UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

January 3, 2004

John Vodopia
Philips Electronics
P. O. Box 3001
Briarcliff Manor, NY 10510-8001

In re Application of:
Johannes Bruijns
Serial No: 10/023,166 On Petition
Filing Date: December 18, 2001
For: ANALYZING A DATA SET COMPRISING A TUBULAR STRUCTURE

In response to the petition received January 26, 2004, to withdraw the holding of abandonment 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 Non Provisional Application mailed February 22, 2002. Which set forth a shortened statutory period for reply of two months. Accordingly, the above-identified application became abandoned April 23, 2002.

The evidence submitted is sufficient to establish that the petitioners never received the Notice to File Missing part of Nonprovisional Application mailed February 22, 2002

The application has been completed with the documents received on January 26, 2004 for release to Technology Center 2621.

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

January 3, 2004

John Vodopia
Philips Electronics
P. O. Box 3001
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In re Application of:
Johannes Bruijns
Serial No: 10/023,166 On Petition
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Telephone inquiries concerning this application may be directed to Doshie E. Day (703) 308-3640.

Doshie Day

Doshie E. Day
Program Management Assistant
Office of Initial Patent Examination

FEE

The Commissioner is hereby authorized to charge Deposit Account No. 14-1270 for any petition fee, which may be due. However, since it is believed that the holding of abandonment is the result of circumstances not attributable to any fault by Applicant or his representative, it is respectfully suggested that no fee is due.

Applicant's undersigned attorney may be reached by telephone at (914) 333-9627. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

By _____

John Vodopia, Reg. 36,399
Philips Electronics
P.O. Box 3001
Briarcliff Manor, NY 10510-8001
(914) 333-9627

Attachments: Notice and Response to Missing Parts Mailed 02/22/02
Assignment with Cover Letter (PTO 1595)
Cover Letter for Resending Correspondence Mailed 09/08/03
Status Letter Mailed 09/23/2003
Our Docketing System Case Sheet for this Application

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited this date with the United States Postal Service as first-class mail in an envelope addressed to:

COMMISSIONER FOR PATENTS
PO Box 1450
Alexandria, VA 22313

On 01/22/2004
(Mailing Date)

By G Lamprecht
(Signature)

S:\vo\phnl\NL000772 PETITION TO REVIVE.doc

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte
ELISABETH STOCKERT, ELKE JAGER,
YAO-TSENG CHEN, MATTHEW SCANLAN,
ALEXANDER KNUTH, and LLOYD J. OLD

Appeal 2007-0543
Application 10/023,182
Technology Center 1600

Decided: March 23, 2007

Before TONI R. SCHEINER, LORA M. GREEN, and NANCY J. LINCK, *Administrative Patent Judges*.

SCHEINER, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims directed to a genus of isolated proteins consisting of immunoreactive portions of NY-ESO-1, a protein identified as a tumor rejection antigen precursor. The examiner has rejected the claims under 35 U.S.C. § 112, first paragraph, as lacking adequate written descriptive support. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

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BACKGROUND

Major Histocompatibility Complex (MHC) molecules are cellular proteins that form complexes with proteolytic fragments of antigens, and transport those antigen fragments to the cell surface to present them to the body's T cells in order to provoke a specific immune response. A given MHC molecule characteristically recognizes and binds peptides that are similar in size and sequence. Methods of predicting which portions of a given protein are likely to bind a given MHC molecule were known in the art at the time of the invention, as were cytotoxicity assays designed to determine whether a given MHC-bound peptide is capable of provoking a T cell response. Specification 24: 4 to 25: 18.

DISCUSSION

Claims 32, 34-37, and 40, are the subject of this appeal, and are directed to a genus of proteins consisting of immunoreactive portions of NY-ESO-1, a purported tumor rejection antigen precursor encoded by SEQ ID NO: 1. Specifically, the claims are directed to portions of NY-ESO-1 that can be processed by a cell to generate peptides capable of provoking a T cell response after complexing with MHC molecules. Claim 41, also pending, is directed to three specific portions of NY-ESO-1, and has been indicated allowable.

Claim 32 is representative of the subject matter on appeal, and reads as follows:

> 32. An isolated protein consisting of an immunoreactive portion of a protein encoded by an isolated nucleic acid molecule, consisting of the nucleotide sequence of SEQ ID NO: 1, wherein said immunoreactive portion of a protein is processed by a cell to form a peptide which complexes to an MHC molecule and provides a T cell response.

PAGE 9/13 * RCVD AT 3/28/2007 1:03:43 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/5 * DNIS:2738300 * CSID:2123183400 * DURATION (mm-ss):06-46

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According to Appellants, the cDNA encoding NY-ESO-1 was originally isolated from a library prepared from a specimen of squamous cell cancer of the esophagus (Specification 6: 4-8), and the corresponding mRNA was subsequently detected in other esophageal tumors, as well as tumors of unrelated lineage, including melanoma, and breast (*id.* at 10: 24-26). NY-ESO-1's overall "pattern of expression is consistent with other tumor rejection antigen precursors" (*id.* at 10: 13-14). Moreover, NY-ESO-1 was "found to be reactive with antibodies in the serum of cancer patients" (*id.* at 5: 12-13, 16-17).

In order to evaluate T cell response to NY-ESO-1, the amino acid sequence of the protein encoded by SEQ ID NO: 1 was analyzed, and peptides satisfying the binding motif for the MHC molecule HLA-A2 were tested in cytotoxicity assays (*id.* at 17: 9-11 and 24: 4-11). Of these peptides, three corresponding to SEQ ID NOS: 4, 5, and 6, with the common amino acid sequence SLLMWIT, "were the three best stimulators of CTLs" (*id.* at 25: 1-4). In addition, the deduced protein was analyzed for peptides satisfying other MHC binding motifs (i.e., various HLA-A and HLA-B molecules). Of the thirty-eight such peptides listed in the specification, only a few have sequences overlapping SEQ ID NOS: 3, 4, and 5 (*id.* at 25: 9 to 26: 40). According to Appellants, complexes between these additional peptides and their corresponding MHC molecules "should provoke a cytolytic T cell response" (*id.* at 25: 12-15), which "could be determined by one skilled in the art following [conventional] methods" (*id.* at 25: 16-17).

According to the Examiner, however, "[t]he specification does not provide an adequate written description of the claimed genus" (Answer 10), because the peptides corresponding to SEQ ID NOS: 3, 4, and 5 are not representative of a genus that encompasses "peptides [which] do not have to share the same common structure SLLMWIT of . . . SEQ ID NO[S]: 4, 5 and 6" (Answer 5). As far as the

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other thirty-eight peptides listed in the specification are concerned, the Examiner acknowledges that they "have HLA binding motifs, and are expected to bind to HLA molecule[s]" (*id.*), but argues that they are not "adequate examples of the claimed T cell epitopes" (*id.* at 6), because "one cannot predict that these peptides also elicit sufficient T cell response" (*id.* at 5). The Examiner finds that "one of skill in the art would reasonably conclude that Appellant[s] did not have possession of the claimed genus . . . at the time the invention was made" (*id.* at 10).

We disagree with the Examiner's rationale and conclusion. "The 'written description' requirement serves a teaching function, . . . in which the public is given 'meaningful disclosure in exchange for being excluded from practicing the invention for a limited period of time.'" *University of Rochester v. G.D. Searle & Co., Inc.*, 358 F.3d 916, 922, 69 USPQ2d 1886, 1891 (Fed. Cir. 2004) (citation omitted). Another "purpose of the 'written description' requirement is . . . [to] convey with reasonable clarity to those skilled in the art that, as of the filing date [ ], [the applicant] was in possession of the invention." *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). *See also Enzo Biochem Inc. v. Gen-Probe Inc.*, 296 F.3d 1316, 1329, 63 USPQ2d 1609, 1617 (Fed. Cir. 2002). The requirement is satisfied when the specification "set[s] forth enough detail to allow a person of ordinary skill in the art to understand what is claimed and to recognize that the inventor invented what is claimed." *University of Rochester*, 358 F.3d at 928, 69 USPQ2d at 1896. Whether or not a specification satisfies the requirement is a question of fact, which must be resolved on a case-by-case basis (*Vas-Cath*, 935 F.2d at 1562-63, 19 USPQ2d at 1116).

"[A]pplicants have some flexibility in the 'mode selected for compliance' with the written description requirement" (*University of Rochester*, 358 F.3d at 928, 69 USPQ2d at 1896), and it is well settled that actual reduction to practice is

PAGE 11/13 * RCVD AT 3/28/2007 1:03:43 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/5 * DNIS:2738300 * CSID:2123183400 * DURATION (mm-ss):06-46

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not necessary to satisfy the requirement (*id.* at 926, 69 USPQ2d at 1894). In *University of California v. Eli Lilly and Co.*, 119 F.3d 1559, 1568, 43 USPQ2d 1398, 1406 (Fed. Cir. 1997), the court explained that "[a] description of a genus of cDNAs may be achieved by means of a recitation of a representative number of cDNAs, defined by nucleotide sequence, falling within the scope of the genus or of a recitation of structural features common to the members of the genus, which features constitute a substantial portion of the genus" (*id.* at 1569, 43 USPQ2d at 1406). In addition, the court subsequently clarified that "the written description requirement would be met for [a claim] . . . if [a] functional characteristic . . . were coupled with a disclosed correlation between that function and a structure that is sufficiently known or disclosed." *Enzo Biochem*, 296 F.3d at 1324-25, 63 USPQ2d at 1613.

Finally, the court has made it clear that other factors, including the level of knowledge and skill in the art, are relevant to whether a description satisfies § 112. *See Capon v. Eshhar*, 418 F.3d 1349, 1359, 76 USPQ2d 1078, 1085 (Fed. Cir. 2005) ("[T]he determination of what is needed to support generic claims to biological subject matter depends on a variety of factors, such as the existing knowledge in the particular field, the extent and content of the prior art, the maturity of the science or technology, the predictability of the aspect at issue, and other considerations appropriate to the subject matter.").

Here the specification discloses more than forty representative peptides. Each of the peptides is structurally identical to a portion of NY-ESO-1, the protein encoded by SEQ ID NO: 1, and each of the peptides was identified on the basis of what was known about MHC binding motifs at the time of the invention. Moreover, at least three of the peptides were shown to meet the functional limitations of the claims using a conventional cytotoxicity assay. We conclude that

PAGE 12/13 * RCVD AT 3/28/2007 1:03:43 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/5 * DNIS:2738300 * CSID:2123183400 * DURATION (mm-ss):06-46

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the structural constraints placed on the members of the claimed genus, together with what was known in the art at the time of the invention about MHC binding motifs, and about detecting T cell response, provides more than enough detail to allow a person skilled in the art to understand and recognize what is claimed, and conveys with reasonable clarity to one of skill in the art that Appellants were in possession of the claimed genus at the time of the invention.

SUMMARY

The rejection of claims 32, 34-37, and 40 under 35 U.S.C. § 112, first paragraph, for lack of adequate written descriptive support is reversed.

REVERSED

lbg

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

PAGE 13/13 * RCVD AT 3/28/2007 1:03:43 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/5 * DNIS:2738300 * CSID:2123183400 * DURATION (mm-ss):06-46

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Commissioner for Patents
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Alexandria, VA 22313-1450
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Date : 4/25/08

Patent No. : 7291335 B2
Application No : 10/023182
Inventor(s) : Stockert et al.
Issued : Nov. 6, 2007
Title : **ISOLATED NUCLEIC ACID MOLECULES ENCODING ESO-1 PEPTIDES AND USES THEREOF**
Docket No. : NY-LUD 5466-US7-DIV

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of 37 CFR 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Fee(s) Transmittal Form PTOL-85B. After payment of the issue fee, correction of assignment data submitted on the PTOL-85B can only be done by Certificate of Correction under 37 CFR 1.323, with a request under 37 CFR 3.81(b).

A request for a patent to be corrected to state the name of the assignee must:

A. state that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent;
B. include a request for a certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); and
C. include the processing fee set forth in 37 CFR 1.17(i).

If the request is granted, Certificates of Correction Branch will be notified that a Certificate of Correction may be issued.

See Manual of Patent Examining Procedure, Section 1481.01 (Rev. 3) (Oct. 2005).

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

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	571-273-8300 ATTN: Office of Petitions

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

Elisha Evans
For Mary F. Diggs
Decisions & Certificates
of Correction Branch
(703) 308-9390 ext. 110

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

MFD/eme

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OFFICE OF PETITIONS

Akzo Nobel Inc.
Intellectual Property Department
7 Livingstone Avenue
Dobbs Ferry, NY 10522-5459

In re Application of
Spitzer et al.
Application No. 10/023,188
Patent No. 6,905,727
Filed: June 14, 2005
Attorney Docket No. ACO 2843 US

: DECISION GRANTING PETITION

This decision is in response to Applicant's "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED ON PATENT ISSUED UNDER 37 CFR 1.705(D)" timely[1] file on June 27, 2005 requesting that the Patent Term Adjustment be adjusted from one hundred and ninety three (193) days to the amount of three hundred and thirteen (313) days. This petition is being considered pursuant to 37 CFR 1.705(d).

Applicant's petition is **GRANTED**. The Office will *sua sponte* issue a certificate of correction reflecting an adjustment of 313 days rather than the 193 day amount printed on the front of the patent.

Applicant argues that the Office erred in asserting an applicant delay of one hundred and twenty (120) days for the submission of drawings after the mail date of the notice of allowance . Applicants assert that the drawings submission occurred on January 14, 2004, not October 24, 2004.

Applicant's arguments are persuasive. A review of the file reflects that drawings were filed on January 14, 2004 not October 24, 1004. The drawings of October 24, 2004 were copies of drawings of January 14, The application does not reflect the submission of any drawings after the mail date of the notice of allowance. Accordingly, the Office erred by entering into PALM a drawing submission after the mail date of the notice of allowance. Accordingly, the one hundred and twenty (120) day reduction is in error because applicant did not fail to engage in any reasonable efforts to conclude prosecution of the application pursuant to 37 CFR 1.704(c)(10). Accordingly, the proper amount of PTA at the time of the issuance of the patent is three hundred and thirteen days (313) as asserted by applicant.

[1]Patent issue date July 14, 2005

Application No. 10/023,188

After review of this decision, this application will be forwarded to the certificate of correction branch for a prompt issuance of a certificate of correction.

The Office acknowledges the receipt of $200.00 for the application for patent term adjustment (petition). No additional fees are required by the Office.

Any questions concerning the issuance of this patent should be directed to Kery A. Fries, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy at 571-272-7757

Kery A Fries

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

cc: Adjusted Pair Calculation
Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	6,905,727 B2
DATED	:	Jun. 14, 2005
INVENTOR(S)	:	Spitzer 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 (193 days

Delete the phrase "by 193 days" and insert – by 313 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 14, 2007

TO SPE OF : ART UNIT 2617

10/023199

SUBJECT : Request for Certificate of Correction on Patent No.: 7139593 B2

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

Please complete this form and return with file, within **7** days to:

Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**

If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**

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

Elisha Evans

Thank You For Your Assistance

Certificates of Correction Branch

Tel. No. 703-308-9390 EXT 110

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

Note your decision on the appropriate box.

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

Comments:

OK for correction. thank you

Duc Nguyen

DUC M. NGUYEN
SUPERVISORY PRIMARY EXAMINER
TECHNOLOGY CENTER 2600 **SPE**

2617
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

David J. Brezner, Esq.
FLEHR HOHBACH TEST
ALBRITTON & HERBERT LLP
Four Embarcadero Center, Suite 3400
San Francisco CA 94111-4187

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DEC 13 2002

OFFICE OF PETITIONS

In re Application of:
Chu
Application No. 10/023,205
Filed: December 14, 2001
Attorney Docket No.

DECISION GRANTING PETITION

This is a decision on the February 12, 2002 petition under 37 C.F.R. §1.10(c) requesting that the above-identified application be accorded a filing date of December 14, 2001 rather than the presently accorded filing date of December 17, 2001.

Petitioner alleges that the application was deposited in Express Mail service on December 14, 2001. In support, the petition is accompanied by a copy of Express Mail receipt no. EV031970521US (the same Express Mail number found on the original application papers located in the official file) showing a "date in" of December 14, 2001.

In view of the above, *this petition is* ***granted***.

This application will be returned to Initial Patent Examination Division for correction of the filing date to December 14, 2001.

Telephone inquiries concerning this matter may be directed to the undersigned in the Office of Petitions at (703) 306-5593.

Scott M. Ledford
Attorney
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 9

JAN - 5 2004

HENRICKS SLAVIN AND HOLMES LLP
SUITE 200
840 APOLLO STREET
EL SEGUNDO, CA 90245

In re Application of	:
Tom Stack	: DECISION ON REQUEST TO
Application No. 10/023,213	: WITHDRAW FROM RECORD
Filed: December 17, 2001	:
Attorney Docket No. 310030-251P2	:

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed October 6, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above listed requirements.

The request is APPROVED.

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

Jose G. Dees, Special Program Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Doug McEvoy, Esq.
Gifford, Krass, Groh, Sprinkle & Associates
280 North Old Woodward Avenue, Suite 400
Birmingham, MI 48009

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

FISH & NEAVE
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50TH FLOOR
NEW YORK, NY 10020-1105

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APR 1 6 2003

OFFICE OF PETITIONS

In re Application of	:	
Philip M. Ginsberg	:	
Application No. 10/023,241	:	DECISION GRANTING PETITION
Filed: December 17, 2001	:	UNDER 37 CFR 1.137(f)
Attorney Docket No. CF-16	:	

This is a decision on the petition, filed April 8, 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 December 6, 2002. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

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

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

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

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

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

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A corrected Filing Receipt which sets forth the projected publication date of July 24, 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 3628 for examination in due course.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ROPES & GRAY, LLP
PATENT DOCKETING 36/361
1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8704

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OFFICE OF PETITIONS

In re Application of	:	
Philip M. Ginsbert	:	
Application No. 10/023,241	:	DECISION ON PETITION
Filed: December 17, 2001	:	TO WITHDRAW
Attorney Docket No. CF/016	:	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 **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Ropes & Gray, LLP has been revoked by the assignee of the patent application on April 23, 2008. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/April M. Wise/
April M. Wise
Petitions Examiner
Office of Petitions

cc: DEAN P. ALDERUCCI
CANTOR FITZGERALD, LP
110 EAST 59TH STREET
6TH FLOOR
NEW YORK, NY 10022

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Paper No. 4

Orlando Lopez
POLAROID CORPORATION
Patent Department
784 Memorial Drive
Cambridge, MA 02139

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OFFICE OF PETITIONS

In re Application of :
Bernier et al. :
Application No. 10/023,245 : DECISION ON PETITION
Filed: December 18, 2001 :
Attorney Docket No. 8522 :

This is a decision on the petition filed March 20, 2002, requesting, in effect, that Page 20 of the specification filed on March 20, 2002 be entered as part of the original disclosure.

The petition is **dismissed**.

The application was filed on December 18, 2001. However, on January 25, 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 December 18, 2001, and advising applicants that page 20 of the specification appeared to have been omitted.

In response, the present petition was filed. Petitioner alleges page 20 was filed with the original application.

All the evidence present in the file has been carefully considered, but is not persuasive that page 20 was submitted with the original application.

Analysis:

While petitioner apparently believes that page 20 was filed on December 18, 2001, the file of application No. 10/023,245[1] shows that page 20 of the specification was not received, since no such paper is present in the file. An applicant alleging that a paper was filed in the USPTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

The application was deposited with a postcard receipt.[2] The postcard receipt states that 24 pages of specification are present. Upon receipt of the application papers, the Office reviewed the file

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[1] The file contains the actual papers received and the file is an official government record prepared and maintained by disinterested USPTO employees as a part of their customary and usual duties.

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

and verified that at least 24 pages of specification were present. The 24 pages were merely counted and were not substantively reviewed. A manual count of the pages of specification in the file indicates the presence of 25 pages of specification. Duplicate copies exist for pages 6 and 22. Therefore, the postcard receipt fails to establish that page 20 was submitted with the original application, but only proves that at least 24 pages of specification were submitted with the application.

Since applicants have not filed a petition under 37 CFR 1.182 requesting March 20, 2002, the date the missing pages were filed, as the filing date, page 20 of the specification will not be entered.

An amendment to the specification deleting references to the missing pages should be filed prior to the first USPTO action in order to avoid further delays in the examination of the application. In the alternative, if petitioner desires for the examiner to consider pages which were not submitted as part of the original disclosure, then petitioner may seek to submit some or all of those pages as an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter. See MPEP 608.02(a).

The file will be returned to the Office of Initial Patent Examination for further processing with a filing date of December 18, 2001, using only the papers filed on that date.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.[3]

Charles Steven Brantley
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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

---

[3] 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

In re Application of Jianping Zhang et al	:
	: DECISION GRANTING PETITION
Application No. 10/023258	: TO REMAIL AN OFFICE
Filed: December 14, 2001	: COMMUNICATION AND RESTART
Attorney Docket No. 1856-23900	: PERIOD FOR REPLY

This is a decision on the petition filed on April 4, 2002, requesting that the Office communication mailed on January 16, 2002 be remailed and the shortened statutory period for reply set forth in the Office communication be restarted on the new mail date.

The petition is granted.

Petitioner provided a statement that the Office communication in question was received at the correspondence address of record on March 27, 2002. The petition was filed within two weeks of receipt of the Office communication. A substantial portion of the reply period had elapsed on the date of receipt.

Accordingly, the Office communication in question will be remailed and the period for reply that was originally set forth in the Office communication will be restarted to run from the new mail date of the Office communication.

Kevin Little 5/9/02

Kevin Little
Office of Initial Patent Examination
(703) 308-1863

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner of Patents

AUG 0 2 2005

Ropes & Gray LLP
One International Place
Boston, MA 02110-2624

In re Application of	:	
PARK ET AL.	:	
Serial No.10/023,259	:	Decision on
Filed December 14, 2001	:	Petition
For: Microneedle Devices and Production Thereof	:	

A Notice of Abandonment for the above-identified application was mailed December 15, 2004. Applicant filed a petition to withdraw the Holding of Abandonment under 37 CFR 1.181 on January 10, 2005. In the petition applicant provides a copy of the Notice of Appeal filed November 15, 2004, a copy of the extension of time filed November 15, 2004 and a copy of the post card receipt dated November 15, 2004 by the USPTO. Applicant filed the papers using US Postal Service Express Mail. The Date due was November 15, 2004 since the required due date , November 13, 2004, fell on a Saturday. Further, upon inspection of the file all papers filed on November 15, 2004 are of record.

In view of the above, the Notice of Abandonment mailed December 15, 2004 is in error. The **Holding of Abandonment is Withdrawn**. This application is being forwarded to the examiner for appropriate action.

Richard A. Bertsch, Director
Technology Center 3700

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Paper No.

Edward J Kelly
Ropes & Gray
One International Place
Boston MA 02110-2624

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MAR 14 2008
OFFICE OF PETITIONS

In re Application of :
Park et al. : DECISION ON PETITION
Application No. 10/023,259 :
Filed: December 14, 2001 :
Atty Docket No. BVTP-P01-590 :

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a) filed October 24, 2007.

The petition under § 1.181 is **GRANTED**.

By Notice of Abandonment mailed October 9, 2007, applicants were advised that the above-identified application became abandoned for failure to file a proper reply to the Office action mailed May 13, 2004. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No response was considered received in the Office.

In response, applicants promptly filed the instant petition. Applicants petition for withdrawal of the holding of abandonment on the ground that a Notice of Appeal and a Petition for Extension of Time were timely filed by Express Mail Procedure as specified in 37 CFR §1.10.

A review of the application record reveals that withdrawal of the holding of abandonment is warranted. By decision mailed August 2, 2005, the Director of the Technology Center withdrew an earlier Notice of Abandonment issued December 15, 2004. In that decision, it was concluded that the holding of abandonment was not warranted as a Notice of Appeal (with extension of time) was timely filed on Monday, November 15, 2004 in response to the

Office action mailed May 13, 2004. The TC Director's decision made a determination that the abandonment for failure to file a proper reply to the Office action mailed May 13, 2004 was not warranted.

However, the decision forwarded the application to the examiner for appropriate action. No further action was taken. On June 23, 2006, applicants filed a status inquiry. No response to the status inquiry was mailed by the Office. Next, on October 9, 2007, the Notice of Abandonment was mailed.

The appropriate action on the part of the examiner was to await the filing of an appeal brief. When an application is revived after abandonment for failure on the part of the appellant to take appropriate action after final rejection (or the abandonment is withdrawn), and the petition to revive was accompanied by a notice of appeal, appellant has 2 months, from the mailing date of the Director's affirmative decision on the petition, in which to file the appeal brief. The time period for filing the appeal brief may be extended under 37 CFR 1.136. Accordingly, in the future, petitioner should be mindful that pursuant to this section of the MPEP, a favorable decision may be construed as setting a period for filing an Appeal Brief, and take action accordingly.

In this instance, the period should have been set in the Director's decision. The MPEP also states:

> When a notice of appeal is the reply filed pursuant to 37 CFR 1.137(a)(1) or 1.137(b)(1), the time period under 37 CFR 41.37 for filing the appeal brief will be set by the Director of the USPTO in the decision granting the petition.

Likewise, when a decision granting a petition to withdraw the holding of abandonment on the basis that a Notice of Appeal that was not received[1] should be considered timely filed, the time period under 37 CFR 41.37 for filing the appeal brief will be set by the Director of the USPTO in the decision granting the

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[1] It is noted that if the Notice of Appeal was received by the Office, i.e., applicants have prima facie evidence in the form of an itemized and date-stamped postcard that the Notice of Appeal was received on a certain date, then the time period under 37 CFR 41.37 is set based on the actual date of receipt of the Notice of Appeal in the Office.

petition. In this instance, no 2-month period was set in the decision mailed August 2, 2005.

In view thereof, the Notice of Abandonment mailed October 9, 2007 and the holding of abandonment are hereby **withdrawn**.

No fee is required on petition under § 1.181.

Please be advised that the two-month period for filing an appeal brief (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the mail date of this decision.

Technology Center AU 3767 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, if necessary, to process the Notice of Appeal filed November 15, 2004 (and resubmitted on petition filed January 10, 2005), and for the examiner to await filing of applicant's Appeal Brief.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Paper No. None

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JAN 13 2006

OFFICE OF PETITIONS

In re Application of	:	
Nils Peter Nordqvist et al.	:	
Application No. 10/023,264	:	DECISION ON TWO PETITIONS
Filed: December 18, 2001	:	UNDER 37 C.F.R. §§1.78(A)(3)
Attorney Docket No. 22645-7202	:	AND 1.55(C)
Title: HEARING PROSTHESIS WITH	:	
AUTOMATIC CLASSIFICATION OF THE	:	
LISTENING ENVIRONMENT	:	

This is a decision on the petition filed on August 19, 2005, which is being treated as petitions under 37 CFR §1.78(a)(3) and 37 CFR §1.55(c) to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of a prior-filed PCT application, and under 35 U.S.C. § 119(a)-(d) for the benefit of a prior-filed foreign application, as set forth in the concurrently filed amendment.

The petition under 37 CFR §1.78(a)(3) is **GRANTED** and the petition under 37 CFR §1.55(c) is **DISMISSED**.

As to the benefit claim under 37 CFR 1.78(a)(3):

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The

Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) 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 provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the 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 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

As to the benefit claim under 37 CFR 1.55(c):

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

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

The instant petition fails to comply with item (2) above. In this regard, a review of the file record fails to disclose that the priority information was included in an oath or declaration or in

an Application Data Sheet in accordance with 37 CFR 1.76(b)(6). Unless provided in an application data sheet, 37 CFR 1.63(c)(2) requires that the oath or declaration must identify the foreign application for patent or inventor's certificate for which priority is claimed under 37 CFR 1.55, and any foreign applications having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. *Note* MPEP 201.14, page 200-77 (Rev. 2, May 2004), last paragraph, second column.

In view of the above, compliance with 37 CFR 1.63(c)(2) or 37 CFR 1.76(b)(6) must be satisfied if applicant desires to claim priority to the foreign application noted in the petition. Any future petition should include a cover letter and be entitled "Renewed Petition under 37 CFR 1.55(c)."

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. 1.55(c)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[1], hand-delivery[2], or facsimile[3].

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

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
United States Patent and Trademark Office

Attachment: Corrected Filing Receipt

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

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Paper No. None

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OFFICE OF PETITIONS

In re Application of :
Nils Peter Nordqvist et al. :
Application No. 10/023,264 :
Filed: December 18, 2001 :
Attorney Docket No. 22645-7202 :
Title: HEARING PROSTHESIS WITH :
AUTOMATIC CLASSIFICATION OF THE :
LISTENING ENVIRONMENT :

DECISION ON RENEWED PETITION
UNDER 37 C.F.R. §1.55(C)

This is a decision on the renewed petition filed on April 13, 2006 under 37 C.F.R. §1.55(c) to accept to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for the benefit of a prior-filed foreign application, as set forth in the concurrently filed Application Data Sheet (ADS).

The original petitions under 37 C.F.R. §1.78(a)(3) and 37 C.F.R. §1.55(c) were filed on August 19, 2005. A decision was mailed on January 13, 2006, granting the former and dismissing the latter for failure to include the priority information in either an oath or declaration or in an Application Data Sheet in accordance with 37 C.F.R. 1.76(b)(6). With the present petition, Petitioner has included a one-month extension of time which is unnecessary as the rule does not require an extension of time for the submission of a subsequently filed renewed petition. Accordingly, this $120 extension of time fee assessed to Petitioner's Deposit Account will be refunded in due course.

The renewed petition under 37 C.F.R. §1.55(c) is **DISMISSED**.

A petition under 37 C.F.R. 1.55(c) to accept an unintentionally

delayed claim for priority requires:

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

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

Intermediate application number PCT/DK01/00226 was filed on April 4, 2001, within 12 months of April 4, 2000, (the filing date of the foreign application to which benefit is now being claimed). Regarding the petition fee, Petitioner has submitted $400, and the fee which is associated with the filing of a petition seeking the acceptance of an unintentionally delayed claim for priority is $1370 - the difference has been charged to Petitioner's Deposit Account, as authorized in the petition. Lastly, Petitioner has provided an adequate statement of unintentional delay.

On April 13, 2006, an ADS was received which identifies the foreign application for which priority is claimed by application number, country and filing date. This ADS has been reviewed, and it is noted that Petitioner has listed intermediate application number PCT/DK01/00226 not as a continuation of the present application, but rather in the section entitled "Foreign Priority Information." As such, Petitioner's claim for priority is improper, and the present petition under 37 C.F.R. 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) cannot be granted.

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

Frances Hicks
Petitions Examiner
Office of Petitions
United States Patent and Trademark Office

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AUG 16 2007

OFFICE OF PETITIONS

In re Application of	:	
Nils Peter Nordqvist et al.	:	
Application No. 10/023,264	:	DECISION ON PETITION
Filed: December 18, 2001	:	UNDER 37 C.F.R. § 1.181
Attorney Docket No. 22645-7202	:	
Title: HEARING PROSTHESIS WITH	:	
AUTOMATIC CLASSIFICATION OF THE	:	
LISTENING ENVIRONMENT	:	

BACKGROUND

This is a decision on the petition under 37 C.F.R. § 1.181, filed June 25, 2007, requesting that the holding of abandonment in the above-identified application be withdrawn.

A second renewed petition under 37 C.F.R. § 1.55(c) was filed September 27, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of priority to the filing date of foreign Danish Application No. PA 2000 00554, filed April 4, 2000. A decision on the petition under 37 C.F.R. § 1.55(c) will be mailed in due course under separate cover.

ANALYSIS

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed September 14, 2006, which set a shortened statutory period for reply of three months. No extensions of time are permitted for transmitting issue or publication fees[1]. Accordingly, the above-identified application became abandoned on December 15, 2006. A Notice of Abandonment was mailed on May 24, 2007.

With the present petition, Petitioner has set forth that on December 14, 2006, a Request for Continued Examination (RCE) was submitted, along with a set of formal drawings.

The electronic record has been reviewed, and it is noted that an RCE, the associated fee, and a set of drawings were received in the Office on December 14, 2006. It is further noted that the RCE failed to indicate that a submission had been included. On May 15, 2007, a "Notice of Improper Request for Continued Examination (RCE)" was mailed by the Office, indicating that the request was not accompanied by a submission - presumably due to Petitioner's filing error.

Petitioner has requested that the holding of abandonment in the above-identified application be withdrawn.

It is clear that a response was timely submitted on December 14, 2006.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that a submission was timely provided.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

CONCLUSION

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the submission under 37 C.F.R. § 1.114 - the drawings submitted on December 14, 2006 - can be processed.

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1 See MPEP § 710.02(e).

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[2]. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

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

---

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

to the address will delay the delivery of the response to the undersigned.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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

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AUG 2 4 2007

OFFICE OF PETITIONS

In re Application of Nils Peter Nordqvist et al. Application No. 10/023,264 Filed: December 18, 2001 Attorney Docket No. 22645-7202 Title: HEARING PROSTHESIS WITH AUTOMATIC CLASSIFICATION OF THE LISTENING ENVIRONMENT	:	DECISION ON SECOND RENEWED PETITION UNDER 37 C.F.R. § 1.55(C)

BACKGROUND

This is a decision on the second renewed petition under 37 C.F.R. § 1.55(c), filed September 27, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of priority to the filing date of foreign Danish Application No. PA 2000 00554, filed April 4, 2000.

ANALYSIS

The original petition was filed on August 19, 2005, and was dismissed via the mailing of a decision on January 13, 2006, for failure to include the required reference in either an oath or a declaration.

The renewed petition was filed on April 13, 2006, and was dismissed via the mailing of a decision on August 30, 2006, for listing the intermediate PCT application as a foreign reference.

With this second renewed petition, Petitioner has again attempted to introduce the benefit claim to foreign Danish Application via an amendment to the specification.

This cannot be done. Consequently, the second renewed petition is **DISMISSED**.

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

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

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

The petition fails to comply with item (2) above. In this regard, a review of the file record fails to disclose that the priority information was included in an oath or declaration or in an Application Data Sheet (ADS) in accordance with 37 C.F.R.

§ 1.76(b)(6). Unless provided in an ADS, 37 C.F.R. §f 1.63(c)(2) requires that the oath or declaration must identify the foreign application for patent (or inventor's certificate) for which priority is claimed under 37 C.F.R. § 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. Note MPEP § 201.14.

In view of the above, compliance with 37 C.F.R. § 1.63(c)(2) or 37 C.F.R. § 1.76(b)(6) must be satisfied if applicant desires to claim priority to the foreign application noted in the petition.

Any future petition should include a cover letter and be entitled "Third Renewed Petition under 37 C.F.R. § 1.55(c)."

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

On August 15, 2007, Senior Attorney Paul Shanoski contacted Petitioner, and was assured by the same that an executed supplementary ADS would be promptly submitted electronically. As of the mailing of this decision, it does not appear that this submission has been made.

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

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

---

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

UNITED STATES 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.

DAVID G. BECK
BINGHAM MCCUTCHEN LLP
3 EMBARCADERO CENTER
SUITE 1800
SAN FRANCISCOf CA 94111

COPY MAILED

SEP 0 4 2007

OFFICE OF PETITIONS

In re Application of Nils Peter Nordqvist et al. Application No. 10/023,264 Filed: December 18, 2001 Attorney Docket No. 22645-7202 Title: HEARING PROSTHESIS WITH AUTOMATIC CLASSIFICATION OF THE LISTENING ENVIRONMENT	:	DECISION ON THIRD RENEWED PETITION UNDER 37 C.F.R. § 1.55(C)

BACKGROUND

This is a decision on the third renewed petition under 37 C.F.R. § 1.55(c), filed August 28, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of priority to the filing date of foreign Danish Application No. PA 2000 00554, filed April 4, 2000.

ANALYSIS

An original petition was filed on August 19, 2005, and was dismissed via the mailing of a decision on January 13, 2006, for failure to include the required reference in either an oath or a declaration.

A renewed petition was filed on April 13, 2006, and was dismissed via the mailing of a decision on August 30, 2006, for listing the intermediate PCT application as a foreign reference. The renewed petition was dismissed via the mailing of a decision on August 30, 2006.

A second renewed petition was filed on September 27, 2006. Petitioner was provided with an opportunity to correct an error with the Application Data Sheet, however, despite his assurance that a submission would be promptly made electronically, no submission was received. Consequently, the second renewed petition was dismissed via the mailing of a decision on August 24, 2007.

This third renewed petition is **GRANTED**.

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

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

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;

(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in an oath or declaration (37 C.F.R. § 1.63(c)(2)) or in an Application Data Sheet (37 C.F.R. § 1.76(b)(6);

(3) the surcharge as set forth in 37 C.F.R. § 1.17(t);

(4) a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and

(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

This application was filed on December 18, 2001, which is after November 29, 2000 and within 12 months of April 4, 2001 (the filing date of the foreign application to which benefit is now being claimed). On December 18, 2001, an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of $1370 was received with the original petition. Lastly, Petitioner has provided an adequate statement of unintentional delay.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 119(a)-(d) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 C.F.R. § 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 119(a)-(d) and 37 C.F.R. § 1.55(a)(1) 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 this application is entitled to the benefit of the earlier filing date.

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

This application is being referred to Technology Center AU 2615 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

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

1 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written

inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

Attachment: Corrected Filing Receipt

---

record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/023,264	12/18/2001	2615	4744	22645-7202	26	4

CONFIRMATION NO. 5504

CORRECTED FILING RECEIPT

OC000000025655083

DAVID G. BECK
BINGHAM MCCUTCHEN LLP
3 EMBARCADERO CENTER
SUITE 1800
SAN FRANCISCO, CA 94111

Date Mailed: 09/04/2007

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

Applicant(s)

Nils Peter Nordqvist, Sollentuna, SWEDEN;
Arne Leijon, Stockholm, SWEDEN;

Assignment For Published Patent Application

GN ReSound A/S

Power of Attorney:

David Beck--37776

Domestic Priority data as claimed by applicant

This application is a CON of PCT/DK01/00226 04/04/2001

Foreign Applications

WORLD INTELLECTUAL PROPERTY ORGANIZATION 01/76321 A1 04/04/2001
DENMARK PA200000554 04/04/2000

If Required, Foreign Filing License Granted: 01/24/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/023,264

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

HEARING PROSTHESIS WITH AUTOMATIC CLASSIFICATION OF THE LISTENING ENVIRONMENT

Preliminary Class

381

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).

SPE: R. Gulakowski

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/13/07

TO SPE OF : ART UNIT 1712

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/023,223 Patent No.: 7148183

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

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

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

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: Corrects typographical and obvious errors

RANDY GULAKOWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

SPE 1712 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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www.uspto.gov

KATTEN MUCHIN ROSENMAN LLP
525 WEST MONROE STREET
CHICAGO IL 60661-3693

COPY MAILED

SEP 14 2005

OFFICE OF PETITIONS

In re Application of	:	
Kenney et al.	:	
Application No. 10/023,284	:	
Filed: December 15, 2005	:	ON PETITION
Attorney Docket Number:	:	
11109-00006	:	

This is a decision in response to the Petition Under 37 CFR 1.182, filed on July 19, 2005 to the change order of inventors.

Applicant files the instant petition to change the order of the names of the inventors as follows:

1. Donald P. Kenney
2. Donald A. Gibson
3. Randy E. Craig

The petition is **granted**.

The order of the names of the inventors has been changed consistent with the petition as requested above.

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

Derek L. Woods
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

KATTEN MUCHIN ROSENMAN, LLP
525 WEST MONROE STREET
CHICAGO, IL 60661-3693

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NOV 2 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Donald P. Kenney, et. al.	:	
Application No. 10/023,284	:	ON PETITION
Filed: December 15, 2001	:	
Attorney Docket No. 11109-00006	:	

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile transmission on October 7, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) under 37 CFR 1.114; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

The Office acknowledges receipt of an amendment and $790 for the filing of the RCE.

This application is being revived for consideration of the RCE.

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

The application file is being referred to Technology Center Art Unit 3746.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Thomas L. Irving
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
1300 I Street, N.W.
Washington DC 20005-3315

COPY MAILED

DEC 01 2003

OFFICE OF PETITIONS

In re Application of
Rollat et al.
Application No. 10/023,330
Filed: December 20, 2001
For: RESHAPABLE HAIR STYLING RINSE COMPOSITION COMPRISING (METH)ACRYLIC COPOLYMERS
Attorney Docket No: 5725.0922-00
Pub. No.: US 2003/0147834 A1
Pub. Date: August 7, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), which was received on October 7, 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 Pre-Grant 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
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MAILED

SEP 09 2004

Director's Office
Group 3700

Paper No. 12

In re Application of
Thomas R. Tudor *et al*
Application No. 10/023,333
Filed: December 12, 2001
Attorney Docket No. SEA-147-D

DECISION ON PETITION

This is a decision on the petition filed on February 10, 2003 by which petitioners request supervisory review of the examiner's refusal to enter the amendment after final action dated December 23, 2003, and entry of that amendment. This petition is being considered under 37 CFR 1.181, and no fee is required for the petition. A refund of the $130.00 fee tendered with the petition will be credited to deposit Account No. 25-0115

The petition is dismissed.

A review of the application record shows that the amendment after final rejection was filed in an attempt to cure an alleged deficiency in the written description of the invention. That alleged deficiency has formed part of the basis for the final rejection of the claims. The record also shows that petitioners have appealed the final rejection, and argue in the appeal brief filed on February 25, 2003 that the originally filed drawings support the proposed amendment.

It appears to the undersigned that the relief requested by petition amounts to the same relief that is requested in the appeal with respect to the claim rejections set forth in paragraphs 2 and 3 of the final rejection. It seems, therefore, that to decide this petition would be to decide a matter which is subject to appeal to the Board of Patent Appeals and Interferences, and therefore, outside of the jurisdiction conveyed by 37 CFR 1.181.

This application is being referred to the Head Supervisory Applications Examiner who will refund the $130.00 petition fee to Deposit Account No. 25-0115. In addition, the appeal brief filed on February 25, 2003 will also be entered and forwarded to the Supervisory Patent Examiner of Art Unit 3751 who will ensure that the appeal brief receives immediate attention by the examiner.

PETITION DISMISSED.

Richard A. Bertsch, Director
Technology Center 3700

ATTN: Andrew R. Basile
BRINKS HOFER GILSON & LIONE
3001 West Big Beaver Road
Suite 624Troy, MI 48084-3107

Adjustment date: 04/25/2005 LTHOMPS1
02/11/2003 TBERME 00000108 10023333
01 FC:1460 130.00 OP

Repln. Ref: 04/25/2005 LTHOMPS1 0011242800
DA#:250115 Name/Number:10023333
FC: 9204 $130.00 CR

PATENT

Docket No. 19603/4040 (CRF D-2630)

#4

OIPE JC48
JUL 2 6 2002
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s)	:	Vision et al.	Examiner: Unknown
Serial No.	:	10/023,337	Art Unit: 1645
Cnfrm. No.	:	5690	
Filed	:	December 17, 2001	
For	:	SOLID PHASE DETECTION OF NUCLEIC ACID MOLECULES	

REQUEST FOR FOUR-MONTH EXTENSION OF TIME

U.S. Patent and Trademark Office
P.O. Box 2327
Arlington, VA 22202
Box: Missing Parts

Dear Sir:

Applicants hereby request a Four-Month Extension of Time in responding to the Patent Office communication mailed January 24, 2002.

Enclosed herewith are the following items:

1) A check to cover the **$1,440.00** fee for said extension of time;

2) A duplicate copy of this letter; and

3) A self-addressed prepaid postcard acknowledging receipt of the above-identified material.

Please charge our Deposit Account No. 14-1138 for additional fees that may be incurred.

07/29/2002 JADDO1 00000003 10023337
01 FC:118 1440.00 OP

Respectfully submitted,

Date: July 23, 2002

Georgia Evans
Registration No. 44,597

Nixon Peabody LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051
Telephone: (585) 263-1672
Facsimile: (585) 263-1600

Certificate of Mailing · 37 CFR 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: U.S. Patent and Trademark Office P.O. BOX 2327 Arlington, VA 22202, on the date below.

July 23, 2002 — Jo Ann Whalen
Date — Jo Ann Whalen

R602632.1

OIPE JC48
JUL 2 6 2002
PATENT & TRADEMARK OFFICE

42 D

PATENT

Docket No. 19603/4040 (CRF D-2630)

JTP 8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Todd J. Vision, Amber Carmon, Theodore W. Thannhauser, Stephen Kresovich, Sharon E. Mitchell, and Uwe R. Müller

Serial No. : 10/023,337

Cnfrm. No. : 5690

Filed : December 17, 2001

For : SOLID PHASE DETECTION OF NUCLEIC ACID MOLECULES

TRANSMITTAL LETTER

U.S. Patent and Trademark Office
P.O. Box 2327
Arlington, VA 22202
Box: Missing Parts

Dear Sir:

In response to the Notice to File Missing Parts of Application Under 37 CFR 1.53(b), which was mailed by the United States Patent and Trademark Office on **January 24, 2002**, enclosed are:

[X] Six Combined Declarations and Powers of Attorney (3 pages each, 18 pages total).

[X] A Request for Four-Month Extension of Time.

[X] A copy of the Notice to File Missing Parts.

[X] A self-addressed, prepaid postcard for acknowledging receipt.

[X] Fees as calculated below:

FEE FOR FOUR-MONTH EXTENSION OF TIME	$1,440.00
SURCHARGE 37 CFR 1.16(e)	$ 130.00
ADDITIONAL FEES	$ 0.00
TOTAL FEES SUBMITTED HEREWITH	$1,570.00

[X] A check in the amount of **$1,570.00** to cover the above fees.

[X] The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 14-1138. A duplicate copy of this sheet is enclosed.

Date: July 23, 2002

Georgia Evans
Registration No. 44,597

Nixon Peabody LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051
Telephone: (585) 263-1672
Facsimile: (585) 263-1600

R602624.1

Certificate of Mailing - 37 CFR 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: U.S. Patent and Trademark Office P.O. BOX 2327 Arlington, VA 22202, on the date below.

July 23, 2002 — Date

Jo Ann Whalen — Jo Ann Whalen

#3

UNITED STATES PATENT AND TRADEMARK OFFICE

OIPE JUC48
JUL 2 6 2002
PATENT & 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
10/023,337	12/17/2001	Todd J. Vision	19603/4040 (CRF D-2630)

CONFIRMATION NO. 5690

FORMALITIES LETTER

OC000000007358067

Michael L. Goldman, Esq.
NIXON PEABODY LLP
Clinton Square
P.O. Box 31051
Rochester, NY 14603-1051

Date Mailed: 01/24/2002

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(l) of $130 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is $ 130.**

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

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

07/29/2002 JADDO1 00000003 10023337
02 FC:105 130.00 OP

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WILLIAMS, MORGAN & AMERSON
1033 RICHMOND, SUITE 1100
HOUSTON TX 77042

COPY MAILED

MAR 13 2007

OFFICE OF PETITIONS

In re Application of	:
John Lipp	:
Application No. 10/023,346	: DECISION DISMISSING PETITION
Filed:December 17, 2001	: UNDER 37 CFR 3.81(b)
Attorney Docket No. 2063.001700	:

This is a decision on the petition, filed November 9, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **dismissed**.

Petitioner states that the correct assignee's name is **LOCKHEED MARTIN CORPORATION,** and that an incorrect assignee's name was unintentionally included on Fee Transmittal Form PTOL-85(b) at the time of payment of the issue fee.

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 instant request under 37 CFR 3.81(b) was not accompanied by a request for a certificate of correction (and fee) as required by

---

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

3.81(b). As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted.

A review of Office database assignment records reflects that an assignment to **LOCKHEED MARTIN CORPORATION** has been recorded. Therefore, upon submission of the required certificate of correction and fee, it would be appropriate for the Office to issue a certificate of correction to correct the front page of the Letters Patent to reflect that **LOCKHEED MARTIN CORPORATION** was the assignee of record at the time of issuance of the instant application into a patent. *Note also* 35 U.S.C. § 152.

In view of the above, **the Certificates of Correction Branch is instructed to issue a certificate of correction upon submission by petitioner of a request for a certificate of correction (and fee) which sets forth LOCKHEED MARTIN CORPORATION, as the assignee**. *No certificate of correction will be issued which sets forth an assignee other than the assignee set forth in the instant request. A copy of this decision* ***must*** *accompany the request for a Certificate of Correction.*

No further renewed request under 37 CFR 3.81(b) is necessary for consideration by the Office of Petitions for issuance of a certificate of correction in the name of the assignee set forth in the instant request, as this decision operates as an instruction to the Certificates of Correction Branch to issue the requested certificate of correction.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3208. After the submission by petitioner of the request for a certificate of correction to correct the assignee data on the front page of the Letters Patent, any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

Thomas H. Close
Patent Legal Staff
Eastman Kodak Company
343 State Street
Rochester, NY 14650-2201

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JUN 29 2005

OFFICE OF PETITIONS

In re Application of :
Susan T. Tingley, et al. :
Application No. 10/023,383 : ON PETITION
Filed: December 17, 2001 :
Attorney Docket No. 83171CEB :

This is a decision on the petition under 37 CFR 1.137(b), filed October 15, 2004, to revive the above-identified application.

The petition is **GRANTED**.

A non-final Office action was mailed to applicant on July 1, 2003, which set a three (3) month shortened statutory period for reply. As no reply was received and no extensions of time under the provisions of 37 CFR 1.136 were obtained, the application became abandoned on October 2, 2003.

Since the application became abandoned, applicant filed the instant petition and a proposed reply, namely, an amendment. Receipt of the amendment is acknowledged.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.

The application file is being referred to Technology Center 3700.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper N .: _____

DATE : Mar. 15, 2006

TO SPE OF : ART UNIT 2643 (Curtis Kuntz)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,956,935

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.

See the omitted References Cited. Your denial or approval decision is needed below.

sp STAY 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.

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

Comments:

_____

_____

_____

_____

_____

[signature] 2643

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MILLS & ONELLO LLP
ELEVEN BEACON STREET, SUITE 605
BOSTON, MA 02108

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DEC 1 5 2005

OFFICE OF PETITIONS

In re Application of :
John J. Hart III et al :
Application No. 10/023,424 :
Filed: December 12, 2001 :
Attorney Docket No. ECD-0004

ON PETITION

This is a decision on the petition, filed December 9, 2005 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 29, 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 2653 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

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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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : June 11, 2007

TO SPE OF : ART UNIT 2168

SUBJECT : Request for Certificate of Correction for Appl. No. 10/023433 patent no.7206778

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: _____

SPE

2168

Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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SCHWEGMAN LUNDBERG & WOESSNER/APPLE
PO BOX 2938
MINNEAPOLIS MN 55402

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JUN 22 2009
OFFICE OF PETITIONS

In re Application of	:	
Michael S. Zaharkin	:	
Application No. 10/023,440	:	ON PETITION
Filed: December 14, 2001	:	
Attorney Docket No. 962.007US1	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, or in the alternative to revive under 37 CFR 1.137(b), filed May 12, 2009.

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

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

The above-identified application became abandoned for failure to timely submit a response to the non-final Office action mailed September 3, 2008. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on December 4, 2008. The Office mailed a Notice of Abandonment on March 17, 2009.

Petition under 37 CFR 1.181:

To establish non-receipt of an Office action, a petitioner:

> 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.[1]

In addition, the Manual of Patent Examining Procedure § 711.03(c) also states:

> 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 non-received Office action, a copy of the master docket report **showing all replies docketed for a date three months from the mail date of the non-received Office action** must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has not submitted a copy of a master docket record showing all his replies docketed for a due date of December 3, 2008. Rather, the docket record submitted by petitioner is a copy of an incoming mail log, showing all replies received from the Office, arranged in order by date mailed.

Petition under 37 CFR 1.137(b):

With the instant petition, petitioner has paid the petition fee, submitted the required reply in the form of an Amendment, and made the proper statement of unintentional delay.

The application is being forwarded to Group Art Unit 2178 for consideration of the Amendment, filed May 12, 2009.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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[1] MPEP 711.03(c).

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

Paper No. 6

John P. O'Banion
O'Banion & Ritchey
Suite 1550
400 Capitol Mall
Sacramento, CA 95814

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FEB 2 5 2003

OFFICE OF PETITIONS

In re Application of
Garcia-Luna-Aceves et al.
Application No. 10/023,448
Filed: October 29, 2001
Attorney Docket No. UC00-354-2US

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 5, 2003, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner in reply to the Notice to File Missing Parts (Notice) mailed February 21, 2002, which set a period for reply of (2) two months. No extensions of time under the provisions of 37 CFR 1.136(a) have been obtained. Accordingly, the application became abandoned on April 22, 2002.

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

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

Latrice Bond

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

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APR 04 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Leo R. Reynolds, Esq.
HAMILTON, BROOK, SMITH & RENOLDS, P.C.
530 Virginia Road
P.O. Box 9133
Concord MA 01742-9133

In re Application of :

PELLETIER, DAVID C., et al. :
Application No. 10/023,452 :
Filed: December 17, 2001 :
For: **CAMERA-MOUNTABLE FIBER OPTIC TRANSCEIVER SYSTEM** :

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed May 27, 2004, under 37 CFR §1.102(d) to make the application special and treated as pursuant to MPEP §708.02, section II (Infringement),.

A grantable petition under 37 CFR §1.102(d) and MPEP §708.02, section II (Infringement), must be accompanied by the required fee and a statement alleging:

(1) that there is an infringing device or product actually on the market or method in use;
(2) that a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
(3) that he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art. Further, Applicant must provide a copy of each of the references deemed most closely related to the subject matter encompassed by the claims if the references are not already of record.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application is being forwarded to the examiner for expedited prosecution.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

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P.O. Box 1450
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THOMAS A. O'ROURKE
BODNER & O'ROURKE
425 BROADHOLLOW RD., STE. 108
MELVILLE, NY 11747

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SEP 2 0 2005

OFFICE OF PETITIONS

In re Application of	:	
Gregory Moulton et al	:	
Application No. 10/023,473	:	ON PETITION
Filed: December 17, 2001	:	
For: CURRENT CARRYING STRETCH HOSE	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 18, 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)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed July 13, 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 October 14, 2004.

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

> (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;
> (2) the petition fee as set forth in 37 CFR 1.17(m);
> (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and
> (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)).

The instant petition does not satisfy requirement (2) above.

As to item (2), the fee for a petition to revive under the unintentional standard of 37 CFR 1.137(b) is $1,500. With the present petition, petitioner has submitted $1,370. Accordingly, a consideration on the merits of the present petition cannot be made until the $130 fee deficiency is submitted to the Office.

The statement of unintentional delay presented in the petition does not comply with the current rule. Effective December 1, 1997, 37 C.F.R. §1.137 (b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

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

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

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

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

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

Wan Laymon

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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THOMAS A. O'ROURKE
BODNER & O'ROURKE
425 BROADHOLLOW RD., STE. 108
MELVILLE, NY 11747

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DEC 27 2005

OFFICE OF PETITIONS

In re Application of	:	
Gregory Moulton et al	:	
Application No. 10/023,473	:	ON PETITION
Filed: December 17, 2001	:	
For: Current Carrying Stretch Hose	:	

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

The petition is **GRANTED**.

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

This matter is being referred to Technology Center AU 3754.

Wan Laymon
Petitions Examiner
Office of Petitions

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Paper No. 6

THOMAS A. O'ROURKE
WYATT, GERBER & O'ROURKE
99 PARK AVENUE
NEW YORK, NY 10016

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MAY 1 3 2003

OFFICE OF PETITIONS

In re Application of
Kun Liang
Application No. 10/023,474
Filed: December 17, 2001
Attorney Docket No. None

ON PETITION

This is a decision on the communication filed April 28, 2003, which is being treated as a petition under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely respond to a Notice to File Missing Parts mailed January 25, 2002. The notice required the statutory basic filing fee, an oath or declaration under 37 CFR 1.63 and the requisite surcharge, as well as substitute drawings in compliance with 37 CFR 1.84. Since no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the application became abandoned on March 26, 2002.

Receipt is acknowledged of four (4) sheets of substitute drawings, containing Figures 1-18; the filing fee of $440, as a small entity; an executed declaration under 37 CFR 1.63; and the $65 surcharge under 37 CFR 1.16(e).

It is noted that the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in 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.

The application is being returned to the Office of Initial Patent Examination (OIPE) for further processing.

Telephone inquires related to this decision should be directed to the undersigned at (703) 305-9220. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.

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

cc: THOMAS A. O'ROURKE
BODNER & O'ROURKE
425 BROADHOLLOW ROAD
MELVILLE, NY 11747

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APR 0 4 2007

OFFICE OF PETITIONS

In re Application of :
Wurm, Drewniok, Koellner, :
Strauss, Schang, Herwig, :
Dobson, Grimm, Keyes, and Hof :
Application No. 10/023,479. :
Filed: 12/13/2001 :
Atty Docket No. 60,130-1303; :
01MRA0194 :

DECISION ACCORDING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed under 37 CFR 1.47(a) on 2 July, 2002.

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

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventors, Gregory Keyes and Harald Koellner, have refused to the sign the declaration after having been sent a copy of the application. Specifically, petitioners have shown, via the declaration of British patent attorney John Jones, that a copy of the application papers were sent to the non-signing inventors' last known addresses, but that the non-signing inventors have failed to sign and return the declaration naming them as joint inventors along with George Wurm, Daniel Drewniok, Kalus Dieter Strauss, Kenneth W. Schang, Arnd Herwig, Simon Blair Dobson, Rainer W. Grimm, and Patrick Hof.

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

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventors at the addresses given in the petition, not the Declaration. Notice of the filing of this application will also be published in the *Official Gazette*.

The application is being referred to Technology Center Art Unit 3726 for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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P.O. Box 1450
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Gregory Keyes
28 Inverclyde Road
Handsworth Wood
Birmingham B20 2LJ
UNITED KINGDOM

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APR 0 4 2007

OFFICE OF PETITIONS

In re Application of
Wurm et al.
Application No. 10/023,479
Filed: 13 December, 2001
For: METHOD OF ASSEMBLING A DOOR

Dear Mr. Keyes:

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 571-272-3150. 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 571-272-3150 or 1-800-972-6382 (outside the Washington D.C. area).

D Wood
Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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DIW Apr-07

Harald Koellner
Blutenstrasse 15
D-63674
GERMANY

COPY MAILED

APR 0 4 2007

OFFICE OF PETITIONS

In re Application of
Wurm et al.
Application No. 10/023,479
Filed: 13 December, 2001
For: METHOD OF ASSEMBLING A DOOR

Dear Mr. Koellner:

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 571-272-3150. 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 571-272-3150 or 1-800-972-6382 (outside the Washington D.C. area).

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 6

LOUIS MYERS
Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804

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NOV 0 5 2002

OFFICE OF PETITIONS

In re Application of
Dennis Keith, Jan-Ji Lai,
Nazar Khalaf and
Chandrika Govardhan
Application No. 10/023,517
Filed: December 17, 2001
Attorney Docket No. 13764-002001
Title: METHODS FOR PREPARING
PURIFIED LIPOPEPTIDES

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

This is in response to the petition, filed September 3, 2002, (certificate of mailing, Monday, August 26, 2002) under 37 C.F.R. § 1.47(a).

The petition is **GRANTED**.

The above-identified application was filed on December 17, 2001, without an executed oath or declaration. Accordingly, on January 24, 2002, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring an executed oath or declaration, and the surcharge under § 1.16(e) for its late filing. A two-month period for reply was set, with extensions of time obtainable under § 1.136(a).

In reply, petitioners filed the instant petition, asserting that status under § 1.47[1] is proper because joint inventors Khalaf and Govardhan have refused to join in the application. This reply was made timely by an accompanying petition for an extension for response within the fifth month (and fee). Accompanying the petition was a declaration executed by joint inventors Keith and Lai on behalf of themselves and on behalf of non-signing joint inventors Khalaf and Govardhan. In support thereof, petitioner submitted the declaration of patent attorney Timothy J. Douros; with documentary evidence of the presentation of the application papers to patent counsel Richard Forrest.

Having considered the evidence, it is concluded that rule 47 applicants have shown that inventors Khalaf and Govardhan have,

[1] A grantable petition under 37 C.F.R. §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 (oath or declaration, and specification, claims, 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.

by their conduct, refused to join in the application. Petitioners have shown that the application papers were presented to patent counsel Forrest for delivery to inventors Khalaf and Govardhan. Return of the documents with signatures by September 16, 2002 was requested. Attorney Douros attests to having received no response.

The declaration and the petition have been reviewed and found in compliance with 37 C.F.R. § 1.47(a). The petition fee has been charged to Deposit Account No. 06-1050, as authorized. (Receipt of the $130 check for payment of the late surcharge is acknowledged). The last known addresses of inventors Khalaf and Govardhan are understood to be as stated in the declaration.

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 forwarded to Technology Center 1646 for examination in due course.

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

Nancy Johnson
Petitions Attorney
Office of Petitions
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

NAZAR KHALAF
14 LAUF STREET
WORCESTER, MA 01602

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NOV 0 5 2002

OFFICE OF PETITIONS

LETTER

In re Application of :
Dennis Keith, Jan-Ji Lai, :
Nazar Khalaf and :
Chandrika Govardhan :
Application No. 10/023,517 :
Filed: December 17, 2001 :
Attorney Docket No. 13764-002001 :
Title: METHODS FOR PREPARING :
PURIFIED LIPOPEPTIDES :

Dear Mr. Khalaf:

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

LOUIS MYERS
Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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CHANDRIKA GOVARDHAN
9 SCOTLAND RD
LEXINGTON, MA 02420

COPY MAILED

NOV 0 5 2002

OFFICE OF PETITIONS

LETTER

In re Application of :
Dennis Keith, Jan-Ji Lai, :
Nazar Khalaf and :
Chandrika Govardhan :
Application No. 10/023,517 :
Filed: December 17, 2001 :
Attorney Docket No. 13764-002001 :
Title: METHODS FOR PREPARING :
PURIFIED LIPOPEPTIDES :

Dear Chandrika Govardhan:

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

LOUIS MYERS
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225 Franklin Street
Boston, MA 02110-2804

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PRATT & WHITNEY
LEGAL DEPARTMENT-PATENT GROUP
MAIL STOP 132-13
400 MAIN STREET
EAST HARTFORD CT 06108

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FEB 2 4 2009

OFFICE OF PETITIONS

In re Application of
Alan D. CETEL
Application No. 10/023,565
Filed: December 18, 2001
Attorney Docket No. **EH-10559**

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 02, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of July 22, 2008 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on September 23, 2008. See MPEP 1214.06.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay. Accordingly, the reply to the decision by the Board of Patent Appleals and Interferences of July 22, 2008 is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 1793 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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TAREK FAHMI
BLAKELY SOKOLOFF TAYLOR
& ZAFMAN LLP
1279 OAKMEAD PKWY.
SUNNYVALE, CA 94086

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OFFICE OF PETITIONS

In re Application of	:	
Steve Grove et al	:	
Application No. 10/023,583	:	DECISION ON PETITION
Filed: December 14, 2001	:	TO WITHDRAW
Attorney Docket No. 2043.052US1	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 22, 2004.

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

A review of the file record indicates that the power of attorney to Tarek Fahmi has been revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

The correspondence address of record remains unchanged, which is the first address indicated below.

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

Amelia Au
Petitions Examiner
Office of Petitions

cc: Schwegman, Lundberg, Woessner & Kluth/Ebay
P.O. Box 2938
Minneapolis, MN 55402

cc: Andre L. Marais
Schwegman, Lundberg, Woessner & Kluth, P.A.
1600 TCF Tower
121 South Eighth Street
Minneapolis, MN 55402

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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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,583	12/14/2001	Steve Grove	2043.052US1	1938

49845 7590 02/27/2008
SCHWEGMAN, LUNDBERG & WOESSNER/EBAY
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER
CHENCINSKI, SIEGFRIED E

ART UNIT	PAPER NUMBER
3691	

NOTIFICATION DATE	DELIVERY MODE
02/27/2008	ELECTRONIC

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

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

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

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SCHWEGMAN, LUNDBERG & WOESSNER/EBAY
P.O. BOX 2938
MINNEAPOLIS, MN 55402

In re application of	:	**DECISION ON PETITION**
Steve Grove et al.	:	**TO MAKE SPECIAL**
Application No. 10/023,583	:	**(ACCELERATED**
Filed: December 14, 2001	:	**EXAMINATION)**
For: METHOD AND SYSTEM AUTOMATICALLY TO SUPPORT MULITPLE TRANSACTION TYPES, AND TO DISPLAY SELLER-SPECIFIC TRANSACTIONS OF VARIOUS TRANSACTION TYPES IN AN INTEGRATED, COMMINGLED LISTING		

This is in response to the petition filed on August 23, 2006 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(i); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references in accordance with 37 CFR 1.111 (b) and (c).

Since all of the requirements for special status under MPEP § 708.02 VIII have been met, the petition is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona fide*** effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED.**

Teri Luu
Special Programs Examiner
Technology Center 3600
(571) 272-7045

TL/slb: 02/21/08

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CASIMIR JONES
101 HOWARD STREET
SUITE 350
SAN FRANCISCO, CA 94105

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SEP 25 2007

OFFICE OF PETITIONS

In re Patent No. 6,696,584	:	
Issue Date: February 24, 2004	:	
Application No. 10/023,598	:	NOTICE
Filed: December 18, 2001	:	
Attorney Docket No. CONLINCO-06902	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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P.O. Box 1450
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LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON DE 19805

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OFFICE OF PETITIONS

In re Application of
George K. Kodokian et al. :
Application No. 10/023,616 : ON PETITION
Filed: December 18, 2001 :
Attorney Docket Number: FA0984 US NA :

This is a decision on the petition under 37 CFR 1.137(b). [1], filed October 15, 2004, to revive the above identified application.

The petition is **DISMISSED**.

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

This application became abandoned for failure to timely respond to the non-Final office action mailed February 9, 2004. Accordingly, a Notice of Abandonment was mailed October 20, 2004, after the filing of the instant petition.

Pursuant to 37 CFR 1.137(b) however, the instant petition lacks item (2) of the regulation. Effective October 1, 2004, the petition fee was set at $1370.00 for a large entity and while

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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)).

the petition indicates that the petition was included with the petition, no such payment appears to have been included. Therefore and since no authorizations for debiting a deposit account for any deficiencies have been granted, the petition fee has not been paid.

In view of the above, the application will remain in an abandoned status until such time as the petition fee in the amount of $1370 has been paid.

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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Paper No. 4

E. Eric Hoffman
BEAVER HOFFMAN & HARMS LLP
TRI-VALLEY OFFICE
1432 Concannon Blvd. Bldg. G
Livermore, CA 94550

MAIL

NOV 1 9 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:	)	
Tushar Ramanlal Shah	)	
Application No. 10/023,623	)	
Filed: December 17, 2001	)	**DECISION ON REQUEST FOR**
For: ADAPTIVE LINK QUALITY	)	**WITHDRAWAL AS ATTORNEY**
MANAGEMENT FOR WIRELESS	)	
MEDIUM	)	

This is a decision on the Request To Withdraw from Representation filed October 21, 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 E. Eric Hoffman alone and does not contain a clear indication that Mr. Hoffman is authorized to sign on behalf of the other attorneys of record and is signing on behalf of the other attorneys of record. Furthermore, there is no indication that Applicant has been notified of the request for withdrawal.

Accordingly, the request is **DENIED**.

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

James R. Matthews

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 3

MAIL

AUG 2 9 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

BEVER HOFFMAN & HARMS, LLP
TRI-VALLEY OFFICE
1432 CONCANNON BLVD., BLDG. G
LIVERMORE CA 94550

In re Application of	:	
Gupta et al.	:	
Application No. 10/023,633	:	DECISION ON REQUEST TO
Filed: December 17, 2001	:	WITHDRAW AS ATTORNEY
For: **NETWORK NODE WITH MULTI-MEDIUM INTERFACES**	:	

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on July 30, 2003.

A grantable request to withdraw as attorney/agent of record must do the following:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above.

Accordingly, the request is **GRANTED**.

All attorneys associated with Customer No. 22,888 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: ATIQ RAZA CHAIRMAN CEO OF RAZA FOUNDRIES & REDWAVE NETWORKS, INC
RAZA FOUNDRIES, INC.
3080 NORTH FIRST STREET
SAN JOSE, CA 95134

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 10

IVOR R. ELRIFI, ESQ.
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY and POPEO, P.C.
ONE FINANCIAL CENTER
BOSTON, MA 02111

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OFFICE OF PETITIONS

In re Application of
Shimkets et al.
Application No. 10/023,634
Filed: December 17, 2001
Attorney Docket No. 21402-221 (Cura 521)

ON PETITION

This decision concerns the August 13, 2002 petition that the above-identified application be accorded a filing date of December 17, 2001.

The petition is **GRANTED**.

The petition is based on the argument that the application was deposited on December 17, 2001 in the U.S. Postal Service (USPS) "Express Mail Post Office to Addressee" service pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by a copy of the USPS "Express Mail" mailing label bearing the number "ET318103882US." While the "date-in" entry is not legible, this mailing label includes an official USPS stamp containing the date "December 17, 2002." Information on the USPS official website further confirms that the application papers were accepted by the USPS "Express Mail" service on December 17, 2001 at 10:44 pm. The same mailing label number also appears on the transmittal letter that itemizes the application papers and fees being mailed on that day. The petition is thus granted. No fee is required for a petition under 37 CFR 1.10.[1]

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 17, 2001, and for issuance of a corrected filing receipt reflecting this filing date. Thereafter, the application will be forwarded to Technology Center 1600 for examination in due course.

Telephone inquiries should be directed to Petitions Attorney RC Tang at (703) 308-0763.

D Mood
for Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Commissioner
for Patents

---

[1] Under 37 CFR 1.10(c), any person filing correspondence received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS may petition the Commissioner if there is a discrepancy between the filing date accorded by the Office and the date of deposit shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. The petition is being properly treated as a §1.10(c) petition.

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JJGJR.: 06-06

Paper No: __

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XEROX SQUARE 20TH FLOOR
100 CLINTON AVE. S.
ROCHESTER NY 14644

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JUN 12 2006

OFFICE OF PETITIONS

In re Application of	:	
Coleman	:	
Application No. 10/023,644	:	ON PETITION
Filed: 21 December, 2001	:	
Attorney Docket No. D/A0060	:	

This is a decision on a petition filed on 13 December, 2005, under 37 C.F.R. §1.137(b).

For the reasons set forth below, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record indicates:

- Petitioner failed to reply timely to the Notice of Allowance/Allowability and Fees Due mailed on 5 July, 2005, with reply due under a non-extendable deadline on or before 5 October, 2005;
- the application went abandoned by operation of law after midnight 5 October, 2005;
- the Office mailed the Notice of Abandonment on 21 November, 2005;
- Petitioner filed the instant petition on 13 December, 2005, with fee, reply in the form of the fees due, and made the statement of unintentional delay–thus, Petitioner appears to have satisfied the regulatory requirements under 37 C.F.R. §1.137(b).

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[1]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[2]

Delays in responding properly raise the question whether delays are unavoidable.[3] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[4] And the Petitioner must be diligent in attending to the matter.[5] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[6]))

Allegations as to
Unintentional Delay

---

[1] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[2] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[3] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[4] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[5] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[6] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

The requirements for relief under the provisions of 37 C.F.R. §1.137(b) are: petition, fee, reply, showing of unintentional delay, and–where appropriate–a terminal disclaimer and fee.

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

Because Petitioner appears to have satisfied the regulatory requirements, regulation, the petition under 37 C.F.R. §1.137(b) is **granted**.

The application is released to Publications Branch to be processed into a patent in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P O BOX 2149
BAYTOWN TX 77522-2149

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SEP 2 6 2003

OFFICE OF PETITIONS

In re Application of
James Austin Kendrick
Filed: December 18, 2001
Application No. 10/023,677
Attorney Docket No.: P23713.A02

DECISION GRANTING PETITION

This is a decision on the request for resealing, filed May 12, 2003, and the petition to expunge filed July 18, 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 December 18, 2001, applicant filed a two page Information Disclosure Statement (IDS). Subsequently, on September 19, 2002, applicant filed a supplemental IDS with a four page listing of references. 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 18, 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 September 19, 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 September 19, 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 September 19, 2002 will remain in the file to preserve the prosecution history. Both Information Disclosure Statements filed July 18, 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
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,713	12/21/2001	John C. Smith	5788.0178	6867

22852 7590 03/29/2006

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER
NGUYEN, KHIEM M

ART UNIT	PAPER NUMBER
2839	

DATE MAILED: 03/29/2006

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
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Alexandria, VA 22313-1450
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MAR 2 2 2006 03102006

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

In re Application of	:	DECISION ON PETITION
John C. SMITH	:	
Application No. 10/023,713	:	
Filed: December 21, 2001	:	
Attorney Docket No. 09242.0178	:	

This is a decision on the petition filed November 24, 2004, requesting that the holding of abandonment in the above-identified application be withdrawn.

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

This application was held abandoned for failure to timely reply to the non-final Office action mailed April 5, 2004, setting a three-month period of response. A Notice of Abandonment was mailed on November 17, 2004.

Petitioner asserts that a Response and a one-month Extension of Time fee were timely filed in the Patent and Trademark Office (USPTO) on July 23, 2004. This is evidenced by a copy of the Response and the postcard receipt that indicates receipt of the Response and check in the Patent and Trademark Office on July 23, 2004.

The Response and the one-month Extension of Time fee acknowledged as having been received in the USPTO on July 23, 2004 are not of record in the application file and cannot be located. However, M.P.E.P. §503 states, "A post card receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the Response and the one-month Extension of Time fee were timely received in the USPTO but lost after receipt thereof.

The revenue and accounting records indicates that the one-month Extension of Time fee was received on July 23, 2004 and paid on July 26, 2004.

For the above reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn. Any inconvenience to petitioner is regretted.

The application file is being forwarded to the examiner of record for consideration of the response and prompt appropriate action.

Questions regarding this decision should be directed to Jose' G. Dees at 571-272-1569.

Richard A. Seidel, Director
Technology Center 2800
Semiconductor, Electrical and Optical
Systems and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

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CPI Computer Packages Annuity Service, Inc
414 Hungerford Drive, Suite 300
Rockville MD 20850

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JUN 29 2009

OFFICE OF PETITIONS

In re Patent No. 7,403,687	:	ON PETITION
Smith et al.	:	UNDER 37 CFR 1.183
Issue Date: July 22, 2008	:	and
Application No. 10/023,713	:	ON REQUEST FOR RECONSIDERATION
Filed: December 21, 2001	:	OF PATENT TERM ADJUSTMENT
Attorney Docket No. 09242.0178	:	

This is a decision on the petition under 37 C.F.R. 1.183, requesting that the Office suspend the rules and consider on the merits a Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) filed more than two months from the date the above-referenced patent issued and on the Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d), both of which were filed on January 15, 2009.

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

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **dismissed as untimely filed**. The petition fee of $200.00 will be charged to deposit account no. 06-0916.

Any request for reconsideration, whether directed to the decision on petition under 37 CFR 1.183 or to the decision on application for patent term adjustment under 37 CFR 1.705(d), must be filed within two months of the mailing date of this decision. Extensions of time under 37 CFR 1.136 are not permitted. See § 1.181(f).

BACKGROUND

On July 22, 2008, the above-identified application matured into U.S. Patent No. 7,403,687, with a revised patent term adjustment of 762 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months

of the date the patent issued. Patentees now petition under 37 C.F.R. § 1.183 to (i) suspend or waive the requirement of 37 C.F.R. § 1.705(d) that a Request for Reconsideration of Patent Term Adjustment be filed within two months of the date the patent issued; and (ii) consider the enclosed Request for Reconsideration of Patent Term Adjustment. Patentees make this request, in view of the situation presented by the recent decision in *Wyeth v. Dudas*, No. 07-1492 (D.D.C. Sept. 30, 2008). The court in *Wyeth* determined, contrary to the Office's position, that the patentee is entitled to Patent Term Adjustment credit for examination delay under 37 CFR 1.702(b) in addition to any examination delay under 37 CFR 1.702(a), to the extent that the two periods of delay "do not occur on the same calendar day or days."

ON PETITION UNDER 37 CFR 1.183
TO WAIVE THE TWO-MONTH REQUIREMENT OF 37 CFR 1.705(d)

The above-referenced patent issued on July 22, 2008. A request for reconsideration of the patent term adjustment indicated in the patent was not filed until January 15, 2009. Petitioners request that the Office suspend the rules and consider on the merits the Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) even though it was untimely filed more than two months from the date the patent issued.

The relevant regulation, 37 CFR 1.705(d), provides that:

> If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, *any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued* and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues. (*emphasis* added).

By the express provisions of 37 CFR 1.705(d), a request for reconsideration of patent term adjustment must be filed within two months of the date the patent issued. It is undisputed that

no such request for reconsideration was filed by September 22, 2008, the date two months from the date this patent issued, July 22, 2008. Rather, on January 15, 2009, more than three months after the issuance of a decision in Wyeth v. Dudas on September 30, 2008, petitioners filed the instant request for waiver of the two-month requirement.

37 CFR 1.183 provides that:

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

Preliminarily, it is recognized that the two-month requirement of 37 CFR 1.705(d) is a requirement of the regulations and not a statutory requirement. The statute, 35 U.S.C. 154, requires the Office to provide the applicant one opportunity to request reconsideration of any patent term adjustment determination made by the Director. But, the statute allows the Director to establish the procedures for requesting such reconsideration. Those procedures[1] include pursuant to 37 CFR 1.705(d) setting a

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[1] 35 U.S.C. § 154(b)(3) provides that the USPTO shall: (1) prescribe regulations establishing procedures for the application for and determination of patent term adjustments under 35 U.S.C. § 154(b); (2) make a determination of any patent term adjustment under 35 U.S.C. § 154(b) and transmit a notice of that determination with the notice of allowance under 35 U.S.C. § 151; and (3) provide the applicant one opportunity to request reconsideration of any patent term adjustment determination. Pursuant to the mandate and authority in 35 U.S.C. § 154(b)(3), the USPTO promulgated 37 C.F.R. § 1.705, which provides that: (1) the notice of allowance will include notification of any patent term adjustment under 35 U.S.C. § 154(b)(37 C.F.R. § 1.705(a)); (2) any request for reconsideration of the patent term adjustment indicated in the notice of allowance (except as provided in 37 C.F.R. § 1.705(d)) must be by way of an application for patent term adjustment filed no later than the payment of the issue fee and accompanied by (inter alia) the fee set forth in 37 C.F.R. § 1.18(e)(37 C.F.R. § 1.705(b)); and (3) if the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued.

two-month period for filing a request for reconsideration of the revised patent term adjustment indicated in the patent. As such, it is within the Director's authority to waive the two-month requirement.

Having considered petitioners' arguments, it is concluded that waiver of the two-month requirement is not warranted. The primary basis for requesting waiver set forth by petitioners is the situation presented by the recent decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. Sept. 30, 2008). Specifically, petitioners state that in Wyeth, the U.S. District Court for the District of Columbia held that contrary to USPTO practice, a patentee is entitled to Patent Term Adjustment credit for examination delay under 37 CFR 1.702(b) in addition to any examination delay under 37 CFR 1.702(a), to the extent that the two periods of delay "do not occur on the same calendar day or days." Petitioners implicitly argue that they could not have filed a Request for Reconsideration of Patent Term Adjustment within two months of the date the above-referenced patent issued because the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth decision, which was entered more than two months after the issuance of their patent.

First, of all, the issuance of the Wyeth Opinion is not an extraordinary situation. Wyeth followed the procedure set forth in 37 CFR 1.705 for requesting reconsideration of the patent term adjustment determination. Then, pursuant to 35 U.S.C. 154(b)(4)(A)[2], Wyeth timely filed a complaint in District Court seeking judicial review of the Office's decision. A Memorandum Opinion and Order, the Wyeth decision of September 30, 2008, directed to the parties involved was issued.

The fact that any relief ultimately granted in Wyeth would benefit patentees had they timely filed a request for reconsideration does not make the situation extraordinary. Petitioners chose not to challenge their revised patent term

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[2] 35 U.S.C. 154(b)(4) (A) APPEAL OF PATENT TERM ADJUSTMENT DETERMINATION. — (A) An applicant dissatisfied with a determination made by the Director under paragraph (3) shall have remedy by a civil action against the Director filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent. Chapter 7 of title 5 shall apply to such action. Any final judgment resulting in a change to the period of adjustment of the patent term shall be served on the Director, and the Director shall thereafter alter the term of the patent to reflect such change.

adjustment within the two-month period. The argument that patentees could not have filed a Request for Reconsideration of Patent Term Adjustment within two months of the date the above-referenced patent issued because the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth decision, which was entered more than one month after the issuance of their patent, is not compelling. Petitioners could have filed a Request for Reconsideration of Patent Term Adjustment as Wyeth did. It is acknowledged that petitioners may have chosen not to file a request for reconsideration based on a conclusion that the Office's interpretation of 35 U.S.C. § 154(b)(2)(A) was correct. Nonetheless, the fact that the District Court has now issued an Opinion contrary to the Office's interpretation does not make the situation extraordinary. This is not unlike any other situation where a patentee (or applicant) challenges a final agency decision and the decision upon judicial review could have had applicability to another patentee (or applicant) had they taken such action. In fact, many patentees may be in the same situation as petitioners with respect to the Wyeth decision.

Petitioners simply fail to articulate how their failure to file a request for reconsideration of patent term adjustment within two months of the issue date of the patent was due to an extraordinary situation. Petitioners cannot rely on Wyeth's actions or the Wyeth decision to establish that their situation was extraordinary.

Moreover, justice does not require waiver of the two-month requirement. Justice requires that the Office continue to devote its resources to the adjudication of timely filed requests for reconsideration under 37 CFR 1.705(b) and (d). Further, upon ultimate resolution of the interpretation of 37 CFR 1.702, justice requires that the Office determine consistent with relevant law and practice, and appropriate Court or legislative guidance, the applicability of any changes as to all affected patentees who failed to timely seek administrative remedy, and thus, could not seek judicial review.

In addition, given that the law only allows 180-days for both the filing of a petition and for the Office's consideration of that petition, petitioners' unexplained delay in filing the petition weighs against them.

In view thereof, the petition under 37 CFR 1.183 for waiver of the two-month requirement of 37 CFR 1.705(d) is **dismissed**.

Accordingly, consideration now turns to the Request for Reconsideration of Patent Term Adjustment under 37 CFR 1.705(d).

ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)

This is a decision on the "DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT," filed January 15, 2009. Therein, patentees request correction of the patent term adjustment (PTA) indicated in the patent to eight hundred fifty-nine (859) days.

On July 22, 2008, the above-identified application matured into U.S. Patent No. 7,403,687 with a revised patent term adjustment of 762 days. The instant request for reconsideration was filed more than five months after the issuance of the patent, on January 15, 2009.

No error in the printing of the patent has been shown. The patent term adjustment indicated on the patent reflects the Office's determination of patent term adjustment shown in the PAIR system for this application. 37 CFR 1.705(d) provides the sole avenue before the Office for requesting reconsideration of the Office's determination of patent term adjustment indicated in the patent. Moreover, § 1.705(d) states that "any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section." Since the request was not filed within two months of the issue date of the patent, the request is properly **dismissed as untimely filed**.

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 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.

CONCLUSION

The request for waiver of 37 CFR 1.705(d) pursuant to 37 CFR 1.183 is not warranted. Accordingly, the request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) filed more than two months after the issue date of the patent is dismissed as untimely filed.

Telephone inquiries specific to this matter should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.

KeryAFz

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration

CC: FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080505

DATE : May 05, 2008

TO SPE OF : ART UNIT 2625

SUBJECT : Request for Certificate of Correction on Patent No.: 7,253,911

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

SPE: /Mark Zimmerman/ Art Unit 2625

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : June 10, 2008

TO SPE OF : ART UNIT 2800

SUBJECT : Request for Certificate of Correction for Appl. No 10/023757 patent no7277928

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: _____

NATHAN FLYNN
SUPERVISORY PATENT EXAMINER

SPE

2454
Art Unit

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SCHWEGMAN LUNDBERG WOESSNER & KLUTH
P.O. BOX 2938
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OFFICE OF PETITIONS

In re Application of :
Biju Chandran et al :
Application No. 10/023,819 :
Filed: December 21, 2001 :
Attorney Docket No. 219.40779X00 :

ON PETITION

This is a decision on the petition, filed March 19, 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 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 Wan Laymon at (703) 306-5685.

This matter is being referred to Technology Center AU 2827 for processing of the request for continued examination under 37 CFR 1.114.

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 2938
MINNEAPOLIS, MN 55402

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OFFICE OF PETITIONS

In re Application of :
Biju Chandran, et al. :
Application No. 10/023,819 :
Filed: December 21, 2001 :
Attorney Docket No. 21940779X00 :

ON PETITION

This is a decision on the petition, filed October 22, 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 7, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2841 for further processing of the request for continued examination under 37 CFR 1.114.

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

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

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Commissioner for Patents
United States Patent and Trademark Office
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WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MINNESOTA 55402

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JUL 21 2006

OFFICE OF PETITIONS

In re Application of :
Biju Chandran et al :
Application No. 10/023,819 : ON PETITION
Filed: December 21, 2001 :
Attorney Docket No. 219.40779X00

This is a decision on the petition filed, July 17, 2006 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 27, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2841 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

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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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/4/09

TO SPE OF : ART UNIT 2626 David Hudspeth (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/023944 Patent No.: 7103542

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Thank You For Your Assistance

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

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

Comments: _____

/David R. Hudspeth/
SPE

2626
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

Seong-kun Oh, Esq.
JACKSON & CO., L.L.P.
6114 La Salle Ave., Suite 507
Oakland, CA 94611-2802

MAILED

SEP 1 0 2004

Technology Center 2100

In re Application of:
Jeffrey DE VRIES, et al.
Application No. 10/023,915
Filed: December 14, 2001
For: METHOD AND SYSTEM FOR EXECUTING A SOFTWARE APPLICATION IN A VIRTUAL ENVIRONMENT

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed August 31, 2004.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED.**

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

BEST AVAILABLE COPY

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

cc: Perkin Coie, LLP
Attention : William F. Ahmann
101 Jefferson Drive
Menlo Park, CA 94025-1114

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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HELLER EHRMAN LLP
4350 LA JOLLA VILLAGE DRIVE #700
7TH FLOOR
SAN DIEGO CA 92122

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JUN 2 1 2006

OFFICE OF PETITIONS

In re Application of	:	
Shpiro et al.	:	DECISION ON PETITION
Application No. 10/023,923	:	TO WITHDRAW
Filed: December 18, 2001	:	FROM RECORD
Attorney Docket No. 37818-6035	:	

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 3, 2005.

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

A review of the file record indicates that the power of attorney to the attorneys/agents associated with Customer Number 33123 has been revoked by the assignee of the entire interest of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

However, a review of the file record indicates that Alan C. Gordon does not have power of attorney in this patent application nor is there any statement or evidence of record of employment in or otherwise being engaged in the proceedings in this patent application. Accordingly, the request to withdraw Alan C. Gordon under 37 C.F.R. § 1.36(b) is not applicable.

There is an outstanding Office action mailed January 31, 2006 that requires a reply.

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

Telephone inquires concerning this decision should be directed to Petitions Examiner Liana Chase at 571-272- 3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

David Bucci
Petitions Examiner
Office of Petitions

cc:

TOWNSEND AND TOWNSEND AND CREW
TWO EMBARACADERO CENTER 8TH FLOOR
SAN FRANCISCO, CA 94111

DATE : 6/10/09

TO SPE OF : ART UNIT 1714

SUBJECT : Request for Certificate of Correction for Appl. No.: 10023950 Patent No.: 6977278 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 Branc
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: _____

D. Wu 1796

SPE
Art Unit

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WASHINGTON, D.C. 20231
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Paper No. 4

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OFFICE OF PETITIONS

YOUNG & THOMPSON
745 SOUTH 23RD STREET 2ND FLOOR
ARLINGTON, VA 22202

In re Application of Ekberg, et al. Application No. 10/023,952 Filed: December 21, 2001 Attorney Docket No. 48266-61462CIP For: SYSTEM FOR PREPARATION OF A SOLUTION AND USE OF THE SOLUTION	: : : : : : :	DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed December 21, 2001.

The petition is **GRANTED**.

Petitioner has shown that inventor Sudhir Chowdhury has 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 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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SUDHIR CHOWDHURY
VIDJAVAGEN 53
123 52 FARSTA
SWEDEN

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JUL 0 3 2002

OFFICE OF PETITIONS

In re Application of :
Ekberg, et al. :
Application No. 10/023,952 : LETTER
Filed: December 21, 2001 :
Attorney Docket No. 48266-61462CIP :
For: SYSTEM FOR PREPARATION OF A :
SOLUTION AND USE OF THE SOLUTION :

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: YOUNG & THOMPSON
745 SOUTH 23RD STREET 2ND FLOOR
ARLINGTON, VA 22202

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Paper No. 3

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TECHNOLOGY CENTER 2600

BEVER HOFFMAN & HARMS, LLP
TRI-VALLEY OFFICE
1432 CONCANNON BLVD., BLDG. G
LIVERMORE CA 94550

In re Application of :
Kumar et al. :
Application No. 10/023,958 :
Filed: December 17, 2001 :
For: **METHOD OF GENERATING, TRANSMITTING, RECEIVING AND RECOVERING SYNCHRONOUS FRAMES WITH NON-STANDARD SPEEDS** :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on July 30, 2003.

A grantable request to withdraw as attorney/agent of record must do the following:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above.

Accordingly, the request is **GRANTED**.

All attorneys associated with Customer No. 22,888 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 A. Wieder

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

cc:ATIQ RAZA CHAIRMAN CEO OF RAZA FOUNDRIES & REDWAVE NETWORKS, INC
RAZA FOUNDRIES, INC.
3080 NORTH FIRST STREET
SAN JOSE, CA 95134

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LEGAL DEPARTMENT
RAZA MICROELECTRONICS, INC.
18920 FORGE DRIVE
CUPERTINO CA 95014

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OFFICE OF PETITIONS

In re Application of	:	
Addepalli Sateesh Kumar et al	:	
Application No. 10/023,958	:	DECISION ON PETITION
Filed: December 17, 2001	:	
Attorney Docket No. RN1-001-6P	:	

This is a decision on the petition under 37 CFR 1.137(b), filed February 5, 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, January 13, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on April 14, 2006. A Notice of Abandonment was mailed on August 22, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of an amendment, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the non-final Office action of January 13, 2006 is accepted as being unintentionally delayed.

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

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. Petitioner is advised that, if the power of attorney is by an assignee, compliance with 37 CFR 3.73(b) must be satisfied.

This application is being referred to Technology Center AU 2616 for appropriate action in the normal course of business on the reply received February 5, 2007.

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

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

David R. Stevens
Stevens Law Group
P. O. Box 1667
San Jose, CA 95109

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CUPERTINO CA 95014

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OFFICE OF PETITIONS

In re Application of
Addepalli Sateeseh Kumar et al
Application No. 10/023,958
Filed: December 17, 2001
Attorney Docket No. RN1-001-6P

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed August 1, 2006.

The request is **NOT APPROVED**.

A review of the file record indicates that David Ashby and the attorneys/agents associated with Customer Number 32,986 do not have power of attorney in this patent application nor is there any statement or evidence of record of employment in or otherwise being engaged in the proceedings in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

It is further noted that Office records fail to disclose that an assignment was ever recorded to Raza Microelectronics, Inc. Accordingly, if Raza desires to prosecute this application, the proper documents under 37 CFR 3.73(b) must be submitted. Further, if Raza, as the assignee of record, desires to be represented by counsel registered to practice before the USPTO, the appropriate power of attorney documents must be submitted and compliance with 37 CFR 3.73(b) satisfied.

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

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

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

ISPG, P.C.
P. O. Box 700640
San Jose, CA 95170

David C. Ashby
IPSG, P.C.
815 Covington Road
Los Altos, CA 94024

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

BEVER HOFFMAN & HARMS, LLP
TRI-VALLEY OFFICE
1432 CONCANNON BLVD., BLDG. G
LIVERMORE CA 94550

In re Application of :
Kumar et al. :
Application No. 10/023,963 :
Filed: December 17, 2001 :
For: **HYBRID NETWORK TO CARRY SYNCHRONOUS AND ASYNCHRONOUS TRAFFIC OVER SYMMETRIC AND ASYMMETRIC LINKS** :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on July 30, 2003.

A grantable request to withdraw as attorney/agent of record must do the following:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above.

Accordingly, the request is **GRANTED**.

All attorneys associated with Customer No. 22,888 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: ATIQ RAZA CHAIRMAN CEO OF RAZA FOUNDRIES & REDWAVE NETWORKS, INC
RAZA FOUNDRIES, INC.
3080 NORTH FIRST STREET
SAN JOSE, CA 95134

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Paper No. 3

BEVER HOFFMAN & HARMS, LLP
TRI-VALLEY OFFICE
1432 CONCANNON BLVD., BLDG. G
LIVERMORE CA 94550

In re Application of	:	
Shah et al.	:	
Application No. 10/023,972	:	DECISION ON REQUEST TO
Filed: December 17, 2001	:	WITHDRAW AS ATTORNEY
For: **INTEGRATION OF NETWORK, DATA LINK, AND PHYSICAL LAYER TO ADAPT NETWORK TRAFFIC**	:	

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on July 30, 2003.

A grantable request to withdraw as attorney/agent of record must do the following:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above.

Accordingly, the request is **GRANTED**.

All attorneys associated with Customer No. 22,888 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:ATIQ RAZA CHAIRMAN CEO OF RAZA FOUNDRIES & REDWAVE NETWORKS, INC
RAZA FOUNDRIES, INC.
3080 NORTH FIRST STREET
SAN JOSE, CA 95134

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IPSG, P.C.
P.O. BOX 700640
SAN JOSE, CA 95170-0640

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OFFICE OF PETITIONS

In re Application of	:	
Tushar Ramanlal Shah et al.	:	
Application No. 10/023,972	:	DECISION ON PETITION
Filed: December 17, 2001	:	TO WITHDRAW
Attorney Docket No. RNI-0001-5P	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed August 1, 2006.

The request is **NOT APPROVED**.

A review of the file record indicates that the attorney(s) and/or agents associated with Customer Number 32986 does not have power of attorney in this patent application nor is there any statement or evidence of record of employment in or otherwise being engaged in the proceedings in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

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

Telephone inquires concerning this decision should be directed to Terri Williams at 571-272-2991.

Terri Williams
Terri Williams
Petitions Examiner
Office of Petitions

cc: Legal Department
Raza Microelectronics, Inc.
18920 Forge Drive
Cupertino CA 95014

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AUG 2 9 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

BEVER HOFFMAN & HARMS, LLP
TRI-VALLEY OFFICE
1432 CONCANNON BLVD., BLDG. G
LIVERMORE CA 94550

In re Application of :
Kumar et al. :
Application No. 10/023,974 :
Filed: December 17, 2001 :
For: **DYNAMIC MIXING TDM DATA WITH DATA PACKETS** :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on July 30, 2003.

A grantable request to withdraw as attorney/agent of record must do the following:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above.

Accordingly, the request is **GRANTED**.

All attorneys associated with Customer No. 22,888 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 A. Wieder

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

cc: ATIQ RAZA CHAIRMAN CEO OF RAZA FOUNDRIES & REDWAVE NETWORKS, INC
RAZA FOUNDRIES, INC.
3080 NORTH FIRST STREET
SAN JOSE, CA 95134

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IPSG, P.C.
P.O. BOX 700640
SAN JOSE, CA 95170

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JUL 31 2007

OFFICE OF PETITIONS

In re Application of :
KUMAR, et al. :
Application No. 10/023,974 :
Filed: December 17, 2001 :
Attorney Docket No. RNI-001-3P :

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed August 1, 2006.

The request is **NOT APPROVED.**

A review of the file record indicates that **IPSG, PC** does not have power of attorney in this patent application nor is there any statement or evidence of record of employment in or otherwise being engaged in the proceedings in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **STEVENS LAW GROUP**
P.O. BOX 1667
SAN JOSE CA 95109

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 6

BARNES & THORNBURG
750 - 17TH STREET NW
SUITE 900
WASHINGTON, DC 20006

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OFFICE OF PETITIONS

In re Application of
Stewart III et al.
Application No. 10/023,977
Filed: December 21, 2001
Attorney Docket No. 6714/38242

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 19, 2003, to revive the above-identified application.

The petition is **granted.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) 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. A Notice of Abandonment was mailed on December 10, 2003.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

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

Telephone inquiries should be directed to Paralegal Liana Chase at (703) 306-0482.

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

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JONDLE & ASSOCIATES P.C.
9085 EAST MINERAL CIRCLE
SUITE 200
CENTENNIAL, CO 8011

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Thomas R. Williams, et al. :
Application No. 10/024,010 :
Filed: December 21, 2001 :
Atty Docket No. N1429-001 :

This is a decision on the petition, filed November 1, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on May 26, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 1638 for further processing of the request for continued examination under 37 CFR 1.114 filed November 1, 2004.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 7

PATENT ADMINSTRATOR
KATTEN MUCHIN ZAVIS ROSENMAN
525 WEST MONROE STREET
SUITE 1600
CHICAGO IL 60661-3693

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OFFICE OF PETITIONS

In re Application of
Dalton, Damiano, and Cress
Application No. 10/024,017
Filed: December 21, 2001
Attorney Docket No. 114205.1501
For: COMPOUNDS AND METHODS FOR MODULATING CELL-ADHESION MEDIATED DRUG RESISTANCE

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

This is a decision on the petition under 37 CFR 1.47(a), filed June 4, 2002.

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

Any request for reconsideration under 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 titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a). Failure to respond will result in abandonment of the application. Extensions of time are available and will be governed by 37 CFR 1.136(a).

The above-cited application was filed without a properly executed oath or declaration. In response, the Office mailed a "Notice to File Missing Part of Non-Provisional Application" (the "Notice") on February 4, 2002. The Notice set forth a period for reply of two months. On June 4, 2002, in response to the Notice, petitioner filed the instant petition and supplementary evidentiary documents. Petitioner also obtained an extension of time within the second month.

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 (1) as set forth above.

As to item (1), sufficient proof was not provided that the entire application was sent to inventor Dalton not just the declaration and power of attorney. Guidance as to what is required to be sent to the non-signing inventor before a refusal to sign can be alleged is found in the *Manual of Patent Examining Procedure*, Section 409.03(d), which reads, in pertinent part,:

> Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature.

It appears from the instant petition and the letter of June 29, 2001, from Sheri Shuman to the non-signing inventor that all that was sent to the non-signing inventor was the declaration and power of attorney. There is no indication from any of the other documents filed with the instant petition that the entire application was sent to the non-signing inventor as required. It is, therefore, concluded that Item (1) above has not been satisfied. Any renewed petition filed must provide documentary evidence demonstrating that the entire application was sent to the non-signing inventor for his review.

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

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6919
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, Virginia

Telephone inquiries 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

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

Jeff Lloyd
Saliwanchik, Lloyd & Saliwanchik
A Professional Association
2421 N.W. 41st Street, Suite A-1
Gainesville, Florida 3206-6669

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DEC 13 2002

OFFICE OF PETITIONS

In re Application of :
Dalton, Damino, and Cress :
Application No. 10/124,017 :
Filed: December 21, 2001 : DECISION ON PETITION
Attorney Docket No. 114205.1501 :
Invention: COMPOUNDS AND METHODS FOR :
MODULATING CELL-ADHESION MEDIATED :
DRUG RESISTANCE :

This is in response to the renewed petition under 37 CFR 1.47(a), filed December 10, 2002.

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

The instant renewed petition was filed in response to a decision dismissing the first petition under 37 CFR 1.47(a). The decision was mailed on October 10, 2002, and allowed a two month period for filing a renewed petition. The instant renewed petition was then filed on December 10, 2002, with a statement from the inventor Dalton, the non-signing inventor, indicating that, although he was presented with a complete copy of the application papers, inventor Dalton did not sign the declaration.

Petitioner has established that, despite being presented with a complete copy of the application papers, inventor Dalton has refused to join in the prosecution of the application. 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 will be forwarded to the Office of Initial Patent Examination for further processing.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary.

Telephone inquiries 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

William S. Dalton
111 Dunbar Avenue
Tampa, Florida 33629

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DEC 13 2002

OFFICE OF PETITIONS

In re Application of
Dalton, Damino, and Cress
Application No. 10/124,017
Filed: December 21, 2001
Attorney Docket Number: 114205.1501
For: COMPOUNDS AND METHODS FOR MODULATING CELL-ADHESION MEDIATED DRUG RESISTANCE

LETTER

Dear Mr. Dalton:

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

Telephone inquiries regarding this communication should be directed to Petitions Attorney Kenya A. McLaughlin at (703) 305-0010. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Jeff Lloyd
Saliwanchik, Lloyd & Saliwanchik
A Professional Association
2421 N.W. 41st Street, Suite A-1
Gainesville, Florida 3206-6669

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

THORPE, NORTH & WESTERN, LLP
P.O. BOX 1219
SANDY, UT 84091

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DEC 1 5 2005

OFFICE OF PETITIONS

In re Patent No. 6,636,584	:	
Issued: October 21, 2003	:	
Application No. 10/024,035	:	DECISION ON PETITION
Filed: December 17, 2001	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 22027.CIP3.CON	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 9, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications.

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.

However, since the instant application matured into Patent No. 6,636,584 on October 21, 2003, 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 prior-filed nonprovisional applications after issuance of the application into a patent. Petitioner did not include a Certificate of Correction with the instant petition.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a Certificate of Correction, 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 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) 272-3282.

Liana Chase

Liana Chase
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THORPE, NORTH & WESTERN, LLP
P.O. BOX 1219
SANDY, UT 84091

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AUG 0 2 2006
OFFICE OF PETITIONS

Certificate
AUG 0 4 2006
of Correction

In re Patent No. 6,636,584
Issued: October 21, 2003
Application No. 10/024,035
Filed: December 17, 2001
Attorney Docket No. 22027.CIP3.CON

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.78(a)(3) AND
: REQUEST FOR CERTIFICATE
: OF CORRECTION

This is a decision on the renewed petition filed May 10, 2006, which is being treated as a petition under 37 CFR 1.78(a)(3) seeking to add a claim for priority on the front page of the Letters Patent by way of a Certificate of Correction the prior-filed applications set forth in the petition.

The petition is **GRANTED**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 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 December 17, 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, Rev. 2, May 2004, page 1400-85, second column.

As the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to 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.

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

This application is being forwarded to the Certificates of Correction Branch for processing the request for a Certificate of Correction.

Liana Chase
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

Paper No. 9

OLIFF & BERRIDGE PLC
P O BOX 19928
ALEXANDRIA VA 22320

COPY MAILED

JUL 1 5 2002

OFFICE OF PETITIONS

In re Application of	:
John S. Bobo et al	:
Application No. 10/024,143	: DECISION REFUSING STATUS
Filed: December 21, 2001	: UNDER 37 CFR 1.47(a)
Attorney Docket No. 108774	:

This is in response to the petition under 37 CFR 1.47(a), filed June 17, 2002.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the nonsigning inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the nonsigning inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the nonsigning inventor. Applicant lacks item (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 has not been presented. The declaration does not set forth the citizenship of the nonsigning inventors. Further, neither the declaration nor the Application Data Sheet includes the residence and mailing address of the nonsigning inventors. Accordingly, a new oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by the other co-

inventors on behalf of themselves and on behalf of the nonsigning inventors is REQUIRED. See MPEP 409.03(a). All the co-inventors must sign the new declaration that lists the nonsigning inventors' citizenship because they are attesting that this information is true to the best of their knowledge.

In order to expedite consideration, petitioner may wish to submit the renewed petition under 37 CFR 1.47(a) by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

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

By mail: U.S. Patent and Trademark Office
P.O. Box 2327
Mailstop DAC
Arlington, VA 22202

OR

Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

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

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

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Oliff & Berridge PLLC
P O Box 19928
Alexandria, VA 22320

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NOV 0 8 2002

OFFICE OF PETITIONS

In re Application of
John S. Bobo et al
Application No. 10/024,143
Filed: December 21, 2001
Attorney Docket No: 108774

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

This is a decision on the petition filed September 16, 2002, requesting reconsideration of a decision mailed July 15, 2002, 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 to complete processing of the application.

Frances Hicks

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

met: 1) all six available joint inventors made an oath or declaration on their behalf as required by 37 C.F.R. §1.63 and made an oath or declaration on behalf of the non-signing joint inventors as required by 37 C.F.R. §1.64; 2) Applicants have provided proof of the pertinent facts surrounding the non-signing inventors' refusal to execute the application papers; 3) Applicants have provided the last known addresses of the non-signing joint inventors; and 4) Applicants have provided the fee set forth in 37 C.F.R. §1.17(h).

It is respectfully requested that this application be accepted for examination without J. Christopher Marmo's and Scott Marc Cannizzaro's signatures. Included is Applicants' check number #131684 for $130.00 in payment of the Petition fee under 37 C.F.R. §1.17(h). Please credit any overpayment or debit any underpayment to Deposit Account No. 15-0461.

If any further information is needed in order to obtain acceptance and examination of this application pursuant to 37 C.F.R. §1.47(a) and/or 37 C.F.R. §1.63, Applicants' undersigned representative invites the Patent Office to telephone at the number listed below.

Respectfully submitted,

William P. Berridge
Registration No. 30,024

Philip A. Caramanica
Registration No. P-51,528

WPB:PAC/rle

Attachment:
Declaration Under 37 C.F.R. §1.47(a) with Exhibits A and B

Date: June 17, 2002

OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

DEPOSIT ACCOUNT USE AUTHORIZATION
Please grant any extension necessary for entry;
Charge any fee due to our Deposit Account No. 15-0461

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Scott Marc Cannizzaro
3131 Walnut Street
Philadelphia, PA 19104

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NOV 0 8 2002

OFFICE OF PETITIONS

In re Application of:
John S. Bobo; Julian A. Quintero; Jerry Y. Jonn; Joe B. Barefoot; Jeffrey G. Clark; Upvan Narang; Scott Marc Cannizaro and J. Christopher Marmo
Application No. 10/024,143
Filed: December 21, 2001
For: BIOCOMPATIBLE POLYMERS AND ADHESIVES: COMPOSITIONS, METHODS OF MAKING AND USES RELATED THERETO

Dear Mr. Cannizzaro:

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:

Oliff & Berridge PLLC
P O Box 19928
Alexandria, VA 22320

UNITED STATES PATENT AND TRADEMARK OFFICE

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

J. Christopher Marmo
39 Green Gables Ct.
Danville, CA 94506

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NOV 0 8 2002

OFFICE OF PETITIONS

In re Application of:
John S. Bobo; Julian A. Quintero; Jerry Y. Jonn; Joe B. Barefoot; Jeffrey G. Clark; Upvan Narang; Scott Marc Cannizaro and J. Christopher Marmo
Application No. 10/024,143
Filed: December 21, 2001
For: BIOCOMPATIBLE POLYMERS AND ADHESIVES: COMPOSITIONS, METHODS OF MAKING AND USES RELATED THERETO

Dear Mr. Marmo:

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:

Oliff & Berridge PLLC
P O Box 19928
Alexandria, VA 22320

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)
6,639,794	2003-10-28	10/024,165	2001-12-18	069099.0133

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	/BKP/	Date (YYYY-MM-DD)	2008-08-07
Name	Brian K. Prewitt	Registration Number	60135

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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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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In re Patent No. 6639794
Issue Date: October 28,2003
Application No. 10024165
Filed: December 18,2001
Attorney Docket No. MAX-0003-US

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

This is a decision on the electronic petition, filed August 7,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 7,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

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Paper No. 6

BARNES & THORNBURG
750 - 17TH STREET NW
SUITE 900
WASHINGTON, DC 20006

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JAN 14 2004

OFFICE OF PETITIONS

In re Application of
Stewart III et al.
Application No. 10/024,191
Filed: December 21, 2001
Attorney Docket No. 6714/38658

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 19, 2003, to revive the above-identified application.

The petition is **granted.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed January 30, 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 31, 2002. A Notice of Abandonment was mailed on December 10, 2003.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

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

Telephone inquiries should be directed to Paralegal Liana Chase at (703) 306-0482.

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

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NOV 17 2004

NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON MA 02210-2604

In re Application of	:	
Robert E. Smonson	:	
Serial No.: 10/024,221	:	DECISION ON PETITION
Filed: October 30, 2001	:	
For: Non Cannulated Dilators	:	

This is in response to applicants' petition filed August 30, 2004, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on infringement.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, II. Therefore the petition is **GRANTED**.

The application will be forwarded to the examiner for action on the merits commensurate with this decision.

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, P.O. Box 1450 Alexandria, VA 22313-1450, or by telephone at (571) 272-2975 or by facsimile transmission at (571) 273-0275.

John E. Kittle

John E. Kittle
Director
Technology Center 3700/2900

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

OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT PC
1755 JEFFERSON DAVIS HIGHWAY
FOURTH FLOOR
ARLINGTON VA 22202

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MAR 0 4 2003

OFFICE OF PETITIONS

In re Application of Allen, et al. Application No. 10/024,225 Filed: December 21, 2001 Attorney Docket No. 209184US Title: PHILLIPSITIC ZEOLITE SOIL AMENDMENTS	:	DECISION GRANTING PETITIONS AND MERGING FILES
In re Application of Allen, et al. Application No. 10/193,699 Filed: July 11, 2002 Title: PHILLIPSITIC ZEOLITE SOIL AMENDMENTS	:	

This is a decision on the petitions filed September 4, 2002 in the above-identified applications, requesting that the substitute specification filed in Application No. 10/024,225 on July 11, 2002 be placed into that application file, and that Application No. 10/193,699 be canceled.

The petitions are **GRANTED** to the extent that the application files will be merged. However, the substitute specification will **not** be entered.

Application No. 10/024,225 was filed on December 21, 2001. On February 22, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts of Nonprovisional Application (Filing Date Granted), requiring an executed oath or declaration and a substitute specification containing proper margins. On April 22, 2002, applicant filed an executed declaration and a substitute specification containing proper margins.

On July 11, 2002, applicant filed an additional substitute specification, replacing the word "Jordanite" with the term "Yenomite". The submission contained a cover letter directed to

Application No. 10/024,225, a substitute specification marked with the word "Substitute", and a redline version marked "Redline Version".

OIPE entered the substitute specification into a new application file, Application No. 10/193,699. Thereafter, OIPE mailed a Notice to File Missing Parts (Filing Date Granted) for Application No. 10/193,699 on August 12, 2002. This Notice required an executed oath or declaration and the necessary filing fees.

The substitute specification was directed to Application No. 10/024,225, and was clearly labeled as a substitute specification. Therefore, it was an Office error to have entered the substitute specification into a new application file. Accordingly, it is appropriate to merge the files in order to correct an Office error. Given the basis for granting this decision, no petition fee has been charged.

However, a review of the substitute specification does not reveal a statement that the substitute specification includes no new matter, as required by 37 CFR 1.125(b)(1). Accordingly, the substitute specification is improper.

If applicant desires to have the substitute specification entered, applicant should submit a statement to the examiner that the substitute specification includes no new matter. MPEP 608.01(q) states that "[t]here is no obligation on the examiner to make a detailed comparison between the old and the new specifications for determining whether or not new matter has been added. If, however, an examiner becomes aware that new matter is present, objection thereto should be made."

The applications will be returned to the Application Processing Division for merging the file of Application No. 10/193,699 into the file of Application No. 10/024,225. Application No. 10/193,699 will no longer be an active serial number. All future correspondence concerning this application should be directed to Application No. 10/024,225.

Application No. 10/024, 225 will then be forwarded to Technology Center 1600 for to await for applicant's submission of a statement that the substitute specfication contains no new mater. At that time, the examiner will consider the substitute specification to determine if new matter is present.

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

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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Director's Office
Group 3700

In re Application of
Kenji Nakabayashi *et al*
Application No. 10/024,246
Filed: December 21, 2001
Attorney Docket No. 38INT/48610CO

DECISION ON PETITION

This is a decision on the petition filed on June 18, 2004 by which petitioners request withdrawal of the technical state of abandonment that exists as a result of the failure to file a reply to the Office letter dated November 24, 2003. A Notice of Abandonment has not been mailed. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioners allege that this application is not abandoned because petitioners did not receive the Office letter in question. In support of this allegation, petitioners have made a showing as discussed at MPEP § 711.03(c). The showing has been reviewed and it clearly satisfies the requirements of the Notice published at 1156 OG 53 pertaining to abandonment resulting from nonreceipt of Office correspondence. Based upon the showing, it is clear this application is not technically abandoned.

Accordingly, this application is being forwarded to the Head Supervisory Applications Examiner for Technology Center 3700 to re-mail the office letter dated November 24, 2003, together with all attachments thereto. The period for filing a reply to the re-mailed Office letter will run THREE MONTHS from the date upon which the Office letter is re-mailed, and may be extended pursuant to 37 CFR 1.136(a).

PETITION GRANTED

Richard A. Bertsch, Director
Technology Center 3700

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

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Paper No. 8

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

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OFFICE OF PETITIONS

In re Application of	:	
Wei-Kang King	:	
Application No. 10/024,274	:	ON PETITION
Filed: December 17, 2001	:	
Attorney Docket No. 17815-302101	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed December 1, 2003. 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 2, 2003.

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

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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OFFICE OF PETITIONS

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

In re Application of
Matsuda et al.
Application No. 10/024,298
Filed: December 21, 2001
Attorney Docket Number:
1254-0191P

DECISION ON PETITION

This is a decision on the petition filed August 23, 2002, requesting that the above-identified application be accorded a filing date of December 21, 2001.

The petition is granted.

The application was deposited on December 21, 2001. However, on February 21, 2002, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application" stating that the application had been accorded a filing date of December 21, 2001, and advising applicants that the oath or declaration, small entity fee, and an English language translation and fee were required. Subsequent review of the application revealed that the application had been filed without drawings, and that a sequence listing, a paper copy or compact disk copy thereof, and an amendment directing entry of the sequence listing into the application were required. On June 6, 2002, the Notice to File Missing Parts of Nonprovisional Application was withdrawn, and a Notice of Incomplete Nonprovisional Application, noting the missing drawings and sequence listing, was mailed.

Petitioner responds with the instant petition wherein Petitioner avers that the drawings and at least some of the sequences in the above-identified application were incorporated by reference to prior provisional application.

Initially it is noted that a review of the file reveals that the specification contains both process claims (i.e., claims 11, 12, 14 and 17), and method claims (i.e., claims 13, 20, 23, and 27). As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains both process and method claims. Therefore, the application should have been treated as an application for which a drawing is not necessary for an understanding of the invention.

Regarding the drawings, 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.

Applicants are advised that a petition is not necessary in this instance to add the drawing figures. Applicants may add figure(s) described in the specification on the basis that the drawings are not new matter. New drawings may be entered by the primary examiner without a petition so long as the drawings contain no new matter. See, MPEP § 608.02(a).

Moreover, the sequence listing, 37 CFR 1.821(g) provides that where an application disclosing sequences is filed without a copy of the sequence listing and a compact disk copy, "applicant will be notified and given a period of time within which to comply with such requirements in order to prevent abandonment of the application". Moreover, nonessential matter may be incorporated by reference. See MPEP 608.01(I).

MPEP 201.06(c) states:

> . . . 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 by herein by reference." The statement may appear in the specification or in the application transmittal letter . . . . The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), <u>without the need for a petition</u> provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference. (emphasis supplied).

In view of the above, the requirement to submit drawings was sent in error. The "Notice" mailed June 6, 2002, is hereby vacated with regards to the requirement to submit drawings.

This application is being forwarded to the Office of Initial Patent Examination, Customer Corrections, for further processing, with the <u>filing date of December 21, 2001</u>, and an indication that no drawings were required at filing, and that no sequence listing and a compact disk copy were present on filing.

No petition fee is required and a refund of the petition fee has been credited to Petitioner's deposit account as authorized in the instant petition.

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

for B Moore

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

Conferee: Christina Donnell

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PO BOX 747
FALLS CHURCH VA 22040-0747

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AUG 1 2 2004
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Applicant: Matsuda et al.
Appl. No.: 10/024,298
Filing Date: December 21, 2001
Title: NF-KAPPA B ACTIVATING GENE
Attorney Docket No.: 1254-0191P
Pub. No.: US 2003/0143540 A1
Pub. Date: July 31, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on September 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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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 14

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

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MAY 1 4 2003

OFFICE OF PETITIONS

In re Application of :
Candice Hellen Brown Elliott :
Application No. 10/024,326 : DECISION ON PETITION
Filed: December 14, 2001 :
Attorney Docket No. CLRV-002 :

This is a decision on the "Petition under 37 C.F.R. § 1.17(h) that Missing Page 19 was Submitted to the USPTO," filed February 4, 2003. Petitioner requests, in essence, that the above-identified application be accorded a filing date of December 14, 2001, with page 19 of the specification considered a part of the original application disclosure.

Application papers in the above-identified application were filed on December 14, 2001. However, on January 9, 2003, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application," advising applicant that the application papers had been accorded a filing date of December 14, 2001; however, page 19 of the specification appeared to have been omitted.

In response, applicant timely filed the instant petition (and petition fee). Applicants assert that page 19 of the specification was submitted to the USPTO with the filing of the application on December 14, 2001. In support thereof, applicant submitted a copy of their return postcard from the USPTO. Petitioner also submitted a copy of page 19 as originally filed.

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 petitioners' postcard receipt reveals that: 1) it was date stamped as received in the USPTO on December 14, 2001, and the items filed therewith were assigned Application No. 10/024,326; 2) it specifically identifies the items being filed, including "14 Pages of Specification, 8 Pages of Claims, 1 Page of Abstract, and 5 sheets of Drawings" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioners have shown that the items denoted were filed on December 14, 2001.

The application papers already considered received in the Office on December 14, 2001, were reviewed along with page 19 of the specification submitted on petition. These papers together constitute the items described on the postcard receipt as "14 Pages of Specification, 8 Pages of Claims, 1 Page of Abstract, and 5 sheets of Drawings" It is concluded that

petitioner has shown that page 19 of the specification was among the items present in the application on the date of deposit and should be included in the original application disclosure.

Accordingly, the petition is **GRANTED**.

Given the basis for granting the petition, the petition fee is being refunded to Deposit Account No. 06-0916.

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

- reprocessing with a filing date of December 14, 2001 using the application papers received in the Office and presently accorded that date; and page 19 of the specification resupplied on petition filed February 4, 2003.

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.

Christina Tartera Donnell for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

CLAIRVOYANTE, INC.
874 GRAVENSTEIN HIGHWAY SOUTH, SUITE 14
SEBASTOPOL, CA 95472

In re Application of
Candice Hellen Brown Elliott
Application No. 10/024,326
Filed: December 14, 2001
Attorney Docket No. CLRV-002

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed November 30, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

It is noted that a request to rescind under 35 U.S.C. § 122(b)(2)(B)(ii) the previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) was filed on May 31, 2002, without also filing a notice of foreign filing. However, the mere filing of a rescission of the nonpublication request without also filing a notice of foreign filing within forty-five days after the date the counterpart application was filed is not sufficient to avoid abandonment. Consequently, 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.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on May 9, 2002, and that 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.

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

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

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (571) 272-3204.

This application is being forwarded to Technology Center Art Unit 2673 for further prosecution.

Sherry D. Brinkley

Sherry D. Brinkley
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
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

AUG 20 2002

OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA VA 22320

#14

In re Application of	:
Jean-Louis Touraine et al	:
Serial No.: 10/024,329	: PETITION TO MAKE SPECIAL
Filed: December 21, 2001	:
Attorney Docket No.: 109993	:

This is in response to applicants' petition filed August 6, 2002, to make the above-identified application special under the provisions of 37 CFR 1.102(d).

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, XII. Therefor the petition is **GRANTED**.

The application will be forwarded to the examiner for action on the merits commensurate with this decision.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, Washington, DC 20231, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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APR 21 2004

Paper No. 7

Hunton & Williams LLP
Intellectual Property Department
1900 K Street, N.W.
Suite 1200
Washington, DC 20006-1109

In re Application of	:	
Blair R. Dobbie et al	:	*SUA SPONTE*
Serial No. : 10/024,346	:	RESCISSION OF
Filed : December 21, 2001	:	NOTICE OF
For : Headmount Apparatus for Attaching and Supporting Devices	:	ABANDONMENT

A review of the application reveals that an Office action was mailed to applicants on May 30, 2003. On December 17, 2003, a Notice of Abandonment was mailed indicating that the application was being abandoned for failure to file a response to the Office action mailed May 30, 2003. The abandonment of the application was premature given the fact that applicant had filed a response, via facsimile transmission, on October 1, 2003. The response included a one-month extension of time request and a certificate of facsimile transmission dated September 30, 2003.

In view of these facts, the abandonment was clearly premature and is hereby rescinded. The application will be forwarded to the Examiner via the Legal Instruments Examiner for entry and consideration of the response filed October 1, 2003.

Summary: Holding of Abandonment Rescinded.

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

ak/04/06/04

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Commissioner for Patents
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Alexandria, VA 22313-1450
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Mailed: MAR 28 2005

WAK

In re application of
Grant Hay, et al..
Serial No. 10/024,349
Filed: December 18, 2001
For: RADIAL TILT REDUCED MEDIA

DECISION ON PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT, filed June 24, 2004, for failure to supply a complete oath with inventors address. On December 11, 2003, the USPTO mailed a Notice to File Corrected Application Papers. On January 9, 2004, a copy of the Notice to File Corrected Application Papers and Newly executed Declarations, including inventor's resident addresses, were faxed to the USPTO.

DECISION

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

Applicant has provided copies of everything that were faxed to the office along with an auto-reply facsimile transmission confirmation from the USPTO. Since Applicants timely filed the required reply in the allotted time period, abandonment of the application due to failure o reply was unavoidable on part of the Applicants.

The petition is **GRANTED.**

The response to file corrected application papers will be entered into the file and the application will be returned to pending status and forwarded to the examiner of record for action.

JMStone

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

Pamela J. Curbelo
Cantor Colburn LLP
55 Griffin Road South
Bloomfield, Connecticut 06002

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CANTOR COLBURN, LLP
55 GRIFFIN ROAD SOUTH
BLOOMFIELD, CT 06002

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JUN 14 2006
OFFICE OF PETITIONS

In re Application of :
Grant Hay, et al. :
Application No. 10/024,349 : ON PETITION
Filed: December 18, 2001 :
Attorney Docket No.: 120644-1 :

This is a decision on the petition, filed June 8, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 5, 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 1774 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).

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McLEAN, VA 22102

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OFFICE OF PETITIONS

In re Patent No. 6,808,914	:	
Issue Date: October 26, 2004	:	
Application No. 10/024,370	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. 021123-0284139	:	

This is a decision on the petition under 37 CFR 3.81(b), filed January 4, 2006, to accept the addition of the second assignee on the front page of the above-identified patent by way fo a Certificate of Correction.

The petition is GRANTED.

The patent is being referred to the Certificates of Correction Branch for issuance of a Certificate of Correction to include the second assignee **Forschungszentrum, Julich (DE).**

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.

Wan Laymon
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Albert Philips Van Duren, et. al.	:	
Application No. 10/024,387	:	ON PETITION
Filed: December 17, 2001	:	
Attorney Docket No. AUGA22000007	:	

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

In response to the non-final Office action mailed September 19, 2004, petitioner hereby submits $750 for the petition to revive fee, an amendment, and the statement of unintentional delay.

Since petitioner has met the requirements to revive this application, pursuant to 37 CFR 1.137(b), the petition is **GRANTED**.

The Change of Correspondence Address filed June 20, 2005, has been accepted and made of record.

The application file is being referred to Technology Center Art Unit 3739, 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 9

Gary L. Eastman, Esq.
Eastman & Associates
Suite 306
520 W. Ash Street
San Diego, CA 92101

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JUN 2 2 2004

OFFICE OF PETITIONS

In re Application of	:	ON PETITION
Donald Rauscher	:	
Application No. 10/024,452	:	
Filed: December 18, 2001	:	
Attorney Docket No. 1240-PA03	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 8, 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 29, 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 January 29, 2003. A Notice of Abandonment was mailed May 6, 2003.

In response, petitioner submitted with the instant petition $665 for the petition to revive fee, and an Amendment.

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 Technology Center Art Unit 3765 for review of the Amendment filed with the instant petition.

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

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

CC: Gary L. Eastman, Esq.
Eastman & Associates
707 Broadway Street, Suite 1800
San Diego, CA 92101

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HONEYWELL INTERNATIONAL INC.
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

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JUN 29 2005

OFFICE OF PETITIONS

In re Application of :
Aravind Padmanabhan et al :
Application No. 10/024,462 : DECISION ON PETITION
Filed: December 17, 2001 :
Attorney Docket No. H0002475-02 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 24, 2004, which, for the reasons stated below, is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment.

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

This application was held abandoned for failure to timely pay the issue and publication fees on or before March 31, 2004, as required by the Notice of Allowance and Fee(s) Due, mailed December 31, 2003. A Notice of Abandonment was mailed on May 26, 2004.

Petitioner states that, while the fees required by the Notice of December 31, 2003, where not paid by the due date of March 31, 2004, a Request for Continued Examination (RCE) and an Information Disclosure Statement were filed in their place on March 31, 2004. In support, petitioner has proffered a stamped return postcard which evidences receipt in the U.S. Patent and Trademark Office (USPTO) of an RCE and Information Disclosure Statement on April 5, 2004.

A review of the file history discloses that the USPTO did in fact receive the RCE and Information Disclosure Statement on April 5, 2004. It is further noted that the RCE bears a certificate of mailing date of March 31, 2004, in compliance with 37 CFR 1.8(a).

37 CFR 1.114 states that an RCE may be filed (1) prior to payment of the issue fee (unless a petition under 37 CFR 1.313 is granted); (2) abandonment of the application; or (3) the filing of a notice of appeal to the U.S. Court of Appeals, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated. The rule further provides that the timely filing of an RCE, fee and submission will withdraw the finality of any Office action.

As the RCE was entitled to the certificate of mailing procedure under 37 CFR 1.8(a), the RCE is considered to have been timely filed prior to expiration of the due date for payment of the issue and publication fees. Accordingly, the holding of abandonment was improper and is hereby withdrawn. This application is restored to pending status.

As requested in the RCE filed on April 5, 2004, the required fee of $770 will be charged to petitioner's deposit account.

Additionally, as a petition to withdraw the holding of abandonment does not require a fee, the $1,370 fee submitted will be refunded to petitioner's deposit account in due course.

Inquiries concerning this matter may be directed to the undersigned at (571) 272-3218. Any inquiries concerning the examination procedures or status of this application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 2863 for processing of the RCE filed on April 5, 2004 and for appropriate action on the concurrently filed Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Paper No. 6

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OFFICE OF PETITIONS

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

In re Application of :
Manabu Nishizawa, Takayuki Wakimura, and Fumiteru Sato :
Application No. 10/024,469 :
Filed: December 18, 2001 :
Attorney Docket No. : 100809-00106(SCEY 19.288) :
Title: OBJECT DISPLAY PROGRAM FOR CONDUCTING VOICE MANIPULATION OF CHARACTER :

DECISION GRANTING PETITION

This is a decision on the petition filed August 5, 2002, requesting that application number 10/024,469 be accorded a filing date of December 18, 2001.

On May 9, 2002, the Office of Initial Patent Examination (OIPE) mailed a Filing Receipt, stating that the application had been accorded a filing date of December 19, 2001.

In response, on August 5, 2002, applicants filed the present petition. Petitioners have included a copy of the first page of the specification[1], a copy of the Express Mail Label, bearing Express Mail Label Number EV 014264064 US[2], a copy of a printout from the United States Postal Service (USPS) Web-based Database[3], and a copy of the postcard receipt[4]. Applicants request that application be accorded a filing date of December 18, 2001.

1 The specification contains a certificate of mailing dated December 18, 2001.
2 The express mail label contains a date of December 19, 2001.
3 The print-out shows a date-in of December 18, 2001.
4 The postcard receipt shows a date stamp of December 19, 2001, and a notation that the postcard was mailed to the Office on December 18, 2001.

Upon review of the record, the application is date stamped December 19, 2001. However, the evidence is convincing that the application papers were deposited on December 18, 2001, and the incorrect date was subsequently both placed on the USPS mailing label and stamped on the application. Therefore, the application was entitled to a filing date of December 18, 2001.

Accordingly, the petition is **GRANTED**.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 18, 2001, as well as the mailing of a corrected filing receipt.

Any inquiries related to this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.

Christina Tartera Donnell for

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

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UNITED STATES DEPARTMENT OF COMMERCE
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June 2, 2003

PROCESSED BY
PG PUB DIVISION

JUN 0 2 2003

Jeff Coulter
Reed Technology and Information Services, Inc.
275 Gibraltar Road
Horsham, PA 19044

RE: **Authorization of Corrections for A9 Publication**

Authorization is given to publish the following original application for the purpose(s) of modifying the specified text, images or other documentation, as an A9 publication to correct publication inaccuracies.

Patent Application Number: 10/024,469
Publication Number Reference: US20020111211A1

Projected A9 Export Date: 6/5/03
Projected Publication Date: 8/7/03

The following errors are referenced in the USPTO letter from Beverly M. Flanagan of the Office of Petitions, Office of the Deputy Commissioner for Patent Examination Policy.

1) See attachments concerning USPTO letter to Katten Muchin Zavis Rosenman (petition filed August 5, 2002) processed by Beverly M. Flanagan (USPTO), "Pub. No.:US20020111211A1", for the purpose of correcting the filing date of the application. Those notated sections of the A1 publication are authorized for correction:

Reference: USPTO Office of Petition Letter

A. "Publishing the incorrect filing date."

2) In accordance with Page III-37 of the 29Jan02 edition of the DATA PREPARATION MANUAL FOR PRE-GRANT PUBLICATION, the A9/P9 information document will specify the contents of the "See ..." line(s) that will be published under (15) Prior Publication Data on the front page of the A9 or P9 document.

The following information is for correction of US20020111211 A1 August 15, 2002:

See title page.

Shelby Pittman
United States Patent and Trademark Office
Pre Grant Publication Division

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

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

In re Application of Manabu Nishizawa, Takayuki Wakimura, and Fumiteru Sato Application No. 10/024,469 Filed: December 18, 2001 Attorney Docket No. : 100809-00106(SCEY 19.288) Title: OBJECT DISPLAY PROGRAM FOR CONDUCTING VOICE MANIPULATION OF CHARACTER	DECISION GRANTING PETITION

This is a decision on the petition filed August 5, 2002, requesting that application number 10/024,469 be accorded a filing date of December 18, 2001.

On May 9, 2002, the Office of Initial Patent Examination (OIPE) mailed a Filing Receipt, stating that the application had been accorded a filing date of December 19, 2001.

In response, on August 5, 2002, applicants filed the present petition. Petitioners have included a copy of the first page of the specification[1], a copy of the Express Mail Label, bearing Express Mail Label Number EV 014264064 US[2], a copy of a printout from the United States Postal Service (USPS) Web-based Database[3], and a copy of the postcard receipt[4]. Applicants request that application be accorded a filing date of December 18, 2001.

1 The specification contains a certificate of mailing dated December 18, 2001.
2 The express mail label contains a date of December 19, 2001.
3 The print-out shows a date-in of December 18, 2001.
4 The postcard receipt shows a date stamp of December 19, 2001, and a notation that the postcard was mailed to the Office on December 18, 2001.

Upon review of the record, the application is date stamped December 19, 2001. However, the evidence is convincing that the application papers were deposited on December 18, 2001, and the incorrect date was subsequently both placed on the USPS mailing label and stamped on the application. Therefore, the application was entitled to a filing date of December 18, 2001.

Accordingly, the petition is **GRANTED**.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 18, 2001, as well as the mailing of a corrected filing receipt.

Any inquiries related to this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.

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

US 20020111211A1

(19) United States

(12) Patent Application Publication (10) Pub. No.: US 2002/0111211 A1

Nishizawa et al. (43) Pub. Date: Aug. 15, 2002

(54) OBJECT DISPLAY PROGRAM FOR CONDUCTING VOICE MANIPULATION OF CHARACTER

(76) Inventors: Manabu Nishizawa, Tokyo (JP); Takayuki Wakimura, Kanagawa (JP); Fumiteru Sato, Tokyo (JP)

Correspondence Address:
KATTEN MUCHIN ZAVIS ROSENMAN
575 MADISON AVENUE
NEW YORK, NY 10022-2585 (US)

(21) Appl. No.: 10/024,469

(22) Filed: Dec. 19, 2001

(30) Foreign Application Priority Data

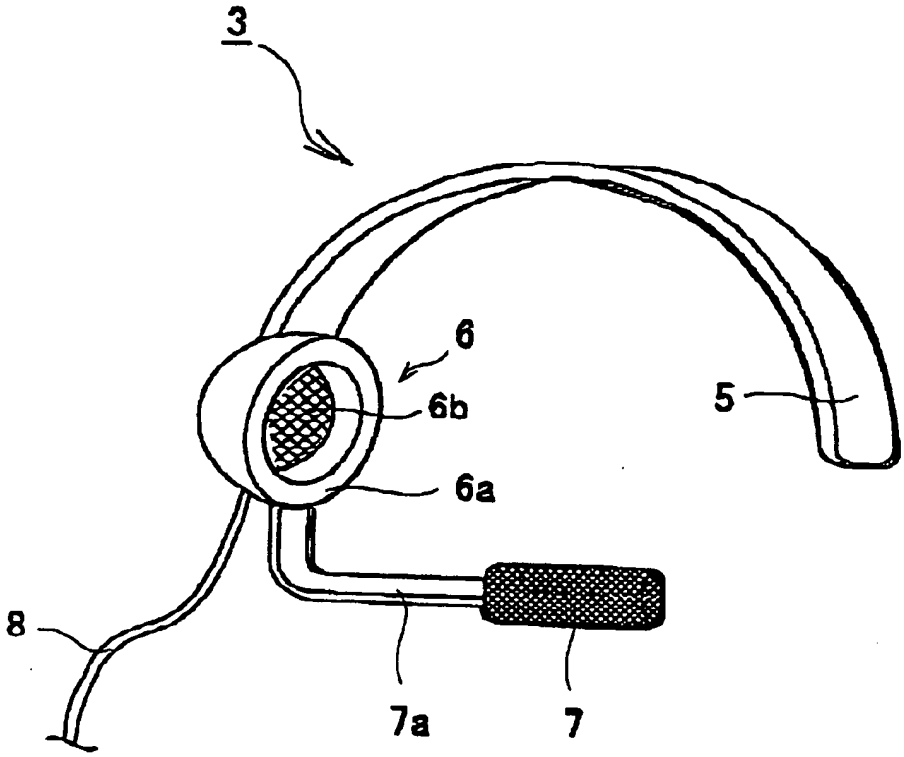
Dec. 22, 2000 (JP) 2000-389856
Nov. 15, 2001 (JP) 2001-349841

Publication Classification

(51) Int. Cl.[7] A63F 13/00
(52) U.S. Cl. 463/31

(57) ABSTRACT

On the occasion that predetermined voices are recognized, parameters regarding objects are changed appropriately depending on the voice thus recognized, and the objects is displayed on the basis of the changed parameters. For that reason, it is possible to control to display smoothly a battle scene while fastening smoothly an attack and protection and so forth between the character of the leading character and the character of the enemy.



PMG900C APC PreGrant Publication

File Edit Window Help

Application

Application Number: 10024469 **Confirmation No:** 6181

Effective/Priority Filing Date: 12/22/2000 **Actual Filing Date:** 12/18/2001

Title of Invention: Object display program for conducting voice manipulation of character

Indicators

- [ ] Non Pub
- [ ] Early Pub
- [ ] Rescind Non Pub

Filing Type	Status Description	Projected Pub Date	Projected Export Dt	Actual Export Dt	System Cd	Bio Ind	Publication Status	Actual Pub Date	F
PTOCORR	Pub Processing	08/07/2003	06/05/2003		PA	N	ELIGIBLE		
NEW	Published	08/15/2002	06/13/2002	06/14/2002	PA	N	PUBLISHED	08/15/2002	U

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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/024,469	12/18/2001	Manabu Nishizawa	100809-00106(SCEY 19.288)

CONFIRMATION NO. 6181

OC000000010134181

026304
KATTEN MUCHIN ZAVIS ROSENMAN
575 MADISON AVENUE
NEW YORK, NY 10022-2585

Date Mailed: 05/29/2003

NOTICE OF ACCEPTANCE OF PUBLICATION REQUEST

The request for voluntary publication, amended publication, early publication, redacted publication, republication, corrected publication or revised publication has been received for this application. The request, including payment of any necessary fee(s), is in compliance with 37 CFR 1.215, 1.217, 1.219 or 1.221.

The projected publication date is 09/04/2003.

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

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ATTN: BOX IP DEPT.
600 Washington Ave.
Suite 2500
ST LOUIS, MO 63101

Mail Date: 04/20/2010

Applicant	: James B. Melesky	: DECISION ON REQUEST FOR
Patent Number	: 7650722	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/024,478	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/21/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **658** 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. 11

JOHN E. HOLMES
ROYLANCE, ABRAMS, BERDO & GOODMAN L.L.P.
1300 19th STREET N.W.
SUITE 600
WASHINGTON DC 20036

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OCT 2 0 2003

OFFICE OF PETITIONS

In re Application of	:	
DeNuzzio et al.	:	
Application No. 10/024,506	:	DECISION GRANTING PETITION
Filed: 21 December, 2001	:	
Attorney Docket No. P-4899	:	

This is a decision on the petition, filed on 19 August and supplemented by facsimile on 15 October, 2003, 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 17 December, 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© 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 statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

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. A Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing, which sets forth the projected publication date of 22 January, 2004, accompanies this decision on petition.

This decision is being forwarded to Technology Center 3700 for further processing.

Any inquiries concerning this decision may be directed to the undersigned at 703.308.6918.

DIWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing

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JJGJR.: 07-05

Paper No: __

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JUL 0 8 2005

OFFICE OF PETITIONS

In re Application of
Denuzzio, et al. :
Application No. 10/024,506 :
Filing Date: 21 December, 2001
Attorney Docket No. P-4899 :

This is a decision on the petition filed on 5 May, 2005, to revive the instant application 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

For the reasons set forth below, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Notice of Allowability *(inter alia*, drawings requirement) accompanying the Notice of Allowance and Fees Due mailed on 9 September, 2004, with reply due absent extension of time on or before 9 December, 2004;
- the application went abandoned after midnight 9 December, 2004;
- the Office mailed the Notice of Abandonment on 18 February, 2005;

- with the instant petition and fee, Petitioner filed drawings as the required reply and made the statement of unintentional delay.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[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]))

---

[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 Unintentional Delay

A grantable petition under 37 C.F.R. §1.137(b) requires a petition, fee, statement of unintentional delay, reply, and a terminal disclaimer and fee if appropriate.

Petitioner has satisfied the requirements of the regulation.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to Publications Branch to be processed into a patent in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

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

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Commissioner for Patents
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ALCOA TECHNICAL CENTER
100 TECHNICAL CENTER DRIVE
ALCOA CENTER, PA 15069-0001

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Kenneth S. Murphy	:	
Application No. 10/024,518	:	
Filed: December 21, 2001	:	
Attorney Docket No. MP-332	:	

This is a decision on the petition filed, October 4, 2004, which is being treated as a petition under 37 CFR 1.313(c)(2), to withdraw the above-identified application from issue after payment of the issue fee. See 1233 *Official Gazette* 54 (April 11, 2000).

The petition is **DISMISSED as moot.**

The Request for Continued Examination (RCE) deposited on March 3, 2004, was proper submission under 37 CFR 1.114. Therefore, this petition is unnecessary and the $1330 issue fee and $300 publication fee submitted on April 19, 2004 is being credited to petitioner's credit card.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JUN - 6 2003

UR
PAPER NO. 6

In re Application of	:	
Antonio G. Whitby et al.	:	
Serial Number: 10/024,539	:	DECISION ON
Filed: December 21, 2001	:	PETITION UNDER
For: METHOD AND APPARATUS FOR BY-PRODUCT	:	M.P.E.P. 708.02, VI
REMOVAL IN A HYDROGEN GENERATION	:	
SYSTEM	:	

This is in response to the petition filed April 29, 2003, requesting that the above-identified application be granted Special Status under Section 708.02 (VI) of the MPEP and 37 CFR 1.102(c).

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

The petition is **GRANTED.**

JMStone

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

H. Samuel Frost
Bereskin and Parr
40 King Street West, Box 401
Toronto, ON N5H 3Y2
CANADA

Suite 300
1700 Diagonal Road
Alexandria, Virginia 22314
TELEPHONE: 703-684-1111
FACSIMILE: 703-518-5499

LOWE HAUPTMAN & BERNER, LLP

FAX

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To:	**Imaging Section**	From:	**Jane Katsarelis for Benjamin J. Hauptman**
Of:	**U.S. PTO**	Pages:	**Including this cover sheet, 4**
Fax:	**703-872-9306**	Date:	**June 7, 2005**

Re: **UNITED STATES Patent Application No. 10/024,544**
For: BODY FLUID ABSORBENT WEARING ARTICLE
Inventor (s): Masashi NAKASHITA
Our Reference: 2038-282

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

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As requested by Examiner Karin Reichle, attached is the Decision on Petition mailed March 10, 2005 to be scanned into the PTO record.

Please confirm receipt on this document by calling Jane at 703-535-7066.

IMPORTANT
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MAR 1 0 2005
Lowe, Hauptman, Gilman & Berner

Lowe Hauptman Gilman & Berner, LLP
Suite 310
1700 Diagonal Road
Alexandria, VA 22314

In re Application of Masashi Nakashita Serial No. : 10/024,544 Filed : December 21, 2001 For : Body Fluid Absorbent Wearing Article	DECISION ON PETITION UNDER 37 CFR 1.144 TO REVIEW RESTRICTION REQUIREMENT

This is a decision on the petition under 37 CFR § 1.144 filed November 23, 2004, requesting review of the restriction requirement between inventions I and II as set forth in the Office action mailed April 19, 2004. Petitioner further requests to have the finality of the Office action mailed August 23, 2004 withdrawn. There is no fee for this petition.

BACKGROUND

In an Office action mailed April 19, 2004, the examiner required a restriction between three groups of claims indicating that groups I and III are related as combination and subcombination, Groups II and III are also so related, and that Groups II and I are related as combination and subcombination.

In a response filed May 19, 2004 applicant elected Group I and traversed the restriction requirement only as it pertained to Groups I and II.

In an Office action mailed August 23, 2004, the examiner considered applicants traversal, found it non-persuasive, and made the restriction requirement final. The claims of Groups II and III were withdrawn from consideration. The examiner also rejected the claims of Group I and made the Office action final.

On November 23, 2004 the instant petition and an amendment were filed.

DISCUSSION

At the outset, it is stated that the following discussion will be limited as it pertains to Groups I and II only, as the traversal was limited to these two groups.

Section 806.05(a) of the MPEP, Combination and Subcombination or Element, sets forth the difference between a combination and a subcombination. It states that "(a) combination is an organization of which a subcombination or element is a part".

Section 806.05(c) of the MPEP, Criteria of Distinctness for Combination, Subcombination, or Element of a Combination, sets forth that in order to establish that combination and subcombination inventions are distinct, two-way distinctness must be demonstrated, and specifies that it must be shown that, as claimed: (a) the combination does not require the particulars of the subcombination as claimed for patentability; and (b) that the subcombination has utility either by itself or in other and different relations. When these factors cannot be shown, such inventions are not distinct and, therefore, restriction between the two inventions is not proper.

In setting forth the restriction requirement, the examiner indicated that Group I, included claims 1-5 and characterized it as being a subcombination, and that Group II included claims 6-15 and characterized it as being a combination. To show distinctness, the examiner indicated that "the combination as claimed does not require the particulars of the subcombination as claimed because the Group II claims do not require the features of compressive restorative elasticity, a first subpanel having a flat portion, and a flat second subpanel and these features in combination with specific density or fiber weight percentages or superabsorbent weight percentages as set forth in the Group I claims."

Petitioner asserts that Groups II and I are not related as combination and subcombination because they are both drawn to body fluid absorbent wearing articles (applicant's response filed May 19, 2004). Further, petitioner reiterates in the instant petition that, for example, claim 6 (the representative independent claim of Group II, the "combination") is broader than claim 1 (the representative independent claim of Group I, the "subcombination") in all aspects and therefore cannot be a "combination" as a combination claim must be narrower in at least one aspect than the corresponding "subcombination" claim as by including an additional element.

A thorough review has been conducted of the entire application in order to determine if petitioner's arguments have merit. This review has revealed that petitioner is correct in his views. A careful comparison of the language found in claims 6 and 1, and keeping in mind the definitions of combination and subcombination set forth in section 806.05(a) of the MPEP, reveals that claim 6 cannot be characterized as being a combination claim relative to claim 1, as set forth by the examiner. Every element that is recited in claim 6 is found in claim 1. The preambles are identical in both claims as are the first three elements (the topsheet, backsheet and the liquid-absorbent panel). It is in the details of the panel where the differences between the two claims lie. However, every detail of the panel recited in combination claim 6 is found in the subcombination claim 1. Thus, since every element of claim 6, is found in claim 1, claim 6 cannot be characterized as a combination claim relative to claim 1 and therefore, the restriction requirement set forth in the Office action mailed April 19, 2004 is improper as Groups II and I are not related as combination and subcombination. As the two groups of claims identified above are not related as combination and subcombination, there is no need to delve into whether the criteria of distinctness and the reasons for insisting on restriction set forth in section 806.05(c) of the MPEP have been satisfied or not.

It is noted for the record that, assuming *arguendo*, had the characterizations of the claims been reversed, that is, Group I identified as the combination and Group II as the subcombination, restriction between the two would still have been considered improper, as the two-way distinctness test could not have been

satisfied as the particulars or details of the subcombination as claimed are found in the combination as indicated above.

DECISION

Applicant's petition for review and reversal of the final decision to maintain the restriction requirement is **GRANTED** as is the request to have the finality of the Office action mailed August 23, 2004 withdrawn. Upon the mailing of this decision, the application will be returned to the examiner for consideration of all the pending claims in the application, along with the amendment submitted with the petition, which is responsive to the Office action of August 23, 2004.

Richard A. Bertsch, Director
Technology Center 3700
Phone: (571) 272-3750

ak/02/22/05

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Paper No. 10

12-9-02

SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, NW
Washington DC 20037-3213

In re Application of
Engst
Application No. 10/024,567
Filed: December 21, 2001
Attorney Docket No. A8224

DECISION GRANTING PETITION

This is a decision on the October 7, 2002 petition requesting that the above-identified application be accorded a filing date of December 21, 2001.

The United States Patent and Trademark Office (hereinafter "USPTO") received this application on December 21, 2001. However, on January 24, 2002, 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 a the required drawings. The notice further stated that the filing date would be the date of receipt of the omitted drawings unless a petition was filed that successfully showed that the missing item(s) had been included with the application

Petitioner responded on March 19, 2002 by filing the missing drawings, a declaration, and a return receipt postcard with a USPTO date stamp of December 21, 2001, indicating receipt of the allegedly missing drawings on that date.

For reasons not entirely clear, the office responded by assigning the date of receipt of the petition (March 19, 2002) to the application as its filing date. The office mailed a notice to this effect on April 3, 2002.[1]

Petitioner responded with the October 7, 2002 filing of this petition.

In view of the above, it is concluded that the USPTO received a complete application on December 21, 2001 and later misplaced the drawings. It is furthermore concluded that the April 3, 2002 notice assigning a filing date of March 19, 2002 was mailed in error. Accordingly, *this petition is* ***granted***.

The $130.00 petition fee has been charged to counsel's deposit account. However, as no petition fee is required in this case, the fee will be refunded to Petitioner's deposit account (no. 19-4880).

The application is being returned to OPIE for further processing with a filing date of December 21, 2001.

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[1] That notice indicated that although a filing date had been assigned, the application was considered informal because the drawings did not conform to the standards that would be required for them to be treated as formal.

Any questions regarding this decision should be directed to the undersigned at (703) 306-5593.

Scott M. Ledford
Senior Attorney
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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701 FIFTH AVE
SUITE 6300
SEATTLE WA 98104-7092

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OFFICE OF PETITIONS

In re Application
Gregory Herd et al.
Application No. 10/024,571
Filed: December 21, 2001
Attorney Docket No. 1748X/50823

: 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 January 5, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred twenty-one (221) to three hundred fifteen (315) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred fifteen **(315)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 6, 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 twenty one days. On January 5, 2005, 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 three hundred fifteen (315) days. Applicants dispute the reduction of nineteen (19) days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed January 25, 2002 and to the reduction of seventy-five (75) days attributed to applicant for failing to respond within three months to the non-Final Office Action mailed March 18, 2004.[2]

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[1] PALM records indicate that the Issue Fee was received in the Office on January 5, 2005.

[2] A non-Final Office Action was mailed January 2, 2004 however a revised non-Final Office Action was mailed March 18, 2004 and the period of three months for response was restarted.

This application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of two hundred twenty-one (221) days based on an adjustment for PTO delay of three hundred fifteen (315) days pursuant to 35 U.S.C. 154(b)(1)(A)(I) and 37 C.F.R. § 1.703(a)(1) reduced by applicants' delays of nineteen days and seventy-five days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The reduction of ninety-four (94) days is at issue.

The reduction of 94 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 January 25, 2002, is of record in the application with a date of receipt by the Office of April 25, 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 May 14, 2002 or assessed applicants a delay of nineteen (19) days. As well, the response to the non-Final Office Action mailed March 18, 2004 was timely filed June 16, 2004, within the three-month period under 37 CFR 1.704(b). The discrepancy exists because the mail date of the original non-Final Office Action was January 2, 2004 and thus applicant's delay was incorrectly calculated using three months from that date as the date the response was due. Thus, the Office should not have assessed applicants an additional delay of seventy-five (75) days.

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

In view thereof, the patent should have issued with a revised Patent Term Adjustment of three hundred fifteen (315) days.

The Office will refer the matter 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.

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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MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, NW
WASHINGTON, DC 20006

Mail Date: 04/21/2010

Applicant	: Errol O. Kendall	: DECISION ON REQUEST FOR
Patent Number	: 7634420	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/024,585	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/21/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1839** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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Paper No. 6

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

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OFFICE OF PETITIONS

In re Application of :
Ohtsu, et al. :
Application No. 10/024,589 :
Filed: December 17, 2001 :
Attorney Docket No. SCEY 19.261 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 4, 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 January 17, 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 18, 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

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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

#9

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JUL 22 2002

LICENSING & REVIEW

Micheline Gravelle
Bereskin & Parr
40 King Street West
Box 401
Toronto M5H 3Y2 CA Canada

In re Application of:
E. James Squires, et al:
For Serial No. 10/024,628

DECISION ON
REQUEST FOR
RECONSIDERATION

Filed: November 23, 2001
For: **METHOD OF DETECTING AND REDUCING BOAR TAINT**

This is a decision on the REQUEST FOR RECONSIDERATION filed July 3, 2002, responding to the communication (FORM PTOL-456) mailed April 29, 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 label as disclosed in at least page 19 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 April 29, 2002.

Joanne P. Hodge
Supervisory Legal Instruments Examiner
Licensing and Review
Patent Technology Center 3600

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Paper No. 12

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TORONTO, ON M5H 3Y2
CANADA

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OCT 0 4 2002

OFFICE OF PETITIONS

In re Application of	:	
Squires et al.	:	
Application No. 10/024,628	:	DECISION GRANTING
Filed: 23 November, 2001	:	PETITION
Attorney's Docket No. 6580-234	:	

This is a decision on the petition filed on 27 August, 2002, to accord the above-identified application a filing date of 23 November, 2001.

The petition is **GRANTED**.

Petitioners argue that the application was deposited in the USPTO on 23 November, 2001. In support, petitioners supplied with the present petition a copy of a postcard receipt bearing a USPTO Office date stamp of 23 November, 2001, and identifying the application by docket number, parent application, and first named inventor's name, and itemizing the filing of, *inter alia*, application papers - oath/dec CIP, 26 claims, 14 sheets drawings.

A review of the record reveals that the original application papers located the official file contain an Office date stamp of 26 November, 2001, but were apparently processed with a filing date of 27 November, 2001. However, the evidence is convincing that the application papers were filed on 23 November, 2001.

As this petition was necessitated by an error on the part of the USPTO, the petition fee will be credited to counsel's deposit account, No. 02-2095.

The application is being returned to the Office of Initial Patent Examination (OIPE) for correction of the filing date to 23 November, 2001, and for issuance of a corrected Filing Receipt. Thereafter the application will be forwarded to Technology Center 1600 for examination in due course.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

PET DEC

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Commissioner for Patents
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JUN - 1 2004

In re Application of	:	
Sonya S. Johnson et al.	:	
Serial Number : 10/024,631	:	WITHDRAWAL
Filed : December 17, 2001	:	FROM
For : METHOD AND PRODUCT FOR	:	ISSUE
ACCELERATING ABSORPTION OF	:	
MEDICAMENTS THROUGH ORAL MUCOSA:		

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 application is being withdrawn to permit reopening of prosecution. The reasons therefore will be communicated to you by the examiner.

PTO records reveal that the issue fee has not been paid. If the issue fee has been submitted, the applicant may request a refund or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee to 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.

The application is being forwarded to the examiner for action.

Jacqueline M. Stone

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

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

cc:Allowed Files, Pk3-915

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JUN - 1 2004

In re Application of	:	
Sonya S. Johnson et al.	:	
Serial Number : 10/024,631	:	WITHDRAWAL
Filed : December 17, 2001	:	FROM
For : METHOD AND PRODUCT FOR	:	ISSUE
ACCELERATING ABSORPTION OF	:	
MEDICAMENTS THROUGH ORAL MUCOSA:		

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 application is being withdrawn to permit reopening of prosecution. The reasons therefore will be communicated to you by the examiner.

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The application is being forwarded to the examiner for action.

Jacqueline M. Stone

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CHICAGO, IL 60610

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OFFICE OF PETITIONS

In re Application of :
Moss, et al. : LETTER REGARDING PTA
Application No. 10/024,645 :
Filed: December 14, 2001 :
Atty. Dkt. No.: 8285/458 :

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed March 6, 2006. The Office thanks applicants for their good faith and candor in bringing this to our attention.

Applicants indicate that the PTA of 796 days indicated on the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b), mailed December 16, 2005, may extend the patent by too many days. Applicants have not specified the nature of the potential error and have requested that the calculation be reviewed and, if necessary, corrected.

A careful review of the application history does not reveal an error in the calculation. It is noted that the instant application is subject to a terminal disclaimer. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer.

In view thereof, at the time of allowance, the application was entitled to a PTA of 796 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). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

If applicants remain of the belief that an error exists in the calculation of patent term adjustment, a response to this letter should be forthcoming, setting forth with specificity the exact nature of the error in calculation.

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

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

Kery Fries

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

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SCHWEGMAN LUNDBERG WOESSNER & KLUTH P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402-0938

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JUN 13 2005

OFFICE OF PETITIONS

In re Application of :
Scott Sibbett :
Application No. 10/024,674 : ON PETITION
Filed: December 17, 2001 :
Attorney Docket No. 884.590US1 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 18, 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)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 22, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 23, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

As to item (1), a reply to the office action mailed on July 22, 2004, has not been submitted. A proper reply to the office action must be submitted with the petition to revive for the petition to be granted.

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

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(703) 872-9306 ATTN: Office of Petitions

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

Wan Laymon

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080423

DATE : April 23, 2008

TO SPE OF : ART UNIT 1618

SUBJECT : Request for Certificate of Correction on Patent No.: 7,008,633

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

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

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

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

Note your decision on the appropriated box.

☐ **Approved** All changes apply.

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

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

Comments:

Do not enter correction: On cover page, left column, under [75] Inventors: ... Ali Azhdarinia, Houston, TX (US) should be on the same line, because the printing format places teh names in two lines.

Do not enter correction: On cover page, left column, under [75] Inventors: ... E. Edmund Kim, Houston, TX (US) should be on the same line, because the printing format places teh names in two lines.

Do not enter correction: In col. 69, line 10, after "container" insert --- cthe cross-linking composition--- because it is not known what "cthe" is and is not supported by teh specification or original claims, appears to represent ---comprises the ---.

Do not enter correction: In col. 70, line 3 "chiorambucil" should read --- because what the "chiorambucil" should be changed to is missing.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Comments:

Do not enter correction: In col. 70, line 5, "azireonani" should read --- because what the "azireonani" should be changed to is missing.

Do not enter correction: In col. 73, line 2-3, "ras; myc, raf, erb, src, fms, jun, trk, ret, gsp, hst, bcl abl," in italic front, because "ras; myc, raf, erb, src, fms, jun, trk, ret, gsp, hst, bcl abl," occurs in lines 1 and 2 of col, 73 and not lines 2 and 3.

SPE: /Michael Hartley/ Art Unit 1618

Approved for use through 04/30/2009. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6710532	2004-03-23	10024697	2001-12-21	K-0339

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)	2008-05-01
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.

UNITED STATES 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. 6710532
Issue Date: March 23,2004
Application No. 10024697
Filed: December 21,2001
Attorney Docket No. K-0339

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

This is a decision on the electronic petition, filed May 1,2008 ,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 1,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

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SEP 18 2006
OFFICE OF PETITIONS

In re Application of	:	
Satoshi Seo, et al.	:	
Application No. 10/024,699	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No.: 12732-088001	:	

This is a decision on the petition, filed September 15, 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 May 24, 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 2879 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).

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MINNEAPOLIS, MN 55440-1022

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JUL 20 2007

OFFICE OF PETITIONS

In re Application of
Satoshi Seo et al
Application No. 10/024,699
Filed: December 21, 2001
Attorney Docket No. 12732-088001

ON PETITION

This is a decision on the petition, filed July 18, 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 July 2, 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]

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 should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2879 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

cc: John F. Hayden
Fish & Richardson P.C.
1425 K Street, 11th Floor
Washington, DC 20005-3500

---

[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
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Paper No. 9

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JUN 26 2003

OFFICE OF PETITIONS

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

In re Application of
Dennis Keith, Chandrika Govardhan and Nazer Khalaf Nazer
Application No.10/024,701
Filed: December 17, 2001
Attorney Docket No.13764-003001
Title of Invention: METHODS FOR PREPARING PURIFIED DAPTOMYCIN

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to the renewed petition under 37 CFR 1.47(a), filed June 16, 2003 (certificate of mailing June 11, 2003).

The petition is GRANTED.

Petitioner has shown that the non-signing inventors Govardhan and Khalaf refused to join in the filing of the above-identified application after having been presented with the application papers. The declaration of Laurie Butler and the petition attest a copy of the application was sent to Richard Forrest the purported representative of both non-signing inventors. The non-signing inventors' failure to respond to the application mailing sufficiently establishes that they refuse 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 for further processing.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Chandrika Govardhan
9 Scotland Road
Lexington, MA 02420

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JUN 2 6 2003

OFFICE OF PETITIONS

In re Application of
Dennis Keith, Chandrika Govardhan and Nazer Khalaf Nazer
Application No.10/024,701
Filed: December 17, 2001
Attorney Docket No.13764-003001
Title of Invention: METHODS FOR PREPARING PURIFIED DAPTOMYCIN

LETTER

Dear Mr. Govardhan:

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, applicant (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).

Charlema R. Grant
Petitions Attorney
Office of Petitions

Laurie Butler Lawrence
FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON MA 02110

cc: Richard Forrest
Altus Biologics, Inc
625 Putnam Street
Cambridge, MA 02139

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Nazer Khalaf
14 Lauf Street
Worcester, MA 01602

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JUN 2 6 2003

LETTER OFFICE OF PETITIONS

In re Application of
Dennis Keith, Chandrika Govardhan and Nazer Khalaf Nazer
Application No.10/024,701
Filed: December 17, 2001
Attorney Docket No.13764-003001
Title of Invention: METHODS FOR PREPARING PURIFIED DAPTOMYCIN

Dear Mr. Khalaf:

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, applicant (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).

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

Laurie Butler Lawrence
FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON MA 02110

cc: Richard Forrest
Altus Biologics, Inc
625 Putnam Street
Cambridge, MA 02139

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

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APR 1 1 2003

OFFICE OF PETITIONS

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON MA 02110

In re Application of
Keith et al.
Application No.10/024,701
Filed: December 17, 2001
Attorney Docket No.13764-003001

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed November 6, 2002, under 37 C.F.R. §1.47(a) (certificate of mailing date October 28, 2002).

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the 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 December 17, 2001, without an executed oath or declaration. Accordingly, on March 27, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of May 27, 2002.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, the Declaration of Timothy Douros of Cubist Pharmaceuticals, inc, and a partially executed declaration. To make timely a request for a five (5) month extension of time was submitted with the petition.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirements (1).

As to item (1), Rule 47 applicant has failed to show that the non-signing inventors Govardhan and Khalaf refused to sign the declaration after having been presented with the application papers (specification, including claims, drawings, and oath or

declaration). See MPEP 409.03(d). The declaration of Timothy Douros states the application papers were forwarded to Richard Forrest General, Counsel for Altus. However, sufficient evidence that the documents were presented to the inventors has not been provided. There is no indication rule 47 applicant inquired as to whether the application papers were forwarded to the inventors. Nor is there any indication rule 47 applicant provided a copy of the application papers to inventors Govardhan and Khalaf at their last known addresses. Furthermore, no evidence has been presented that the inventors are represented by Richard Forrest. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor.

Thus on renewed petition, rule 47 applicant must establish the **entire** application package (including specification, claims and drawings) was presented to the non-signing inventors and they refused to sign.

Deposit account 06-1050 has been charged the $130.00 petition fee.

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4-19-05

TO SPE OF : ART UNIT 3721

SUBJECT : Request for Certificate of Correction on Patent No.: 6767316

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-915
Palm location **7580** - Tel. No. 305-8309

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

Please check Drawings / claims

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:

Rinaldi I. Rada
Supervisory Patent Examiner
SPE Group 3700 **Art Unit** 3721

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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JUN 14 2007

OFFICE OF PETITIONS

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR NY 10510

In re Application of	:	
Piotrowski	:	
Application No. 10/024,766	:	DECISION ON PETITION
Filed: December 20, 2001	:	
Attorney Docket No. US010629	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 30, 2006, 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 February 24, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 25, 2006.

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

The proposed reply required for consideration of a petition to revive after the final office action 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, according to Examiner Calvin Hewitt, the amendment submitted does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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.

The required petition fee of $1500.00 is being charged to petitioner's Deposit Account No. 14-1270.

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 Christopher Bottorff at (571) 272-6052 or in his absence, the undersigned at (571) 272-7099.

David Bucci
Petitions Examiner
Office of Petitions

cc: Kevin Simons
Philips Electronics North America Corp.
1109 McKay Drive MS41-SJ
San Jose, California 95131

UNITED STATES PATENT AND TRADEMARK OFFICE

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101 SOUTH TRYON ST
SUITE 4000
CHARLOTTE NC 28280-4000

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OFFICE OF PETITIONS

In re Patent No. 6,806,401	:	DECISION ON
Zheng, et al.	:	PATENT TERM ADJUSTMENT
Issue Date: October 19, 2004	:	AND NOTICE OF INTENT
Application No. 10/024,806	:	TO ISSUE
Filed: December 19, 2001	:	CERTIFICATE OF
Attorney Docket No. 35718/241887	:	CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED ON PATENT (37 C.F.R. § 1.705(d))", filed December 17, 2004. Patentees request that the patent term adjustment indicated on the patent be corrected from ninety-one (91) days to two hundred five (205) days.

The request is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **two hundred five (205)** days.

On October 19, 2004, the above-identified application matured into U.S. Patent No. 6,806,401. The instant request for reconsideration filed December 17, 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 ninety-one (91) days. Patentees state that the initial determination of patent term adjustment of six hundred two hundred five (205) days should not have been reduced to days for the submission of a "INTERVIEW SUMMARY" after the Notice of Allowance.

The Office notes that the interview summary mailed by the Office on May 26, 2004 expressly required a formal written reply containing the substance of the interview. Accordingly, the "INTERVIEW SUMMARY" will not be considered to be a "failure to engage in reasonable efforts to conclude processing or examination of the application."

In view thereof, the correct determination of PTA at the time of issuance is two hundred five (205) days (223 days of PTO delay reduced by 18 days of applicant delay).

The $200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 16-0605, as authorized.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 CFR 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **two hundred five (205)** days subject to any disclaimers.

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

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

Enc: draft certificate of correction

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 15

Edward R. Gimmi
SmithKline Beecham
Corporation
Corporate Intellectual
Property-U.S., UW2220
P.O. Box 1539
King of Prussia, PA
19406-0939

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JUN 13 2005

OFFICE OF PETITIONS

In re Application of Meek et al. Application No. 10/024,808 Filed: December 19, 2001 Atty Docket Number: P51217	: : : : : :	DECISION ON PETITION

This is in response to the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)," filed June 21, 2004.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a response to the non-final Office action mailed November 26, 2003. This Office action set a shortened statutory period for reply of three (3) months from the mailing date of the action. A three-month extension of time for response under the provisions of 37 CFR 1.136(a) was filed on June 1, 2004. However, the maximum period for reply expired on May 26, 2004. No proper reply having been received and no proper extension of time having been timely received, the above-identified application became abandoned on February 27, 2004. The petition was filed prior to the mailing of a courtesy Notice of Abandonment.

Petitioner states that a continuing application has been filed. The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the application, the application is again abandoned in favor of continuing application number 10/857,404, filed May 28, 2004. The continuing application will be processed in due course.

Petitioner is advised that 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. Petitioner cannot extend the period for reply after the application has

obtainable, payment of the fee ($950) is unnecessary and will be credited to petitioner's deposit account.

The application file for application number 10/024,808 is being forwarded to Files Repository.

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. 16

Edward R. Gimmi
SmithKline Beecham
Corporation
Corporate Intellectual
Property-U.S., UW2220
P.O. Box 1539
King of Prussia, PA
19406-0939

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SEP 29 2005

OFFICE OF PETITIONS

In re Application of Meek et al. Application No. 10/024,808 Filed: December 19, 2001 Atty Docket Number: P51217	: : : : : :	DECISION ON PETITION

This is a decision on the "PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY UNDER 35 U.S.C. 120," filed August 19, 2004. This decision is made in light of the amendment filed February 23, 2005.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior filed provisional application, is 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), and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the surcharge set forth in 37 CFR 1.17(t);

(2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed was unintentional; and

(3) the reference to the prior filed provisional application, supplied in an application data sheet (ADS)(37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 USC 119(e) and 37 CFR 1.78(a)(5). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on December 19, 2001, within twelve months of the filing date of the

prior provisional application, Application No. 60/259,595, which was filed on January 3, 2001, and for which priority is claimed. A reference to the prior provisional application has been included as an amendment[1] to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5). 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 USC 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 USC 119(e), the petition to accept an unintentionally delayed claim of benefit to prior filed provisional Application No. 60/259,595 is granted as of the date of filing the petition.

As authorized, the $1,330 fee required by 37 CFR 1.78(a)(6) has been charged to petitioner's Deposit Account No. 19-2570, as authorized.

The application is being forwarded to the Office of Initial Patent Examination for pre-examination processing, which will include entry of continuity with prior filed provisional Application No. 60/259,595, filed January 3, 2001, and for mailing of a corrected filing receipt with the projected publication date. Thereafter, the application will be forwarded to Technology Center AU 1645 for processing the amendment filed June 1, 2004 (resubmitted in proper form on February 23, 2005) and for consideration by the examiner of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior provisional application, Application No. 60/259,595, filed on January 3, 2001.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Nancy Johnson at (571) 272-3219.

Charles A. Pearson
Director
Office of Petitions

---

[1] As to requirement (3), in the petition as filed on June 1, 2004, it appears that petitioner has attempted to amend the specification by way of a request set forth on the second page of the petition. However, an amendment should be filed as a separate paper and should comply with § 1.121. See 37 CFR 1.4. By telephone call of January 2005, an informal request for such an amendment was made by petitions attorney Nancy Johnson. On February 23, 2005, petitioner provided the amendment in a separate paper.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/13/06

TO SPE OF : ART UNIT 2855

SUBJECT : Request for Certificate of Correction on Patent No.: 6510742 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.**

change to drawing approved?

Thank You For Your Assistance

D. Irvine
Certificates of Correction Branch
Tel. No. 703-308-9590

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

_____ Art Unit

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WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE - 46TH FLOOR
PHILADELPHIA PA 19103

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MAR 18 2004

OFFICE OF PETITIONS

In re Application of	:
Brian Froehler et al	: DECISION ON PETITION
Application No. 10/024,818	: UNDER 37 CFR 1.78(a)(3)
Filed: December 18, 2001	:
Attorney Docket No. GLIS-0143	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 19, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

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

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

The instant application was filed on December 18, 2001 and was pending at the time of filing of the instant petition.

---

[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 reference to the prior-filed applications was not included in the manner specified in 37 CFR 1.78(a)(2)(i) (i.e., in an ADS or in an amendment to the first sentence following the title of the specification) or filed within the period specified in 37 CFR 1.78(a)(2)(ii).

The instant petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., August 2001), Section 201.11, Reference to First Application. The amendment filed September 19, 2003 fails to state the **proper** relationship of Application No. 08/338,352, filed November 14, 1994, to the instant application. Intermediate Application No. 07/976,103 was filed on **November 25, 1992**, and Application No. 08/338,352 was filed on **November 14, 1994**. Therefore, Application No. 07/976,103, cannot be a continuation of Application No. 08/338,352.

For the above-noted reason, the petition under 37 CFR 1.78(a)(3) cannot be granted.

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

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

By hand: Customer Window located at:

2011 South Clark Place
Crystal Plaza Two Lobby
Room 1B03
Arlington, VA 22202

By fax: (703) 872-9306
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (703) 305-8859 .

Karen Creasy

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

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

WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE - 46TH FLOOR
PHILADELPHIA PA 19103

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MAR 18 2004

OFFICE OF PETITIONS

In re Application of	:
Brian Froehler et al	: DECISION ON PETITION
Application No. 10/024,818	: UNDER 37 CFR 1.78(a)(3)
Filed: December 18, 2001	:
Attorney Docket No. GLIS-0143	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 19, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

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

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

The instant application was filed on December 18, 2001 and was pending at the time of filing of the instant petition.

---

[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 reference to the prior-filed applications was not included in the manner specified in 37 CFR 1.78(a)(2)(i) (i.e., in an ADS or in an amendment to the first sentence following the title of the specification) or filed within the period specified in 37 CFR 1.78(a)(2)(ii).

The instant petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., August 2001), Section 201.11, Reference to First Application. The amendment filed September 19, 2003 fails to state the **proper** relationship of Application No. 08/338,352, filed November 14, 1994, to the instant application. Intermediate Application No. 07/976,103 was filed on **November 25, 1992**, and Application No. 08/338,352 was filed on **November 14, 1994**. Therefore, Application No. 07/976,103, cannot be a continuation of Application No. 08/338,352.

For the above-noted reason, the petition under 37 CFR 1.78(a)(3) cannot be granted.

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

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

By hand: Customer Window located at:

2011 South Clark Place
Crystal Plaza Two Lobby
Room 1B03
Arlington, VA 22202

By fax: (703) 872-9306
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (703) 305-8859 .

Karen Creasy

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

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JUL 14 2004

OFFICE OF PETITIONS

In re Application of	:
Brian Froehler et al	:
Application No. 10/024,818	: DECISION ON PETITION
Filed: December 18, 2001	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. GLIS-0143	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed June 7, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

---

[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

The instant pending application was filed on December 18, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

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

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

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

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

The examiner of Technology Center Art Unit 1637 will consider applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Karen Creasy

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

ATTACHMENT: Corrected Filing Receipt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 19, 2006

TO SPE OF : ART UNIT 1637

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/024818 Patent No.: 6,962,783

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: _____

GARY BENZION, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE **Art Unit** 1637

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FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

In re Application of :
Shunpei Ysmazaki, et al. :
Application No. 10/024,850 :
Filed: December 18, 2001 :
Atty Docket No. 07977-188002/US3427/3434D :

ON PETITION

This is a decision on the petition, filed June 30, 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 17, 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]

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

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

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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).

The application will be forwarded to Technology Center AU 2823 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

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

cc: Fish & Richardson P.C.
1425 K Street, N.W., 11th Floor
Washington, DC 20005-3500

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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SMITHKLINE BEECHAM CORPORATION
CORPORATE INTELLECTUAL PROPERTY-US, UW2220
P.O. BOX 1539
KING OF PRUSSIA, PA 19406-0939

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OFFICE OF PETITIONS

In re Application of	:	
Graham Stanley Leondard et al	:	
Application No. 10/024,858	:	ON PETITION
Filed: December 18, 2001	:	
Attorney Docket No. P31220X2C2	:	

This is a decision on the petition filed November 22, 2005, which is being treated under 37 CFR 1.313(c)(2), to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 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 Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 1615 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Amendment and IDS.

Wan Laymon
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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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

www.uspto.gov

Date : November 23, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Graham Stanley Leonard et al
Application No. : 10/024,858
Filed : December 18, 2001

The above-identified application has been assigned Patent No. 6,969,526 and an issue date of November 29, 2005.

It is hereby directed that this application be withdrawn from issue at the request of the applicants. 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 November 29, 2005:

"All reference to Patent No. 6,969,526 to Graham Stanley Leonard et al of St Albans, United Kingdom for PAROXETINE CONTROLLED RELEASE COMPOSITIONS appearing in the Official Gazette of November 29, 2005 should be deleted since no patent was granted."

Wan Laymon
Petitions Examiner
Office of Petitions

cc: Paul Harrison; MDW, Suite 04B03 (FAX-571-273-5468)
Deneise Boyd, MDE, Suite 03D39 (FAX-571-273-5124)
Mary Louise McAskill, South Tower, Suite 8C15(FAX 305-4372)
Niomi Farmer, South Tower, Suite 8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE, Suite 07C71 (FAX-571-273-0038)
Duane Davis (CDS), MDE, Suite 07D89
Tamara K. Greene, South Tower, Suite 08C13

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UW2220
P.O. BOX 1539
KING OF PRUSSIA, PA 19406-0939

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OFFICE OF PETITIONS

In re Application of :
Graham Stanley Leonard et al :
Application No. 10/024,858 : ON PETITION
Filed: December 18, 2001 :
Attorney Docket No. P31220X2C2

This is a decision on the petition filed, October 5, 2006 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 19, 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 Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 1615 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

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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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MOTOROLA, INC.
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG, IL 60196

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MAR 24 2006

OFFICE OF PETITIONS

In re Application of	:	
Yu et al.	:	
Application No. 10/024,886	:	DECISION
Filed: December 18, 2001	:	ON PETITION
For: METHOD AND APPARATUS FOR	:	
FOR MOTION DETECTION FROM	:	
COMPRESSED VIDEO SEQUENCE	:	

This is a decision on the Petition for Withdrawal of Abandonment, filed via Facsimile on February 2, 2006[1]. The petition is properly treated under 37 CFR 1.181.

The petition is **granted.**

Background

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed November 22, 2004. The Office action set a three (3) month period for reply. No complete and proper reply having been filed, this application became abandoned on February 23, 2005. A Notice of Abandonment was mailed on January 25, 2006.

The instant petition

Applicant files this petition and asserts that a complete and proper reply was timely filed in this Office via facsimile on January 21, 2005. In support of this assertion, Applicant files copies of an Amendment in response to the November 22, 2004 Office action which includes a Certificate of Facsimile Transmission by Nanette Orr dated January 21, 2005, and a copy of a statement from Nanette Orr attesting to the transmission on January 21, 2005.

[1] A review of the Certificate of Mailing appearing on the facsimile reveals that the Certificate is inconsistent.

In view of the above, Applicant has demonstrated timely filing of the Amendment by a preponderance of the evidence. As such, the holding of abandonment is improper and is hereby withdrawn.

No petition fee has been charged and none is due.

The application file is being referred to Technology Center Art Unit 2613 for consideration of the Amendment filed January 21, 2005, and 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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CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

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JAN 13 2005

OFFICE OF PETITIONS

In re Application of
Nigel Victor Spurr :
Application No. 10/024,915 :
Filed: December 19, 2001 :
Attorney Docket Number: 60,130-1295 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 4, 2004, to revive the above identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed February 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 May 13, 2004. Accordingly, a Notice of Abandonment was mailed September 20, 2004.

Petitioner files the instant petition under 37 CFR 1.137(b). [1]

This application is being forwarded to Technology Center 3676 for appropriate action on the amendment filed October 4, 2004.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In 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)).

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OFFICE OF PETITIONS

N.R.H. BLACK
DBA BAYPATENT
420 MIRAMONTES AVE.
HALF MOON BAY CA 94019

In re Patent No. 6,803,824	:	
Issue Date: October 12, 2004	:	
Application No. 10/024,943	:	ON PETITION
Filed: December 18, 2001	:	
Attorney Docket No. M-12365 US	:	

This is a decision on the petition under 37 CFR 1.378(c), filed February 27, 2009, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on October 13, 2008 for failure to pay the first maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

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

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney in the above application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future

correspondence will be directed to the address currently of record until appropriate instructions are received.

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

The patent file is being referred to Files Repository.

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

WARD & OLIVO LLP
382 SPRINGFIELD AVE.,
SUMMIT, NJ 07901

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TOWSEND and TOWNSEND and CREW
Two Embarcarcadero Center, Eighth Floor
San Francisco, California 94111-3834

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OFFICE OF PETITIONS

In re **Chandler et al.** Application No. 10/024,959 Filing Date: December 18, 2001 Attorney Docket No.020824-000910US	: : : : :	RECONSIDERATION OF PATENT TERM ADJUSTMENT

This decision is in response to applicants' PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE 37 CFR 1.705 timely[1] filed on May 23, 2005 requesting that the Office adjust the PTA calculation at the time of the notice of allowance from a determination of zero (0) days to a determination of two hundred and sixty-one (261)days.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment 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. Patentee 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

[1]Issue fee paid on May 23, 2005.

reconsideration on other bases must be timely filed and must include payment of the required fee.

Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

After the mailing of this decision, the file will be forwarded to the Office of Patent Publications for a prompt issuance of the patent. Any delays in issuing the application more than four months from the payment of the issue fee and all other requirements being satisfied will be added in the issue notification letter that is provided to applicants approximately three weeks prior to issuance of the application.

Applicants have provided the required $200.00 fee. No additional fees are required in the determination of this request.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, at 571-272-7757.

Kery A Fries

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

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FISH & RICHARDSON, P.C.
P. O. BOX 1022
MINNEAPOLIS, MN 55440-1022

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AUG 0 9 2007

OFFICE OF PETITIONS

In re Patent No. 7,107,279 :
Issue Date: September 12, 2006 :
Application No. 10/024,961 : DECISION ON PETITION
Filed: December 19, 2001 :
Attorney Docket No. :
13729-003001

This is a decision on the petition under 37 CFR 1.182, filed November 30, 2006, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Publishing Division is directed to issue a duplicate Letters Patent.

The fee for filing a petition under 37 CFR 1.182 for issuance of a duplicate Letters Patent is $400, rather than $130. Accordingly, as authorized, the $270 balance due for the petition under 37 CFR 1.182 has been assessed to petitioner's deposit account.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries regarding the issuance of a duplicate Letters Patent may be directed Krystal Paige in the Publishing Division at (703) 308-9250, Ext. 139.

A copy of this decision is being faxed to Publishing Division for issuance of a duplicate Letters Patent.

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Krystal Paige, South Tower, 8th Floor (Fax No. (571) 270-9937

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United States Patent and Trademark Office
P.O. Box 1450
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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins CO 80527-2400

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MAR 2 5 2008

OFFICE OF PETITIONS

In re Application of
Baird et al.
Application No. 10/024,964
Filed: December 18, 2001
Attorney Docket No. 10012975-1

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 17, 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 as a result of petitioner's failure to take appropriate action in a timely manner after the decision of March 30, 2007 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. *See* 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on May 31, 2007. *See* MPEP 1214.06.

The merits of the petition have **not** been reviewed.

In accordance with 37 CFR 1.34, a paper filed by a registered patent attorney or agent in an application in which he or she is not of record must include his or her name and registration number with his or her signature. A review of the petition shows that an attorney registration number has not been provided. A properly executed petition is required on renewed petition.

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

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450

Alexandria, VA 22313-1450

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

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

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

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OFFICE OF PETITIONS

In re Application of
Baird et al.
Application No. 10/024,964
Filed: December 18, 2001
Attorney Docket No. 10012975-1

DECISION ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed April 14, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of March 30, 2007 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. *See* 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on May 31, 2007. *See* MPEP 1214.06.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $790.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $1500.00; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR §10.18(b). 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 referred to Technology Center AU 2134 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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

Charlema Grant
Petitions Attorney
Office of Petitions

Cc: David R. Risley
600 Galleria Parkway
Suite 1500
Atlanta, GA 30339

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Paper No. 6

NOV 3 2004

AIR PRODUCTS AND CHEMICALS, INC.
PATENT DEPARTMENT
7201 HAMILTON BOULEVARD
ALLENTOWN PA 18195-1501

In re Application of:
Ronald Joseph Pangrazi et al.
Serial No.: 10/024,967
Filed: December 19, 2001
For: TEST FOR MEASURING ADHESION OF POLYMER BINDERS TO A HEATED METAL SURFACE

DECISION ON PETITION

This is a decision on the petition, filed May 14, 2004, via facsimile transmission, to withdraw the holding of abandonment of the above-identified application.

The petition is GRANTED.

This application was held abandoned for failure to respond in a timely manner to the non-final Office action of August 22, 2003. A Notice of Abandonment was mailed on May 2, 2004.

Petitioner states that a response was in fact timely mailed on November 26, 2003. To support this assertion, petitioner has submitted a copy of a post card receipt that acknowledges receipt in the USPTO of a response along with a request for extension of time on November 28, 2003. A copy of the response was submitted with the petition.

The response originally filed on November 28, 2003 was not associated with the application file. However, the finance record indicates that fee of $110 for the one-month extension of time was collected from petitioner's Deposit Account on December 3, 2003.

In view of the above-stated evidence, it is hereby accepted that a response was timely filed but lost by the USPTO after receipt thereof. The application is not abandoned in fact.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. Inconvenience to the applicant is regretted.

The copy of the response is accepted since the originally submission is apparently lost.

The response will be entered and consider by the examiner 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.

Howard N. Goldberg, Group Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20050210

DATE : 10 February 2005

TO SPE OF : ART UNIT 3672

SUBJECT : Request for Certificate of Correction on Patent No.: 6,802,780

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:

DAVID BAGNELL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

SPE

3672
Art Unit

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Marina Portnova
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026

In re Application of	:	
WIRYAWAN, et al.	:	
Application No. 10/024,990	:	DECISION ON PETITION
Filed: December 19, 2001	:	TO WITHDRAW
Attorney Docket No. 5306.P074	:	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 03, 2006.

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

A review of the file record indicates that the power of attorney to BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP has been revoked by the assignee of the patent application on September 11, 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 PatriciaVolpe at (571) 272-6825.

David Bucci
Petitions Examiner
Office of Petitions

cc: CSA LLP
4807 Spicewood Springs Road
Bldg. 4, Suite 201
Austin, TX 78759

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/024,990	12/19/2001	Antonius Adhi Wiryawan	5306.P074

CONFIRMATION NO. 3673

OC000000020479171

Lance A. Termes
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

Date Mailed: 09/18/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/11/2006.

- 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).

PVolpe

PATRICIA A VOLPE
OP (571) 272-6825

FORMER ATTORNEY/AGENT COPY

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Paper No. 17

MCDONNELL BOEHNEN HULBERT & BERGHOFF
300 SOUTH WACKER DRIVE
SUITE 3200
CHICAGO IL 60606

COPY MAILED

MAR 1 9 2004

OFFICE OF PETITIONS

In re Application of Johnson, et al. Application No. 10/025,076 Filed: December 18, 2001 Attorney Docket No. 01-272-C	: : : : :	DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 11, 2003, to accept an unintentionally delayed claim under U.S.C. 120 for the benefit of prior filed nonprovisional application nos. 09/235,691 and 08/798,284.

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;

(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 application was filed on December 18, 2001, and was pending at the time of filing of the instant petition. Reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed 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 must be met. Accordingly, the examiner will, in due course, consider this benefit claims and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Technology Center 3600 for consideration of the RCE filed September 11, 2003.

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

Charles Pearson
Director
Office of Petitions

Enc: Corrected Filing Receipt (2 pages)

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/9/10

TO SPE OF : ART UNIT 2817

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/025090 Patent No.: 7010016 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

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

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

Comments: _____

2817

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Paper No. 16

David J. Gaskey
CARLSON, GASKEY & OLDS, P.C.
Suite 350
400 West Maple Road
Birmingham, MI 48009

JUL - 1 2005

In re Application of:
Douglas E. Logan et al.
Serial No.: 10/025,097
Filed: December 19, 2001
Attorney Docket No.: 60,469-052; OT-935; OT-49

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the petition filed on September 02, 2003 to withdraw the holding of abandonment of the above-identified application under 37 C.F.R. § 1.181(a).

The petition is **GRANTED**.

On April 10, 2003, a Notice of Allowance and Fee(s) Due was mailed indicating that the issue fee and publication fee were due on July 10, 2003. On August 19, 2003, a Notice of Abandonment was mailed indicating that the application was abandoned due to applicant's failure to timely pay the required issue fee.

A review of Office records indicates that a Request for Continued Examination (RCE), an amendment and an Information Disclosure Statement (IDS) were timely filed on June 20, 2003 before the due date of the issue fee and publication fee. In addition, credit card payments for the fees associated with the RCE and amendment were received and posted on June 23, 2005.

It is clear that there was no abandonment in fact. The Notice of Abandonment mailed August 19, 2003 is hereby **VACATED** and the holding of abandonment is withdrawn.

The application file is being forwarded to the Technology Center 2800 support staff for completing the processing of the RCE and for entry of the amendment. The application file will then be forwarded to the examiner for prompt appropriate action.

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

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

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Date Mailed : November 16, 2006

Patent No. : 7,041,937
Inventor : Ihde et al.
Patent Issued : May 9, 2006
Docket No. : ITW7510.038

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.

Inspection of the application for the patent reveals, however, that in connection with the alleged errors to which applicant refer; column 5 and 6 is printed in accordance with the records of the Patent and Trademark Office as passed to issue by the examiner. There being no fault on the part of the Patent and Trademark Office, it has no authority to a issue certificate of correction under the provisions of 35 U.S.C. 254 and Rule 322 of the Rules of Practice of the United States Patent and Trademark Office in Patent Cases.

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

To further consider applicants request, a request for reconsideration filed under 37 CFR 1.323 which includes the required fee of $100.00 or a reconsideration filing together with documentation in support of applicants request filed under 1.322 should be submitted. Required documentation may include acknowledgement of receipt.

Further correspondence concerning this matter should be filed and directed to Decisions & Certificate of Correction Branch. Any telephone inquiry concerning this communication should be directed to Ms. A. Green at (703) 308-9380 ext. 123.

Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9380 ext. 123 or (703) 308-9380 Ext. 123

Timothy J. Ziolkowski
Ziolkowski Patent Solutions Group, SC
14135 N. Cedarburg Rd
Mequon, WI 53097-1416

CBN/arg

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BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 Wilshire Boulevard, 7th Floor
Los Angeles CA 90025-1026

In re Application of	:	
WIRYAWAN, et al.	:	
Application No. 10/025,126	:	DECISION ON PETITION
Filed: December 18, 2001	:	TO WITHDRAW
Attorney Docket No. 5306.P075	:	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, 2006.

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

A review of the file record indicates that the power of attorney to Marina Portnova and all attorneys associated with Blakely Sokoloff Taylor & Zafman LLP have been revoked by the assignee of the patent application on September 5, 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.

David Bucci
Petitions Examiner
Office of Petitions

cc: **CSA 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
10/025,126	12/18/2001	Antonius Adhi Wiryawan	5306.P075

CONFIRMATION NO. 3829

OC000000020756970

Lance A. Termes
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

Date Mailed: 10/10/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/05/2006.

- 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

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/025,126	12/18/2001	Antonius Adhi Wiryawan	5306.P075

CONFIRMATION NO. 3829

OC000000020756973

CSA LLP
4807 Spicewood Springs Road
Bldg. 4, Suite 201
Austin, TX 78759

Date Mailed: 10/10/2006

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/05/2006.

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

MONICA A GRAVES
OP (571) 272-7253

ATTORNEY/APPLICANT COPY

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Christopher M. Goff (27839)
ARMSTRONG TEASDALE LLP
ONE METROPOLITAN SQUARE
SUITE 2600
ST. LOUIS, MO 63102

Mail Date: 05/11/2010

Applicant	: Christopher Peter Olson	: DECISION ON REQUEST FOR
Patent Number	: 7615040	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/025,173	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/19/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2350** 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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SCHWEGMAN, LUNDBERG &
WOESSNER/BSC-CRM
PO BOX 2938
MINNEAPOLIS MN 55402

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APR 27 2010

OFFICE OF PETITIONS

In re Application of	:	
Von Arx, et al.	:	
Application No. 10/025,183	:	DECISION ON APPLICATION
Filed: December 19, 2001	:	FOR
Atty Docket No.279.391US1	:	PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)," filed December 28, 2009. Applicants request that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from one hundred and ten (110) days to one hundred and sixty-seven (167) days.

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

The Office has updated the PALM and PAIR screens to reflect that the patent term adjustment determination at the time of the mailing of the notice of allowance is **one hundred and sixty-seven (167) days** (385 days of Office delay - 218 days of applicant delay). A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

On September 28, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 110 days. Applicants timely filed the instant application for patent term adjustment.[1] Specifically, applicants state that:

> Applicants have calculated that correct patent term adjustment as 167 days, which was calculated as follows:
>
> The date that is three months after the Office Action

[1] PALM finance records indicate the issue fee was paid on December 28, 2009.

> (Mailed on December 10, 2008) is March 10, 2008. Applicants' compliant response to the first Office Action was received by the USPTO on May 12, 2008. The difference between these two dates is 63 days debit from Applicants' patent term. However, the USPTO has debited from Applicants' patent term the above 63 days twice in the calculations (i.e., 63 + 63 + 126 Days). Additionally, the date that is four months after the Response to the above Office action (Response Received on May 12, 2008) is September 12, 2008. The Notice of Allowance was mailed by the USPTO on September 18, 2008. The difference between these two dated is 6 days credit to Applicants' patent term. However, the USPTO has credited to the Applicants' patent term, the above 6 days twice in the calculations (i.e., 6 + 6 + 12 Days). Omitting the duplications, the PTA now becomes 167 Days instead of 110 Days as calculated in PAIR PTA.

Excerpt taken from "Statement of Facts under 37 CFR 1.705(b)(2) in Support of Application for Patent Term Adjustment", filed December 28, 2009, pg. 1.

Applicants' argument is well taken and is supported by a review of the file record. The record supports the conclusion of a duplicate entry of the reduction to the patent term adjustment of 63 days pursuant to 37 CFR 1.704(b) for the filing of a response May 12, 2008, three months and sixty-three days after a non-final Office action was mailed December 10, 2007. Accordingly, the duplicate entry of the period of reduction of 63 days is being removed.

Further, the record supports the conclusion of a duplicate entry of the adjustment to the patent term of 6 days pursuant to 37 CFR 1.702(a)(2) and 37 CFR 1.703(a)(2) for the mailing of a Notice of Allowance and Issue Fee Due on September 14, 2009, four months and six days after a response was filed on May 12, 2008. Accordingly, the duplicate entry of the period of adjustment of 6 days is being removed.

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

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the

Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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

Telephone inquiries specific to this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Monday
Date: 4/19/2010

PALM INTRANET

Time: 08:37:42

PTA Calculations for Application: 10/025183			
Application Filing Date:	12/19/2001	PTO Delay (PTO):	391
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	281
Post-Issue Petitions:	0	Total PTA (days):	167
PTO Delay Adjustment:	57		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
160	04/19/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	57		
149	09/28/2009	MAIL NOTICE OF ALLOWANCE			
148	09/17/2009	ISSUE REVISION COMPLETED			
147	09/17/2009	DOCUMENT VERIFICATION			
146	09/17/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
145	09/14/2009	NOTICE OF ALLOWABILITY			
144	06/12/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
143	06/12/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
136	06/12/2009	REFERENCE CAPTURE ON IDS			
135	07/13/2009	DATE FORWARDED TO EXAMINER			
134	06/12/2009	RESPONSE AFTER NON-FINAL ACTION		24	128
133	06/12/2009	MISCELLANEOUS INCOMING LETTER			
132	06/12/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
131	06/12/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
130	06/12/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
129	06/12/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
128	02/19/2009	MAIL NON-FINAL REJECTION			
127	02/17/2009	NON-FINAL REJECTION			
126	12/17/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
121	12/17/2008	REFERENCE CAPTURE ON IDS			

120	12/17/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
119	01/10/2009	DATE FORWARDED TO EXAMINER			
118	12/17/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
117	01/10/2009	DISPOSAL FOR A RCE / CPA / R129			
116	12/17/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
115	12/17/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
114	10/24/2008	FINISHED INITIAL DATA CAPTURE			
113	10/14/2008	WORKFLOW - QUERY REQUEST - FINISH			
112	09/26/2008	EXPORT TO INITIAL DATA CAPTURE			
111	09/18/2008	MAIL NOTICE OF ALLOWANCE	6		101
111	09/18/2008	MAIL NOTICE OF ALLOWANCE	6		101
110	09/07/2008	ISSUE REVISION COMPLETED			
110	09/07/2008	ISSUE REVISION COMPLETED			
109	09/17/2008	DOCUMENT VERIFICATION			
109	09/17/2008	DOCUMENT VERIFICATION			
108	09/17/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
108	09/17/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
107	09/11/2008	NOTICE OF ALLOWABILITY			
107	09/11/2008	NOTICE OF ALLOWABILITY			
102	07/02/2008	DATE FORWARDED TO EXAMINER			
102	07/02/2008	DATE FORWARDED TO EXAMINER			
101	05/12/2008	RESPONSE AFTER NON-FINAL ACTION		63	99
101	05/12/2008	RESPONSE AFTER NON-FINAL ACTION		63	99
100	05/12/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
100	05/12/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
99	12/10/2007	MAIL NON-FINAL REJECTION			
99	12/10/2007	MAIL NON-FINAL REJECTION			
98	12/07/2007	NON-FINAL REJECTION			
96	10/30/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
95	10/30/2007	REFERENCE CAPTURE ON IDS			
94	10/30/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

93	11/01/2007	DATE FORWARDED TO EXAMINER			
92	10/30/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
91	11/01/2007	DISPOSAL FOR A RCE / CPA / R129			
90	10/30/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
89	10/30/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
88	10/08/2007	PUBS CASE REMAND TO TC			
87	10/12/2007	WORKFLOW - QUERY REQUEST - BEGIN			
86	09/17/2007	EXPORT TO INITIAL DATA CAPTURE			
85	09/14/2007	MAIL NOTICE OF ALLOWANCE			
84	09/12/2007	ISSUE REVISION COMPLETED			
83	09/12/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
82	09/12/2007	DOCUMENT VERIFICATION			
81	08/17/2007	NOTICE OF ALLOWABILITY			
77	06/26/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
76	07/23/2007	PARALEGAL TD ACCEPTED			
75	07/02/2007	DATE FORWARDED TO EXAMINER			
74	06/26/2007	RESPONSE AFTER NON-FINAL ACTION			
73	06/26/2007	TERMINAL DISCLAIMER FILED			
72	06/26/2007	REFERENCE CAPTURE ON IDS			
71	06/26/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
70	06/26/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
69	03/26/2007	MAIL NON-FINAL REJECTION			
68	03/19/2007	NON-FINAL REJECTION			
67	01/31/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
66	01/31/2007	MISCELLANEOUS INCOMING LETTER			
65	02/06/2007	DATE FORWARDED TO EXAMINER			
64	01/31/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
63	02/06/2007	DATE FORWARDED TO EXAMINER			
62	01/31/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		92	56
61	02/06/2007	DISPOSAL FOR A RCE / CPA / R129			
		REQUEST FOR EXTENSION OF TIME - GRANTED			

60	01/31/2007				
59	01/31/2007	REFERENCE CAPTURE ON IDS			
58.7	01/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
58	01/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
57	01/31/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
56	07/31/2006	MAIL FINAL REJECTION (PTOL - 326)			
55	07/24/2006	FINAL REJECTION			
54	05/15/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
53	05/24/2006	DATE FORWARDED TO EXAMINER			
52	05/15/2006	RESPONSE AFTER NON-FINAL ACTION			
51.7	05/15/2006	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
51	05/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	02/15/2006	MAIL NON-FINAL REJECTION			
49	02/13/2006	NON-FINAL REJECTION			
48	01/06/2006	DATE FORWARDED TO EXAMINER			
47	01/03/2006	APPEAL BRIEF FILED			
46	01/03/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
45	08/29/2005	NOTICE OF APPEAL FILED		4	44
44	05/25/2005	MAIL FINAL REJECTION (PTOL - 326)			
43	05/24/2005	FINAL REJECTION			
42	04/15/2005	REFERENCE CAPTURE ON IDS			
41.7	04/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
41	04/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
40	04/21/2005	DATE FORWARDED TO EXAMINER			
39	04/15/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
38	04/21/2005	DATE FORWARDED TO EXAMINER			
37	04/15/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		2	34
36	04/21/2005	DISPOSAL FOR A RCE / CPA / R129			
35	04/15/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
34	01/13/2005	MAIL FINAL REJECTION (PTOL - 326)			

33	01/12/2005	FINAL REJECTION			
32	12/06/2004	REFERENCE CAPTURE ON IDS			
31.7	12/06/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	12/06/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	12/17/2004	DATE FORWARDED TO EXAMINER			
29	12/06/2004	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
28	12/17/2004	DATE FORWARDED TO EXAMINER			
27	12/06/2004	REQUEST FOR CONTINUED EXAMINATION (RCE)		33	22
26	12/17/2004	DISPOSAL FOR A RCE / CPA / R129			
25	12/06/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
24	12/06/2004	WORKFLOW INCOMING AMENDMENT IFW			
23	12/06/2004	WORKFLOW - REQUEST FOR RCE - BEGIN			
22	08/03/2004	MAIL FINAL REJECTION (PTOL - 326)			
21	08/02/2004	FINAL REJECTION			
20	07/07/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
19	07/07/2004	DATE FORWARDED TO EXAMINER			
18	06/04/2004	RESPONSE AFTER NON-FINAL ACTION			
17	03/01/2004	REFERENCE CAPTURE ON IDS			
16	06/04/2004	WORKFLOW INCOMING AMENDMENT IFW			
15.7	03/01/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	03/01/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	03/04/2004	MAIL NON-FINAL REJECTION	379		-1
13	03/03/2004	NON-FINAL REJECTION			
12	02/17/2004	CASE DOCKETED TO EXAMINER IN GAU			
11.7	06/09/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	06/09/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10.7	05/24/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	05/24/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

9	06/12/2002	CASE DOCKETED TO EXAMINER IN GAU			
8	05/01/2002	APPLICATION DISPATCHED FROM OIPE			
7	04/30/2002	APPLICATION IS NOW COMPLETE			
6	04/08/2002	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
5	04/08/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	01/30/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
2	01/03/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/19/2001	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

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P.O. BOX 9133
CONCORD, MA 01742-9133

Mail Date: 06/09/2010

Applicant	: Chad Cori Huval	: DECISION ON REQUEST FOR
Patent Number	: 7638524	: RECALCULATION of PATENT
Issue Date	: 12/29/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/025,184	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/19/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **575** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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MINNEAPOLIS MN 55415-1002

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OFFICE OF PETITIONS

In re Application of :
James Comb :
Application No. 10/025,207 : ON PETITION
Filed: December 18, 2001 :
Attorney Docket No. S697.12-0059 :

This is a decision on the petition under 37 CFR 1.137(f), filed May 26, 2004, to revive the instant nonprovisional application.

The petition is **GRANTED**.

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

A petition under 37 CFR 1.137(f) must be accompanied by: (1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty; (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 director may require additional information where there is a question whether the delay was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(f). The nonpublication request has been rescinded.

Accordingly, the failure to timely notify the Office of a foreign filing within 45 days as provided by 35 USC 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

A Corrected Filing Receipt which sets forth the projected publication date accompanies this decision on petition.

A Notice of Allowability and a Notice of Allowance and Issue Fee were mailed in this case on May 21, 2004. However, in view of the nonpublication request filed with this application, the Notice of Allowance mailed in this case did not require the submission of publication fee. Therefore, in view of the rescinding of the nonpublication request, a Notice of Publication Fee Due is being mailed concurrently with this decision under separate cover. Petitioner should note that payment of the publication fee is required to be filed within the period set forth in the Notice to avoid abandonment of the application.

This application is being forwarded to the Office of Publication to await a reply to the Notice of Publication Fee Due.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 306-0251.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

SAILE ACKERMAN LLC
28 DAVIS AVENUE
POUGHKEEPSIE NY 12603

In re Patent No. 6,925,499
Issue Date: August 2, 2005
Application No. 10/025,242
Filed: December 19, 2001
Attorney Docket No. IV00-001.3

ON PETITION

This is a decision on the petition filed September 26, 2005, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

A petition fee of $400 was charged to petitioner's deposit account. However, the required fee is $130.00. A total of $100 is being applied to the Request for Certificate of Correction. As the petition stated, the assignee's name was inadvertently misspelled on the Issue Fee Transmittal Form (PTOL-85B). The remaining balance of $170.00 is being credited to petitioner's deposit account no.

The Office apologizes for the delay in replying to the above matter.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3208. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

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1621 BARBER LANE
MS: D-106
MILPITAS, CA 95035

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OFFICE OF PETITIONS

In re Application of	:	
Bret S. Weber et al	:	
Application No. 10/025,256	:	ON PETITION
Filed: December 19, 2001	:	
Attorney Docket No. 01-674	:	

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

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed March 24, 2006, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on June 25, 2006.

The above-identified application is being revived solely for purposes of continuity with a Request For Continued Examination (RCE) filed on November 17, 2006.

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

This matters is being referred to Technology Center AU 2182 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

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Paper No. 3

BENJAMIN AARON ADLER
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8011 CANDLE LANE
HOUSTON TX 77071

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OFFICE OF PETITIONS

In re Application of Stout et al. Application No. 10/025,264 Filed: 19 December, 2001 Attorney Docket No. D6124	: : : : :	ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed on 20 May, 2002, to change the order of the names of the inventors.

The petition is **granted**.

The order of the names of the inventors will be changed as follows:

1. J. Timothy Stout

2. Binoy Appukuttan

This application is being forwarded to Technology Center 1600 via Application Branch Data Input to change the order of inventorship.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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DAVID L. PARKER
FULBRIGHT & JAWORSKI
600 CONGRESS AVENUE, SUITE 2400
AUSTIN, TX 78701

In re Application of	:	
J. Timothy Stout et al	:	
Application No. 10/025,264	:	ON PETITION
Filed: December 19, 2001	:	
Attorney Docket No. D6124	:	

This is a decision on the petition, filed September 27, 2004, under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for express abandonment. See 37 CFR 1.313(c)(3).

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

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

The application will be referred to Files Repository.

Karen Creasy

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

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In re Application of :
Robert H. Wilson :
Application No. 10/025,276 : DECISION GRANTING PETITION
Filed: December 19, 2001 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. LEAR 0819 PUS :

This is a decision on the petition, filed April 10, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 12, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2612 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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CARLSBAD, CA 92009

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OFFICE OF PETITIONS

In re Application of
Seal, Galen
Application No. 10/025,278
Filed: December 18, 2001
Attorney Docket No. SEAL.1622

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 1, 2004, to revive the above-identified application.

The petition is **granted.**

This application became abandoned for failure to timely reply within three months to the final Office action mailed July 10, 2003. A two-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, this application became abandoned on December 11, 2003.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

This matter is now being forwarded to Technology Center 1700 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

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

Liana Chase

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

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2701 CAMBRIDGE COURT STE 410
AUBURN HILLS MI 48326

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OFFICE OF PETITIONS

In re Application	:	
Cora Alisuag	:	
Application No. 10/025,316	:	DECISION ON APPLICATION
Filed: December 18, 2001	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. COR-001-US	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705", filed September 5, 2007. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be increased from the currently accorded five hundred sixty-eight (568) days to eight hundred seventy-six (876) days.

For the reasons set forth below, a decision on the request for reconsideration of the patent term adjustment indicated on the patent is being **HELD IN ABEYANCE** until after the actual patent date.

Applicant is given two months from the issue date of the patent to request reconsideration of the patent term adjustment indicated on the patent application. Applicant may seek such reconsideration without payment of the fee. A copy of this decision should accompany applicant's written request for reconsideration.

On June 5, 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 (PTA) to date is five hundred sixty-eight (568) days. On September 5, 2007, Applicant timely[1] submitted the instant application for patent term adjustment.

Applicant states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of five hundred sixty-eight (568) days based on an adjustment of seven hundred thirty (730) days of PTO delay pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), and fifty-seven (57) days of PTO delay pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. 1.703(a)(2), reduced by applicant's delays of ninety-two (92), three (3), thirty-three (33), and sixty-one (61) days pursuant to 37 C.F.R § 1.704(b), and thirty (30) days pursuant to 37 C.F.R. 1.704(c)(8). All periods of adjustment have been reviewed and found to be correct.

However, applicants assert additional PTO delay for the failure on the part of the Office to issue the patent within three years of its filing. The Office will be able to assess whether or not any additional PTA is accorded once the issue date is established.[2]

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **five hundred sixty-eight (568)** (787 days of PTO delay, reduced by 219 days of applicant delay).

Receipt of the $200 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

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

---

[1] Applicant filed the application for patent term adjustment together with the payment of the issue fee.

[2] Applicant should note that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period of pendency before the Office except for periods excluded under 35 U.S.C. (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).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Kiyoshi Kobayashi Application No. 10/025,317 Filed: December 18, 2001 Patent No. 6,836,957 Issued: January 4, 2005	DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT

This is a decision on the "PETITION FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)", filed January 24, 2005. Patentee requests that the patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred ninety-four (294) days to four hundred nine (409) days.

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

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **three hundred sixty-two (362)** days.

On July 28, 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 was three hundred ninety-two (392) days. On January 4, 2005, the above-identified application matured into U.S. Patent No. 6,836,957. The patent issued with a Patent Term Adjustment of two hundred ninety-four (294) days.

Patentee states that the patent is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of two hundred ninety-four (294) days based on an adjustment for PTO delay of three hundred ninety-three (393) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by applicant's delays of one (1) day pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b), and ninety-eight (98) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(c)(10). The PTO delay of 393 days and applicant delay of 1 day have been reviewed and found to be correct. The adjustment 98 days is at issue.

Patentee argues that he should not have been assessed applicant delay of ninety-eight (98) days for the filing of an Information Disclosure Statement after the Notice of Allowance. Alternatively, patentee contends that if applicant delay is to be incurred, that delay should be zero (0) days, since no Office action or notice was mailed in response to the IDS. In addition, patentee argues that the Office should have incurred additional PTO delay of seventeen (17) days for its failure to issue the patent within three years of filing.

The assessment of applicant delay for the filing of an Information Disclosure Statement after the Notice of Allowance has been found to be correct. The IDS did not contain the statement that each item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than **thirty** days prior to the filing of the IDS. See 37 C.F.R. 1.704(d). However, the calculation of 98 days was improper. The IDS was filed on September 29, 2004. The next Office communication in response to the IDS was the Interview Summary mailed on October 28, 2004. Pursuant to 37 C.F.R. §1.704(c)(10)(i), applicant should have incurred delay of thirty (30) days, not 98 days.

Lastly, Patentee's argument that the PTO should have incurred additional delay of seventeen (17) days for the failure of the Office to issue the patent within three years has been found to be unpersuasive. As the 17 days of PTO delay overlap with the 393 days of PTO delay already accorded, this delay does 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 C.F.R. § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004).

Accordingly, issuance of a certificate of correction pursuant to 35 U.S.C. 254 and 37 C.F.R. § 1.322 is appropriate. The correct determination of patent term adjustment is three hundred sixty-two (362) days (393 days of PTO delay, reduced by 31 (30 + 1) days of applicant delay).

Receipt of the $200 PTA fee is acknowledged.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. §1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **three hundred sixty-two (362)** days subject to any disclaimers.

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

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

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Paper No. 4

MAR 7 2002

James W. Badie
Stoll Miskin Hoffman & Badie
350 5th Ave., Suite 6110
New York, NY 10018

In re Application of:
Buonocunto
Application No. 10/025,318
Filed: December 19, 2001

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition under 37 C.F.R. § 1.102(c), filed January 29, 2002, the above-identified application special under the accelerated examination procedure set forth in the Manual of Patent Examining Procedure (M.P.E.P.), § 708.02, Section VI: Energy. No petition fee is required.

A grantable petition under 37 C.F.R. § 1.102(c), and in accordance with M.P.E.P. § 708.02, Item VI, for inventions which materially contribute to (A) the discovery or development of energy resources or (B) the more efficient utilization and conservation of energy resources, must be accompanied by statements under 37 C.F.R. § 1.102 by the applicant, assignee, or an attorney/agent registered to practice before the Office explaining how the invention materially contributes to category (A) or (B) set forth above.

Applicant has filed a paper February 26, 2002 withdrawing the petition. Accordingly, it is WITHDRAWN.

Inquiries regarding this decision should be directed to Michael L. Gellner at 703-308-1721.

M. L. Gellner

Michael L. Gellner, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

PTO/SB/66 (03-09)
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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6607240	2003-08-19	10025361	2001-12-19	100697.0014US1

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	/Martin Fessenmaier/	Date (YYYY-MM-DD)	2009-07-24
Name	Martin Fessenmaier	Registration Number	46697

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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Alexandria, VA 22313-1450
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In re Patent No. 6607240
Issue Date: August 19,2003
Application No. 10025361
Filed: December 19,2001
Attorney Docket No. 100697.0014US

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

This is a decision on the electronic petition, filed July 24,2009 ,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 July 24,2009 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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ALEXANDRIA, VA 22313-1450
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WOODCOCK WASHBURN, LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA, PA 19104-2891

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OFFICE OF PETITIONS

In re Application of
Rudi Wilfried Jan Pauwels, et. al.
Application No. 10/025,391
Filed: December 19, 2001
Attorney Docket No. TIBO00--1
13468.0002.DVU

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), on January 19, 2007, to revive the above-identified application.

The application became abandoned for failure to timely respond to the Restriction/Election Requirement mailed March 21, 2006. A Notice of Abandonment was mailed on January 9, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b), in that, petitioner has supplied (1) an election; (2) the petition fee of $1,500; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 1639, for further processing.

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

Andrea Smith
Petitions Examiner
Office of Petitions

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P.O. BOX 1450
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N.R.H. Black
dba Baypatent
420 Miramontes Ave.
Half Moon Bay CA 94019

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OFFICE OF PETITIONS

In re Application of
Soltan et al.
Application No. 10/025,437
Filed: December 18, 2001
For: INTERNAL IMPEDANCE MATCH IN INTEGRATED CIRCUITS
Attorney Docket No: PM-12367 US
Pub. No.: US 2003/0112090 A1
Pub. Date: June 19, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), which was received on August 18, 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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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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N.R.H. Black
dba Baypatent
420 Miramontes Ave.
Half Moon Bay CA 94019

In re Application of
Soltan et al.
Application No. 10/025,437
Filed: December 18, 2001
For: INTERNAL IMPEDANCE MATCH IN INTEGRATED CIRCUITS
Attorney Docket No: PM-12367 US
Pub. No.: US 2003/0112090 A1
Pub. Date: June 19, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), which was received on August 18, 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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COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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OFFICE OF PETITIONS

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

In re Application of
Karpinsky, et al.
Application No. 10/025,460
Filed: December 26, 2001
Docket No.: 2119-0171P
For: FIBER OPTIC SWITCH PROCESS AND OPTICAL DESIGN

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed June 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 December 26, 2001 without an executed oath or declaration and naming John R. Karpinsky, Daniel M. Brown, and Rodney L. Clark as joint inventors. Accordingly, on January 7, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition lacks requirement (1) stated above. Petitioner has failed to establish that the inventor cannot be reached or refused to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, and oath or declaration).

Petitioner alleges that the inventor cannot be reached to execute the application papers. The petition is accompanied by the declaration of Stacey A. Hite who declares efforts to reach the inventor via last known address, telephone, employer, and e-mail have been unsuccessful. Hite further indicates that the application papers mailed to the inventor on April 19, 2002 were returned May 26, 2002.

Where inability to locate an inventor is alleged, diligent effort to locate the inventor must be undertaken. Petitioner is required to undertake additional effort to locate the non-signing inventor and provide the non-signing inventor with a complete copy of the patent application (specification, claims, drawings, and oath or declaration). Details and supporting evidence regarding attempts to locate the non-signing inventor should be submitted in the form of a declaration or affidavit by one having first hand knowledge of the information contained therein. Petitioner may wish to consult telephone directories, the internet, national registries, etc., in effort to locate the non-signing inventor.

Petitioner should note that while the petition alleges the non-inventor cannot be reached at the non-signing inventor's last known address, a cursory review of the Lexis®.com EZFIND Combined Person Locator Nationwide database indicates the more current address of the non-signing inventor to be as follows: 3241 Knights Bridge Road, San Jose, CA 95132.

Any renewed petition should be accompanied by evidence to sufficiently establish that the non-signing inventor either cannot be located or that the non-signing inventor was sent a complete copy of the application papers and thereafter refused to execute the declaration. Petitioner may wish to provide the Office copies of letters sent to the inventor indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration). If after the inventor receives the application papers and requests to execute the oath or declaration are refused, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If a written refusal has been made, a copy of the written refusal should be included on renewed petition.

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

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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FULWIDER PATTON LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES CA 90045

MAILED

MAR 2 6 2010

OFFICE OF PETITIONS

In re Application of:	:
Webler et al.	: ON APPLICATION FOR
Application No. 10/025515	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 12/18/2001	:
Atty. Docket No.: ACS-60271 (2168P)	:

This letter is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed July 31, 2009. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

The request for Reconsideration of 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 1015 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 4, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 877 days.

On July 31, 2009, applicant timely submitted the present application for patent term adjustment[1]. Applicant requests that the Determination of Patent Term Adjustment be corrected from 877 days, as indicated on the Determination of PTA mailed May 4, 2009, to an adjustment of 1015 days. Applicant asserts that the Office mailed a Restriction Requirement to an incorrect correspondence address, and subsequently re-mailed the restriction requirement to the same incorrect correspondence address; however, applicants filed a timely response to the subsequently mailed Restriction Requirement.

The application history has been reviewed and it has been determined that the initial adjustment of the patent term for Office delay of 534 days, and the reduction of the patent term for

[1] PALM records show that the Issue Fee payment was received in the Office on July 31, 2009.

Applicant delay of 86 days is incorrect. This Office mailed a Restriction Requirement to an incorrect correspondence address on August 5, 2004, and subsequently re-mailed the restriction requirement to the same incorrect correspondence address on November 19, 2004, re-setting the time period for reply. The subsequently mailed Restriction Requirement was 640 days after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a). Applicants filed a timely response to the subsequently mailed Restriction Requirement, on December 7, 2004.

The correct patent term adjustment at the time of the allowance is **1015 days**. The Office will adjust the PAIR screen to reflect that the PTA determination at the time of mailing of the instant letter reflects an adjustment of 1015 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

In view thereof, at the time of allowance, the application is entitled to an adjustment of 1402 days.

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

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

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

Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculations

Day : Friday
Date: 3/26/2010

PALM INTRANET

Time: 07:21:02

PTA Calculations for Application: 10/025515			
Application Filing Date:	12/18/2001	PTO Delay (PTO):	963
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	86
Post-Issue Petitions:	0	Total PTA (days):	1015
PTO Delay Adjustment:	138		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
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88	05/04/2009	MAIL NOTICE OF ALLOWANCE			
87	05/03/2009	ISSUE REVISION COMPLETED			
86	05/03/2009	DOCUMENT VERIFICATION			
85	05/03/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
84	05/03/2009	CASE DOCKETED TO EXAMINER IN GAU			
83	05/03/2009	EXAMINER'S AMENDMENT COMMUNICATION			
82	05/01/2009	NOTICE OF ALLOWABILITY			
78	02/13/2009	MAIL BPAI DECISION ON APPEAL - AFFIRMED	421		58
77	02/12/2009	BPAI DECISION - EXAMINER AFFIRMED			
75	12/17/2008	WAIVER OF HEARING BY APPELLANT			
73	12/02/2008	NOTIFICATION OF APPEAL HEARING			
72	07/17/2008	DOCKETING NOTICE MAILED TO APPELLANT			
71	07/16/2008	ASSIGNMENT OF APPEAL NUMBER			
70	06/30/2008	APPEAL AWAITING BPAI DOCKETING			
69	05/22/2008	MAIL REPLY BRIEF NOTED BY EXAMINER			
68	05/22/2008	REPLY BRIEF NOTED BY EXAMINER			
67	05/13/2008	ORDER RETURNING UNDOCKETED APPEAL TO THE EXAMINER			
66	03/11/2008	APPEAL AWAITING BPAI DOCKETING			
65	11/15/2007	MAIL REPLY BRIEF NOTED BY EXAMINER			
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63	08/20/2007	REQUEST FOR ORAL HEARING			
62	09/04/2007	DATE FORWARDED TO EXAMINER			
61	08/20/2007	REPLY BRIEF FILED			
60	09/04/2007	EXAM. ANS. REVIEW COMPLETE			

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58	08/20/2007	REPLY BRIEF FILED			
57	08/10/2007	MAIL SUPPLEMENTAL EXAMINER'S ANSWER			
56	08/06/2007	2ND OR SUBSEQUENT EXAMINER'S ANSWER TO APPEAL BRIEF			
55	07/20/2007	RETURN OF UNDOCKETED APPEAL TO THE TC			
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53	06/22/2007	MAIL EXAMINER'S ANSWER	8		49
52	06/20/2007	EXAMINER'S ANSWER TO APPEAL BRIEF			
51	04/18/2007	APPEAL BRIEF REVIEW COMPLETE			
50	04/18/2007	DATE FORWARDED TO EXAMINER			
49	02/14/2007	APPEAL BRIEF FILED			
48	02/14/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
47	12/04/2006	NOTICE OF APPEAL FILED		4	46
46	08/30/2006	MAIL FINAL REJECTION (PTOL - 326)			
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44	06/27/2006	DATE FORWARDED TO EXAMINER			
43	06/19/2006	RESPONSE AFTER NON-FINAL ACTION		5	42
42	03/14/2006	MAIL NON-FINAL REJECTION			
41	03/06/2006	NON-FINAL REJECTION			
40	12/21/2005	DATE FORWARDED TO EXAMINER			
39	12/12/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
38	12/21/2005	DATE FORWARDED TO EXAMINER			
37	12/12/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		33	29
36	12/21/2005	DISPOSAL FOR A RCE / CPA / R129			
35	12/12/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
34	12/12/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
33	10/24/2005	MAIL ADVISORY ACTION (PTOL - 303)			
32	10/20/2005	ADVISORY ACTION (PTOL-303)			
31	10/15/2005	DATE FORWARDED TO EXAMINER			
30	10/11/2005	AMENDMENT AFTER FINAL REJECTION			
29	08/09/2005	MAIL FINAL REJECTION (PTOL - 326)			
28	08/08/2005	FINAL REJECTION			
27	06/01/2005	DATE FORWARDED TO EXAMINER			
26	05/23/2005	RESPONSE AFTER NON-FINAL ACTION		1	25

25	02/22/2005	MAIL NON-FINAL REJECTION			
24	02/21/2005	NON-FINAL REJECTION			
23	12/16/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
22	12/16/2004	DATE FORWARDED TO EXAMINER			
21	12/07/2004	RESPONSE TO ELECTION / RESTRICTION FILED		32	13
20	12/16/2004	CORRESPONDENCE ADDRESS CHANGE			
19	12/17/2004	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
18	06/16/2003	REFERENCE CAPTURE ON IDS			
17	12/18/2001	REFERENCE CAPTURE ON IDS			
16	12/07/2004	WORKFLOW INCOMING AMENDMENT IFW			
15	11/19/2004	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
14	11/18/2004	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
13	08/05/2004	MAIL RESTRICTION REQUIREMENT	534		-1
12	08/04/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
11	05/27/2004	CASE DOCKETED TO EXAMINER IN GAU			
10.7	06/16/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	06/16/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9.7	12/18/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	12/18/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	07/23/2002	APPLICATION DISPATCHED FROM OIPE			
7	07/22/2002	APPLICATION IS NOW COMPLETE			
6	07/01/2002	ADDITIONAL APPLICATION FILING FEES		11	4
5	07/01/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	03/20/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	03/08/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/05/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/18/2001	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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

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OFFICE OF PETITIONS

In re Application of	:	
Antonius Adhi Wiryawan et al.	:	
Application No. 10/025,523	:	DECISION ON PETITION
Filed: December 18, 2001	:	TO WITHDRAW
Attorney Docket No. 5306.P073	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 4, 2006.

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

A review of the file record indicates that the power of attorney to the attorneys and/or agents associated with Blakely, Sokoloff, Taylor & Zafman LLP has been revoked by the assignee of the patent application on September 5, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to Terri Williams at 571-272-2991.

Amelia Au
Petitions Examiner
Office of Petitions

cc: **CSA LLP**
4807 Spicewood Springs Road
Bldg. 4, Suite 201
Austin, TX 78759

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

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OFFICE OF PETITIONS

In re Patent No. 6,899,823	:	
Issued: May 31, 2005	:	
Application No. 10/025,535	:	PATENT TERM ADJUSTMENT
Filed: December 26, 2001	:	
Atty. Dkt. No.: 35.C16056	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed July 8, 2005.

The application for patent term adjustment ("PTA") under 37 C.F.R. § 1.705(d) is **GRANTED**.

The above-identified application matured into U.S. Patent No. 6,899,823 on May 31, 2005. The instant request for reconsideration was timely filed July 8, 2005 in accordance with 37 C.F.R. § 1.705(d). The patent issued with a PTA of 261 days. Applicant argues that the adjustment was improperly reduced 56 days in connection with an interview summary submitted April 6, 2005.

A review of the application history reveals that in accordance with 37 C.F.R. § 1.702(a)(1), an adjustment of 348 days can be attributed to the Office. The adjustment of 348 days was properly reduced 31 days in accordance with 37 C.F.R. § 1.704(b).

On April 6, 2005, applicants submitted a "STATEMENT OF THE SUBSTANCE OF THE INTERVIEW" in response to an examiner's interview summary. As the examiner's interview summary, mailed January 11, 2005, permitted applicants one month from the mail date of the interview summary to submit a statement of the summary of the interview, the statement submitted April 6, 2005 is not deemed a failure to engage in reasonable efforts to conclude prosecution (or processing) within the meaning of 37 C.F.R. § 1.704.

Thus, at the time of issuance, the patent was entitled to a PTA 317 days, as argued by applicants. The PTA indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of 317 days.

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 317 days.

The Office acknowledges submission of the required application fee of $200.00.

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

Kery Fries

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

cc: Draft Certificate of correction
Adjusted Pair Calculation

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Koestner Bertani LLP
18862 MacArthur Boulevard
Suite 400
Irvine, CA 92612

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FEB 22 2005

OFFICE OF PETITIONS

In re Application of	:	
David Hooke, et al.	:	
Application No. 10/025,578	:	ON PETITION
Filed: December 26, 2001	:	
Attorney Docket No. SW-00786	:	

This is a decision on the petition filed January 24, 2005, to correct assignment data on Form PTOL-85(b).

The petition is granted.

The requested data will be printed on the patent if this can be accomplished without substantial disruption to the issue process. However, if the printing of the patent has progressed to the point where the requested data cannot be included in the printed patent, petitioner can request a Certificate of Correction under 37 CFR 1.322.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.

The application is being referred to the Publishing Division to be processed into a patent.

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

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APR 19 2004

Director's Office
Group 3700

Paper No. 6

In re Application of
Gyu-Hwan Kim et al
Application No.: 10/025584
Filed: 12/26/01

DECISION ON PETITION

This is a decision on petitioner's request filed April 8, 2004, requesting withdrawal of the holding of abandonment of the above-identified application because the applicant did not receive the Office communication mailed on July 8, 2003 at the correspondence address of record.

The petition is granted.

In support of the request, petitioner has provided a showing of non-receipt of the Office action in accordance with Official Gazette Notice 1156 O.G. 53 (November 16, 1993). MPEP 711.03(c)II.

In view of the above, the Notice of Abandonment mailed March 10, 2004 is in error and is hereby vacated. The holding of abandonment is withdrawn.

The Office communication will be remailed and the shortened statutory period that was originally set forth in the Office communication shall be restarted to run from the mail date of the newly supplied Office action or notice.

Summary: Holding of Abandonment Withdrawn.

Richard A. Bertsch, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Paper No. 6

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MAR 07 2003

OFFICE OF PETITIONS

Steven L. Oberholtzer
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, IL 60610

In re Application of
Brown
Application No. 10/025,585
Filed: December 18, 2001
Atty. Dkt. No.: 10541-595
For: ELECTRIC CONTROL FOR AUTOMOBILE HEADLIGHTS

DECISION DISMISSING PETITION UNDER 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed February 20, 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 deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed December 18, 2001 without an executed oath or declaration and naming Heather Steiner Brown as sole inventor. The instant petition under 37 CFR 1.47(b) was filed February 20, 2003. This decision precedes mailing of Notice of Missing Parts of Nonprovisional Application. The required surcharge for late submission of executed oath or declaration has been charged to Deposit Account No. 06-1500 as authorized in the instant petition.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee;(4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is required to preserve the rights of the parties or to prevent irreparable damages.

The instant petition lacks requirement (1) and (5).

As to item (1) set forth above, the petition lacks sufficient evidence that the nonsigning inventor cannot be reached. The declaration of Sujatha Subramaniam details attempts to locate the non-signing inventor through internet searches. The declaration further indicates that packages sent to the addresses that

resulted from the searches were returned as undeliverable.

Where inability to locate a nonsigning inventor is alleged, diligent efforts of attempts to locate the nonsigning inventor must be made. Details regarding attempts to locate the nonsigning inventor should be submitted in the form of a declaration or affidavit.

While petitioner has demonstrated that some effort to locate the inventor has been made, petitioner should note that a cursory review of the Lexis®.com EZFIND Combined Person Locator Nationwide database indicates the more current address of the nonsigning inventor to be as follows: 897 Westchester Way, Birmingham, MI 48009-2917.

As to item (5), petitioner has presented no corroborative evidence of proprietary interest in the instant application. Petitioner must establish that the invention has been assigned to applicant, that the inventor has agreed in writing to assign the invention to applicant, or that applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application. Petitioner must submit a copy of an employment agreement between the inventor and applicant or a legal memorandum signed by an attorney familiar with the law of the relevant jurisdiction stating that a court of competent jurisdiction would by weight of authority in that jurisdiction award title of the invention to Rule 47 applicant.

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

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

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 8

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MAY 16 2003

OFFICE OF PETITIONS

Steven L. Oberholtzer
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, IL 60610

In re Application of Brown Application No. 10/025,585 Filed: December 18, 2001 Atty. Dkt. No.: 10541-595 For: ELECTRIC CONTROL FOR AUTOMOBILE HEADLIGHTS	DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 CFR 1.47(b) MOOT

This is in response to the renewed petition under 37 CFR 1.47(b), filed April 21, 2003.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(b) is not necessary and the petition is considered to be moot. This application does not have any Rule 1.47(b) status and no such status should appear on the file wrapper. This application need not be returned to this Office for further consideration under 37 CFR 1.47(b).

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 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.: _____

DATE : 08/05/05

TO SPE OF : ART UNIT 1636

SUBJECT : Request for Certificate of Correction on Patent No.:10/025598 6759229

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

A. Green

Angela Green
Certificates of Correction Branch
Tel. No. 703-305-9380 ext. 123

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

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

Comments:

_____

_____

_____

_____

_____

RLynch — **SPE**

1636 — **Art Unit**

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STEVEN H. MEYER
WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE, 46TH FLOOR
PHILADELPHIA, PA 19103

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JUL 12 2006

OFFICE OF PETITIONS

In re Application of	:
Linda G. Bulter et al	: DECISION ON PETITION TO
Application No. 10/025,649	: WITHDRAW FROM RECORD
Filed: December 19, 2001	:
Attorney Docket No. BELL-0160/01307	:

This is a decision on the request to withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 9, 2005.

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

A review of the file record indicates that the power of attorney to the attorneys noted in the Declaration and Power of Attorney, filed on November 21, 2002, has been revoked by the assignee of the patent application on October 5, 2005 (which was re-submitted on October 6, 2005 and again on October 20, 2005). 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 assignee.

A non-final Office action was mailed on February 27, 2006 and a reply thereto was received on May 30, 2006. Appropriate action on the reply will be taken by the Technology Center in the normal course of business.

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

Frances Hicks
Petitions Examiner
Office of Petitions

cc:
Lee & Hayes PLLC
421 W. Riverside Avenue
Suite 500
Spokane, WA 99201

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SUGHRUE MION PLLC
2100 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20037-3213

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MAR 1 5 2005

OFFICE OF PETITIONS

In re Application of	:	
Atsushi Kobayashi et al	:	
Application No. 10/025,673	:	DECISION GRANTING PETITION
Filed: December 26, 2001	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. Q67835	:	

This is a decision on the petition, filed March 8, 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 December 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) 272-3218.

This matter is being referred to Technology Center AU 2861 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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

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JUN 0 7 2005

OFFICE OF PETITIONS

In re Application of :
Robert L. Sutherland et al :
Application No. 10/025,680 : ON PETITION
Filed: December 19, 2001 :
Attorney Docket No. 7156 :

This is a decision on the petition under 37 CFR 1.137(b), filed August 12, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed July 17, 2003, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on October 18, 2003.

There is no indication that petitioner has submitted an Issue Fee Transmittal Form (PTOL-85b). Accordingly, if petitioner desires to have the information normally found thereon printed on the patent, the attached blank Issue Fee Transmittal Form should be completed and returned to the Publishing Division within **ONE MONTH** from the mail date of this decision.

The Notice of Change of Correspondence Address filed on August 12, 2004 is noted and made of record. Since the Associate Power of Attorney filed on August 12, 2004, was filed after June 25, 2004, the effective date of a rule change eliminating the Associates Power of Attorney practice (37 CFR 1.34(b)). The paper has been placed in the official file; however, but the name of the patent practitioner listed on the Associate Power of Attorney has **not** been made of record.[1]

Pursuant to petitioner's authorization, Deposit Account No. 09-0528 was charged

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

a total of $2,960.00 -- $1,330.00 for the petition to revive an unintentionally abandoned application, $1,330.00 for the issue fee and $300.00 for the publication fee.

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

This matter is being referred to Publishing Division.

Wan Laymon

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

Attachment: PTOL-85(b)

RAM

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OLIFF & BERRIDGE PLC
P O BOX 19928
ALEXANDRIA, VA 22320

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OFFICE OF PETITIONS

In re Application of
Naoto Suzuki et al
Application No. 10/025,693
Filed: December 26, 2001
Attorney Docket No. 111057

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

This is a decision on the petition, filed April 20, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 10, 2003 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 3748 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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OFFICE OF PETITIONS

In re Application of	:	
Joel E. Cordsmeyer et al	:	
Application No. 10/025,710	:	DECISION ON PETITION
Filed: December 19, 2001	:	TO WITHDRAW
Attorney Docket No. 0220-083	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 9, 2005.

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

A review of the file record indicates that the previously appointed power of attorney has been revoked by the assignee. 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 applicants.

This application is being referred to Technology Center AU 2616.

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

David Bucci
Petitions Examiner
Office of Petitions

cc: POTOMAC PATENT GROUP
P.O. BOX 270
FREDERICKSBURG, VA 22404

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Pet. Dec.

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JUN 29 2004

In re Application of	:	
Kinya Kumazawa	:	NOTICE OF WITHDRAWAL
Serial No. 10/025,713	:	FROM ISSUE
Filed: December 19, 2001	:	UNDER 37 CFR 1.313(b)
For: COLOR-DEVELOPING COMPOSITE SHORT:		
FIBERS AND COLOR-DEVELOPING STRUC-	:	
TURES EMPLOYING THE SAME	:	

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

The above-identified application is hereby withdrawn from issue.

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

Telephone inquiries should be directed to Cynthia Kelly at (571) 272-1526.

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

Jmstone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Jordan and Hamburg LLP
122 East 42nd Street
Suite 4000
New York, NY 10168

cc: Allowed Files—Pk3-915

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Paper No. 4

FORD GLOBAL TECHNOLOGIES, INC
SUITE 600 - PARKLANE TOWERS EAST
ONE PARKLANE BLVD.
DEARBORN, MI 48126

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APR 23 2002

OFFICE OF PETITIONS

In re Application of Hepburn, et al. Application No. 10/025,723 Filed: December 18, 2001 Attorney Docket No. 198-1276	: : : : :	DECISION ON PETITION

This is a decision on the petition filed February 11, 2002 (duplicate filed March 21, 2002), requesting that the above-identified application be accorded a filing date of December 18, 2001, rather than the presently accorded filing date of December 19, 2001.

Petitioner maintains that the above-identified application was deposited in the United States Postal Service (USPS) Express Mail Service on December 18, 2001, pursuant to the requirements of 37 C.F.R. §1.10, and that the "date-in" was incorrectly entered by the USPS, resulting in the Office according the application the incorrect filing date of December 19, 2001. In support, petitioner submitted:

- a copy of the Post Office to Addressee Express Mail mailing label used to transmit the application, No. EL764777180US;
- a copy of the application transmittal, which identifies the Express Mail No. used as EL764777180US;
- a declaration by Angela Y. Singleton, attesting to having deposited the correspondence in an Express Mail Drop Box prior to the last scheduled pickup for the day; and
- a declaration by USPS employee Sharon L. Bare, declaring that the records of the USPS show that the correct "date-in" for this Express Mail is December 18, 2001, with a copy of the relevant USPS tracking record showing acceptance or pickup on 12/18/01 at 22:00.

The instant petition was filed promptly within the meaning of §1.10(d)(1). Having considered the evidence submitted, it is concluded that petitioner has shown that the correspondence was deposited with the USPS on December 18, 2001, pursuant to the requirements of §1.10, and thus, is entitled to a filing date of December 18, 2001 [1].

---

[1] §1.10(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect

Accordingly, the petition is **GRANTED**.

The application is being returned to the Office of Initial Patent Examination for **correction of the filing date to December 18, 2001**.

Telephone inquiries regarding this matter should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.

for D Wood

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

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entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

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Paper No. 15

PARSONS HSUE & DE RUNTZ LLP
655 MONTGOMERY STREET
SUITE 1800
SAN FRANCISCO, CA 94111

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MAR 2 6 2004

OFFICE OF PETITIONS

In re Application of
Khandker N. Quader, et al. :
Application No. 10/025,749 :
Filed: December 18, 2001 :
Attorney Docket No. M-12220 US :

ON PETITION

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on March 8, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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

After the application file is received in the Office of Petitions, the file will be forwarded to Technology Center AU 2824 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

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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 indicted as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language on bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 6

Skjerven Morrill LLP
25 Metro Drive, Suite 700
San Jos, CA 95110

JUL 17 2003

In re Application of	)	
Alexander Tzalenchuk et al.	)	
Application No. 10/025,818	)	DECISION ON REQUEST TO
Filed: December 18, 2001	)	WITHDRAW FROM RECORD
For: Finger Sqiud Quibit Device	)	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed August 5, 2002.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above listed requirements.

The request is APPROVED

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

Jose' G. Dees, Special Program Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Gary S. Williams
Pennie & Edmonds LLP
3300 Hillview Avenue
Pal Alto, California 94304

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

NOV 12 2003

Kenneth J. Waite
Roche Diagnostics Corp.
9115 Hague Rd.
Indianapolis, IN 46250

In re Application of	:	
Ihlenfeldt et al	:	
Serial No.: 10/025,826	:	Decision on Petition
Filed: December 19, 2001	:	
Attorney Docket No.: BMID 9918 CUS		

This is in response to applicant's "Petition to Accept an Unintentionally Delayed Claim Under 35 USC 120" filed September 19, 2003.

On December 19, 2001, applicants filed instant continuation application claiming co-pendency with parent application 09/308,034. However, applicants unintentionally failed to submit the reference required by 35 USC 120 along with the instant application. The discrepancy was noted in the first Office Action. On September 19, 2003, the present petition was filed. The petition was accompanied with the surcharge as set forth in 37 CRF 1.17(t).

Applicants' petition and statement shows that the entire delay in submitting the required reference form the due date for making the submission was unintentional. Accordingly, the petition is Granted. The delayed claim under 35 USC 120 is accepted.

Petition GRANTED.

Should there be any questions with respect to this decision, please contact Cecilia J. Tsang, by mail addressed to: Director, Technology Center 1600, Alexandria, VA 22313-1450, or by telephone at (703) 308-0254 or by facsimile transmission at (703) 305-7230.

Cecilia Tsang for
John Doll
Director, Technology Center 1600

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Patent No. : 6,915,463 B2
Ser. No. : 10/025,868
Inventor(s) : Vieregge et al.
Issued : Jul. 5,2005
Title : SYSTEM AND METHOD FOR PERFORMING PRE- EMPTIVE PROTECTION SWITCHING
Docket No. : TR-043-US

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
40l Dulany Street
Alexandria, VA 22314

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

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

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) **756-1542** or (703) 756-1814

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-3873

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OFFICE OF PETITIONS

In re Application of	:	
Peter J. Kight, et. al.	:	DECISION ON REQUEST
Application No. 10/025,897	:	TO WITHDRAW FROM
Filed: December 26, 2001	:	RECORD
Attorney Docket No. 23952-0059	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b) or 37 CFR § 10.40, filed on June 27, 2005.

The request is **APPROVED**.

A review of the file record indicates that Alfred A. Stadnicki and all the attorneys/agents associated with Customer No. 20457: (1) do not have power of attorney in this patent application; but (2) have been employed or otherwise engaged in the proceedings in this patent application. In view of the present decision, Alfred A. Stadnicki and all the attorneys/agents associated with Customer No. 20457 have been withdrawn from the present application and may not prepare or submit papers under 37 C.F.R. § 1.34, or correspond in any manner in this application unless appointed in an acceptable power of attorney under 37 C.F.R. § 1.32(b).

Since the intervening assignee filed a substitute power of attorney and change of correspondence address on November 21, 2005, the correspondence address of record has been changed and the new correspondence address is the address indicated below.

Telephone inquires concerning this decision should be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Conferee:

cc: SUTHERLAND ASBILL & BRENNAN, LLP
999 PEACHTREE STREET, N.E.
ATLANTA, GA 30309

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SUTHERLAND, ASBILL & BRENNAN, LLC
999 PEACHTREE STREET
ATLANTA GA 30309

MAILED

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OFFICE OF PETITIONS

In re Application of	:	
KIGHT et al.	:	
Application No. 10/025,897	:	DECISION ON PETITION
Filed: 12/26/2001	:	
Attorney Docket No. 23952-0039	:	

This is a decision on the "PETITION UNDER TO WITHDRAW HOLDING OF ABANDONMENT," filed March 5, 2010.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the Notice of Allowance and Fee(s) Due mailed October 16, 2009, which set a three (3) month statutory period for reply. In the absence of a timely reply, the application became abandoned on January 17, 2010.

Applicants request that the Office withdraw the holding of abandonment because they did not receive the Notice of Allowance and Fee(s) Due (Notice), which was returned as undeliverable by the U.S. Postal Service on October 23, 2009. In support, applicants submitted a copy of their docket records where the Notice of Allowance and Fee(s) Due would have been entered had it been received and docketed. Furthermore, the practitioner attested to the fact that a search of the records indicated that the Notice of Allowance and Fee(s) Due was not received at the correspondence address of record.

A review of the record reveals that the USPTO mailed the Notice of Allowance and Fee(s) Due to the correct correspondence address. However, the USPS inexplicably returned the Notice to the USPTO. For this reason, applicants did not receive the Notice of Allowance and Fee(s) Due of October 16, 2009. Accordingly, the petition to withdraw the holding of abandonment is **granted**. The holding of abandonment is hereby withdrawn. The application is restored to pending status.

Technology Center Art Unit 3691 has been advised of this decision. The matter is being referred to the Technology Center's technical support staff for re-mailing of the Notice of Allowance and Fee(s) Due. The three (3) month statutory time period for responding to the Notice of Allowance and Fee(s) Due will be set to run from the re-mailing date of the Notice.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. Any other questions regarding the status of the application or the examination process should be directed to the Technology Center.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Paper No.

DYKEMA GOSSETT PLLC
FRANKLIN SQUARE,
THIRD FLOOR WEST
1300 I STREET, NW
WASHINGTON DC 20005

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SEP 0 8 2006
OFFICE OF PETITIONS

In re Patent No. 7,062,359	:	
Hans Bjorklund	:	DECISION ON REQUEST FOR
Issue Date: June 13, 2006	:	RECONSIDERATION OF
Application No. 10/025,963	:	PATENT TERM ADJUSTMENT
Filed: December 26, 2001	:	
Atty Docket No. 66291-0311-2	:	

This is a decision on the "REQUEST FOR CORRECTION TO PATENT TERM ADJUSTMENT," filed June 1, 2006. Patentee requests that the patent term adjustment of seven hundred thirty-seven (737) days be corrected.

The request for reconsideration of the patent term adjustment under § 1.705(d) is **DISMISSED**.

Patentee is given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On June 13, 2006, application No. 10/025,963 matured into Patent No. 7,062,359. The instant request for reconsideration filed June 1, 2006, was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment (PTA) of 737 days. The initial PTA of 419 days was increased by 438 days for Office delay in issuing the patent after payment of the issue fee and satisfaction of all outstanding requirements, but reduced by 120

days pursuant to 37 CFR § 1.704(c)(10) for the submission of drawings after the mailing of the notice of allowance.

The reduction of 120 days is in dispute. Patentee acknowledges submitting a replacement sheet of drawings on November 10, 2004. Patentee argues that the replacement sheet had been filed on August 4, 2004, and that the sheet was again filed on November 10, 2004 in response to the request for replacement drawings mailed with the Notice of Allowance on November 1, 2004

Patentee's argument has been considered, but is not persuasive. The submission of a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application. See *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001; See also MPEP 2700. However, the filing of drawings after the mailing of a Notice of Allowance is properly a basis for reduction of patent term adjustment.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

In this instance, it is undisputed that rather than file an argument that the Notice was in error, patentee filed drawings after the mailing of the Notice of Allowance. Other than those papers identified in this Notice, all papers filed after allowance of an application substantially delay the Office's ability to process an application for a patent because the Office does not wait until payment of the Issue Fee to begin the

patent issue process. As a result, 37 CFR 1.704(c)(10) does not distinguish between papers that are and are not required by the Office. Filing of any drawings after allowance will be treated as a failure to engage in reasonable efforts to conclude prosecution.

Furthermore, the drawings filed November 10, 2004 are not merely a resubmission of the drawings filed August 4, 2004. The drawings filed August 4, 2004 are different from the drawings filed November 10, 2004.

Accordingly, pursuant to § 1.704(c)(10), the patent term adjustment was properly reduced by the lesser number of days, 120, counting the number of days in the period beginning on the date the drawings were filed, November 10, 2004, and ending on the date of issuance of the patent, May 24, 2006.

In view thereof, the reduction of 120 days was proper

It is concluded that the patent properly issued with a revised Patent Term Adjustment of seven hundred thirty-seven (737) days.

Receipt is acknowledged of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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1300 I STREET, NW
WASHINGTON DC 20005

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JAN 25 2007

OFFICE OF PETITIONS

In re Patent No. 7,062,359	:	DECISION ON REQUEST FOR
Hans Bjorklund	:	RECONSIDERATION OF
Issue Date: June 13, 2006	:	PATENT TERM ADJUSTMENT
Application No. 10/025,963	:	and
Filed: December 26, 2001	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 66291-0311-2	:	CERTIFICATE OF CORRECTION

This is a decision on REQUEST FOR CORRECTION TO PATENT TERM ADJUSTMENT filed September 12, 2006.

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

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of eight hundred fifty-seven **(857)** days.

On June 13, 2006, application No. 10/025,963 matured into Patent No. 7,062,359. The Patent issued with a revised Patent Term Adjustment (PTA) of 737 days. By decision mailed September 8, 2006, the initial REQUEST FOR CORRECTION TO PATENT TERM ADJUSTMENT filed June 1, 2006 was dismissed. Patentee did not show that the reduction of 120 days for resubmitting drawings at the request of the Office was not allowed. The record did not support a conclusion that this was a mere resubmittal of drawings because the drawings received after the mailing of the

notice of allowance were different from the earlier-filed drawings.

On instant request for reconsideration, patentee explained that the drawings filed after the mailing of the notice of allowance were intended to be the same drawing as the earlier-filed drawing. Through applicant error another version of the drawing was supplied. Nonetheless, the required replacement sheet had been filed in the Office on August 4, 2004.

Upon reconsideration, it is concluded that the period of reduction of 120 days is not warranted and is being removed.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by eight hundred fifty-seven **(857)** days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,062,359 B2

DATED : June 13, 2006

INVENTOR(S) : Bjorklund

DRAFT

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (737) days

Delete the phrase "by 737" and insert – by 857 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 8

SMART & BIGGAR
Suite 1500, Box 111
438 University Avenue
Toronto, Canada M5G 2K8

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AUG 2 9 2002

OFFICE OF PETITIONS

In re Application of
Gail Huang
Application No.10/025,981
Filed: December 26, 2001
Attorney Docket Number: 91436-349

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

This is in response to the petition under 37 C.F.R. §1.47(b), filed May 3, 2002.

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(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application**. Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on December 26, 2001, without an executed oath or declaration, and naming Gail Huang as the sole inventor. Accordingly, on February 5, 2002, a Notice to File Missing Parts of Application - Filing Date Granted was mailed, requiring applicant to submit for the purposes of this decision an executed oath or declaration and pay a surcharge for late filing. The Notice set an extendable two month period for reply.

In reply, applicant filed a one (1) month extension of time, the instant petition and fee and the surcharge for late filing of the declaration. Accompanying the petition is the employment document of inventor Huang, name change documents of Nortel Limited and a correspondence from inventor Huang.

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 last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is necessary to preserve the rights of parties or to prevent irreparable damage. Rule 47 applicant has failed to provide item (2).

As to item (2), rule 47 applicant submitted the $130 surcharge fee for the submission of a late oath or declaration, Applicant failed to submit an executed oath or declaration with the petition. The granting of 47 status requires a rule 47 (b) applicant to make the oath required by 37 CFR §1.63 and §1.64. Where applicant is a corporation, an officer of the corporation normally is required to sign the oath or declaration. The declaration must state the full name, residence, post office address, and citizenship of the non-signing inventor. The title or position of the person signing must also be stated if signing on behalf of a corporation under 37 CFR §1.47(b). See MPEP 409.03(b).

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 regarding this decision should be directed to Petitions Attorney Charlema R. Grant at (703) 305-0309.

Alexia Nelson for

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

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Paper No. 10

SMART & BIGGAR
Suite 1500, Box 111
438 University Avenue
Toronto, Canada M5G 2K8

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OFFICE OF PETITIONS

In re Application of
Gail Huang
Application No.10/025,981
Filed: December 26, 2001
Attorney Docket Number: 91436-349

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

This is in response to the renewed petition for status under 37 C.F.R. §1.47(b), filed October 28, 2002.

The petition is **GRANTED**.

The above-identified application was filed on December 26, 2001, without an executed oath or declaration, and naming Gail Huang as the sole inventor. Accordingly, on February 5, 2002, a Notice to File Missing Parts of Application - Filing Date Granted was mailed, requiring applicant to submit for the purposes of this decision an executed oath or declaration and pay a surcharge for late filing. The Notice set an extendable two month period for reply. A petition filed under 37 CFR 1.47(b) was dismissed on August 29, 2002.

In response, on May 3, 2002, and supplemented on October 28, 2002 applicant filed:

- correspondence with non-signing inventor,
- employment agreement between Bell-Northern Research and Gail Huang,
- declaration and power of attorney signed by Angela De Wilton, Director for Intellectual Property,
- the surcharge under 1.16(e)for late filing, and
- a petition (and fee) under §1.47(b).

Applicant has satisfied the requirements of §1.47(b)[1]. Applicant, by declaration of persons with first hand knowledge and documentary evidence, demonstrated that the non-signing inventor had been presented with a copy of the application papers for signature and that she has refused by statement and conduct to sign the declaration. Applicant submitted a declaration signed by, Angela De Wilton, Director for Intellectual Property. This declaration has been reviewed and is found in compliance with 1.63 and 1.64. Applicant paid the petition fee and included a statement of the non-signing inventor's last known address in the petition. The employment agreement and documents which establish the chain of ownership establish the applicant's proprietary interest in the application.

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

---

[1] 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 last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) proof of irreparable damage.

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 further processing of the application.

Telephone inquiries regarding this decision should 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

PUBS Routing Sheet

Application #	10/025998	Doc Code Date	4/10/07
Date of Request	4/10/07	Doc Code (if not listed)	

☐ 892 List of References cited by Examiner	☐ ISSUE.WD.NTC Notice of Withdrawal from Issue	☐ PETDEC Petition Decision
☐ 1449 List of References cited by Applicant	☐ IIFW Issue Information	☐ PGEA.D PreGrant Publication Express Abandonment-Dismissed
☐ ABN Abandonment	☐ IMIS Internal Miscellaneous Paper	☐ PGEA.G PreGrant Publication Express Abandonment - Granted
☐ BIB Bibliographic Data Sheet	☐ LET. Miscellaneous Incoming Letter	☐ PGREF Request for Refund of Publication Fee Paid
☐ CDEN Request for Certificate of Correction Denied	☐ M327 Miscellaneous Communication to Applicant	☐ RUSH Printer Query Form
☐ CLM Claims	☐ M903 Notice of DO/MO Acceptance Mailed	☐ SPEC Specification
☐ COCIN Request for Certificate of Correction	☐ N271 Response to Amendment under Rule 312	☐ STAT.DISCLMR Statutory Disclaimers
☐ COCOUT Certificate of Correction	☐ N417 Status Letter Mailed to Applicant	☐ W/AC Withdrawal of previous action
☐ COCX SPE Response to Request for Certificate of Correction	☐ N427 Post Allowance Communication Transaction	☐ XRUSH Internal Response to Printer Query
☐ CTMS Miscellaneous Office Action	☐ N570 Accepted Change to Power of Attorney	
☐ IFEE issue Fee Payment Record	☑ PET.DEC.PUBS Petition decision routed to Publications	

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
10/025998	12/26/01	ABE, MASAYOSHI	HYAE:130

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

EXAMINER	
BATTAGLIA, MICHAEL	
ART UNIT	PAPER NUMBER
2627	

DATE MAILED: 4/10/07

NOTICE OF RESCINDED ABANDONMENT

☐ **In response to your communication filed** 6/1/06

☒ **Through inadvertence, a Notice of Abandonment was mailed in the above-identified application. The Notice of Abandonment is hereby rescinded.**

For Manager, Publications Division
Office of Patent Publication
571-272-4200

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No. 090304

DUANE MORRIS LLP
100 COLLEGE ROAD WEST, SUITE 100
PRINCETON, NJ 08540

OCT - 8 2004

In re Application of:	:	
MINORU TODA *et al.*	:	
Serial No.: 10/026,008	:	DECISION ON REQUEST TO WITHDRAW
Filed: May 09, 2000	:	FROM RECORD
Attorney Docket No.: **N1024-00253**	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed August 02, 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 Paul A. Schwarz, on behalf of himself and all the attorneys/agents of record. There is no outstanding Office action at this time.

The request is **APPROVED**.

All future communications from the Office will be directed to Plevy & Howard, at the below address, until otherwise notified by applicant.

Inquiries related to this decision should be directed to Jose G. Dees at (571) 272-1569.

Jose G. Dees, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: PLEVY & HOWARD
600 NORTH EASTON ROAD
WILLOW GROVE, PA 19090

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Alexandria, VA 22313-1450
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Paper No. 090204

DUANE MORRIS LLP
100 COLLEGE ROAD WEST, SUITE 100
PRINCETON, NJ 08540

SEP 7 2004

In re Application of:	:	
JOSHUA CLAPPER *et al.*	:	
Serial No.: 10/026,012	:	DECISION ON REQUEST TO WITHDRAW
Filed: December 21, 2001	:	FROM RECORD
Attorney Docket No.: **N1024-00222**	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed August 02, 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 Paul A. Schwarz, on behalf of himself and all the attorneys/agents of record. There is no outstanding Office action at this time.

The request is **APPROVED**.

All future communications from the Office will be directed to Plevy & Howard, at the below address, until otherwise notified by applicant.

Inquiries related to this decision should be directed to Jose G. Dees at (571) 272-1569.

Jose G. Dees, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: PLEVY & HOWARD
600 NORTH EASTON ROAD
WILLOW GROVE, PA 19090

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LEGAL DEPT.
11 MIDLAND BLDG.,
101 PROSPECT AVE, N.W.
CLEVELAND OH 44115

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OFFICE OF PETITIONS

In re Application of	:	
Mary M. Darif et al	:	
Application No. 10/026,041	:	DECISION GRANTING PETITION
Filed: December 21, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 6962	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 9, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Nonfinal Rejection mailed April 14, 2006, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 3611.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Washington, D.C. 20231
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Paper No. 3

Mark I. Koffsky, Esq.
Symbol Technologies, Inc.
MS A-6
One Symbol Plaza
Holtsville, NY 11742-1300

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MAY 1 3 2002

OFFICE OF PETITIONS

In re Application of :
Wang et al. :
Application No. 10/026,043 :
Filed: October 25, 2001 :
Attorney Docket No. 1190 :

ON PETITION

This is a decision on the petition filed under 37 CFR 1.183 to waive the requirements of 37 CFR 1.10 and to accord the above-identified application a filing date of October 25, 2001, instead of December 25, 2001. The petition is also being treated as a petition under 37 CFR 1.10.

The petition under 37 CFR 1.10 is **granted**.

The petition under 37 CFR 1.183 is **dismissed as moot**.

Paragraph (c) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where there is a discrepancy between the filing date initially accorded by the Office and the "date-in" entered by the USPS. Paragraph (d) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where the "date-in" is incorrectly entered or omitted by the USPS.

Petitioner has failed to provide evidence establishing the "date-in" entered by the USPS. Specifically, petitioner has failed to provide the PTO with a copy of the express mail label. Since a copy of an express mail label has not been provided, petitioner has failed to establish the "date-in" entered by the USPS. Therefore, petitioner has failed to establish a discrepancy between the filing date accorded by the Office and the "date-in" entered by the USPS. In addition, petitioner has failed to establish that the "date-in" was incorrectly entered or omitted by the USPS.

Petitioner has provided a printout of a search result of an USPS database. The search results indicate the package was accepted by the USPS at 4:59 pm on October 25, 2001. The current policy, which may change in the future, of the Office is to grant a petition under 37 CFR 1.10 if the express label is unavailable and a search of an USPS database supports petitioner's allegations. Therefore, the petition under 37 CFR 1.10 is granted. To the extent 37 CFR 1.10 requires presentation of an express mail label, that requirement is hereby sua sponte waived by the Office. Since the Office has granted the relief requested under 37 CFR 1.10, the merits of the petition under 37 CFR 1.183 need not be considered and the petition is dismissed as moot.

Since relief has been granted under 37 CFR 1.10, the petition fee of $130 for the petition under 37 CFR 1.183 will be credited to petitioner's deposit account.

In the future, petitioner should take steps to receive an express mail label with a clear date-in, and not rely solely on possible database results.[1] If the Office receives a label with an omitted or illegible date-in, the Office will give the application a filing date of the date the package is received, unless a petition is filed. A petition involves additional work by petitioner and the Office, and also delays prosecution of the application into a patent.

The file is now being forwarded to the Office of Initial Patent Examination to accord the application a filing date of October 25, 2001.

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

Charles Steven Brantley
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] Paragraph (b) of 37 CFR 1.10 provides,

Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.

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KENYON & KENYON
ONE BROADWAY
NEW YORK NY 10004

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OFFICE OF PETITIONS

In re Application of	:	
Werner Poechmuller, et. al.	:	
Application No. 10/026,087	:	DECISION GRANTING
Filed: December 21, 2001	:	PETITION
Attorney Docket No. 10191/2132	:	

This is a decision on the petition filed April 4, 2005, requesting that the above-identified application be accorded a filing date of December 21, 2001, rather than the presently accorded date of December 12, 2001. The petition is properly treated as a petition under 37 CFR 1.10(c).

The petition is **GRANTED**.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited with Express Mail Service on December 21, 2001 pursuant to 37 CFR 1.10. While the copy of the Express Mail label receipt No. EV 003628174 US bears a handwritten "date-in" of December 12, 2001, it also includes a USPS receipt date stamp of December 21, 2001. Petitioner is alleging that the date of mailing shown in the "date-in" is a U. S. Postal Service (USPS) error and the correct date of mailing pursuant to 37 CFR 1.10 is December 21, 2001. The above Express Mail number appears on the combined Declaration filed with the application, which references an attached specification.

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. However, since the mailing label included a USPS receipt date stamp of December 21, 2001, the evidence is convincing that the application was deposited as "Express Mail" with the U. S. Postal Service on December 21, 2001.

This application file is being returned to the Office of Initial Patent Examination (OIPE) for **correction of the filing date to December 21, 2001 and issuance of a corrected filing receipt.**

Telephone inquiries relating to this decision should be directed to Andrea Smith at (571) 272-3226. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

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OFFICE OF PETITIONS

In re Application of	:	DECISION ON
Pochmuller et al.	:	PETITION
Application No.: 10/026,087	:	
Filed: 12/21/2001	:	
Attorney Docket Number: 10191/2132	:	

This is a decision in response to the Petition to Withdraw Holding of Abandonment Under 37 C.F.R. § 1.181(a), filed October 27, 2006 (Certificate of Mailing dated October 23, 2006). The petition is properly treated under 37 CFR 1.181. The delay in treating this petition is regretted.

This Petition to withdraw the holding of abandonment is hereby **granted**.

Background

The above-identified application became abandoned for failure to timely and properly reply to the final office action mailed September 19, 2005. The final office action indicated that no claims were allowed. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the application became abandoned on December 20, 2005. A Notice of Abandonment was mailed September 6, 2006.

The present petition

Applicant files the present petition and asserts that a timely reply to the Office action, to wit – a Notice of Appeal and Extension of time request and fee, were filed on March 20, 2006. In support of this assertion, Applicant files a copy of the reply.

Analysis and conclusion

A review of Office records reveals that the Office received the Notice of Appeal and Extension of Time request and fee on March 23, 2006, which included a Certificate of Mailing under 37 CFR 1.8, certifying that the Notice of Appeal was mailed to this Office on Monday, March 20, 2006.

In view of the above, the holding of abandonment for failure to timely and properly reply to the final office action is hereby withdrawn.

In view of the above, the holding of abandonment is withdrawn.

The application is being referred to Technology Center Art Unit 2629 for processing of the Appeal brief[1].

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

Derek L. Woods
Attorney
Office of Petitions

[1] The time period for filing an Appeal Brief is two months from the date of receipt of the Notice of Appeal. As such, the Appeal brief was also timely filed.

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OFFICE OF PETITIONS

TIMOTHY W. MARKISON
VIXS, INC.
P.O.BOX 160727
AUSTIN, TX 78736

In re Application of
James W. Girardeau, Jr., et al.
Application No. 10/026,129
Filed: December 18, 2001
Attorney Docket No. VIXS 033

ON PETITION

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

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue fee on or before December 9, 2005. A Notice of Abandonment was mailed on January 26, 2006. In response, on February 16, 2006, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the requisite issue/publication fee; (2) the petition fee of $750; and (3) the required statement of unintentional delay.

The application is being referred to the Office of Publications to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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Minneapolis, MN 55402-4320

Paper No. 3

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APR 15 2002

Director's Office
Group 3700

In re Application of
VIKEN, JAMES P.
Application No.: 10/026,137
Filed: December 18, 2001

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed December 18, 2001 to make special under 37 CFR 1.102(d).

Since the requirements of 37 CFR 1.102(d) and MPEP 708.02, II have been met, the petition is granted.

The application is being forwarded to the examiner for an action on the merits.

Linda J. Sholl
Special Program Examiner
Technology Center 3700
Phone: (703) 308-1288

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

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OFFICE OF PETITIONS

In re Application of	:	
MARKEL	:	
Application No. 10/026,156	:	DECISION ON PETITION
Filed: December 18, 2001	:	TO WITHDRAW
Attorney Docket No. 2178	:	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 14, 2006.

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

A review of the file record indicates that the power of attorney to MORRISON & FOERSTER LLP has been revoked by the assignee of the patent application on November 20, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6825.

Patricia Volpe
Petitions Examiner
Office of Petitions

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

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

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JUN 20 2007

OFFICE OF PETITIONS

In re Application of	:	
Steven O. Markel	:	
Application No. 10/026,156	:	DECISION ON PETITION
Filed: December 18, 2001	:	TO WITHDRAW
Attorney Docket No. 577172003800	:	FROM RECORD
	:	

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

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to OPTV/MOFO C/O Morrison & Foerster has been revoked by the assignee of the patent application on November 20, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the 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: MARC KAUFMAN, ESQ.
NIXON PEABODY, LLP
401 9TH STREET NW
SUITE 900
WASHINGTON, DC 20004

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HONEYWELL INTERNATIONAL, INC.
101 COLUMBIA ROAD
P.O. BOX 2245
MORRISTOWN, NJ 07962-2245

In re Application of	:	
Michael J. Emery, et. al.	:	
Application No. 10/026,189	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. I20 01530 US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed on September 25, 2006, to revive the above-identified application.

The application became abandoned for failure to timely respond to the Notice of Allowability mailed April 3, 2006. A Notice of Abandonment was mailed on August 15, 2006.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

Further, there is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

The petition satisfies the requirements of 37 CFR 1.137(b), in that, petitioner has supplied (1) the reply in the form of three (3) sheets of replacement drawings containing Figures 1, and 3-5; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

The Office also acknowledges receipt of $1,400 for payment of the issue fee and $300 for payment of the publication fee submitted on May 11, 2006.

This application file is being referred to the Office of Publications for review of the replacement drawings filed on September 25, 2006.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Paul Greeley
Ohlandt, Greeley, Ruggiero & Perle, LLP
One Landmark Square 10th Floor
Stamford, CT 06901

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BRADFORD GREEN, BUILDING 5
755 MAIN STREET, P O BOX 224
MONROE CT 06468

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APR 25 2007

OFFICE OF PETITIONS

In re Application of
Anthony **ELLIOTT**
Application No. 10/026,215
Filed: December 19, 2001
Attorney Docket No. 18872.0114

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 14, 2006, 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, December 2, 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 3, 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; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

The application file is being forwarded to Technology Center Art Unit 3679 for action on the merits commensurate with this decision.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: **ROY PETER MAUNDER**
BIO PURE TECHNOLOGY LTD
17 SOUTH STREET
HAVENT, HAMPSHIRE P09 1BU
UNITED KINGDOM

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

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OFFICE OF PETITIONS

In re Patent No. 6,827,682 :
Issue Date: December 7, 2004 :
Application No. 10/026,224 : ON PETITION
Filed: December 19, 2001 :
Attorney Docket No. P/1094-129 :

This is a decision on the petition filed December 20, 2004, under 37 CFR 1.55(a) for late entry of a certified copy of the priority application after the patent has been granted.

The petition considered under 37 CFR 1.55(a) is **Dismissed As Moot.**

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

Specifically, the requirements of the rules are (a) that the applicant must file a claim for the right, (b) he or she must also file a certified copy of the original foreign application, and (c) these papers must be filed within a certain time limit. The maximum time limit specified in the rule is that the claim for priority and the priority papers must both be filed before the patent is granted. *See* 37 CFR 1.55. If the required papers are not filed within the time limit set, the right of priority is lost. As the record presently discloses that the certified copy of the priority document was not, as required by rule, filed in the above-identified application either during prosecution or prior to issuance of the application into a patent, the right of priority to the Swedish patent application is lost.

However, a reissue was granted in Brenner v. State of Israel , 400 F.2d 789; 158 USPQ 584 (D.C. Cir. 1968), where the only ground urged was applicant's failure to file the certified copy of the original foreign application under 35 U.S.C. § 119 before the patent was granted. Under the circumstances of this case, petitioner may wish to seek relief from his predicament by way of reissue under 35 USC § 251. *See* MPEP 1417 and 201.14(a).

The petition fee is not being refunded, since the petition has been considered, notwithstanding the decision. See Ex parte VENTURA CITRUS ASSOCIATION, 71 USPQ 103, 104 (Comm'r Pat. 1946).

Telephone inquiries should be directed to Sherry Brinkley at (571) 272-3204.

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

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

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LERNER AND GREENBERG P A
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HOLLYWOOD, FL 33022-2480

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OFFICE OF PETITIONS

In re Application of	:	
Peter Hachmann et al	:	DECISION GRANTING
Application No. 10/026,240	:	PETITION
Filed: December 21, 2001	:	
Attorney Docket No. A-2869	:	

This is a decision on the petition under 37 CFR 1.10(c) filed March 13, 2002, requesting that the above-identified application be accorded a filing date of December 21, 2001, rather than the presently accorded filing date of December 22, 2001.

Petitioners allege that the application was deposited in "Express Mail" service with the U.S. Postal Service, on December 21, 2001. In support, petitioners provided, inter alia, a copy of the Express Mail label, receipt no. EL600692356US, showing a Date-In of December 21, 2001. The same Express Mail receipt number was referred to in the copy of the original application transmittal letter submitted with the instant petition. Petitioners request that the application be accorded a filing date of December 21, 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 December 21, 2001.

The petition is granted.

Receipt is acknowledged of the associate power of attorney filed January 25, 2002, and the declaration filed in response to the Notice mailed January 29, 2002.

The application is being returned to Initial Patent Examination Division for correction of the filing date to December 21, 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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OFFICE OF PETITIONS

Ronald A. Sandler
Jones, Day, Reavis & Pogue
77 West Wacker Drive
Chicago, IL 60601-1692

In re Application of
Covington et al.
Application No.10/026,247
Filed: December 19, 2001
Attorney Docket No. 635482.625.036

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR § 1.47(a), filed July 1, 2002 (certificate of mailing date June 25, 2002).

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

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR. § 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application**. Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on December 19, 2001, without an executed oath or declaration. Accordingly, on January 28, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with § 1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply until March 28, 2002.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make the reply timely, a three (3) month extension of time was also submitted. In support of the petition, applicants submitted statement of facts and correspondence sent to the inventors.

A grantable petition under 37 CFR. § 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirement (2).

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 for the following reasons:

The first page of the Declaration does not list all joint inventors and the Declaration does not include page numbers --i.e. 1 of 2; 2 of 2. Instead the Declaration submitted

with the present petition identifies each inventor individually on a separate sheet paper without reference to the other joint inventors. The Declaration should set forth all of the joint inventors on the same page to ensure that each named inventor is aware of the other named inventors of the subject matter or indicate page numbers as outlined above.

Applicant submitted "Added Pages to Combined Declaration and Power of Attorney for Signature By Joint Inventor(s) On Behalf of Nonsigning Inventors Who Refuse to Sign or Cannot be Reached," which was only signed by joint inventor McGlone. However, 37 CFR § 1.47(a) and 35 U.S.C. 116, second paragraph, require all available joint inventors to file an application "on behalf of" themselves and on behalf of a joint inventor who "cannot be found or reached after diligent effort" or who refuses to "join in an application." Thus, in addition to other requirements of law (35 U.S.C. 111(a) and 115), in an application deposited in the U.S. Patent and Trademark Office pursuant to 37 CFR 1.47(a):

> (A) All the available joint inventors must (1) make oath or declaration on their own behalf as required by 37 CFR §§ 1.63 or 1.175 (see MPEP §602, §605.01, and §1414) and (2) make oath or declaration on behalf of the non-signing joint inventor as required by 37 CFR 1.64. An oath or declaration signed by all the available joint inventors with the signature block of the non-signing inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the non-signing inventor(s), unless otherwise indicated.
> (Emphasis added).

Here, applicants have indicated, by having inventor McGlone sign on behalf of the non-signing inventors, that the declaration as submitted is not signed by all the available joint inventors on behalf of themselves and on behalf of the non-signing joint inventors. A declaration properly executed by all available joint inventors on behalf of the non-signing inventors is required.

In addition, as to inventor Melanie Al-Shabkoun, applicant has failed to provide her mailing address on the declaration, as required by 1.63(c)(1).

In addition, as to inventor John E. Kalil, his signature block includes non-dated/non-initialed alterations. Such alterations render the declaration unacceptable. The new declaration, executed by all available joint inventors on behalf of themselves and on behalf of the non-signing inventors should incorporate these changes or be properly dated and initialed by inventor Kalil. It is further noted that the deficiencies as to inventor Kalil are separate and distinct from the deficiency in execution discussed above. Accordingly, if applicants obtain a declaration executed by the non-signing inventors, a new declaration executed by inventor Kalil is still required.

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

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

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

Telephone inquiries related to this decision may be directed to Petitions Attorney 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

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Paper No. 7

Ronald A. Sandler
Jones, Day, Reavis & Pogue
77 West Wacker Drive
Chicago, IL 60601-1692

In re Application of
Robert Covington, Melanie Al-Shabkoun, Andrew Carlson, Sandeep Chugani, Drew Conrad, Paul D'Alessandro, John Kalil, Jason Kunesh, Charles Brent Lohrmann, James Spira, John Viokla, Darren Yaphe, Lorraine McGlone
Application No.10/026247
Filed: December 27, 2001
Attorney Docket No. 635482.625.036
Title of Invention: INTERACTIVE IN-STORE/IN-MALL AND ON-LINE SHOPPING SYSTEM AND METHOD

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

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APR 1 1 2003

OFFICE OF PETITIONS

This is in response to the renewed petition under 37 CFR 1.47(a), filed December 26, 2002.

The petition is GRANTED.

Petitioner has shown that the non-signing inventors, Al-Shabkhoun, Chugani, Spira, and Sviokla has refused to join in the filing of the above-identified application after having been presented with the application papers. The non-signing inventors' failure to respond to the application mailing sufficiently establishes that they refuse 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 for further processing.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

Charlema R. Grant

Charlema R. Grant
Petition 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

Melanie A. Al-Shabkhoun
7908 Westfield Blvd.
Indianapolis, IN 46240

In re Application of
Robert Covington, Melanie Al-Shabkoun, Andrew Carlson, Sandeep Chugani, Drew Conrad, Paul D'Alessandro, John Kalil, Jason Kunesh, Charles Brent Lohrmann, James Spira, John Viokla, Darren Yaphe, Lorraine McGlone
Application No.10/026,247
Filed: December 27, 2001
Attorney Docket No. 635482.625.036
Title of Invention: INTERACTIVE IN-STORE/IN-MALL AND ON-LINE SHOPPING SYSTEM AND METHOD

LETTER

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APR 1 1 2003

OFFICE OF PETITIONS

Dear Ms. Al-Shabkhoun:

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 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).

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

Mark V. Campagna
Jones, Day, Reavis & Pogue
77 West Wacker Drive
Chicago IL 60601-1692

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Sandeep Chugani
7 Brown Court
Livingston, New Jersey 07039

In re Application of
Robert Covington, Melanie Al-Shabkoun, Andrew Carlson, Sandeep Chugani, Drew Conrad, Paul D'Alessandro, John Kalil, Jason Kunesh, Charles Brent Lohrmann, James Spira, John Viokla, Darren Yaphe, Lorraine McGlone
Application No.10/026,247
Filed: December 27, 2001
Attorney Docket No. 635482.625.036
Title of Invention: INTERACTIVE IN-STORE/IN-MALL AND ON-LINE SHOPPING SYSTEM AND METHOD

LETTER

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APR 1 1 2003

OFFICE OF PETITIONS

Dear Mr. Chugani:

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 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).

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

Mark V. Campagna
Jones, Day, Reavis & Pogue
77 West Wacker Drive
Chicago IL 60601-1692

UNITED STATES PATENT AND TRADEMARK OFFICE

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

James C. Spira
16950 South Woodland
Shaker Heights, Ohio 44120

In re Application of
Robert Covington, Melanie Al-Shabkoun, Andrew Carlson, Sandeep Chugani, Drew Conrad, Paul D'Alessandro, John Kalil, Jason Kunesh, Charles Brent Lohrmann, James Spira, John Viokla, Darren Yaphe, Lorraine McGlone
Application No.10/026,247
Filed: December 27, 2001
Attorney Docket No. 635482.625.036
Title of Invention: INTERACTIVE IN-STORE/IN-MALL AND ON-LINE SHOPPING SYSTEM AND METHOD

LETTER

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APR 1 1 2003

OFFICE OF PETITIONS

Dear Mr. Spira:

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 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).

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

Mark V. Campagna
Jones, Day, Reavis & Pogue
77 West Wacker Drive
Chicago IL 60601-1692

UNITED STATES PATENT AND TRADEMARK OFFICE

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

John Sviokla
11 Willard Street
Newton, Massachusetts 02458-2230

In re Application of
Robert Covington, Melanie Al-Shabkoun, Andrew Carlson, Sandeep Chugani, Drew Conrad, Paul D'Alessandro, John Kalil, Jason Kunesh, Charles Brent Lohrmann, James Spira, John Viokla, Darren Yaphe, Lorraine McGlone
Application No.10/026,247
Filed: December 27, 2001
Attorney Docket No. 635482.625.036
Title of Invention: INTERACTIVE IN-STORE/IN-MALL AND ON-LINE SHOPPING SYSTEM AND METHOD

LETTER

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APR 1 1 2003
OFFICE OF PETITIONS

Dear Mr. Sviokla:

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 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).

Charlema R. Grant
Charlema R. Grant
Petitions Attorney
Office of Petitions

Mark V. Campagna
Jones, Day, Reavis & Pogue
77 West Wacker Drive
Chicago IL 60601-1692

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Paper No. 4

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MAY 0 2 2002

OFFICE OF PETITIONS

Lerner and Greenberg, P.A.
Post Office Box 2480
Hollywood, FL 33022-2480

In re Application of :
Fehn :
Application No. 10/026,265 : ON PETITION
Filed: December 21, 2001 :
Attorney Docket No.: GR 97 P 3021 C:
For: METHOD OF INITIALIZING A :
SIMULATION OF THE BEHAVIOR OF AN :
INDUSTRIAL PLANT, AND SIMULATION :
SYSTEM FOR AN INDUSTRIAL PLANT :

This decision is in response to the petition under 37 CFR 1.10(c), filed February 12, 2002, requesting that the above-identified application be accorded a filing date of December 21, 2001 instead of December 22, 2001.

Petitioner alleges that the application was deposited in Express Mail service on December 21, 2001. Petitioner has provided evidence to this effect, including a copy of an "Express Mail Post Office to Addressee" mailing label bearing tracking number EL600692356US (the same Express Mail number found on the transmittal letter accompanying the original application papers located in the official file) and a "date-in" of December 21, 2002. Additionally, a search of the USPS Express Mail Track/Confirm database confirms that the above-referenced Express Mail label number was accepted by the USPS on December 21, 2001.

In view of the above, the petition under 37 CFR 1.10(c) is **GRANTED**.

No fee is due in connection with this matter.

This application is being forwarded to the Official of Initial Patent Examination for correction of the filing date to December 21, 2001.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

for D Wood

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

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JUL 19 2007

OFFICE OF PETITIONS

In re Application of	:	
Eko N. Onggosanusi et al.	:	
Application No. 10/026,278	:	DECISION ON PETITION
Filed: December 18, 2001	:	
Attorney Docket No. TI-32854	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 28, 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 June 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) were obtained. Accordingly, the application became abandoned on September 6, 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 $1500.00, 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 Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2611 for appropriate action by the Examiner in the normal course of business on the reply received March 28, 2007.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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DALLAS, TX 75265

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MAY 1 1 2010

OFFICE OF PETITIONS

In re Application of
Eko N. ONGGOSANUSI, et *al.*
Application No. 10/026,278
Filed: December 18, 2001
Attorney Docket No. **TI-32854**

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 26, 2010, 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, July 23, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 24, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620; 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 Monica A. Graves at (571) 272-7253.

This application is being referred to Technology Center AU 2611 for appropriate action by the Examiner in the normal course of business on the reply received on February 26, 2010.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Paper No. 7

Samuel H. Dworetsky
AT&T CORP.
P. O. BOX 4110
Middletown NJ 07748-4110

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JUN 1 7 2003

OFFICE OF PETITIONS

In re Application of
Barry S. Bosik, Amit Garg, Rajeev B. Patil,
and Jeffrey L. Tuttle
Application No. 10/026,281
Filed: December 18, 2001
Attorney Docket No. 2000-0674A
Title CALL MANAGEMENT SYSTEM
RESPONSIVE TO NETWORK PRESENCE

DECISION ON PETITION
UNDER 37 C.F.R. §1.137(f)

This is a decision on the petition filed on May 19, 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 an international application on December 13, 2002. However, the United States Patent and

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.

Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country[2].

In view of the above, this application became abandoned pursuant to 35 U.S.C. §1.22(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

The petition is **GRANTED**.

Petitioner has submitted the notification of an international filing, paid the petition fee, and has made the proper statement of unintentional delay.

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

After this decision is mailed, the application will be forwarded to Technology Center 2600 for further processing.

Telephone inquiries concerning *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 On December 18, 2002, a Request to Rescind Nonpublication Request was filed with the Office, but the Office was not notified about the foreign or international filing until May 19, 2003, when the notification was included with the instant petition.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

EPSON RESEARCH AND DEVELOPMENT INC
INTELLECTUAL PROPERTY DEPT
150 RIVER OAKS PARKWAY, SUITE 225
SAN JOSE CA 95134

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MAR 1 6 2004

OFFICE OF PETITIONS

In re Application of :
Mori, et al. :
Application No. 10/026,286 :
Filed: December 20, 2001 :
Attorney Docket No. P6495a :
For: PATTERN FORMING METHOD AND APPARATUS USED FOR SEMICONDUCTOR DEVICE, ELECTRIC CIRCUIT, DISPLAY MODULE, AND LIGHT EMITTING DEVICE

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), and in the alternative, under 37 CFR 1.137(b), filed November 5, 2003, to revive the above-identified application.

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

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

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

The above-identified application was filed on December 20, 2001. On February 22, 2002, the Office mailed a Notice to File Missing Parts of Nonprovisional Application, giving petitioners a two month extendable period to submit, *inter alia*, an English translation of the foreign language specification and a statement that the translation is accurate. On April 19, 2002, petitioners submitted, *inter alia*, an English translation of the application and an statement of its accuracy. On June 27, 2002 petitioners submitted a preliminary amendment in which the marked up version contained claims commencing on a separate page.

On October 1, 2003, the Office mailed a Notice of Incomplete Reply (Nonprovisional) which required petitioners to submit replacement claims commencing on a separate sheet. The Notice did not set a new period for reply. Instead, the Notice retained the period for reply set in the February 22, 2002 Notice. This period expired on April 22, 2002. Thus, the application became abandoned on April 23, 2002. The filing of the instant petition precedes the mailing of a Notice of Abandonment.

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 does not satisfy requirement (1).

37 CFR 1.52(b)(5) requires that the pages of the specification **including claims** and abstract must be numbered consecutively, starting with 1, the numbers being centrally located above or preferably, below, the text. (emphasis added)

It is noted that the substitute specification filed on July 5, 2002 (certificate of mailing date June 27, 2002) is numbered from pp. 1-53 and does not include claims. The clean copy of the claims submitted with the instant petition begins on p. 47.

Petitioners are requested to submit a replacement specification that includes the claims and abstract.

A substitute specification under 37 CFR 1.125 requires:

1. A statement that the substitute specification includes no new matter.
2. A specification with markings to show all the changes relative to the immediate prior version.
    a. Added text must be shown by underlining.
    b. Deleted text must be shown by strikethrough (e.g., strikethrough) with 2 exceptions.
        1. For deletion of five or fewer consecutive characters, double brackets [[ ]] may be used (e.g., [[eroor]]); and
        2. If strikethrough cannot be easily perceived, deleted text must be shown by double brackets [[ ]] around the deleted text characters.
3. A clean version (without markings) of the substitute specification.

The petition under 37 CFR 1.137(b) is **dismissed** because petitioners have presented a compelling unavoidable delay scenario. Petitioners are strongly encouraged to submit a reconsideration petition under 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
Post Office Box 1450
Alexandria, VA 22313-1450
ATTN: E. Shirene Willis

By hand: Crystal Plaza 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202
ATTN: E. Shirene Willis

By FAX: (703) 872-9306
ATTN: Office of Petitions - E. Shirene Willis

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

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. 13

EPSON RESEARCH AND DEVELOPMENT INC
INTELLECTUAL PROPERTY DEPT
150 RIVER OAKS PARKWAY, SUITE 225
SAN JOSE CA 95134

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JUN 0 7 2004

OFFICE OF PETITIONS

In re Application of :
Mori, et al. :
Application No. 10/026,286 :
Filed: December 20, 2001 :
Attorney Docket No. P6495a :
For: PATTERN FORMING METHOD AND APPARATUS USED FOR SEMICONDUCTOR DEVICE, ELECTRIC CIRCUIT, DISPLAY MODULE, AND LIGHT EMITTING DEVICE

ON PETITION

This is a decision on the reconsideration petition under 37 CFR 1.137(a), filed May 13, 2004, to revive the above-identified application.

The above-identified application was filed on December 20, 2001. On February 22, 2002, the Office mailed a Notice to File Missing Parts of Nonprovisional Application, giving petitioners a two month extendable period to submit, *inter alia*, an English translation of the foreign language specification and a statement that the translation is accurate. On April 19, 2002, petitioners submitted, *inter alia*, an English translation of the application and an statement of its accuracy. On June 27, 2002 petitioners submitted a preliminary amendment in which the marked up version contained claims commencing on a separate page.

On October 1, 2003, the Office mailed a Notice of Incomplete Reply (Nonprovisional) which required petitioners to submit replacement claims commencing on a separate sheet. The Notice did not set a new period for reply. Instead, the Notice retained the period for reply set in the February 22, 2002 Notice. This period expired on April 22, 2002. Thus, the application became abandoned on April 23, 2002. The filing of the instant petition precedes the mailing of a Notice of Abandonment.

Petitioners have established that they were unavoidably prevented from timely responding to the October 1, 2003 Notice of Incomplete Reply (Nonprovisonal), which should have set a new period for reply. In addition, petitioners have submitted a replacement specification that includes claims commencing on a separate sheet and an abstract.

Accordingly, the reconsideration petition to revive under 37 CFR 1.137(a) is **GRANTED**.

After the mailing of this decision, the application will be forwarded to the Office of Initial Patent Examination for further processing.

.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. 11

Genencor International, Inc.
925 Page Mill Road
Palo Alto, CA 94034-1013

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MAR 2 4 2004

OFFICE OF PETITIONS

In re Application of
Jayarama K. Shetty et al.
Application No. 10/026,288
Filed: December 19, 2001
Attorney Docket No. GC712

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 15, 2004, to revive the above-identified application.

The petition is Granted.

The above-identified application became abandoned for failure to reply in a timely manner in reply to the non-final Office action mailed May 29, 2003, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the application became abandoned on August 30, 2003.

Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the extended time for response expired. Therefore, no extension fees are due on a petition for revival. In view thereof, the extension of time fee submitted with the petition is unnecessary and will be refunded to petitioner's deposit account as authorized.

The application file is being forwarded to Technology Center AU 1651 for further processing.

Telephone inquiries should be directed to the undersigned at (703) 308-6911.

Latrice Bond

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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IAN F. BURNS & ASSOCIATES
4790 CAUGHLIN PARKWAY #701
RENO, NV 89519-0907

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DEC 1 7 2008

OFFICE OF PETITIONS

In re Application of	:	
Bradley W. JOHNSON, et al	:	
Application No. 10/026,289	:	DECISION ON PETITION
Filed: December 19, 2001	:	TO WITHDRAW
Attorney Docket No. 720-505	:	FROM RECORD.
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 25, 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 Ian F. Burns on behalf of the attorneys of record associated with Customer No. 21707.

The attorneys of record associated with Customer No. 21707 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.

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).

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-6735.

Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: BRADLEY W. JOHNSON
2700 E. SUNSET RD #7
LAS VEGAS, NV 89120

cc: PALTRONICS, INC.
1145 PALTRONICS COURT
CRYSTAL LAKE, IL 60014

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 11

CHARLES E. DUNLAP
KEENAN BUILDING, THIRD FLOOR
1330 LADY STREET
COLUMBIA, SC 29201

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JUN 0 2 2003

OFFICE OF PETITIONS

In re Application of	:
Maurice R. De Billot et al	:
Application No. 10/026,301	:DECISION DISMISSING
Filed: December 19, 2001	:PETITION UNDER 37 CFR
Attorney Docket No. 17396/09015	:1.137(f)

This is a decision on the petition, filed by facsimile transmission on April 28, 2003, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **DISMISSED**.

Petitioner states that the instant nonprovisional application is the subject of applications filed in foreign countries on December 17, 2001, December 20, 2001, and December 21, 2001. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

A review of the file record discloses that, on filing, petitioner filed a "Request to Rescind Previous Nonpublication Request." The record also discloses that, on September 11, 2002, petitioner filed a request for a Corrected Filing Receipt in view of the fact that a request to rescind a previous nonpublication request was submitted at the time of filing of the application rather than a request for nonpublication under 35 U.S.C. § 122(b)(2)(B)(i).

The statute at 35 U.S.C. § 122(b)(2)(B)(iii) only provides for revival in the situation where a certification was made under 35 U.S.C. § 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. Therefore, since petitioner did not file a nonpublication request on filing of the instant application, this application did not become abandoned for failure to notify the Office of a foreign filing within 45 days thereof. Accordingly,

a petition to revive this application is unnecessary and is dismissed as involving a moot issue.

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 1616 to take appropriate action on the reply received April 28, 2003 to the Office action of March 26, 2003.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 3

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

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JUN 13 2002

OFFICE OF PETITIONS

In re Application of	:	
David Vardi	:	DECISION GRANTING
Application No. 10/026,309	:	PETITION
Filed: December 21, 2001	:	
Attorney Docket No. P/1318-149	:	

This is a decision on petition under 37 CFR 1.10 (c) filed on April 15, 2002, which is being treated as a petition under 1.10(d), requesting that the above-identified application be accorded a filing date of December 21, 2001, rather than the presently accorded filing date of December 22, 2001.

Applicant requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on December 21, 2001, pursuant to 37 CFR 1.10. In support applicant submits, inter alia, a copy of a U.S. Postal Service (USPS) record styled "Pickup Service Statement for Express Mail, Priority Mail, or Parcel Post" showing that a package bearing Express Mail label No. EL157419035US was picked up by the USPS from counsel's office on December 21, 2001. The same Express Mail receipt number was referred to in the copy of the original transmittal letter submitted with present petition.

Since the evidence from the USPS, namely, the Express Mail pickup Service Statement, corroborates a "date-in" of December 21, 2001, the petition is granted.

The application is being returned to Initial Patent Examination Division for correction of the filing date to December 21, 2001.

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

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

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ALEXANDRIA, VA 22313-1450
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Paper No. 6

BEYER WEAVER & THOMAS LLP
P.O. BOX 778
BERKELEY CA 94704-0778

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SEP 3 0 2003

OFFICE OF PETITIONS

In re Application of
Marco Di Benedetto et al.
Application No. 10/026,311
Filed: December 21, 2001
Attorney Docket No. ANDIP006
Title: METHODS AND APPARATUS FOR IMPLEMENTING A HIGH AVAILABILITY FIBRE CHANNEL SWITCH

DECISION ON PETITION

This is a decision on the petition filed on August 22, 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.

On December 23, 2002, a Notice of Rescission of Nonpublication Request was filed with the Office. Unfortunately, notification of the filing of the foreign or international application did not accompany this filing.

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 August 22, 2003, the instant petition was filed with the Office. Unfortunately, notification of the filing of the foreign or international application did not accompany this filing either.

As such, petitioner has not met the first requirement above.

Petitioner states that the instant nonprovisional application is the subject of an application filed in either a foreign country or under a multinational agreement.

On September 29, 2003, the undersigned contacted the petitioner in an attempt to have the notification sent via facsimile transmission, but the petitioner's voice mail indicated that he would be out of town for the week. Obviously, as of the mail date of this decision, the required date has not been supplied.

Petitioner is reminded that if an applicant makes a nonpublication request and then rescinds the nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country, the application will be treated as if the nonpublication request were never made, and any petition fee would be refunded.

In view of the foregoing, this petition is **DISMISSED**. Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(f)." Petitioner must submit the date which the foreign or international application was filed.

The reply to this letter may be submitted by mail[2], hand-delivery[3], or facsimile[4].

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

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.

Paul Shanoski

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

---

2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

3 Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.

4 (703) 308-6916, Attn: Office of Petitions.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No. 8

BEYER WEAVER & THOMAS LLP
P.O. BOX 778
BERKELEY CA 94704-0778

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OFFICE OF PETITIONS

In re Application of
Marco Di Benedetto et al.
Application No. 10/026,311
Filed: December 21, 2001
Attorney Docket No. ANDIP006
Title: METHODS AND APPARATUS FOR IMPLEMENTING A HIGH AVAILABILITY FIBRE CHANNEL SWITCH

DECISION ON RENEWED PETITION

This is a decision on the renewed petition filed on November 3, 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.

On December 23, 2002, a Notice of Rescission of Nonpublication Request was filed with the Office. Unfortunately, notification of the filing of the foreign or international application did not accompany this filing.

The original petition was filed on August 22, 2003, and was dismissed via the mailing of a decision on September 30, 2003, for failure to include notification of the filing of the foreign or international application.

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.

With the renewed petition, Petitioner states that the instant nonprovisional application is the subject of an application filed in a foreign application on December 17, 2002. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. §1.22(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) for failure to timely notify the Office of the filing of a foreign application.

The renewed petition under 37 C.F.R. §1.137(f) is **GRANTED**.

Petitioner has submitted the notification of a foreign filing, paid the petition fee, and has made the proper statement of unintentional delay.

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

After this decision is mailed, the application will be forwarded to Technology Center 2100 for further processing.

Telephone inquiries concerning *this decision* should be directed to Attorney Paul Shanoski at (703) 305-0011.

Paul Shanoski

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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SHERIDAN ROSS
1560 Broadway
Suite 1200
Denver, CO 80202-5141

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OCT 3 1 2005
OFFICE OF PETITIONS

In re Application of	:
Vance et al.	:
Application No. 10/026,329	:
Filed: December 19, 2001	:
Patent No.:6,777,449	:
Issued: August 17, 2004	:
Attorney Docket No.	:
ARC 1016-042	:

This is a decision on the petition filed April 12, 2005, pursuant to 37 C.F.R. §3.81(b), to request a change in the name of the assignee after payment of the issue fee. The petition is properly treated as a request under 37 CFR 3.81(b)[1]. The delay in treating this petition is regretted.

The Petition is **granted**.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

The application is being referred to the Certificate of Corrections Branch for issuance of the requested Certificate of Correction[2].

Derek L. Woods
Petitions Attorney
Office of Petitions

[1] See, 1283 OG 148 22 June 2004, 69 Fed. Reg. 29865 26 May 2004
[2] The request for Certificate of Correction was filed August 18, 2005 via facsimile as per Applicant.

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Paper No. 6

SAMUEL H DWORETSKY
AT&T CORP
PO BOX 4110
MIDDLETOWN NJ 07748-4110

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JUN 1 8 2003

OFFICE OF PETITIONS

In re Application of Bosik, et al. Application No. 10/026,330 Filed: December 18, 2001 Attorney Docket No. 2000-0674	: : : : :	ON PETITION

This is a decision on the petition under 37 CFR 1.137(f)), filed May 19, 2003, which is being treated as a petition to revive under 37 CFR 1.137(b).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of a PCT international application filed on December 13, 2002. However, the US Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the PCT application.

Applicant filed a "Rescission of Request to not Publish Application Pursuant to 35 U.S.C. 122(b) and 37 C.F.R. 1.213" on December 18, 2002 (Certificate of Mailing under 37 CFR 1.8 dated December 12, 2002, however, the rescission request was not eligible for the benefits of 37 CFR 1.8.[1]). The rescission request did not provide notice of the PCT filing. Accordingly, as the rescission was not made until after the filing of the PCT application, applicant was required by 35 U.S.C. 122(b)(2)(B)(iii) to provide notice of the PCT filing not later than forty-five days after the date the PCT application was filed to avoid abandonment of the application.[2]

---

[1] 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)", available at http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/35usc122b2binterpret.htm.

[2] See id.

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

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

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

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

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

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

The previous Request and Certification under 35 USC 122(b)(2)(B)(I) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth a projected publication date of September 25, 2003 accompanies this decision on petition.

The application is being forwarded to Technology Center 2600 for examination in due course.

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

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: Notice Regarding Rescission of Nonpublication Request
(1 page)

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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AT & T LEGAL DEPARTMENT,
ATTN: PATENT DOCKETING ROOM 2A-207
BEDMINSTER NJ 07921

MAILED

JUL 0 2 2009

OFFICE OF PETITIONS

In re Application of	:	
Bosik et al.	:	
Application No. 10/026,330	:	ON PETITION
Filed: December 18, 2001	:	
Attorney Docket No. 2002-0674 (40147/12201)	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 20, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and an Amendment, (2) the petition fee, and (3) a proper statement of unintentional delay.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

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

This matter is being referred to Technology Center AU 2616 for further examination on the merits.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: FAY KAPLUN & MARCIN, LLP
150 BROADWAY, SUITE 702
NEW YORK, NY 10038

UNITED STATES PATENT AND TRADEMARK OFFICE

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KLARQUIST SPARKMAN, LLP
121 SW SALMON ST
FLOOR 16
PORTLAND, OR 97204

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MAR 04 2008

In re Application of :
Yasumichi Hitoshi, et al. :
Application No. 10/026,331 : ON PETITION
Filed: December 21, 2001 :
Attorney Docket No. 7946-79824-01 :

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 is **GRANTED**.

The application became abandoned for failure to timely respond to a Notice to File Corrected Application Papers mailed July 6, 2007, which set a period for reply of 60 days. A Notice of Abandonment was subsequently mailed on October 22, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a replacement sheet of drawing of Figure 1; (2) the petition fee of $1,540; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Data Management to oversee the review of the drawing filed October 22, 2007.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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APR 22 2004

OFFICE OF PETITIONS

In re Application of	:	
Sivaram Pillarisetti et al	:	
Application No. 10/026,335	:	NOTICE
Filed: December 21, 2001	:	
Attorney Docket No. 18631-0121	:	
(45115-264494)	:	

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 application file is being referred to Technology Center AU 1617.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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GREENBERG TRAURIG LLP
2450 COLORADO AVENUE, SUITE 400E
SANTA MONICA, CA 90404

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JUL 1 5 2004

OFFICE OF PETITIONS

In re Application of	:	
Pedigo, Jesse L.	:	
Application No. 10/026,338	:	ON PETITION
Filed: December 20, 2001	:	
Attorney Docket No. 47406-011400	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 4, 2004, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply within three months to the final Office action mailed July 16, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on October 17, 2003. A Notice of Abandonment was mailed on April 14, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

This matter is now being forwarded to Technology Center 1700 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAR 23 2010

OFFICE OF PETITIONS

WILMERHALE/NEW YORK
399 PARK AVENUE
NEW YORK, NY 10022

In re Patent of Agarwal et al.	:	DECISION ON REQUEST
Patent No. 7,590,585	:	FOR RECONSIDERATION OF
Issue Date: September 15, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/026,359	:	AND NOTICE OF INTENT TO
Filing Date: December 24, 2001	:	ISSUE CERTIFICATE OF
Attorney Docket No. 1497210.00123US1	:	CORRECTION

This is a decision on the petition filed on November 16, 2009, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting that the patent term adjustment indicated on the patent be corrected to indicate the term of the above-identified patent is extended or adjusted by two thousand one hundred ninety-nine (2199) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate the term of the above-identified patent is extended or adjusted by two thousand one hundred ninety-nine (2199) days is **GRANTED**.

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

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **two thousand one hundred ninety-nine (2199)** days.

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

Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,590,585 B2
ISSUE DATE	:	September 15, 2009
INVENTOR(S)	:	Agarwal et al.

DRAFT

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1530 days.

Delete the phrase "by 1530 days" and insert - by 2199 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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www.uspto.gov

WILMERHALE/NEW YORK
399 PARK AVENUE
NEW YORK, NY 10022

Mail Date: 04/20/2010

Applicant	: Brijesh Agarwal	: DECISION ON REQUEST FOR
Patent Number	: 7590585	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/026,359	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/24/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2868** 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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WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 94304-1050

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SEP 03 2004
OFFICE OF PETITIONS

In re Application of	:	
Chang-An Wu et al	:	
Application No. 10/026,361	:	ON PETITION
Filed: decameter 21, 2001	:	
Attorney Docket No. 25885-703	:	

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.**

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. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The reply submitted on June 4, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed July 16, 2004. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. Extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on June 13, 2004.

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

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

This matter is being referred to Technology Center AU 1616 for processing of the request for continued examination (RCE) under 37 CFR 1.114.

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

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OFFICE OF PETITIONS

IPSG, P.C.
P.O. BOX 700640
SAN JOSE CA 95170-0640

In re Application of Isaac Achler Application No. 10/026,368 Filed: December 17, 2001 Attorney Docket Number: ANTAP005/IC-0106 Title: INTERFACE RECEIVE CIRCUITS FOR MODULARIZED DATA OPTIMIZATION ENGINES AND METHODS THEREFOR	DECISION ON PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the petition filed August 2, 2006, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

A Notice of Allowance and Issue Fee Due was mailed on June 30, 2005. The issue fee was received on September 30, 2005, and on November 8, 2005, the Office mailed a "Notice regarding Drawings," which indicated that corrected drawings were required. The notice set a two-month non-extendable period to respond. No response was received, and accordingly, the above-identified application became abandoned on January 9, 2006. A Notice of Abandonment was mailed on February 21, 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. Therefore, Petitioner has met the second requirement of Rule §1.137(b). It is noted that a terminal disclaimer is not required.

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[2]. In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. §1.137(b)(1). With the present petition, Petitioner has submitted corrected drawings. These drawings have been reviewed by the Draftsperson, and he has objected to them. A Notice of Draftsperson's Patent Drawing Review has been included with this decision.

Regarding the third requirement of Rule §1.137(b), §1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The present petition does not appear to contain this statement.

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[3], hand-delivery[4], or facsimile[5].

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.

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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.
5 (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[6]. 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

Encl. Notice of Draftsperson's Patent Drawing Review

6 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).

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ALEXANDRIA, VA 22313-1450
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Paper No. None

IPSG, P.C.
P.O. BOX 700640
SAN JOSE CA 95170-0640

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JAN 19 2007

OFFICE OF PETITIONS

In re Application of :
Isaac Achler :
Application No. 10/026,368 :
Filed: December 17, 2001 :
Attorney Docket Number: :
ANTAP005/IC-0106 :
Title: INTERFACE RECEIVE :
CIRCUITS FOR MODULARIZED DATA :
OPTIMIZATION ENGINES AND :
METHODS THEREFOR :

DECISION ON RENEWED PETITION
UNDER 37 C.F.R. §1.137(b)

This is a decision on the renewed petition filed January 4, 2007, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

A Notice of Allowance and Issue Fee Due was mailed on June 30, 2005. The issue fee was received on September 30, 2005, and on November 8, 2005, the Office mailed a "Notice regarding Drawings," which indicated that corrected drawings were required. The notice set a two-month non-extendable period to respond. No response was received, and accordingly, the above-identified application became abandoned on January 9, 2006. A Notice of Abandonment was mailed on February 21, 2006.

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1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

1. The reply required to the outstanding Office action or notice, unless previously filed;
2. The petition fee as set forth in § 1.17(m);
3. A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
4. Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The original petition was submitted on August 2, 2006, along with the petition fee and drawings. The original petition was dismissed via the mailing of a decision on December 11, 2006.

With this renewed petition, Petitioner has again submitted drawings.

The renewed petition is **GRANTED**.

The Office of Patent Publication will be notified of this decision so that the present application can be processed into a patent.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[2]. All other inquiries concerning the status of the application should be directed to the Office of Patent Publication at 571-272-4200.

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

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2 Petitioner's representative 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's representative is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner's representative.

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Paper No. 7

MAR 2 9 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SHEMWELL GREGORY & COURTNEY LLP
4880 STEVENS CREEK BOULEVARD
SUITE 201
SAN JOSE CA 95129

In re Application of
Chang et al
Application No. 10/026,371
Filed: December 24, 2001
For: TRANSCEIVER WITH SELECTABLE DATA RATE

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the Request for Withdrawal as agent(s)/attorney(s) of record received on May 27, 2003.

A grantable request to withdraw as attorney/agent of record must:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above. Accordingly, the request is **GRANTED**.

All attorneys/agents associated with Customer Number 30554 in the request to withdraw are withdrawn.

Given that all attorneys/agents who were of record have withdrawn and also given that the subject request indicated that the correspondence address was not effected, then in accordance with MPEP §403 Correspondence —With Whom Held, the previous firm is not recognized but will be used for correspondence. Accordingly, all future communications from the Office will be directed to the first 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. A courtesy copy of this decision is also being sent to the first named applicant.

The file is being returned to TC 2600 Central Files to await examination in appropriate turn.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4778

Cc: Kun-Yung Chang
In care of SHEMWELL GREGORY & COURTNEY LLP
4880 STEVENS CREEK BOULEVARD
SUITE 201
SAN JOSE CA 95129

cc: Kun-Yung K. Chang
296 Ramon Drive
Los Altos, CA 94024

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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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Steven M Greenberg
CHRISTOPHER & WEISBERG
200 East Las Olas Boulevard
Suite 2040
Fort Lauderdale, FL 33301

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JUN 23 2006
OFFICE OF PETITIONS

In re Application of	:	
Cox et al.	:	
Application No. 10/026,384	:	
Filed: December 21, 2001	:	DECISION ON
For: SCENARIO BASED TESTING AND LOAD	:	PETITION
GENERATION FOR WEB APPLICATIONS	:	

This is a decision in response to the Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181, filed June 30, 2005. The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly respond to the final Office action, mailed January 5, 2004. The Notice set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a).

Applicant filed an Amendment in response to the Office action on March 8, 2004. The response was mis-placed by the Office. Applicant was so notified in a Notice Under 37 CFR 1.251, mailed April 18, 2005.

Applicant filed a copy of the previously-filed Amendment that included a Certificate of Mailing under 37 CFR 1.8, along with a copy of a Return-Receipt postcard evidencing receipt by this Office

of the Amendment on March 11, 2004 (Certificate of Mailing dated March 8, 2004).

The Amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action, mailed June 6, 2005.

No timely and proper response having been received, the application became abandoned on July 6, 2004. A Notice of Abandonment was mailed June 6, 2005.

Petition under 37 CFR 1.181

Applicant files the instant petition and asserts that the Notice Under 37 CFR 1.251 is an action within the meaning of 35 U.S.C. 133, such that an Applicant was given an extendable period of up to six months to respond to the Notice Under 37 CFR 1.251.

Applicant is advised that the application became abandoned for failure to timely and proper reply to the final Office action[1], and not for failure to timely reply to the Notice Under 37 CFR 1.251.

Applicant is further advised that the mechanism for replacing time that Applicants have lost resulting from the Patent Office misplacing applicant's paperwork is the Patent Term Adjustment.

Alternative venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently $750.00.

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[1] 35 U.S.C. § 133 provides that "[u]pon 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 Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable. (Emphasis supplied).

37 CFR § 1.135. provides:
(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.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not 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 revive under 37 CFR 1.137(b).

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

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

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

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

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Steven M Greenberg
CHRISTOPHER & WEISBERG
200 East Las Olas Boulevard
Suite 2040
Fort Lauderdale FL 33301

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OFFICE OF PETITIONS

In re Application of	:	
Cox et al.	:	
Application No. 10/026,384	:	ON PETITION
Filing or 371(c) Date: 12/21/2001	:	
Attorney Docket Number:	:	
RSW920010209US1	:	

This is a decision on the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), filed July 10, 2006. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

Background

The above-identified application became abandoned for failure to timely reply to the final office action, mailed January 5, 2004. The Office action set a three (3) period for reply. Extensions of time under 37 CFR 1.136(a) were available.

Applicant filed an Amendment in reply to the Office action on March 8, 2004. The reply was mis-placed by the Office. Applicant was so notified in a Notice Under 37 CFR 1.251, mailed April 18, 2005.

Applicant filed a copy of the previously-filed Amendment that included a Certificate of Mailing under 37 CFR 1.8, along with a copy of a return-receipt postcard evidencing receipt by this Office of the Amendment on March 11, 2004 (Certificate of Mailing dated March 8, 2004).

The Amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action mailed June 6, 2005.

No timely and proper reply having been received, the application became abandoned April 6, 2004. A Notice of Abandonment was mailed June 6, 2005.

The instant petition under 37 CFR 1.137(b)

Applicant files the instant petition to revive the application. A Request for Continued Examination ("RCE") and Amendment were filed on June 30, 2005. Accordingly, the petition is granted.

This application is being referred to Technology Center Art Unit 2857 for processing of the RCE and Amendment.

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

Derek L. Woods
Attorney
Office of Petitions

#10

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AUG 24 2004

TECHNOLOGY CENTER 2100

Paper No. 10

Steven M. Greenberg
Christopher & Weisberg, P.A.
200 East Las Olas Boulevard
Suite 2040
Fort Lauderdale, FL 33301

In re Application of: Gennaro A. Cuomo et al. Application No. 10/026,388 Filed: December 21, 2001 For: CONTEXT-SENSITIVE CACHING	DECISION ON PETITION UNDER 37 CFR §1.181 TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed 18 June 2004 under 37 CFR §1.181 to withdraw the holding of abandonment of the above-identified application.

This application was held abandoned for failure to respond in a timely manner to the Office Action mailed 10 October 2003 (paper no. 5). A Notice of Abandonment was mailed 02 June 2004 (paper no. 8).

In support of the petition, Petitioner provides (1) an affidavit from Frank Medina, (2) a response to the Office Action dated 30 December 2003, (3) a transmittal letter, and (4) a post card with a PTO stamp indicating receipt at the USPTO on 02 January 2004 of the aforementioned items.

M.P.E.P. §503 states:

> A post card 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.

Petitioner has established that a response was filed on 02 January 2004. Thus, Petitioner has established that a response was timely filed and the Abandonment was the result of Office error in not matching the response to the application file.

The petition is **GRANTED**. The Notice of Abandonment is **WITHDRAWN**.

The application file is being forwarded to the Technology Center support staff for processing of the amendment. After processing, the application will then be forwarded to the Examiner for appropriate action.

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

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

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Commissioner for Patents
United States Patent and Trademark Office
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COOK, ALEX, McFARRON, MANZO,
CUMMINGS & MEHLER, LTD.
SUTE 2850
200 WEST ADAMS STREET
CHICAGO, IL 60606

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OFFICE OF PETITIONS

In re Application of	:	
Shunpei Yamazaki, et al.	:	
Application No. 10/026,406	:	DECISION GRANTING PETITION
Filed: December 21, 2001	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SEL-297	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 22, 2008, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 28, 2007 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642.

This application is being referred to Technology Center AU 2629 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

April M. Wise
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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OFFICE OF PETITIONS

VIDAS, ARRETT & STEINKRAUS, P.A.
SUITE 400, 6640 SHADY OAK ROAD
EDEN PRAIRIE, MN 55344

In re Patent No.7,537,607	:	
Brent C. Gerberding	:	DECISION DISMISSING
Application No. 10/026,413	:	REQUEST FOR
Issue Date: May 26, 2009	:	RECONSIDERATION OF
Filed: December 21, 2001	:	PATENT TERM ADJUSTMENT
Atty. Docket No.S63.2-10234-US01	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705, filed July 24, 2009. Patentee requests that the determination of patent term adjustment be corrected from one thousand three hundred fifteen (1,315) days to one thousand eight hundred twenty-three (1,823) days.

Preliminarily, patentees request that the Office defer or delay a decision on this request for reconsideration until a final decision has been rendered in Wyeth v. Dudas, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C. 2008), which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120. However, the Office notes that there is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance.

The request for reconsideration of patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of 1,315 days.

BACKGROUND

This application was filed on December 21, 2001. On May 26, 2009, the application matured into U.S. Patent No. 7,537,607, with a revised patent term adjustment of 1,315 days. The Office determined that the 1,075 days of Office delay, pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b), overlaps with the 1,617 days of Office delay, pursuant to 35 U.S.C. 154(b)(1)(A) and 37

CFR 1.702(a)(1) and (a)(2), accorded during the pendency of the application. As such, 542 additional days of patent term adjustment were entered at issuance under the three-year pendency provision. Given the 302 days of applicant delay, the patent issued with a revised patent term adjustment of 1,315 (1,075 + 542 - 302) days.

On July 24, 2009, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1,823 days under the court's interpretation of the overlap provision as set forth in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Accordingly, patentees maintain that the total non-overlapping PTO delay under §154(b)(1)(A) & (B) is 2,125 days. Further, given the applicant delay of 302 days, patentee asserts entitlement to 1,823 (508 + 1,617 - 302) days of patent term adjustment.

OPINION

Patentee's interpretation of the period of overlap has been considered, but found inconsistent with the Office's interpretation of the overlap provision, 35 U.S.C. 154(b)(2)(A). 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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

As explained in *Explanation of 37 CFR 1.703(f)*[1] *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

---

[1] 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.

permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 56366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

Further, as stated in the *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding §1.702 overlap, the period of

adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the period during which the application was pending before the Office beginning on the application filing date under 35 U.S.C. 111(a), December 21, 2001, and ending on the date the patent issued, May 26, 2009,(not including any other periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)).

Pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1) and (a)(2)[2], 1,075 days[3] of patent term adjustment were accorded during the pendency of the application for Office delay prior to the issuance of patent. Pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b)[4], 1,617 days of patent term adjustment accrued

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[2] 37 CFR § 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

> (a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:
>
> (1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;
>
> (2) Response to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken:

[3] A restriction requirement was mailed on July 13, 2004, 14 months and 508 days after the application was filed on December 21, 2001. A Notice of Non-Compliant Amendment was mailed November 2, 2006, four months and 248 days after a response was filed October 27, 2005. A final Office action was mailed December 24, 2008, four months and 319 days after a response was filed on October 9, 2007.

[4] Pursuant to 35 U.S.C. 154(b)(1)(B), 37 CFR 1.702(b) provides, in pertinent part, that:

Failure to issue a patent within three years of the actual filing date of the application. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within

for Office issuance of the patent more than 3 years after the filing date of the application.

All of the 1,617 days of patent term adjustment under 37 CFR 1.702(b) overlap with the 1,075 days of patent term adjustment under 37 CFR 1.702(a)(1) and (a)(2). Entry of both the 1,617 days and the 1,075 days is neither permitted nor warranted. The Office accorded the greater period of 1,617 days for Office delay.

Accordingly, at issuance, the Office properly entered 542 additional days of patent term adjustment for the Office taking in excess of three years to issue the patent.

CONCLUSION

In view thereof, the Office affirms that the revised determination of patent term adjustment at the time of the issuance of the patent is 1,315 days.

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

Telephone inquiries specific to this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

---

three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application.

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DAVIDSON, DAVIDSON & KAPPEL, LLC
14th Floor
485 Seventh Avenue
New York, NY 10018

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MAR 16 2005

OFFICE OF PETITIONS

In re Application of :
Levanduski :
Application No. 10/026,420 : ON PETITION
Filing Date: December 19, 2001 :
Docket No.: 326.1001 :

This decision is in response to the "REQUEST FOR CORRECTED FILING RECEIPT," filed January 27, 2005. This petition is being treated under 37 CFR 1.10 as a petition to accord the above-identified application a filing date of December 18, 2001[1].

Petitioners allege that the application was deposited into USPS Express Mail service on December 18, 2001. It cannot be determined on the face of the instant petition if petitioner is arguing that the there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation (37 CFR 1.10(c)) or if petitioner is arguing that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS.

Paragraph (a) of 37 CFR 1.10 states that:

> "(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.
> (2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a)."

[1] It is acknowledged that numerous requests for corrected filing receipts have been submitted, however, this matter was not brought to the attention of the Office of Petitions until the request of January 27, 2005.

Paragraph (c) of 37 CFR 1.10 states that:

"Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that: (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date; (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Paragraph (d) of 37 CFR 1.10 states that:

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

Petitioners argue that the application papers were deposited into Express Mail service on December 18, 2001 and have presented a copy of the Express Mail label bearing Express Mail Label No. EL825523504US, the same Express Mail label number indicated on the application transmittal letter submitted with the application. However, the "date-in" and the USPS "stamp" shown on the copy of the Express Mail label are illegible. Accordingly, the application has been accorded a filing date of December 19, 2001.

Thus, any renewed petition must in accordance with 37 CFR 1.10(c) be accompanied by a legible copy of the USPS Express Mail Label wherein a "date-in" of December 18, 2001 can be readily determined or the petition must in accordance with 37 CFR 1.10(d) be accompanied by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS, such as petitioner's Express Mail Log, clearly establishing a date of deposit of December 18, 2001.

Any request for reconsideration of this decision must be filed within two (2) months of the mail date of the instant decision to be considered timely. See, 37 CFR 1.181(f). This time period may not be extended under 37 CFR 1.136.

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

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

By facsimile: (703) 872-9306

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON VA 20191

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Yasushi Nagata, et al.
Application No. 10/026,459
Filed: December 27, 2001
Attorney Docket No. P21847

This is a decision on the petition, filed May 25, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on May 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 relating to this decision should be directed to the undersigned at (703) 305-9220.

The application is being referred to Technology Center AU 2817 for further processing of the request for continued examination under 37 CFR 1.114 filed May 25, 2004.

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

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requ sted 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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McKenna Long & Aldridge, LLP
1900 K Street, NW
Washington, DC 20006

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AUG 0 9 2007

OFFICE OF PETITIONS

In re Application of :
Se Chang Won et al. :
Application No. 10/026,482 :
Filed: December 27, 2001 :
Attorney Docket No. 8733.519.00 :

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 23, 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.

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 August 1, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (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, 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). See attached courtesy copy of an advisory action.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1020 extension of time fee submitted with the petition on April 23, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

Attachment: Courtesy copy of advisory action

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/026,482	Applicant(s) WON ET AL.	
	Examiner Fazli Erdem	Art Unit 2826	

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

THE REPLY FILED 23 April 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: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   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: See Continuation Sheet.

SUE A. PURVIS
SUPERVISORY PATENT EXAMINER

Continuation of 13. Other: Newly added claim limitation "guide projection" and "guide hole" require further search and consideration.

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1900 K Street, NW
Washington, DC 20006

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OFFICE OF PETITIONS

In re Application of :
Se Chang Won et al. :
Application No. 10/026,482 : ON PETITION
Filed: December 27, 2001 :
Attorney Docket No. 8733.519.00 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed October 2, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 1, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A three month extension of time pursuant to the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the date of abandonment of this application is November 2, 2006. A notice of abandonment was mailed on February 16, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $1500.00; 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 2826 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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Paper No. 7

MARK A. LITMAN & ASSOC., P.A.
YORK BUSINESS CENTER, STE. 205
3209 WEST 76TH STREET
EDINA, MN 55435

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OFFICE OF PETITIONS

In re Application of :
Pozarnsky et al. :
Application No. 10/026,493 :
Filed: December 20, 2001 : ON PETITION
Attorney Docket No. :
496.014US1 :

This is a decision on the petition under 37 CFR 1.137(a), filed March 18, 2004, to revive the above-identified application. The petition is properly treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment.

The petition is **granted.**

The above-identified application became abandoned for failure to timely reply to the *Ex Parte Quayle* Office action, mailed April 28, 2003. The Notice set a two (2) month period for reply, and extensions of time were available under 37 CFR 1.136(a). No reply having been received, the above-identified application became abandoned June 28, 2003. A Notice of Abandonment was mailed on November 28, 2003.

Applicant's Assertion

Applicant asserts that a timely reply to the Office action, in the form of an Amendment and Response, along with a one (1) month extension of time request, were timely filed via facsimile on July 28, 2003. In support of this assertion, Applicant provides copies of the Amendment and Response, which includes a Certificate of Transmission dated July 28, 2003.

Under 37 CFR 1.8

> "[c]orrespondence required to be filed in the Patent and Trademark Office within a set period of time will be considered 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 the 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 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 a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

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

No petition fee has been charged and none is due.

The application file is being forwarded to Technology Center Art Unit 1724 for processing of the Amendment and Response, filed July 28, 2003 in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at 703-305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

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Paper No. 5

BEYER WEAVER & THOMAS LLP
P.O. BOX 778
BERKELEY, CA 94704-0778

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OFFICE OF PETITIONS

In re Application of
Maurilio Cometto, et al.
Application No. 10/026,583
Filed: December 18, 2001
Attorney Docket No. ANDIP002

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed August 22, 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 December 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.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

This application is being forwarded to Technology Center Art Unit 2857 for examination in due course.

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

Conferee: Frances M. Hicks
Lead Petitions Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

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Weaver Austin Villeneuve & Sampson LLP
P.O. BOX 70250
OAKLAND, CA 94612-0250

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AUG 3 1 2009

OFFICE OF PETITIONS

In re Application of Cometto et al. :
Application No. 10/026,583 :
Filing Date: December 18, 2001 :
Attorney Docket No. ANDIP002/425438 :

On Application For
Patent Term Adjustment

This is in response to the "Application for Patent Term Adjustment Under 37 C.F.R. §1.705" filed May 13, 2009. Applicants submit the correct patent term adjustment to be indicated on the patent is one thousand one hundred seventy (1,170) days, not eight hundred ninety (890) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

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 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the

issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b) is $200. Applicants submitted $400. Therefore, the Office has credited $200 back to deposit account no. 50-4480.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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Weaver Austin Villeneuve & Sampson LLP
P.O. BOX 70250
OAKLAND, CA 94612-0250

Mail Date: 04/20/2010

Applicant	: Maurilio Cometto	: DECISION ON REQUEST FOR
Patent Number	: 7596627	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/026,583	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/18/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1185** 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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BIRCH STEWART KOLASH & BIRCH
P. O. BOX 747
FALLS CHURCH, VA 22040-0747

In re Application of	:
Hidemitsu Nihida et al	:
Serial No.: 10/026,606	: PETITION DECISION
Filed: December 27, 2001	:
Attorney Docket No.: 1110-0306	:

This is in response to the petition under 37 CFR 1.144, filed August 17, 2004, requesting withdrawal of an improper restriction requirement.

BACKGROUND

A review of the file history shows that this application was filed under 35 U.S.C. 111 on December 27, 2001, and contained claims 1-18. In a first Office action, mailed September 12, 2003, the examiner set forth a restriction requirement

Applicants replied on October 14, 2003, electing Group II and traversing the requirement. The examiner mailed a non-Final Office action to applicants on March 17, 2004, and applicants replied on August 17, 2004. This petition was also filed August 17, 2004, but was not entered in the application tracking system and was not forwarded properly for consideration until recently.

On September 14, 2004, the examiner mailed a Notice of allowance and Issue Fee due and a Notice of Allowability to applicants setting a three month statutory period for payment of the Issue Fee. The Issue Fee was paid on December 14, 2004 and the application issued as a patent on February 22, 2005.

DISCUSSION

Inasmuch as the application has issued as a patent the petition is moot and must be dismissed..

DECISION

The petition is **DISMISSED** as moot.

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.

George C. Elliott

George C. Elliott.
Director, Technology Center 1600

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JUL 29 2002

OFFICE OF PETITIONS

HOFFMAN WASSON & GITLER
2361 JEFFERSON DAVIS HIGHWAY
SUITE 522
ARLINGTON, VA 22202

In re Application of
Kele
Application No. 10/026,626
Filed: December 27, 2001
Atty. Dkt. No.: A-7739.CIP
For: METHOD AND APPARATUS FOR LIFTING CRYPT LIDS

DECISION DISMISSING PETITION UNDER 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed February 1, 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(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed December 27, 2001 without an executed oath or declaration and naming Gavin William Kele as sole inventor.

Accordingly, on January 24, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and surcharge.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee;(4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is required to preserve the rights of the parties or to prevent irreparable damages.

The petition fails to satisfy items (2), (3), (4), (5) and (6) set forth above.

As to item (2), the declaration submitted with the instant petition is unacceptable as it fails to comply with the provisions of 37 CFR 1.63 or 37 CFR 1.64. Please note that in a petition under 37 CFR 1.47(b) where no inventor is available to execute the declaration, the declaration should be executed by a

corporate officer, such as the president, vice president, secretary, or treasurer of the assignee on behalf of and as agent for the non-signing inventor. The corporate officer's title or position must be identified in the declaration. If an officer is unavailable to execute the declaration, the declaration may be signed on behalf of the corporation by one whose proof of signing authority has been submitted to the Office, such as the corporation's attorney. Petitioner's attention is directed to MPEP 409.03(b) for further guidance.

As to item (3), the required petition fee of $130.00 has been charged to deposit account No. 08-2455 as authorized in the instant petition.

As to item (4), the petition fails to set forth the last known address of the inventor. The Office is construing the last known address of the non-signing inventor to be that which is listed on the unexecuted declaration submitted herewith. If in fact the last known address of the non-signing inventor is other than that which is listed on the unexecuted declaration, petitioner is required to provide the Office with the correct last known address of the non-signing inventor.

As to item (5), petitioner has presented no evidence of proprietary interest in the above-referenced application. Petitioner must establish that the invention has been assigned to applicant, that the inventor has agreed in writing to assign the invention to applicant, or that applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application. Petitioner must submit a copy of an employment agreement between the inventor and applicant or a legal memorandum signed by an attorney familiar with the law of the relevant jurisdiction stating that a court of competent jurisdiction would by weight of authority in that jurisdiction award title of the invention to Rule 47 applicant.

As to item (6), the petition does not give any indication that status under Rule 47 is necessary to preserve the rights of any particular party or to prevent irreparable damages to any particular party.

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

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

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 8

HOFFMAN WASSON & GITLER
2361 JEFFERSON DAVIS HIGHWAY
SUITE 522
ARLINGTON, VA 22202

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JUN 17 2003

OFFICE OF PETITIONS

In re Application of Kele Application No. 10/026,626 Filed: December 27, 2001 Atty. Dkt. No.: A-7739.CIP For: METHOD AND APPARATUS FOR LIFTING CRYPT LIDS	DECISION GRANTING PETITION UNDER 37 CFR 1.47(b)

This is in response to the renewed petition under 37 CFR 1.47(b), filed June 3, 2003.

The petition is GRANTED.

Petitioner has shown that inventor Gavin William Kele has 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(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 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

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OFFICE OF PETITIONS

GAVIN WILLIAM KELE
44 WENTWORTH TCE
ROCKHAMPTON, QUEENSLAND
AUSTRALIA

In re Application of
Kele
Application No. 10/026,626
Filed: December 27, 2001
Atty. Dkt. No.: A-7739.CIP
For: METHOD AND APPARATUS FOR
LIFTING CRYPT LIDS

LETTER

Dear Sir:

You are named as an 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(b), 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).

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 9

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JUN 17 2003

OFFICE OF PETITIONS

HOFFMAN WASSON & GITLER
2361 JEFFERSON DAVIS HIGHWAY
SUITE 522
ARLINGTON, VA 22202

In re Application of :
Kele :
Application No. 10/026,626 : DECISION ON PETITION
Filed: December 27, 2001 :
Atty. Dkt. No.: A-7739.CIP :
For: METHOD AND APPARATUS FOR :
LIFTING CRYPT LIDS

This is a decision on the "REQUEST FOR WITHDRAWING HOLDING OF ABANDONMENT" filed June 3, 2003. This request is being treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment. No fee is required for this petition.

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

This application was held abandoned August 30, 2002 for failure to timely submit a renewed petition under 37 CFR 1.47(b). Notice of Abandonment was mailed May 21, 2003.

Petitioner asserts that a response to the decision on petition and a petition for extension of time were timely submitted October 24, 2002 and has provided as evidence of this assertion a receipt date stamped by the Office. Petitioner has provided a copy of the response and petition for extension of time.

The response and petition for extension of time submitted August 30, 2002 have not been located in the Office, however, in view of the evidence submitted, the holding of abandonment is hereby withdrawn. Accordingly, the response to the decision of petition will be accepted as having been timely filed October 24, 2002.

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

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0310.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. None

CHRISTOPHER & WEISBERG, P.A.
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SUITE 2040
FORT LAUDERDALE FL 33301

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OFFICE OF PETITIONS

In re Application of :
Paul R. Mena :
Application No. 10/026,667 :
Filed: December 21,2001 :
Attorney Docket Number: :
17147.00011 :
Title: IMPLANT FIXATION DEVICE :

DECISION ON PETITION UNDER 37 C.F.R. §1.181(A)

This is a decision on the petition under 37 CFR §1.181(a), filed February 14, 2005[1], to withdraw the holding of abandonment.

The Office regrets the delay in issuing this decision.

BACKGROUND

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR §1.113 in a timely manner to the final Office action mailed May 4, 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 August 5, 2004. A notice of abandonment was mailed on December 10, 2004.

With the present petition, Petitioner has asserted that the non-final Office action was never received. Petitioner has also included an after-final amendment and a declaration of facts.

1 The petition contains a certificate of mailing dated February 10, 2005.

RELEVANT PORTION OF THE MPEP

MPEP 711.03(c) states, in part:

> PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION
>
> In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).
>
> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).
>
> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).
>
> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).
>
> Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based upon unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

ANALYSIS

The showing in the instant petition is not sufficient to withdraw the holding of abandonment. Although Petitioner has stated that the Office communication was not received and that he searched the file jacket and the docket records, Petitioner has failed to include a copy of his docket report which would establish non-receipt of the Office communication. A docket report is a mail log, recorded by the person who receives all incoming mail, and it should show all incoming mail received during the relevant time period.

Furthermore, Petitioner has failed to submit a copy of the file jacket.

As such, Petitioner has not established non-receipt of the communication, and the petition must be **DISMISED**.

CONCLUSION

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. §1.181." This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[2], hand-delivery[3], or facsimile[4].

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. None

CHRISTOPHER & WEISBERG, P.A.
200 EAST LAS OLAS BOULEVARD
SUITE 2040
FORT LAUDERDALE FL 33301

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JUN 08 2006

OFFICE OF PETITIONS

In re Application of Paul R. Mena Application No. 10/026,667 Filed: December 21,2001 Attorney Docket Number: 17147.00011 Title: IMPLANT FIXATION DEVICE	DECISION ON PETITION UNDER 37 C.F.R. §1.137(B)

This is a decision on the petition filed April 11, 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 within the meaning of 37 C.F.R. §1.113 in a timely manner to the final Office action mailed May 4, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 C.F.R. §1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 5, 2004. A notice of abandonment was mailed on December 10, 2004.

A petition under 37 C.F.R. §1.181(a) was received on February 14, 2005, and was dismissed via the mailing of a decision on February 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 present petition was received on April 11, 2006, along with the petition fee, an amendment, and the proper statement of unintentional delay. No terminal disclaimer is required.

As such, the petition is **GRANTED**.

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 concurrently submitted amendment can be processed.

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

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APR 15 2005

TECHNOLOGY CENTER 3600

Lynn C. Cameron
FAEGRE & BENSON
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55401-3901

In re Application of	:	
Mark E. Abdella et al	:	DECISION ON PETITION
Application No. 10/026,670	:	TO WITHDRAW THE
Filed: December 21, 2001	:	HOLDING OF ABANDONMENT
For: REVERSIBLE DOOR HAVING MORTISE HARDWARE		

This is in reply to applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on December 9, 2004.

The petition is **DISMISSED.**

A review of the file record reveals that a Final office action was mailed June 4, 2004. No reply to the Final office action mailed June 4, 2004 has been received by the Office. The case was abandoned as of December 5, 2004 and a notice to that effect was mailed December 22, 2004.

Applicant states that Final office action of June 4, 2004 was never received and that the docket report does not indicate receiving the Final office action. In support of not receiving the office action applicant provides a copy of the docket records for mail received during the June 4, 2004 time period.

There is a strong presumption that Office communications properly addressed and delivered to the United States Postal Services, are in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include **a copy of the list of all responses in the practitioner's firm with the due date at and around September 4, 2004**. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 OG 53 (November 16, 1993).

The petitioner has failed to comply with requirement (3) indicated above. A complete docket record with a copy of the list of all responses in the practitioner's office to which the action was sent with the due date at and around September 4, 2004 is required.

Petitioner's evidence of non-receipt of the Office action mailed June 4, 2004 is insufficient to withdraw the holding of abandonment, and the petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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

SNM/jwk: 4/7/05

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
FROM DIRECTORS OFFICE

SEP 13 2005

TECHNOLOGY CENTER 3600

Lynn C. Cameron
FAEGRE & BENSON
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55401-3901

In re Application of	:	DECISION ON RENEWED
Mark E. Abdella et al.	:	PETITION TO WITHDRAW
Application No. 10/026,670	:	HOLDING OF
Filed: December 21, 2001	:	ABANDONMENT

For: REVERSIBLE DOOR HAVING MORTISE HARDWARE

This is a decision on Applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO) on June 7, 2005.

The petition is **GRANTED**.

A review of the file record reveals that a Final Office action (herein after referred to as Office action) was mailed to applicant on June 4, 2004. Since a response was not received before the expiration of the six-month statutory period for reply to the Office action, the application was held abandoned, and a Notice to that effect was mailed on December 22, 2004.

Applicant's petition indicates that the Office Action mailed June 4, 2004 was never received.

There is a strong presumption that the Office communication, properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating that the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date at and around September 4, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Practitioner submits a statement that the above-noted Office Action was not received. Practitioner attests to the fact that a search of the file jacket and docket records indicates that the Office Action was not received. Applicant's petition provides a copy of the docket record showing all responses due by practitioner's office between the dates of August 22, 2004 and September 18, 2004. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(571) 272-6587

KJD/js: 8/17/05

6-14-07

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

Patent No.: 7,117,639 B2
Inventors : Abdella, et. Al.
Issued: October 10, 2006
Docket No.: 101P23USU1

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule 1.323.

An error on a patent can be corrected by a certificate of correction, if appropriate, is required to correct the alleged error in the Attorney, Agent or Firm, since the date is printed solely in accordance with the PTOL-85b (Issue Fee Transmittal), submitted by applicant at time of payment of the base issue fee, and since the error was a result of applicant's failure to comply with the requirement that the complete and correct information be indicated on the PTOL-85b, no correction is in order here under the provisions of Rule 1.323 unless a petition is granted.

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

However, a petition under 37 CFR 1.183 should be directed to the attention of the Assistant Commissioner for Patents, using the following mailing address or Fax number.

By Mail: Commissioner of Patents and Trademarks
MAIL STOP STATION
Alexandria, VA 22313-1450

By FAX: (703) 305-6916
Attn: Office of Petitions

Further correspondence concerning this matter should be filed and directed to Decisions and Certificates of Correction Branch.

Eva James
For Cecelia B. Newman
Decisions & Certificates
of Correction Branch
(703) 305-8047 or 8228

James H. Patterson
Patterson, Thuente, Skarr & Christensen
4800 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2100

eJ

Ex. A. Bayat

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/12/07

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/026,714 Patent No.: 7072507

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

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

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

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

Matthew C. Bella

MATTHEW C. BELLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

SPE

2624
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

LESLIE GLADSTONE RESTAINO
BROWN RAYSMAN MILLSTEIN FELDER & STEINER
55 MADISON AVENUE, 4TH FLOOR
MORRISTOWN, NJ 07960

COPY MAILED

JUN 26 2002

OFFICE OF PETITIONS

In re Application of	:	
Janat Horn et al	:	DECISION GRANTING
Application No. 10/026,747	:	PETITION
Filed: December 20, 2001	:	
Attorney Docket No. 4797-93	:	

This is a decision on the petition under 37 CFR 1.10(c) filed May 31, 2002, which is properly treated as a petition under 37 CFR 1.10(d), requesting that the above-identified application be accorded a filing date of December 20, 2001, rather than the presently accorded filing date of December 22, 2001.

Applicants request the earlier filing date on the basis that the application was purportedly deposited with the U.S. Postal Service (USPS) as Express Mail on December 20, 2001, pursuant to the requirements of 37 CFR 1.10. In support, applicants provided, inter alia, a copy of the Express Mail label receipt, but, the Express Mail Number and the "date-in" are not legible. The petition is also accompanied by a copy of the USPS Track/Confirm system information showing that the package bearing Express Mail label No. EK051318535US was accepted on December 20, 2001. The same Express Mail receipt number appears on the copy of the original application transmittal letter submitted with the present petition.

In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on December 20, 2001.

The petition is granted.

The application is being returned to Initial Patent Examination Division for correction of the filing date to December 20, 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

UNITED STATES 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

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FEB 17 2004

OFFICE OF PETITIONS

ON PETITION

GENENCOR INTERNATIONAL, INC.
925 PAGE MILL ROAD
PALO ALTO, CA 94304-1013

In re Application of
Jayarama Shetty et al
Application No. 10/026,753
Filed: December 19, 2001
Attorney Docket No. GC695

This is a decision on the petition under 37 CFR 1.137(b), filed February 5, 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 May 29, 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 August 30, 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 February 5, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The application file is being forwarded to Technology Center AU 1651 for further processing.

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

OIPE JC74
APR 1 9 2002
PATENT & TRADEMARK OFFICE

#3

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/026,761	12/27/2001	Sergio Spreafico	05788.0193

CONFIRMATION NO. 9792

FORMALITIES LETTER

OC000000007522033

Finnegan, Henderson, Farabow
Garrett & Dunner, L.L.P.
1300 I Street N.W.
Washington, DC 20005-3315

Date Mailed: 02/22/2002

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is missing.
  A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(l) of $130 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is $ 130.**

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

Customer Service Center
Initial Patent Examination Division (703) 308-1202
PART 1 - ATTORNEY/APPLICANT COPY

04/22/2002 CNGUYEN 00000030 10026761
01 FC:105 130.00 OP

MP #13 $

OIPE JC174
APR 1 9 2002
PATENT & TRADEMARK OFFICE

Customer No. 22,852
Attorney Docket No. 08719.0193

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
Sergio SPREAFICO	Group Art Unit: 2831
Serial No.: 10/026,761	Examiner: Not Assigned
Filed: December 27, 2001	
For: SUPERCONDUCTING CABLE	

Assistant Commissioner for Patents
Washington, DC 20231
Attention: **BOX MISSING PART**

Sir:

RESPONSE TO NOTICE TO FILE MISSING PARTS

In response to the Notice To File Missing Parts dated February 22, 2002, enclosed is the Declaration and a copy of the Notice To File Missing Parts.

Also enclosed is a check in the amount of $130.00 to cover the surcharge. Authorization is hereby given to charge any additional fees to our deposit account no. 06-0916.

Please associate this Declaration with the application as filed on December 27, 2001, and assigned serial number 10/026,761.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

Dated: April 19, 2002

By: _____
Ernest F. Chapman
Reg. No. 25,961

Enclosures
EFC/FPD/sem

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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

TAKEUCHI & KUBOTERA
200 DAINGERFIELD ROAD
SUITE 202
ALEXANDRIA, VA 22314

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NOV 3 0 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Takehiko Kameya et al :
Application No. 10/026,766 :
Filed: December 27, 2001 :
Attorney Docket No. H0129T :

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue/publication fees in a timely manner in reply to the Notice of Allowance mailed December 2, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on March 3, 2005.

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

The change of correspondence address filed November 22, 2005 has been entered and made of record.

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

This matter is being referred to Publishing Division.

Wan Laymon

Wan Laymon
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

ERIC ROBINSON
PMB955
21010 SOUTHBANK STREET
POTOMAC FALLS, VA 20165

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JAN 1 2 2005

OFFICE OF PETITIONS

In re Application of	:
Hisashi Ohtani et al	:
Application No. 10/026,802	: DECISION GRANTING PETITION
Filed: December 27, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 740756-2415	:

This is a decision on the petition, filed January 11, 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 April 26, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2811 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BAMBI FAIVRE WALTERS
P.O. BOX 5743
WILLIAMSBURG, VA 23188

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NOV 03 2004

OFFICE OF PETITIONS

In re Application of
Best et al.
Application No. 10/026,835
Filed: December 27, 2001
Attorney Docket No. BS01-315

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed October 8, 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 December 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) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of February 10, 2005 accompanies this decision on petition.

This matter is being referred to Technology Center Art Unit 2611 for examination in due course.

Telephone inquiries concerning 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

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

WALTERS & ZIMMERMAN, PLLC
PO BOX 3822
CARY NC 27519

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MAY 18 2007

OFFICE OF PETITIONS

In re Application of	:	
Best et al.	:	
Application No. 10/026,835	:	ON PETITION
Filed: December 27, 2001	:	
Attorney Docket No. BS01-315	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 20, 2007, to revive the above-identified application.

The petition is **GRANTED.**

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

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 as listed above.

This matter is being referred to Technology Center 2600 for further examination on the merits.

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

Liana Walsh
Petitions Examiner
Office of Petitions

Cc:

BAMBI F. WALTERS
P.O. BOX 5743
WILLIAMSBURG, VA 23188

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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BELLSOUTH CORPORATION
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

COPY MAILED

SEP 17 2004

OFFICE OF PETITIONS

In re Application of	:	
Bedingfield, James C.	:	
Application No. 10/026,836	:	DECISION GRANTING PETITION
Filed: December 27, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No.	:	
60027.0410US01/BS01271		

This is a decision on the petition, filed August 27, 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 December 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) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of December 23, 2004 accompanies this decision on petition.

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.

This matter is being referred to Technology Center AU 3629 to await a reply to the outstanding final Office action mailed September 7, 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. Any telephone inquiries after September 28, 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

cc: CHRISTOPHER J. LEONARD
MERCHANT & GOULD
133 PEACHTREE STREET, NE, SUITE 4900
ATLANTA, GA 30303

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

JAN 24 2005

Sughrue Mion, PLLC
2100 Pennsylvania Avenue, N.W.
Washington DC 20037-3213

In re Application of	:
Terukazu Yanagi et al	:
Serial No.: 10/026,843	: PETITION DECISION
Filed: December 27, 2001	:
Attorney Docket No.: Q67605	:

This is a response to the petition under 37 CFR 1.59(b), filed December 10, 2003, to expunge information from the above identified application. This application has been allowed. The delay in acting on this petition is regretted, however it was not forwarded to the proper deciding authority until recently.

Petitioner requests that two priority documents submitted February 1, 2002, 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.

A review of the file shows that the documents are not identified in the declaration filed in the application and that no claim of priority to the documents is made. In view thereof the documents are unnecessary for prosecution of the application or perfection of a claim of priority. As this file has been converted to an IFW file the documents are not returnable, *per se*. They have, however been closed in the file and will not be available to the public.

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, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at general Office facsimile number, 571-273-8300.

Bruce M. Kisliuk
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MOSER, PATTERSON & SHERIDAN, LLP
350 CAMBRIDGE AVENUE, SUITE 250
Palo Alto, CA 94306

COPY MAILED
JUL 17 2006
OFFICE OF PETITIONS

In re Application of	:
Wang	:
Application No. 10/026,848	: DECISION ON PETITION
Filed: December 12, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. WANG P007	:

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

The petition s **GRANTED**.

This application became abandoned for failure to remit the issue and publication fees on or before May 27, 2006 as required by he Notice of Allowability mailed February 27, 2006. Accordingly, the date of abandonment of this application is May 28, 2006. A Notice of Abandonment has not been mailed.

This application is being referred to the Office of Publications for processing into a patent.

Inquiries concerning this decision on petition may be directed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions

CCS-98-029

UNITED STATES PATENT AND TRADEMARK OFFICE

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JC858 U.S. PTO
10/026850
12/19/01

TECHNOLOGY LAW DEPARTMENT
MCI WORLDCOM INC
1133 19TH STREET N W
WASHINGTON , DC 20036

In re Application of
Dugan, et al.
Application No. 09/420,654
Filed: October 19, 1999
For: Method and System for Managing Local Resources at Service Nodes in an Intelligent Network

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

This is in response to the petition under 37 C.F.R. 1.47(a), filed February 14, 2000.

The petition is **GRANTED**.

The above-identified continuation-in-part application was filed on October 19, 1999, without an executed oath or declaration and naming Andrew Dugan, Allen Holmes, Kelvin R. Porter, and Terence A. Robb, as joint inventors.

Accordingly, on November 10, 1999, a "Notice to File Missing Parts of 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, to January 10, 2000.

On February 14, 2000, (certificate of mailing on February 10, 2000), a declaration for patent application signed by three of the four joint inventors, Andrew Dugan, Kelvin Porter, and Terence Robb, was filed; a surcharge for late filing was authorized; as well as, an extension of time for filing the response within one month. A declaration signed by less than all of the inventors is not a proper reply to the Notice to File Missing Parts. Nonetheless, petitioner avoided abandonment of the application by also applying for Rule 47 status.

Rule 47 applicant maintains that status under 37 C.F.R. §1.47(a) is proper because joint inventor Allen Holmes refuses to join in the application for patent.

A grantable petition under 37 C.F.R. §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 inventor has refused to join in the filing of the above-identified application after having been presented with the application papers. By sworn declaration, Albert M. Crowder, Jr., attorney of record, established that the inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that he sign the declaration.

The declaration filed February 14. 2000, and the petition have been reviewed and found in compliance with 37 C.F.R. §1.47(a). The petition fee, as authorized, has been charged to Deposit Account No. 13-2491. This application is hereby accorded Rule 1.47(a) status.

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

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

Telephone inquiries regarding this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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ALLEN HOLMES
5375 CHAMBRAY COURT
COLORADO SPRINGS, CO 80919

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OCT 13 2000

OFFICE OF PETITIONS
A/C PATENTS

In re Application of Dugan, et al. Application No. 09/420,654 Filed: October 19, 1999 For: Method and System for Managing Local Resources at Service Nodes in an Intelligent Network	:	LETTER

Dear Mr. Holmes:

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 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

ALBERT M. CROWDER, JR.
TECHNOLOGY LAW DEPARTMENT
MCI WORLDCOM, INC.
1133 19th STREET NW
WASHINGTON, DC 20036

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Gregory P. LaPointe
BACHMAN & LaPOINTE, P.C.
900 Chapel Street, Suite 1201
New Haven CT 06510-2802

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JUL 1 5 2004
OFFICE OF PETITIONS

In re Application of
Kawae et al.
Application No. 10/026,871
Filed: December 21, 2001
Attorney Docket No. 01-764

: 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 march 5, 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 February 6, 2004.

The petition is **GRANTED**.

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

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

The instant pending application was filed on December 21, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein

for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional applications was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed applications, or that the proposed amendment has been entered in this finally rejected application. See MPEP 201.11, section III(F), which notes that the emendment is not entered as a matter of right and entry may require an RCE . 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 (703) 305-1820..

This application is being forwarded to Technology Center Art Unit * for appropriate action on the amendment after final filed February 6, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Brian Hearn

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Gregory P. LaPointe
BACHMAN & LaPOINTE, P.C.
900 Chapel Street, Suite 1201
New Haven, CT 06510-2802

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OFFICE OF PETITIONS

In re Application of :
Hiroyuki Kawae, et. al. :
Application No. 10/026,871 : ON PETITION
Filed: December 21, 2001 :
Attorney Docket No. 01-764 :

This is a decision on the petition under 37 CFR 1.137(b), filed August 1, 2008, to revive the above-identified application. 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 Ross J. Christie 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.

Additionally, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) along with the $810 fee and the submission under 37 CFR 1.114; (2) the petition fee of $1,540; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2879 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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APR 11 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Paper No. 3

John W. Ryan
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037

In re Application of: Todd Lagimonier, et al.	)	
Application No. 10/026,887	)	
Filed: December 27, 2001	)	
For: SYSTEM FOR OPTIMIZING THE INVOCATION OF COMPUTER-BASED SERVICES DEPLOYED IN A DISTRIBUTED COMPUTING ENVIRONMENT	)	**DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY**

This is a decision on the Request To Withdraw from Representation filed March 14, 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: Brad Aaron
Aether Systems, Inc.
11460 Cronridge Drive
Owings Mills, MD 21117

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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,919	12/21/2001	Mark Aston	16515/95349-00	7083

33222 7590 05/07/2004

JONES, WALKER, WAECHTER, POITEVENT, CARRERE
& DENEGRE, L.L.P.
5TH FLOOR, FOUR UNITED PLAZA
8555 UNITED PLAZA BOULEVARD
BATON ROUGE, LA 70809

EXAMINER
COLON, GERMAN

ART UNIT	PAPER NUMBER
2879	

DATE MAILED: 05/07/2004

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

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
10026919			

EXAMINER

ART UNIT	PAPER NUMBER

DATE MAILED:

NOTICE OF ABANDONMENT

This application is abandoned in view of:

☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.

☐ A reply (with Certificate of Mailing or Transmission of _____) was received on _____ which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.

☐ A proposed reply was received on _____ , but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only 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 CFR 1.114).

☐ A reply was received on _____ , but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).

☐ No reply has been received.

☒ Applicant's 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 (PTOL-85).

☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).

☐ The submitted fee of $_____ is insufficient. A balance of $ _____ is due.
The issue fee by 37 CFR 1.18 is $_____ . The publication fee, if required, by 37 CFR 1.18(d) is $_____.

☒ The issue fee and publication fee, if applicable, have not been received.

☐ Applicant's failure to timely file corrrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).

☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.

☐ No corrected drawings have been received.

☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.

☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.

☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

☐ The reason(s) below: _____

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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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SEP 28 2004

DELTAGEN, INC.
1031 Bing Street
San Carlos CA 94070

In re Application of:
Allen et al.
Serial No.: 10/026,937
Filed: December 21, 2001
Attorney Docket No.: R-632 CIP

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicants' petition under 37 CFR. § 1.181(a) and MPEP 711.03(c) filed on July 28, 2004, requesting withdrawal of the holding of abandonment of the above-identified application based on non –receipt of an Office action and to restore the application to a pending status.

A review of the file history shows that the Office mailed a first Office action, setting a three-month statutory time period for reply, to applicants on November 7, 2003. On July 14, 2004 the examiner mailed a notice of abandonment for failure to respond to the outstanding Office action.

Applicants state that the Office action of November 7, 2003 was never received and provides as evidence thereof a copy of the attorney docket report where the Office action would have been entered if received, showing non-receipt of the Office action. Based on the evidence presented, it is concluded that applicants never received the Office action. In view thereof, the Notice of Abandonment mailed July 14, 2004, is vacated and the application is restored to pending status with the mailing date of this decision.

Applicants' petition is **GRANTED**. The application will be forwarded to the examiner for prompt mailing of a new Office action.

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

Jasemine C. Chambers
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 5

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OFFICE OF PETITIONS

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

In re Application of
Tokura, et al.
Application No. 10/026,947
Filed: December 27, 2001
Attorney Docket No. P 290571 T7KK-01S0454-1
FOR: RAMP FOR MAGNETIC READ/WRITE APPARATUS AND MAGNETIC READ/WRITE APPARATUS USING THE SAME

DECISION DISMISSING PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed April 15, 2003, to revive the above-identified application.

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

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

The above-identified application became abandoned for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, mailed February 8, 2002, which set an extendable period for reply of two (2) months. Having obtained no extensions of time under 37 CFR 1.136(a), this application became abandoned on April 9, 2002 for failing to reply. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

Petitioners allege that they did not receive the February 8, 2002 Notice.

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 does not satisfy requirement (3).

With respect to (3), the showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable". 35 USC § 133. Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term 'unavoidable' "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

The showing required to establish nonreceipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[1]

A review of the record indicates no irregularity in the mailing of the February 8, 2002 Notice and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

---

[1] See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioners have not proven nonreceipt because practitioner did not include a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed. The docket record must be referenced in practitioner's statement. In addition, practitioner has not stated that a thorough search of the file jacket and docket records indicates that the Office communication was not received.

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

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

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Paper No. 8

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

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JUL 2 1 2003

OFFICE OF PETITIONS

In re Application of
Tokura, et al.
Application No. 10/026,947
Filed: December 27, 2001
Attorney Docket No. P 290571 T7KK-01S0454-1
FOR: RAMP FOR MAGNETIC READ/WRITE APPARATUS AND MAGNETIC READ/WRITE APPARATUS USING THE SAME

DECISION GRANTING PETITION

This is a decision on the reconsideration petition under 37 CFR 1.137(a), filed June 27, 2003, to revive the above-identified application.

The above-identified application became abandoned for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, mailed February 8, 2002, which set an extendable period for reply of two (2) months. Having obtained no extensions of time under 37 CFR 1.136(a), this application became abandoned on April 9, 2002 for failing to reply. Applicants' petition to revive under 37 CFR 1.137(a), filed April 15, 2003, was dismissed on May 5, 2003 for failure to show the entire delay in responding to the February 8, 2002 Notice was unavoidable. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

Petitioners have provided adequate evidence to show that the delay in submitting the basic filing fee, oath, and surcharge was unavoidable. Petitioners have provided a copy of the electronic docketing records for the above-identified application that shows the February 8, 2002 Notice was not entered until April 15, 2003, the date that petitioners filed their first petition to revive. Had the February 8, 2002 Notice been received, there would have been an entry that was created much earlier than the April 15, 2003 entry . Petitioners have referenced the electronic docketing records in a practitioner's statement. In addition, petitioners have submitted a copy of the logbook of all incoming mail from the USPTO from February 8, 2002 through February 18, 2002. The logbook contains no entry for the above-identified application.

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

The application will be returned to the Office of Initial Patent Examination for further processing.

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

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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JUL 03 2002
PATENT & TRADEMARK OFFICE

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Washington, DC 20231

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In re Application of:
NAZARENKO ET AL.
Serial No.: 09/748,146
Filed: December 27, 2000
For: PRIMERS AND METHODS FOR THE DETECTION DISCRIMINATION OF NUCLEIC ACIDS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.53, filed October 30,2001, to convert the application to a provisional application.

Since the petition includes all that is required by 37 CFR 1.53, the petition is GRANTED.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for conversion into a provisional application.

PETITION GRANTED

John Doll, Director
Technology Center 1600

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C
ATTORNEYS AT LAW
SUITE 600
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005-3934

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Paper No. None

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MILWAUKEE WI 53202-5308

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MAY 23 2005

OFFICE OF PETITIONS

In re Application of Mark A. Baloga et al. Application No. 10/026,964 Filed: December 21, 2001 Attorney Docket Number: 076507-0421 Title: UTILITY DISTRIBUTION SYSTEM	:	DECISION ON PETITION UNDER 37 C.F.R. §1.183

Background

This is a decision on the petition filed December 30, 2004, pursuant to 37 C.F.R. §1.183, requesting that 37 C.F.R. §1.312 be waived so that Petitioner may receive the benefit of two previously filed non-provisional applications via the entry of an amendment which was supplied subsequent to the mailing of the notice of allowance.

The application was filed on December 21, 2001, and the specification on filing claimed benefit to applications 09/183,023 and 09/887,519. The specification did not indicate how these applications are related to the present application. The transmittal sheet included on filing indicates that the present application is a divisional of both of these applications. No Application Data Sheet was filed in conjunction with this application.

The petition fee of $400 has been charged to Petitioner's Deposit Account, as authorized in the petition.

Petitioner maintains that this constitutes an extraordinary situation where justice requires the waiver of rule 37 C.F.R. §1.312 to allow the amendment of the priority claim.

Applicable Statue and Rules

35 U.S.C. 120 Benefit of earlier filing date in the United States.

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

(Amended Nov. 14, 1975, Public Law 94-131, sec. 9, 89 Stat. 691; Nov. 8, 1984, Public Law 98-622, sec. 104(b), 98 Stat. 3385; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-563 (S. 1948 sec. 4503(b)(1)).)

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a)

(1) A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed application must be:

(i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America; or

(ii) Complete as set forth in § 1.51(b); or

(iii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee set forth in § 1.16; or

(iv) Entitled to a filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(f).

(2)

(i) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain 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) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371 (b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(i) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application for a design patent;

(B) An application filed under 35 U.S.C. 111 (a) before November 29, 2000; or

(C) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§1.76), or the specification must contain or be amended to contain such reference in the first sentence following the title.

37 C.F.R. §1.183

In an extraordinary situation, when justice re-quires, 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(h).

§ 1.312 Amendments after allowance.
No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment filed pursuant to this section must be filed before or with the payment of the issue fee, and may be entered on the recommendation of the primary examiner, approved by the Director, without withdrawing the application from issue.

[Para. (b) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; para. (b) revised, 60 FR 20195, Apr. 25, 1995, effective June 8, 1995; para. (b) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; revised, 65 FR 14865, Mar. 20, 2000, effective May 29, 2000 (adopted as final, 65 FR 50092, Aug. 16, 2000); revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003]

Analysis

37 C.F.R. §1.78(a) indicates that applicants may claim benefit to prior-filed copending nonprovisional applications, but in order to do so, 37 C.F.R. §1.78(a)(2)(i) states that the application number of the parent must be listed, as well as the relationships of the applications. 37 C.F.R. §1.78(a)(2)(iii) indicates that this reference must be in an application data sheet, or the specification must contain or be amended to contain such reference in the first sentence following the title.

With this petition, Petitioner has submitted an amendment which identifies the present application as a divisional of applications 09/183,023 and 09/887,519. Unfortunately, a Notice of Allowance was mailed on September 30, 2004, and 37 C.F.R. §1.312 indicates that amendments may not be made as a matter of right in an application after the mailing of the notice of allowance.

Petitioner wishes to have 37 C.F.R. §1.312 waived, so that the specification can be amended subsequent to the mailing of the notice of allowance.

In order to submit a grantable petition under 37 CFR 1.183, Petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985).

Petitioner has not shown that either condition exists in this case.

The circumstances of this case do not demonstrate an extraordinary situation, much less one where justice requires waiver of the rules. The failure to timely submit the proper amendment which introduces the required relationship into the specification within the time period set forth in 37 CFR 1.78(a)(2)(ii) was a circumstance entirely within Petitioner's control, and the failure to include the relationship of the priority applications to the present application could have been avoided by the exercise of reasonable care and diligence. Equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable due care and diligence[1].

Furthermore, since the USPTO did not cause or contribute to Petitioner's delay, this case is even further removed from consideration as one where "justice requires" equitable relief[2]. It is well settled that a party's inadvertent failure to comply with the requirements of the rules or procedures before the USPTO is not deemed to be an extraordinary situation that would warrant waiver of the rules or procedures under 37 CFR §1.183[3]. Rather, as petitioner failed to comply with the provisions of the C.F.R. cited above, this is not an "extraordinary situation" where "justice requires" an extraordinary remedy.

Finally, the rules provide a remedy for this particular situation: in order to claim the benefit of these two prior-filed applications, Petitioner has the option of filing a petition to withdraw the present application from issue pursuant to 37 C.F.R. §1.313, coupled with the filing of a Request for Continued Examination (RCE) pursuant to 37 C.F.R. §1.114, with the amendment to the specification serving as the submission as described in section (c) of this latter title.

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1 U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983).

2 See Helfgott & Karras, P.C. v. Dickinson, 209 F.3d 1328, 54 USPQ2d 1425 (Fed. Cir. 2000).

3 See Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995) (Commissioner did not abuse his discretion in refusing to waive requirements of 37 CFR 1.10(c) in order to grant filing date to patent application, where applicant failed to produce "Express Mail" customer receipt or any other evidence that application was actually deposited with USPS as "Express Mail"), *aff'd without opinion*, 95 F.3d 1166 (Fed. Cir.1996); Nitto Chemical Industry. Co., Ltd. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (Commissioner's refusal to waive requirements of 37 CFR 1.10 in order to grant priority filing date to patent application not arbitrary and capricious, because failure to comply with the requirements of 37 CFR 1.10 is an "avoidable" oversight that could have been prevented by the exercise of ordinary care or diligence, and thus not an extraordinary situation under 37 CFR 1.183); Gustafson v. Strange, 227 USPQ 174 (Comm'r Pats. 1985) (Counsel's unawareness of 37 CFR 1.8 not extraordinary situation warranting waiver of a rule).

It follows that Petitioner's circumstances are not extraordinary, and justice fails to require waiver of rule 37 C.F.R. §1.312.

Conclusion

The petition is **DISMISSED.**

37 C.F.R. §1.312 will not be waived, and priority will not be accorded to applications 09/183,023 and 09/887,519 without the filing of a petition to withdraw from issue coupled with an RCE, as discussed above.

The petition fee of $400 will not be refunded, as this petition was not necessitated by any error on the part of the Office.

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. §1.183." 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.

Any renewed petition may be submitted by mail[4], hand-delivery[5], or facsimile[6].

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
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

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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 (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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MILWAUKEE WI 53202-5308

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OFFICE OF PETITIONS

In re Application of	:	
Mark A. Baloga et al	:	
Application No. 10/026,964	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. 076507-0421	:	

This is a decision on the petition, filed May 27, 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 December 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 3635 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

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

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Paper No. 8

KENNETH S. BARROW
CENTERPULSE USA INC.
12 E GREENWAY PLAZA
SUITE 1000
HOUSTON, TX 77046-1203

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MAR 2 5 2004

OFFICE OF PETITIONS

In re Application of
Akella et al.
Application No. 10/027,015
Filed: December 21, 2001
Attorney Docket No. 2026-00400

ON PETITION

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

The petition is **DISMISSED**.

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

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed February 14, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. A three-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on July 14, 2002. A Notice of Abandonment was mailed on February 6, 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

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

under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.[2]

The instant petition lacks item (1). The Office acknowledges the timely declaration submitted by the petitioner on July 9, 2002. However, it did not include all of the missing items as listed on the Notice; i.e., substitute drawings in compliance with 37 CFR 1.84 and appropriate sequence listing. A copy of the Notice is enclosed for petitioner's convenience.

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

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

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the existing Customer Window located at:

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

The centralized facsimile number is **(703) 872-9306.**

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

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

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

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United States Patent and Trademark Office
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Paper No. 12

KENNETH S. BARROW
CENTERPULSE USA INC.
12 E GREENWAY PLAZA
SUITE 1000
HOUSTON, TX 77046-1203

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OFFICE OF PETITIONS

In re Application of	:	
Akella et al.	:	
Application No. 10/027,015	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. 2026-00400	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed May 27, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed February 14, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. A two-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on July 15, 2002. A Notice of Abandonment was mailed on February 6, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 2023
www.uspto.go

JJGJ.:04-03

Paper 4

WIGGIN & DANA
DOCKET COORDINATOR
ONE CENTURY TOWER
265 CHURCH STREET
NEW HAVEN CT 06508-1832

COPY MAILED

APR 1 7 2003

OFFICE OF PETITIONS

In re Application of
McQuade, et al. :
Application No. 10/027,146 : ON PETITION
Filed: 20 December, 2001 :
Attorney Docket No.: 102276-200 :

This is a decision on the petition filed (with fee) on 17 October, 2002, and considered under 37 C.F.R. §1.182[1] to change the name of name of the named inventor (Fran McQuade/Francis T. McQuade).

The Office regrets the delay in addressing this matter.

For the reasons set forth below, the petition under 37 C.F.R. §1.182 is **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.182 must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.182."

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

Petitioner is directed to the commentary at MPEP §§605.04 © and (g).

The instant petition is missing the affidavit of the inventor in question, signed by her under both names, and stating, *inter alia*, that there was no deceptive intent in the submission of the name in the incomplete form.

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[1] The regulations at 37 C.F.R. §1.182 provide:
§ 1.182 Questions not specifically provided for.
All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Commissioner, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in §1.17(h).
[47 Fed. Reg. 41278, Sept. 17, 1982, effective date Oct. 1, 1982; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

Petitioner is reminded to submit to the Assignment Division a corrected assignment document and cover sheet--as well as the appropriate fee--as set forth in 37 C.F.R. §1.21(h) for change of the assignment record.

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

By mail: (Effective 1 May, 2003)[2]
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-9199.

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

[2] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

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JJGJr: 06-03

Paper No: 6

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NEW HAVEN CT 06508-1832

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JUN 3 0 2003

OFFICE OF PETITIONS

In re Application of	:	
McQuade, et al.	:	ON PETITION
Application No. 10/027,146	:	
Filed: 20 December, 2001	:	
Attorney Docket No.: 102276-200	:	

This is a decision on the renewed petition filed (with fee) on 19 June, 2003, and considered under 37 C.F.R. §1.182[1] to correct the name of the named inventor (from Fran McQuade to Francis T. McQuade). (See: MPEP §605.04(c).[2])

The petition is **GRANTED**.

The statement of the inventor's name (formerly set forth in a nickname as Fran McQuade) will be corrected to FRANCIS T. MCQUADE.

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[1] The regulations at 37 C.F.R. §1.182 provide:

§ 1.182 Questions not specifically provided for.

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Commissioner, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in §1.17(h).
[47 Fed. Reg. 41278, Sept. 17, 1982, effective date Oct. 1, 1982; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

[2] The commentary at MPEP §605.04(c) provides in pertinent part:

605.04(c) Inventor Changes Name

In cases where an inventor's name has been changed after the application has been filed and the inventor desires to change his or her name on the application, he or she must submit a petition under 37 CFR 1.182. The petition should be directed to the attention of the Office of Petitions. The petition must include an appropriate petition fee and an affidavit signed with both names and setting forth the procedure whereby the change of name was effected, or a certified copy of the court order.

If the petition is granted, the application should be sent to the Office of Initial Patent Examination (OIPE) for change of name on the file wrapper and in the PALM database, unless the application is an 09/ series application, in which case the application should be sent to the assigned Technology Center (TC) for correction to the PALM bib-data sheet by the TC's technical support staff. If the application is assigned, applicant should submit a corrected assignment document along with a cover sheet and the recording fee as set forth in 37 CFR 1.21(h) to the Assignment Division for a change in the assignment record.

Petitioner is reminded to submit to the Assignment Division a corrected assignment document and cover sheet--as well as the appropriate fee--as set forth in 37 C.F.R. §1.21(h) for change of the assignment record.

This application is being forwarded to the Office of Initial Patent Examination Division to change Office records to reflect the correct statement of the inventor's name as FRANCIS T. McQUADE before being forwarded for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-9199.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GAC
Paper Number _____

Mailed: 11-6-06

In re application of :
LARICCHIA et al. : DECISION ON
Serial No. 10/027153 : PETITION
Filed: December 20/2001 :
For: Apparatus and process for Extracting Sulfur Compounds from a Hydrocarbon Stream

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. 1.181 filed October 16, 2006. The petition requests that the abandonment, as set forth in the Notice of Abandonment of September 27, 2006, for failure to timely file a proper reply to the Office letter of December 28, 2005 be withdrawn as the applicants did timely file a response thereto on March 28, 2006.

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicant's response was properly filed on March 28, 2006. Further, a subsequent response by the Examiner of record withdrawing the finality of the action dated December 28, 2005 was apparently not mailed.

Therefore, the application was never in-fact abandoned and any holding of abandonment for failure to timely file a proper response to the Office letter mailed on December 28, 2005 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 papers originally filed March 28, 2006 .

The Petition is **GRANTED**.

Marian Knode, Director
Technology Center 1700
Chemical and Materials Engineering

James C. Paschall
Honeywell Intellectual Property Inc
Patent Services
101 Columbia Drive
P O Box 2245 Mail Stop Ab/2b
Morristown, NJ 07962

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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August 20, 2008

Ivor R. Elrifi
MINTZ LEVIN
One Financial Center
Boston, MA 02111

Patent No: 7,037,906 B1
Application No: 10/027,186
Applicant: Francis Y. Lee
Issued: May 2, 2006
Title: **METHODS FOR MODULATING TUMOR GROWTH AND METASTASIS**

Request for Certificate of Correction:

Consideration has been given to your request for the issuance of a certificate of correction for the above- identified patent under the provisions of Rule 1.322/1.323.

The errors complained of in item # 56 of the title page cannot be corrected since: No 1449 on the record has cited the references proposed to be added.

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

However, further consideration will be given to your request in this matter upon receipt of a copy of the post card receipt and 1449 or 892 with the requested reference(s) which were considered by the Examiner.

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

vt

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August 20, 2008

Ivor R. Elrifi
MINTZ LEVIN
One Financial Center
Boston, MA 02111

Patent No: 7,037,906 B1
Application No: 10/027,186
Applicant: Francis Y. Lee
Issued: May 2, 2006
Title: **METHODS FOR MODULATING TUMOR GROWTH AND METASTASIS**

Request for Certificate of Correction:

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

The patent is in fact printed in accordance with the record in the Patent and Trademark Office, as passed to issue by the examiner. No 1449 on the record has cited the references proposed to add.

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

Further correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

V.
Virginia Tolbert
For Mary F. Diggs
Decisions and Certificate of Correction
(703) 308-8309 or (703) 308-9390 ext. 113

vt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 5

SANFORD ASTOR
SUITE 200
10507 WEST PICO BLVD.
LOS ANGELES, CA 90064

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MAY 1 3 2002

OFFICE OF PETITIONS

In re Application of
William Moulton, Steven Wolff,
Rod Schumacher, Andrew Bryant,
Marcy Hamilton, Strath Hamilton,
and Dana Taschner
Application No. 10/027,191
Filed: December 20, 2001
Attorney Docket No. 50770
Title: FILM LANGUAGE

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

This is in response to the petition, as refiled March 27, 2002 (original filed December 20, 2001), under 37 CFR 1.47(a). This petition was recently forwarded to the Office of Petitions for consideration.

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 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 December 20, 2001, with a declaration executed by joint inventors William Moulton, Steven Wolff, Rod Schumacher, Marcy Hamilton, Strath Hamilton and Dana Taschner; an added page to the declaration signed by inventor Marcy Hamilton on behalf of non-signing inventor Andrew Bryant; and the instant petition under §1.47(a) (and petition fee). Rule 47 applicants assert that status under §1.47(a) is proper because inventor Bryant refuses to execute the declaration. In support thereof, applicant submits a statement of facts of joint inventor Marcy Hamilton stating that non-signed inventor Bryant "was faxed the Specification and the Declaration to sign and I called him on the phone and spoke to him and he refused to sign the declaration. I spoke to him on the phone on December 14, 2001, and he refused to sign the Declaration unless he received certain sums of money."

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 instant petition does not satisfy requirements (1) and (2).

As to requirement (1), rule 47 applicant has not submitted adequate proof of refusal. The statement of facts submitted only shows that the inventor was presented with the specification and the declaration. Before a refusal can be alleged, applicants must demonstrate that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. 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. See MPEP 409.03(d). Evidence making clear that a copy of all of the application papers were sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney is required. Documentary evidence supporting co-inventor Hamilton's statement, such as copies of cover letters transmitting the application papers and certified mail return receipts, should be made part of the record.

If prior to the oral refusal on December 14, 2001 inventor Bryant was not presented with all of the application papers, then rule 47 applicants must now present those papers. In such case, an additional showing of direct refusal or refusal by conduct must also be shown.

As to requirement (2), the added page to the combined Declaration and Power of Attorney is not acceptable. Rule 47 applicants, thereby, indicate that only one of the available joint inventors is signing on behalf of the non-signing inventor. This is not acceptable. 37 CFR 1.47(a) and 35 U.S.C. 116, second paragraph, require all available joint inventors to file an application "on behalf of" themselves and on behalf of a joint inventor who "cannot be found or reached after diligent effort" or who refuses to "join in an application." Thus, in addition to other requirements of law (35 U.S.C. 111(a) and 115), in an application deposited in the U.S. Patent and Trademark Office pursuant to 37 CFR 1.47(a):

> (A) All the available joint inventors must (1) make oath or declaration on their own behalf as required by 37 CFR 1.63 or 1.175 (see MPEP §602, §605.01, and §1414) and (2) make oath or declaration on behalf of the non-signing joint inventor as required by 37 CFR 1.64. An oath or declaration signed by all the available joint inventors with the signature block of the non-signing inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the non-signing inventor(s), unless otherwise indicated.
>
> (Emphasis added).

On renewed petition, applicant must correct the following deficiencies:

1. Provide adequate proof of presentation of all of the application papers to inventor Bryant and if presentation is after December 14, 2001, of his subsequent refusal, consistent with the guidance set forth in MPEP 409.03(d)[1];

2. Supply an oath or declaration properly executed by all available joint inventors on behalf of themselves and on behalf of non-signing inventor Bryant (Rule 47 applicants are reminded that an oath or declaration with non-initialized/non-dated changes is unacceptable).

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

[1] 8th ed. (Rev. Aug 1, 2001).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Washington, D.C. 20231
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Paper No. 7

SANFORD ASTOR
SUITE 200
10507 WEST PICO BLVD.
LOS ANGELES, CA 90064

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JUL 0 2 2002

OFFICE OF PETITIONS

In re Application of
William Moulton, Steven Wolff,
Rod Schumacher, Andrew Bryant,
Marcy Hamilton, Strath Hamilton,
and Dana Taschner
Application No. 10/027,191
Filed: December 20, 2001
Attorney Docket No. 50770
Title: FILM LANGUAGE

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the "Request for Reconsideration under 37 CFR 1.47(a)," filed June 27, 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 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 December 20, 2001, with a declaration executed by joint inventors William Moulton, Steven Wolff, Rod Schumacher, Marcy Hamilton, Strath Hamilton and Dana Taschner; an added page to the declaration signed by inventor Marcy Hamilton on behalf of non-signing inventor Andrew Bryant; and a petition under §1.47(a)(and petition fee). The initial petition was dismissed for failure to submit adequate proof of the unavailability of the nonsigning inventor and for failure to submit an acceptable declaration.

On instant renewed petition, applicants replied filing a declaration executed by previously nonsigning inventor Bryant. An executed declaration by the nonsigning inventor is a proper reply to a dismissal under §1.47. However, a review of the declaration submitted reveals that it is not acceptable. As stated in the initial dismissal, an oath or declaration with non-initialized/non-dated changes is not acceptable. The declaration submitted includes non-initialized/non-dated changes to inventor Bryant's city of residence, city of mailing address and zip code. Accordingly, a new declaration is required.

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 10

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JUL 26 2002

OFFICE OF PETITIONS

SANFORD ASTOR
SUITE 200
10507 WEST PICO BLVD.
LOS ANGELES, CA 90064

In re Application of William Moulton, Steven Wolff, Rod Schumacher, Andrew Bryant, Marcy Hamilton, Strath Hamilton, and Dana Taschner Application No. 10/027,191 Filed: December 20, 2001 Attorney Docket No. 50770 Title: FILM LANGUAGE	DECISION NOTING JOINDER AND PETITION UNDER 37 CFR 1.47(a) MOOT

This is a decision on the "Request for Reconsideration under 37 CFR 1.47(a)," filed July 12, 2002.

The petition is **DISMISSED AS MOOT**.

The above-identified application was filed on December 20, 2001, with a declaration executed by joint inventors William Moulton, Steven Wolff, Rod Schumacher, Marcy Hamilton, Strath Hamilton and Dana Taschner; an added page to the declaration signed by inventor Marcy Hamilton on behalf of non-signing inventor Andrew Bryant; and the instant petition under §1.47(a)(and petition fee). The initial petition was dismissed for failure to submit adequate proof of the unavailability of the non-signing inventor and for failure to submit an acceptable declaration (Decision mailed May 13, 2002). A request for reconsideration with a declaration executed by inventor Bryant was filed on June 27, 2002; however, the request was dismissed because the declaration was rendered due to non-initialized/non-dated alterations (Decision mailed July 2, 2002).

On instant request for reconsideration, applicants timely replied filing a declaration executed by previously non-signing inventor Bryant. This declaration has been reviewed and found in compliance with 37 CFR 1.63.

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

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

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

Nancy Johnson

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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RICHMOND, HITCHCOCK, FISH & DOLLAR
P.O. Box 2443
Bartlesville OK 74005

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OCT 2 0 2005

OFFICE OF PETITIONS

In re Application of :
KHARE et al. :
Application No. 10/027,192 :
Filed: December 20, 2001 :
Attorney Docket No. 33872US :

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed October 18, 2004, to revive the above-identified application.

The petition is **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 file a reply within the meaning of 37 CFR 1.113 to the Final Office action of August 5, 2003, which set a shortened statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on February 6, 2004.

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

The proposed reply required for consideration of a petition to revive 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, 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).

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

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.

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 Amelia Au at (571) 272-7414.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions

Attachment: Advisory Action (PTOL-303)

UNITED STATES PATENT AND TRADEMARK OFFICE

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RICHMOND, HITCHCOCK, FISH & DOLLAR
P.O. Box 2443
Bartlesville OK 74005

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APR 14 2006

OFFICE OF PETITIONS

In re Application of
KHARE et al.
Application No. 10/027,192
Filed: December 20, 2001
Attorney Docket No. 33872US

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

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

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the Final Office action of August 5, 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 6, 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) and amendment under 37 CFR 1.114; (2) the petition fee under 37 CFR 1.17(m); and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of August 5, 2003 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have 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.

The petition fee of $1,500 filed on December 12, 2005 is unnecessary and will be refunded to petitioner's deposit account. The required petition fee of $1370 under 37 CFR 1.17(m) was timely submitted with the original petition dated October 18, 2004.

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.

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.

Amelia Au
Petitions Examiner
Office of Petitions

Cc: BRONWYN WELVAERT
CONOCO PHILLIPS CO. – I.P. LEGAL
P.O. BOX 2443
Bartlesville, OK 74004

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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3M INNOVATIVE PROPERTIES COMPANY
P O BOX 33427
ST. PAUL, MN 55133-3427

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AUG 23 2006

OFFICE OF PETITIONS

In re Application of	:	
Ranjani V. Parthasarathy et al	:	
Application No. 10/027,222	:	DECISION GRANTING PETITION
Filed: December 20, 2001	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 57314US002	:	

This is a decision on the petition, filed August 17, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on May 27, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 1743 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment.*

UNITED STATES PATENT AND TRADEMARK OFFICE

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AT & T LEGAL DEPARTMENT - BHGL
ATTN: PATENT DOCKETING ROOM 2A-207
ONE AT&T WAY
BEDMINSTER, NJ 07921

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DEC 07 2009

OFFICE OF PETITIONS

In re Application of	:	
Crockett et al.	:	DECISION ON PETITION
Application No. 10/027,224	:	TO WITHDRAW
Filed: December 20, 2001	:	FROM RECORD
Attorney Docket No. 8285-461	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 13, 2009.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Scott W. Brim on behalf of all practitioners of record associated with Customer Number 83808. The request cannot be approved since all practitioners of record were not appointed by Customer Number 83808. Accordingly, any subsequent request must reflect the withdrawal of practitioners in the same manner as appointed power of attorney.
The correspondence address will remain unchanged since the address provided with the petition herein is the same as the current address of record.

The application is abandoned for failure to respond to the Office action dated August 17, 2009.

The address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

cc: SCOTT W. BRIM
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No. 10

WADDEY & PATTERSON, P.C.
BANK OF AMERICA PLAZA
SUITE 2020
414 UNION STREET
NASHVILLE, TN 37219

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FEB 1 1 2004

OFFICE OF PETITIONS

In re Application of
Hewitt et al.
Application No. 10/027,225
Filed: December 26, 2001
Attorney Docket No. N8097

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 11, 2003, to revive the above-identified application. In view of the allegation in the petition of the timely filing of a reply and the evidence submitted in support thereof, the petition is more properly a petition under 37 CFR 1.181 requesting the withdrawal of the holding of abandonment in the above-identified application and has been so treated.

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

The above-identified application was held abandoned for failure to timely reply to the non-final Office action mailed February 25, 2003, which set a shortened statutory period for reply of three (3) months. A reply was due on or before May 25, 2003. A Notice of Abandonment was mailed on November 18, 2003.

Petitioner states that the reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of the return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USTPO) on September 3, 2003 of 1. Response and Amendment; and 2.Extension Fee with Check No. 14959 for $465.00. Additionally, petitioner has supplied a copy of the previously mailed correspondence which bears a certificate of mailing date of August 25, 2003.

The reply acknowledged as having been received in the USPTO on September 3, 2003 (certificate of mailing date of August 25, 2003) is not of record in the application file and cannot be located. However, MPEP 503 states that "A post card 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 reply was timely received in the USPTO but was apparently lost after receipt thereof.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee and none has been charged. After a review of the USPTO financial records, the three-month extension of time fee has never been collected. Accordingly, $465.00 will be charged to petitioner's deposit account as authorized.

The Office sincerely apologizes for the inconvinience caused the petitioner in this matter.

This application is being returned to Technology Center AU 2632 for further examination on the merits.

Telephone inquiries concerning this decision should be directed to Paralegal Liana Chase at (703) 306-0482.

Karen Creasy for

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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Paper No. 6

PEARSON & PEARSON, LLP
10 GEORGIA STREET
LOWELL, MA 01852

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MAY 07 2004
OFFICE OF PETITIONS

In re Application of :
Byrne, et al. :
Application No. 10/027,228 :
Filed: December 20, 2001 :
Attorney Docket No. 32181 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a) filed March 8, 2004.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the "Notice to File Missing Parts of Nonprovisional Application" ("Notice") mailed January 29, 2002. The Notice set an extendable period for reply of two months from its mailing date. No response was believed to have been received within the allowable period and the application became abandoned on March 29, 2002. A Notice of Abandonment was mailed on February 12, 2004.

A review of the application history revealed that the filing and claims fees and surcharge required by the Notice were, in fact, timely received on March 25, 2002.

The file is now 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) 305-0010.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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BURR & BROWN
P O BOX 7068
SYRACUSE, NY 13261-7068

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OFFICE OF PETITIONS

In re Application of	:
Yukihisa Takeuchi et al	:
Application No. 10/027,232	: DECISION GRANTING PETITION
Filed: December 20, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 782_208	:

This is a decision on the petition, filed January 24, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on March 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) 272-3218.

This matter is being referred to Technology Center AU 2821 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

---

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

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Paper No. 8

DELLETT AND WALTERS
P. O. BOX 2786
PORTLAND OR 97208-2786

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APR 07 2004

OFFICE OF PETITIONS

In re Application of
Glover
Application No. 10/027,252
Filed: December 21, 2001
Attorney Docket No. G-166
For: GLIDING DOOR, LATCH MECHANISM AND METHOD

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), and in the alternative, under 37 CFR 1.137(b), to revive the above-identified application. Both petitions were filed in the same paper on March 25, 2004.

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

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

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

This application was filed on December 21, 2001. On January 23, 2002, the Office mailed a Notice to File Missing Parts of Nonprovisional Application (Notice), setting forth a 2 month extendable period to submit the basic filing fee, an executed oath/declaration, a surcharge for their late filing, and substitute drawings in compliance with 37 CFR 1.84. The Office did not receive a timely reply. Thus, this application became technically abandoned on Marach 24, 2002. A Notice of Abandonment was mailed on November 24, 2003.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). The instant petition lacks item (3).

Regarding (3), petitioner has not shown to the satisfaction of the Commissioner that the entire delay from the due date of the reply to the filing of a grantable petition was unavoidable.

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 alleges that the delay in responding to the January 23, 2002 Notice was unavoidable because the inventor was beset with a number of health problems that had started by the time the January 23, 2002 Notice was mailed, continued until some point in 2002, and then resumed again in mid 2003.

Thus, petitioner asserts incapacitation as a cause of the delay. A showing of "unavoidable" delay based upon incapacitation must establish that the incapacitation was of such a nature and degree as to render the incapacitated person unable to conduct business (e.g., correspond with the Office) during the period between March 23, 2002 (the due date for responding to the January 23, 2002 Notice) to the present. Such a showing must be supported by a statement from the incapacitated person's treating physician, and such statement must provide the nature and degree of incapacitation during the above-mentioned period.

Petitioner has not provided independent supporting evidence of the debilitating nature of his health problems. Moreover, petitioner has stated that in 2003 he began working again. If petitioner could work at that point, petitioner was not completely incapacitated. Petitioner could have attended to his outstanding patent business. Petitioner's preoccupation with other matters which took precedence over the above-identified application does not constitute unavoidable delay. See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

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

In the alternative, petitioners request consideration under 37 CFR 1.137(b).

Petitioner has submitted $665.00 in petition fees. The petition fee for the petition under 37 CFR 1.137(a) is $55.00. This leaves only $610.00 to apply towards the fee owed for the petition under 37 CFR 1.137(b).

Any petition under this section must be accompanied by the petition fee. The payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

The phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R.Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770 ("[the fees set forth in this section are due on filing the petition"). Accordingly, the Commissioner is statutorily precluded from further review of the petition until the petition fee is paid in full.

The petition under 37 CFR 1.137(b) is dismissed. **Petitioner is strongly encouraged to submit $55.00**, which, taken with the $610.00 balance, will make the $665.00 petition fee.

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 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202

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

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

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. 10

DELLETT AND WALTERS
P. O. BOX 2786
PORTLAND OR 97208-2786

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MAY 2 4 2004

OFFICE OF PETITIONS

In re Application of :
Glover :
Application No. 10/027,252 :
Filed: December 21, 2001 :
Attorney Docket No. G-166 :
For: GLIDING DOOR, LATCH MECHANISM AND METHOD

ON PETITION

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

This application was filed on December 21, 2001. On January 23, 2002, the Office mailed a Notice to File Missing Parts of Nonprovisional Application (Notice), setting forth a 2 month extendable period to submit the basic filing fee, an executed oath/declaration, a surcharge for their late filing, and substitute drawings in compliance with 37 CFR 1.84. The Office did not receive a timely reply. Thus, this application became technically abandoned on March 24, 2002. A Notice of Abandonment was mailed on November 24, 2003.

Petitioner has submitted (1) a proper reply in the form of the basic filing fee, an executed declaration, a surcharge for their late filing, and substitute drawing figures, (2) the petition fee in full, and (3) an acceptable statement of the unintentional nature of the delay in responding to the January 23, 2002 Notice. The petition under 37 CFR 1.137(b) is **GRANTED**.

After the mailing of this decision, the application file will be returned to the Office of Initial Patent Examination for further processing.

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

Paper No. 14

ATTENTION: MARYSUSAN HOWARD
OFFICE OF INTELLECTUAL PROPERTY COUNSEL
3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

COPY MAILED

FEB 10 2003

OFFICE OF PETITIONS

In re Application of	:
Stephen L. Crooks, et al	:DECISION DISMISSING
Application No. 10/027,272	:PETITION UNDER 37 CFR
Filed: December 21, 2001	:1.78(a)(3) AND 37 CFR
Attorney Docket No. 54913US108	:1.78(a)(6)

This is a decision on the petition, filed November 25, 2002, which is being treated both 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. §§ 119(e) and 120 for the benefit of priority to nonprovisional Application Nos. 10/166,321, filed June 15, 2001 (converted from provisional Application No. 60/298,768) and 09/589,216, filed June 7, 2000, and provisional Application No. 60/138,365, filed June 10, 1999.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority 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 37 CFR 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 119(e) and 120 and 37 CFR 1.78(a)(2)(i)and 37 CFR 1.78(a)(5)(i) of the prior-filed application, 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

> **(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 information where there is a question whether the delay was unintentional.

The instant petition lacks item (1) above.

The "Preliminary Amendment," filed concurrently with the instant petition, contains the following language:

> Cross Reference to Related Applications
>
> This application is a continuation of U.S. Application No. 10/166,321, filed June 15, 2001, now pending, **which claims the benefit** of U.S. Application No. 09/589,216, filed June 7, 2000, issued as U.S. Patent No. 6,331,539 B1, which claims the benefit of Provisional Application No. 60/138,365, filed on June 10, 1999 [emphasis supplied].

The claim for benefit of the above-noted prior-filed applications cannot be entered at this time. In this regard, 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

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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).

states: "This application claims the benefit of Application No. 10/---, filed ---," does not comply with 37 CFR 1.78(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* Manual of Patent Examining Procedure (8th ed., August 2001), Section 201.11, Reference to First Application.

If nonprovisional Application No. 09/589,216, filed June 7, 2000, and provisional Application No. 60/138,365, filed June 10, 1999, which are the subject of the instant petition, are merely related applications, a mere cross reference to these related applications should be included in the specification following the title of the invention.

A further review of Office computer database records indicates that nonprovisional Application No. 10/166,321 lacks a common inventorship with the instant application and the other applications to which petitioner herein seeks priority. The statute requires that the applications claiming benefit of the earlier filing date under 35 U.S.C. § 119(e) or 120 be filed by an inventor or inventors named in the prior-filed nonprovisional or provisional application.

For the above-noted reasons, the petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) cannot be granted at this time.

If reconsideration of this decision is desired, and in order to expedite consideration thereof, petitioner may wish to submit the renewed petition by facsimile transmission to the number indicated below and to the attention of the undersigned.

The "Associate Power of Attorney" accompanying the instant petition has been made of record.

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

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.

This application is being forwarded to Technology Center AU 1625 for appropriate action on the reply received November 25, 2002 to the nonfinal Office action of July 29, 2002.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 16

DEAN A. ERSFELD
OFFICE OF INTELLECTUAL PROPERTY COUNSEL
3M INNOVATIVE PROPERTIES COMPANY
P.O. BOX 33427
ST. PAUL, MINNESOTA 55133-3427

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MAR 25 2003

OFFICE OF PETITIONS

In re Application of	:
Stephen L. Crooks, et al	: DECISION ON PETITION
Application No. 10/027,272	: UNDER 37 CFR 1.78(a)(3) AND
Filed: December 21, 2001	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 54913US108	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed by facsimile transmission on February 28, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications, and on the petition under 37 CFR 1.78(a)(6) for the claim under 35 U.S.C. §119(e) for the benefit of priority to a prior-filed provisional application.

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]

[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 application was filed on December 21, 2001 and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(3).

As to the benefit claim under 37 CFR 1.78(a)(6):

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the surcharge set forth in 37 CFR 1.17(t);

(2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional; and

(3) the reference to the prior filed provisional application supplied in an application data sheet (ADS)37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5)(i). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application seeks acceptance of a claim for priority under 35 U.S.C. §119(e) for the benefit of prior-filed provisional Application No. 60/138,365. Additionally, nonprovisional Application No. 09/589,216 was filed within twelve months of provisional Application No. 60/138,365, for which priority is now sought under the provisions of 37 CFR 1.78(a)(6). A reference to the prior-filed application has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Also, the reference to the prior-filed applications was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. §§ 120 and 119(e). Accordingly, having found that the instant

petition satisfies the conditions of 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

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

Any questions concerning this matter may be directed to Karen Creasy at (703) 305-8859 .

This application is being forwarded to Technology Center Art Unit 1625 for processing the amendment filed February 28, 2003, and for processing and 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 above-noted, prior filed nonprovisional 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 prior-filed provisional application, Application No. 60/138,365, filed June 10, 1999.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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AUG 19 2005

POPOVICH, WILES & O'CONNELL, PA
650 THIRD AVENUE SOUTH
SUITE 600
MINNEAPOLIS MN 55402

In re Application of	:	
Christopher Sean Van Winkle, et al	:	DECISION PETITION
Serial No.: 10/027,281	:	
Filed: December 30, 2004	:	
Title: Body Armor	:	

This is in response to applicants' petition filed May 12, 2005, to make the above-identified application special under the provisions of 37 CFR 1.102(d), as an invention for countering terrorism.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02 XI. Therefore the petition is **GRANTED**.

The application will be forwarded to the examiner for action on the merits commensurate with this decision.

Should there be any questions with regard to this letter please contact Frederick Schmidt by letter addressed to the Director, Technology Center 3700, or by telephone at (571) 272-0975 or by facsimile transmission at (571) 273-8300.

Frederick R. Schmidt

Frederick R. Schmidt, 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
www.uspto.gov

GENE W. ARANT
P.O. BOX 269
LINCOLN CITY, OR 97367-0269

COPY MAILED

APR 11 2005

OFFICE OF PETITIONS

In re Application of	:	
Freddie Levario	:	
Application No. 10/027,308	:	DECISION
Filed: December 21, 2001	:	ON PETITION
Title of Invention:	:	
METHOD AND A COUPLER FOR	:	
JOINING TWO STEEL PIPES	:	

This is a decision on the petition filed on November 5, 2004, pursuant to 37 C.F.R. § 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper response to the non-final Office action mailed May 12, 2003. This Office action set a shortened statutory period for reply of three (3) months from the mailing date of the action. No extensions of time pursuant to 37 C.F.R. § 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 13, 2003. A courtesy Notice of Abandonment was mailed on December 16, 2003.

With the instant petition, the petitioner filed a response to the non-final Office action, and met all other requirements for a grantable petition under 37 C.F.R. § 1.137(b). It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner **must** notify the Office.

The power of attorney and change of correspondence address filed November 5, 2004 is acknowledged and made of record.

The application file is being forwarded to Technology Center 3726 for consideration of the response filed November 5, 2004 and the supplement to the response filed November 8, 2004.

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

Nancy Johnson
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

OPPENHEIMER WOLFF & DONNELLY LLP
1400 Page Mill Road
Palo Alto, CA 94304-1124

MAILED

AUG 0 6 2003

Technology Center 2100

In re Application of: Harry A. LESLIE)
Application No. 10/027,309)
Filed: December 19, 2001)
For: METHOD AND SYSTEM FOR ROWCOUNT ESTIMATION WITH MULTI-COLUMN STATISTICS AND HISTOGRAMS)

DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY

This is a decision on the Request To Withdraw from Representation filed May 16, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

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

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

cc: Hewlett-Packard Company
Intellectual Property Administration
Attn: Bill Streeter
P.O. Box 272400
Fort Collins, CO 80527-2400

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

ROBERT K. TENDLER
65 ATLANTIC AVENUE
BOSTON, MA 02110

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MAY 01 2003

OFFICE OF PETITIONS

In re Application of
Mark A. Carlson et al
Application No. 10/027,325
Filed: December 20, 2001
Attorney Docket No. D-4560

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed April 7, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional applications.

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 surcharge set forth in 37 CFR 1.17(t);

(2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional; and

(3) the reference to the prior-filed provisional application supplied in an application data sheet (ADS)(37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. *See* 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5)(iii). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on December 20, 2001, within twelve months of the filing date of the prior-filed provisional applications, for which priority is claimed. A reference to the prior-filed provisional applications has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional applications 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 the prior-filed provisional applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior applications 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 applications. In order for the instant application to be entitled to the benefit of the prior applications, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

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

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

The application is being forwarded to Technology Center AU 3711 for processing the amendment submitted April 7, 2003 and for 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. 60/328,594, filed October 11, 2001, and provisional Application No. 60/328,617, filed October 11, 2001.[1]

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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[1]It is noted in the petition and the amendment filed April 7, 2003, that the filing date of October 10, 2001 was indicated instead of October 11, 2001, which is of record.

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OFFICE OF PETITIONS

CORPORATE PATENT COUNSEL
U.S. PHILIPS CORPORATION
580 WHITE PLAINS ROAD
TARRYTOWN, NY 10591

In re Application of :
Willem Bulthuis :
Application No. 10/027,331 : ON PETITION
Filed: December 20, 2001 :
Attorney Docket No. US 018199 :

This is a decision on the petition, filed September 6, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 9, 2004, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extension of time under the provisions of 37 CFR 1.136(a) was obtained. A Notice of Abandonment was mailed on November 2, 2005.

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 Wayne M. Serra 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 courtesy copy of this decision is being mailed to petitioner. However, if Mr. Serra desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While 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, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The petition 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 2683 for consideration of the response filed September 6, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: WAYNE M. SERRA
ULMER & BERNE LLP
1660 WEST 2ND STREET, SUITE 1100
CLEVELAND, OH 44113-1448

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DIW Dec-08

THEODORE MARTIN SIRKIN
23262 OXNARD STREET
WOODLAND HILLS CA 91367

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DEC 2 4 2008

In re Patent No. 6799732 :
Issue Date: 10/05/2004 :
Application Number: 10/027335 : ON PETITION
Filing Date: 12/19/2001 :
For: WATER SPRINKLER HEAD WITH :
INTEGRAL OFF-ON WATER FLOW :
CONTROL VALVE AND ADAPTIVE :
FITTINGS THEREFOR :

This is a decision in reference to the papers filed on October 30, 2008, which, in view of petitioner's assertion that the delay was unavoidable, are first treated as a petition under 37 CFR 1.378(b),[1] and in the alternative, as a petition under 37 CFR 1.378(c) to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition under 37 CFR 1.378(b) is **dismissed**.

The petition under 37 CFR 1.378(c) is **granted**.

The patent issued on October 5, 2004. The first maintenance fee could have been paid from October 5, 2007 through April 7, 2008, or, with a surcharge, from April 7, 2008 through October 5, 2008. The patent expired at midnight on October 5, 2008, for failure to timely pay the first maintenance fee.

Petitioner, *pro se*, states:

When the patent was granted on October 5, 2004, my patent

---

[1] A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must be include

(1) the required maintenance fee set forth in § 1.20(e) through (g);

(2) the surcharge set forth in §1.20(I)(1); and

(3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

> attorney, Robert Schaap, advised me via a letter dated November 2, 2004, that my first maintenance fee was due 4 years from date of patent issuance, the second fee was due 8 years after and the third fee due 12 years after. I entered those dates onto my patent file so that I would not miss them. Approximately, two months ago in mid-August, I contacted Mr. Schaap's office requesting the information I needed in order to make the payments. (Other than getting e-mails, I am not very computer literate.) He and his secretary assured me they would provide the information. For the next few weeks, I constantly nagged them every 3 or 4 days requesting that info so I could pay the fees. On October 4th, the day prior to the last day, I begged them to please e-mail or call me with that info. I also called Mr. Schaap on October 5th and left pleading messages for him to get back to me.
>
> Just prior to this time, Mr. Schaap's secretary went on part time with Mr. Schaap and took full time employment with another company. Apparently, she handled everything for him. In any event, not until October 8th, did she e-mail me the information that I needed to make my maintenance fee payment and that was 3 days too late. Mr. Schaap himself had no idea where to make the payments, only the secretary knew. As you can see by his November, 2004 letter, he did not even know that the payment was due 3 ½ years after issuance. Up until a few days ago, he even argued with me that the payment was not due without penalty until after 4 years from issuance.
>
> Had my attorney properly advised me that the maintenance fees were due 3 ½ years after issuance instead of four years, this problem would never had arisen because I would have made sure the fees were paid prior to the 3 ½ year mark just to avoid the $65.00 surcharge, not to mention the $1,640.00 surcharge. A copy of Mr. Schaap's November, 2004 letter is also enclosed with this letter. Also, find enclosed a copy of the e-mail dated October 8, 2008, from Liliana Zepeda, Mr. Schaap's secretary.

In the present communication, petitioner states that the amount for a petition for unintentional delay is being submitted "but under the circumstances, which were completely unavoidable on my part, it is requested that the Director grant the status of 'UNAVOIDABLE DELAY'." Accordingly, the petition will be treated under both 37 CFR 1.378(b) and 1.378(c).

PETITION UNDER 37 CFR 1.378(b).

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have

been "unavoidable".[2] A patent owner's failure to pay a maintenance fee may be considered to have been "unavoidable" if the patent owner "exercised the due care of a reasonably prudent person."[3] This determination is to be made on a "case-by-case basis, taking all the facts and circumstances into account."[4] Unavoidable delay under 35 U.S.C. § 41(b) is measured by the same standard as that for reviving an abandoned application under 35 U.S.C. § 133.[5] Under 35 U.S.C. § 133, the Director may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Director to have been "unavoidable". Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable.[6] However, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay.[7] In view of In re Patent No. 4,409,763,[8] this same standard will be applied to determine whether "unavoidable" delay within the meaning of 37 CFR 1.378(b) occurred.

35 U.S.C. § 41(c)(1) does not require an affirmative finding that the delay was avoidable, but only an explanation as to why the petitioner has failed to carry his or her burden to establish that the delay was unavoidable.[9] 35 U.S.C. § 133 does not require the Director to affirmatively find that the delay was avoidable, but only to explain why the applicant's petition was unavailing). Petitioner is reminded that it is the patentee's burden under the statutes and regulations to make a showing to the satisfaction of the Director that the delay in payment of a maintenance fee is unavoidable.[10]

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[2] 35 U.S.C. § 41(c)(1).

[3] Ray v. Lehman, 55 F.3d 606, 608-09 (Fed.Cir.), cert. denied, -- U.S. ---, 116 S.Ct. 304, L.Ed.2d 209 (1995).

[4] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

[5] In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (PTO Comm'r 1988).

[6] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

[7] Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

[8] 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd sub nom. Rydeen v. Quigg, 748 937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992).

[9] See Commissariat A. L'Energie Atomique v. Watson, 274 F.2d 594, 597, 124 USPQ 126, 128 (D.C. Cir. 1960).

[10] See Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff'd 937 F.2d 623 (Fed. Cir. 1991)(table), *cert. denied*, 502 U.S. 1075 (1992); Ray v. Lehman, supra.

As 35 USC § 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 USC § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees.[11] That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken by the responsible party to ensure the timely payment of the second maintenance fee for this patent.[12]

The showing of record has been carefully considered, but does not rise to the level of unavoidable delay.

At the outset, the showing of record is of a failure of communication between petitioner and his counsel regarding the submission of maintenance fees. Petitioner is reminded that the failure of communication between an applicant and counsel is not unavoidable delay.[13] Specifically, delay resulting from a lack of proper communication between a patent holder and a registered representative as to who bore the responsibility for payment of a maintenance fee does not constitute unavoidable delay within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b).[14] Moreover, the Office is not the proper forum for resolving a dispute as to the effectiveness of communications between parties regarding the responsibility for paying a maintenance fee.[15]

Further, with respect to petitioner's assertion that counsel did not properly assist petitioner in timely submitting the maintenance fee to the USPTO, the U.S. Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions.[16] Specifically petitioners' delay caused by the mistakes or negligence of their voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35

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[11] Ray, 55 F.3d at 609, 34 USPQ2d at 1788.
[12] Id.
[13] In re Kim, 12 USPQ2d 1595 (Comm'r Pat. 1988).
[14] See Ray v. Lehman, 55 F.3d 606, 610, 34 USPQ2d 1786, 1789 (Fed. Cir. 1995).
[15] Id.
[16] Link v. Wabash, 370 U.S. 626, 633-34 (1962).

U.S.C. § 41(c)(1) or 37 CFR 1.378(b).[17] Petitioner was not forced, but rather made a conscious decision to obtain the services of the chosen representative in payment of the maintenance fees for this patent, and therefore must be held accountable for his actions, or lack thereof, before the Office.

As petitioner has not shown that he exercised the standard of care observed by a reasonable person in the conduct of his or her most important business, the petition will be dismissed.[18]

PETITION UNDER 37 CFR 1.378(c)

This patent expired at midnight on October 5, 2008, for failure to pay the first maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

37 CFR 1.378(c) requires a statement that "the delay in payment of the maintenance fee was unintentional."

It is noted that petitioner states that "the circumstances causing the delay of the maintenance fees was *unavoidable* as opposed to being *unintentional*." (emphasis added). Petitioner is reminded that the "unavoidable" delay and "unintentional" delay standards are not alternatives: an "unavoidable" delay is the epitome of an "unintentional" delay.[19]

While the showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable, the showing of record is sufficient to establish that the delay until the filing of the instant petition was unintentional.

The statement appearing in the petition varies from the language required by 37 CFR 1.378(c)(3), However, as petitioner has submitted payment in the amount for a petition for acceptance of an unintentionally delayed payment of the maintenance fee, and provided a showing in support of a finding that the delay was unintentional, the statement will be construed as the statement required by 37 CFR 1.378(c)(3). If this is an incorrect reading

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[17] Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891

[18] See note 6, supra.

[19] See In re Maldague, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988).

of the statement appearing in the petition, petitioner must promptly notify the Office.

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

Receipt of the change of correspondence address filed with the subject petition is acknowledged. All future correspondence will be mailed to the new address of record. It is further noted that petitioner has asked that the fee address also be changed. Only an address represented by a Customer Number can be addressed as the fee address for maintenance fee purposes. A fee address should be established when correspondence related to maintenance fees should be mailed to a different address than the correspondence address for the application. As it is unknown whether petitioner has obtained a customer number, a Fee Address Indication Form and Request for Customer Number is attached for petitioner's convenience.

Telephone inquiries should be directed to the undersigned at 571-272-3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

PTO/SB/47
PTO/SB/125

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
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Paper No. 7

ELLIOT M. OLSTEIN
CARELLA BYRNE BAIN GILFILLAN
CECCHI STEWART & OLSTEIN
6 BECKER FARM ROAD
ROSELAND, NJ 07068-1739

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OCT 0 8 2002

OFFICE OF PETITIONS

In re Application of :
Beth A. Burnside et al :
Application No. 10/027,349 :
Filed: December 28, 2001 :
Attorney Docket No. 550750-200 :

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to the Initial Patent Examination Unit.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Richard L. Miller
12 Parkside Drive
Dix Hills, NY 11746-4879

Paper No. 9

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AUG 1 2 2005

OFFICE OF PETITIONS

In re Application of
Tetenes
Application No. 10/027,358
Filed: December 26, 2001
Attorney Docket No. TETJ13A

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 petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action (Paper No. 5) mailed September 12, 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 December 13, 2002.

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 Under 37 CFR 1.111; (2) the petition fee of $750; and (3) the required statement of unintentional delay. Accordingly, the reply to the non-final action of September 12, 2002 is accepted as having been unintentionally delayed.

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 required 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. Office at 88 and 103 (responses to comments 64 and 109 (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office)).

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

The application matter is being forwarded to Art Unit 3643 for further processing.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NOV 16 2004

Paper No. 6

In re Application of	:	
Theodore J. Bergman *et a*	:	
Application No. 10/027,371	:	DECISION ON PETITION
Filed: December 20, 2001	:	
Attorney Docket No. 52484.002	:	

This is a decision on the petition filed by facsimile transmission on June 3, 2004 by which petitioners request withdrawal of holding that this application stands abandoned for failure to file a proper and timely reply to the Office letter dated February 19, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioners allege that this application is not abandoned because petitioners did in fact file a proper and timely reply to the Office letter in question. Petitioners support this allegation by submitting a copy of the reply, and a copy of a request for a two month extension of time with authorization to charge a credit card for the extension fee. Petitioners have also included a copy of a transmittal letter for these items. The transmittal letter has affixed thereto a 37 CFR 1.8(a) certificate of transmission dated July 3, 2003, a date within the period for filing a reply to Office letter in question as extended by two months. Therefore, it is clear that this application is not abandoned. See 37 CFR 1.8(b). Office financial records do not show that the extension fees have been charged.

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 dated July 3, 2003 and the extension of time filed therewith. A two month extension of time fee is to be charged in accordance with the credit card authorization form that was also filed on July 3, 2003. Thereafter, the application will be forwarded to the examiner for immediate action.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Sean M. Casey Co., L.P.A.
Attention: Sean M. Casey
P.O. Box 710
New Albany, OH 43054-0710

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3-20-06

TO SPE OF : ART UNIT 3723

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/027371 Patent No.: 6971149

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**.

Please check Inventor's info / fig 2

E Young

Certificates of Correction Branch

703-308-9390 ext. 117

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: Inventor's info & Fig 2 correction approved.

RC Watson 5/15/06

Joseph J. Hail

SPE

3723

Art Unit

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KUDIRKA & JOBSE, LLP
ONE STATE STREET
SUITE 800
BOSTON MA 02109

In re Application of	:	
Chandrashekhar Pathak	:	
Application No. 10/027,374	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. SBI-082-CIP	:	

This is a decision on the petition, filed August 9, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on September 12, 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 1615 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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RISSMAN JOBSE HENDRICKS & OLIVERIO, LLP
ONE STATE STREET
SUITE 800
BOSTON MA 02109

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OFFICE OF PETITIONS

In re Application of	:	
Chandrashekhar Pathak	:	DECISION ON PETITION
Application Number: 10/027374	:	
Filing Date: 12/21/2001	:	
Attorney Docket Number: SBI-082-CIP	:	

This is a decision on the petition under 37 CFR 1.183, filed on 30 April, 2007, which is being treated as a petition requesting waiver of 1.63 and 1.67 in that they require the signature of all inventor(s) on a supplemental declaration.

The petition is **GRANTED**.

Petitioners have supplied a supplemental declaration in compliance with 37 CFR 1.63 and 1.67 listing the named inventor, Chandrashekhar Pathak, signed on behalf of the inventor by Kevin Klemz, Secretary of the Assignee. Additionally, petitioners have shown that despite diligent efforts, the non-signing inventor could not be reached. Petitioners have also demonstrated that petitioner has a proprietary interest in the application, and that such action is needed to preserve the rights of the parties.

In view of the efforts recounted in the petition to obtain the signature of Chandrashekhar Pathak, it is agreed that justice would be served by waiving the requirement for his signature on the supplemental declaration filed on 30 April, 2007.

The petition fee has been received.

The aforementioned supplemental declaration has been accepted, on petition, and placed in the file.

The application will be referred to Technology Center Art Unit 1615 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 5

ROSENBAUM & ASSOCIATES, P.C.
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OFFICE OF PETITIONS

In re Application of :
Bonsignore et al. :
Application No. 10/027,387 :
Filed: December 20, 2001 :
Attorney Docket No. 5037-001 :

ON PETITION

This is a decision on the petition under 37 CFR 1.10 filed February 25, 2002, to accord the above-identified application a filing date of December 19, 2001, instead of December 20, 2001. This is also a decision on the petition under 37 CFR 1.183, filed February 25, 2002, requesting waiver of 37 CFR 1.10.

The petition under 37 CFR 1.10 is **dismissed**.

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

Facts:

The instant application is a continuation-in-part of 09/721,074, which was filed on November 22, 2000, and was pending on both December 19, 2001, and December 20, 2001.

At the main Chicago post office, the last pick up from any Express Mail drop box is 9:00 p.m. The main Chicago post office is the only twenty-four hour facility in Chicago. Therefore, if one waits until after 9:00 a.m. to mail an Express Mail Package, "the only possible manner for complying with 37 C.F.R. §1.10 is to actually deliver the filing with a postal service employee [at the main Chicago post office]."[1]

The instant application, along with the Express Mail package, was not prepared until 11:30 p.m. on December 19, 2001. The attorney left the office and arrived at the post office at approximately 11:45 p.m. The attorney arrived at the transaction counter at 11:50 p.m. The line held approximately 20-25 persons with multiple Holiday packages. Only one employee was working at the counter. The attorney decided he would not reach the counter by midnight and chose to deposit the application in a drop-box. The application was deposited at 11:51 p.m. The last scheduled pick up for the drop-box was prior to 11:51 p.m.

Petitioner requests a filing date of December 19, 2001, rather than December 20, 2001.

[1] Petition, page 2.

The instant petition is not accompanied by a showing in compliance with 37 CFR 1.10.

37 CFR 1.10(d) requires "the correspondence [to be] deposited in the 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day."

Petitioner has failed to establish that the correspondence was deposited in the receptacle prior to the last scheduled pickup for December 19, 2001.

Petitioner has failed to provide a showing that an extraordinary situation exists such that justice requires waiver of 37 CFR 1.10.

The Law:

In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate the existence of an extraordinary situation where justice requires waiver of one or more federal regulations. It is the responsibility of the Commissioner to determine the definitions of the terms "extraordinary" and "as justice requires" as the terms are used in 37 CFR 1.183.[2] The Commissioner drafted the federal regulations which may be waived including 37 CFR 1.183. The Commissioner is the party responsible for determining when a party has demonstrated that an "extraordinary" situation exists such that "justice requires" waiver of a federal regulation.

In determining when waiver is appropriate, the Office *may* consider the circumstances when courts have exercised their equitable powers to waive requirements of a statute or regulation on behalf of a party. Courts are permitted to waive certain statutory requirements such as statutory time limits.[3] Courts, in determining when waiver is proper, have required due diligence and have required more than a "garden variety claim of excusable neglect."[4] The Federal Circuit has stated, "Equitable powers . . . should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable due care and diligence."[5] Factors which may not justify

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[2] See Bowles, Price Administrator v. Seminole Rock & Sand Co., 325 U.S. 410, 413-414, 89 L. Ed. 1700, 1702, 65 S. Ct. 1215, 1217 (1945) ("Since this involves the interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. . . . [T]he ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.") "In the specialized field of patent law, ... the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. His interpretation of those provisions is entitled to considerable deference." Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA)1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir. 1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1425, 7 U.S.P.Q.2d (BNA) 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")).

[3] See Wood-Ivey Sys. Corp. v United States, 4 F.3d 961, 964 (Fed. Cir. 1993) (Plager, J., concurring) ("Since Irwin [v. Department of Veterans Affairs, 498 U.S. 89, 112 L. Ed. 2d 435, 111 S. Ct. 453, (1990)], compliance with statutory time limits is no longer jurisdictional, in the old sense that when a Congressionally specified time limit had expired a court had no power to entertain the case. The presumption is now to the contrary. The court has jurisdiction to entertain the suit and to determine on the merits if equitable relief from the time bar is warranted.")

[4] See Wiggins v. State Farm Fire and Casualty Co., 153 F. Supp. 2d 16, 21 (D. D.C. 2001) ("A court can equitably toll the statute of limitations . . . plaintiff will not be allowed extra time to file unless he has exercised due diligence, and the plaintiff's excuse must be more than a 'garden variety claim of excusable neglect.'") (citations omitted).

[5] U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983) (citations omitted) ("Lockheed had several means at its disposal which it could have employed to guarantee compliance with the regulation, yet it neglected to use any of them. Equitable powers . . . should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable due care and diligence."); See also: Grymes v. Sanders et al., 93 U.S. 55, 61; 23 L. Ed. 798, 801 (1876)

tolling include: pro se status, illiteracy, deafness, lack of legal training, lack of knowledge of the law, lack of knowledge of a legal process, and lack of legal representation.[6] An attorney's lack of knowledge, misinterpretation of a law, miscalculation of a time period, and failure to exercise due care and diligence will not justify waiver.[7]

Application of the law to the instant facts:

Waiver of 37 CFR 1.10 is inappropriate unless petitioner can demonstrate that failure to waiver the rule will result in actual harm to petitioner AND that petitioner exercised reasonable care and diligence.

Petitioner has not demonstrated that the application will be denied patentability due to the later filing date. The fact that it *might* be denied patentability is insufficient.[8] Petitioner has not shown that the assignment of the December 20, 2001 filing date to the application has resulted in any actual harm to petitioner. If the patentability of the application is not affected by the assignment of a later filing date, then justice does not require waiver of the rule.

Assuming that petitioner can demonstrate that failure to assign the date requested will result in actual harm, why was the application not fully prepared prior to 11:30 p.m. on December 19, 2001? As stated in the petition, if one waits until after 9:00 a.m. to mail an Express Mail Package, "the only possible manner for complying with 37 C.F.R. §1.10 is to

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("Mistake, to be available in equity, must not have arisen from negligence. . . . The party complaining must have exercised at least the degree of diligence 'which may be fairly expected from a reasonable person.') (citing Kerr on Fraud and Mistake, 407); Garcia v. Office of Personnel Management, 2001 U.S. App. LEXIS 21616, 6 (Fed. Cir. 2001) ("Equity will not intervene, however, to protect a claimant from his or her own failure to exercise due diligence in preserving their legal rights.") (citing Irwin v. Department of Veterans Affairs, 498 U.S. 89, 95 (1990)); Goetz & Goetz v. Secretary of Health and Human Services, 2001 U.S. App. LEXIS 943, 5 (Fed. Cir. 2001) ("the special master's finding of a lack of due diligence was not arbitrary, capricious, or an abuse of discretion, and precludes the application of equitable tolling.") (citing Baldwin County Welcome Ctr. V. Brown, 466 U.S. 147, 151, 80 L. Ed. 2d 196, 104 S. Ct. 1723 (1984) which states, "One who fails to act diligently cannot invoke equitable principles to excuse their lack of diligence.")

[6] See Felder v. Johnson, 204 F.3d 168 171-172 (5th Cir. 2000) (Pro se status is not "rare and exceptional" circumstance, but is typical of those bringing a 28 U.S.C. § 2254 claim. "Mere ignorance of the law or lack of knowledge of filing deadlines does not justify equitable tolling or other exceptions to a law's requirements.") (citing United States v. Flores, 981 F.2d 231, 236 (5th Cir. 1993) as "holding pro se status, illiteracy, deafness, and lack of legal training are not external factors excusing abuse of the writ."; citing Barrow v. New Orleans S.S. Ass'n, 932 F.2d 473, 478 (5th Cir. 1991) as "holding equitable tolling . . . within the Age Discrimination in Employment Act not warranted by plaintiff's unfamiliarity with legal process, his lack of representation, or his ignorance of his legal rights.", (other citations omitted)).

[7] See Harris v. Hutchinson, 209 F.3d 325, 330-331 (4th Cir. 2000) (Plaintiff argues that he relied on "negligent and erroneous advice" of his attorney. Attorney agrees his advice was erroneous. The court holds, "[A] mistake by a party's counsel in interpreting a statute of limitations does not present the extraordinary circumstance beyond the party's control where equity should step in to give the party the benefit of his erroneous understanding.") (citing Taliani v. Chrans, 189 F.3d 597, 598 (7th Cir. 1999) as "holding that a lawyer's miscalculation of a limitations period is not a valid basis for equitable tolling."; citing Sandvik v. United States, 177 F.3d 1269, 1272 (11th Cir. 1999) (per curiam) as "refusing to toll the limitations period where the prisoner's delay was assertedly the result of a lawyer's decision to mail the petition by ordinary mail rather than to use some form of expedited delivery."; citing Gilbert v. Secretary of Health and Human Services, 51 F.3d 254, 257 (Fed. Cir. 1995) as "holding that a lawyer's mistake is not a valid basis for equitable tolling."; other citations omitted.)

[8] See Nitto Chemical Industry. Co., Ltd. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) ("As a final matter, Nitto suggests that its patent applications have been prejudiced by the Commissioner's failure to give the applications a filing date of February 28, 1991. Opp. at 9. The Commissioner has acknowledged that, without the benefit of the foreign patent filing date of February 28, 1990, the patentability of Nitto's inventions could be adversely affected. Motion at 4. However, Nitto did not submit evidence showing that the inventions claimed in the two applications have been, or will be, denied patentability over applications filed between February 28, 1990, and May 2, 1991. Reply at 3-4. Thus, the Commissioner had no basis on which to determine whether "justice required" him to award Nitto's applications the earlier filing date.")

actually deliver the filing with a postal service employee [at the main Chicago post office]."[9] Petitioner could have avoided being forced into such a situation by preparing the application on an earlier date or at an earlier time. When was the first date that petitioner learned of the need to file the instant application? What steps were taken at that time to ensure the application would be filed timely?

Those who file at the end of a statutory bar year (35 U.S.C. 102(b)) or a priority year (35 U.S.C. 119) or who delay filing a continuing application until the last possible day for establishing continuity (35 U.S.C. 120 or 121), do not leave any opportunity to overcome any error which might occur in filing the application. In this case, petitioner risked a line at the post office during the Christmas holiday season. Petitioner also risked other problems at the post office or traffic delay. How many other packages had been mailed during prior Christmas holiday seasons between 11:50 p.m. and 12:00 p.m.? Had problems existed before? Should petitioner had anticipated problems such as possible long lines, lack of adequate employees at the counter, etc.?

A party exercising due care would not wait to file the application until the last ten minutes if the filing date was essential. Petitioner was aware, or should have been aware, that waiting until the last moment would preclude the use of a dropbox after the last scheduled pickup of the day. The Office stated in a final rulemaking package in 1983,

> Comment: One person questioned what treatment will be accorded a paper placed in an 'Express Mail' box receptacle after the box has been cleared for the last time on a given day.
>
> Reply: The paper will be considered to be deposited as of the date of receipt indicated on the 'Express Mail' mailing label by the Postal Service clerk.[10]

An applicant may delay action until the end of a time period.. In doing so, however, the applicant must assume the risk attendant to such delay. Petitioner was aware the application needed a filing date of December 19, 2001 but waited until 11:51 to arrive in line at the post office.

Petitioner has failed to establish that justice requires waiver of the rule.

Since the petition lacks a showing that this is an extraordinary situation in which "justice requires" suspension of the rules, the petition under 37 CFR 1.183 is subject to dismissal.

Conclusion:

Congress, through 35 USC 21, chose to allow the Commissioner, at his discretion, to create rules which would allow the filing date to be the date of deposit with the USPS, rather than the date of receipt by the Patent and Trademark Office. The Commissioner had the responsibility of deciding exactly what group of applications would be accorded a filing date as of the date of receipt by the Office and which group would be given a filing date as of the date of deposit with the USPS. The Commissioner chose to allow the second group to only be comprised of applications mailed in compliance with 37 CFR 1.10. The purpose of 37 CFR 1.183 is to deal with extraordinary circumstances where justice requires waiver of a rule, not to expand the size of the second group by circumventing 37 CFR 1.10. Petitioner has failed to establish that this is an extraordinary situation where justice requires waiver of the rule.

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[9] Petition, page 2.

[10] 48 Fed. Reg. 2696-2714 (January 20, 1983), 1027 Off. Gaz. Pat. & TM Office 9 (February 1, 1983).

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

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

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Paper No. 6

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OFFICE OF PETITIONS

In re Application of :
William A. McMillan et al :
Application No. 10/027,404 :
Filed: December 19, 2001 :
Attorney Docket No. 020048-003340US :

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

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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TECHNOLOGY CENTER 3600

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In re application of
Chen Li et al.
Application No. 10/027,406 :
Filed: December 12, 2001 :
For: IDENTIFIER MANAGEMENT IN MESSAGE TRANSMISSION SYSTEM :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on January 27, 2005, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

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

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

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

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

The request to withdraw as attorney in the above-identified application is not approved because the request does not comply with Item B).
No reason was provided by referencing a **specific** portion of 37 CFR 10.40. Please reference a specific portion of 37 CFR 10.40(c) a reason is required for approval.

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
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KJD/slb: 03/16/05

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Paper No: __

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OFFICE OF PETITIONS

In re Application of
Li, et al. :
Application No. 10/027,406 : ON PETITION
Filed: 19 December, 2001 :
Attorney Docket No. 12218-003001 :

This is a decision on the renewed petition filed on 28 July, 2005, to revive the above-identified 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 **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 29 November, 2004, with reply due under a non-extendable deadline on or before 28 February, 2005;
- the application went abandoned by operation of law after midnight 28 February, 2005;
- the Office mailed the Notice of Abandonment on 9 June, 2005;

- with the instant petition with fee, Petitioner filed an amendment as the reply, and made the statement of unintentional delay.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[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.

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, the statement (and possibly a showing) of unintentional delay, a proper reply, and–where

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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.

appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

Petitioner has satisfied the requirements of 37 C.F.R.§1.137(b).

CONCLUSION

Accordingly, the instant petition under 37 C.F.R. §1.137(b) hereby is **granted**.

The instant application is released to Technology Center 3600 for further processing in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

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

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Paper No.

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
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In re Application of	:	
Li et al.	:	
Application No. 10/027,406	:	DECISION ON PETITION
Filed: December 19, 20018	:	PURSUANT TO
Attorney Docket No.:	:	37 C.F.R. § 1.137(B)
2222.4300000	:	
Title: IDENTIFIER MANAGEMENT	:	
IN MESSAGE TRANSMISSION	:	
SYSTEM	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed August 13, 2008, to revive the above-identified application.

This petition pursuant to 37 C.F.R. § 1.137(b) is **DISMISSED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed November 18, 2005, 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 February 19, 2006. A notice of abandonment was mailed on May 31, 2006.

With this petition, Applicant has submitted the petition fee, the required statement of unintentional delay, an amendment, and a single sheet of drawings. The first and second requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

1 See Rule 1.137(d).

Regarding the third requirement, Applicant has not established that the entire period of delay was unintentional. It is noted that the present petition was not filed until more than two years and two months had passed since the mailing of the notice of abandonment. It is not clear why the Applicant chose to take no course of action for such a long period of time. It does not appear that any action was taken to further the prosecution of this application, subsequent to the mailing of the notice of abandonment on May 31, 2006, for more than two years and two months.

As such, it appears that the Applicant intentionally allowed this application to go abandoned. The extended inaction of the Applicant appears to be intentional.

A discussion follows.

In order for a petition under 37 C.F.R. § 1.137(b) to be granted, the holder of the rights to the application must have unintentionally allowed the application to go abandoned, and a delay resulting from a deliberately chosen course of action on the part of the applicant is not an "unintentional" delay within the meaning of 37 C.F.R. § 1.137(b).

The periods of delay:

There are three periods to be considered during the evaluation of a petition under 37 C.F.R. § 1.137(b):

(1) the delay in reply that originally resulted in the abandonment;
(2) the delay in filing an initial petition pursuant to 37 C.F.R. § 1.137(b) to revive the application; and
(3) the delay in filing a grantable petition pursuant to 37 C.F.R. § 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) or (2).

As to Period (1), the patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a

fee of $500 or a fee of $50 **would not be granted where the abandonment** or the failure to pay the fee for issuing the patent **was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Commissioner to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 C.F.R. § 1.137(b)(3) provides that a petition under 37 C.F.R. § 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here there is a question whether the initial delay was unintentional, the Applicant must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.137(b). See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay of more than two years and two months in resuming prosecution, there is a question whether the entire delay was unintentional. Applicant should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 C.F.R. § 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment. That party, in turn must explain what effort(s) was made to reply to the outstanding Office action and further, why no reply was filed. If no effort was made to reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). **Both Applicant and the attorney of record should explain why this application became abandoned subsequent to the mailing of the non-final Office action of November 18, 2005. Statements from both the Applicant and the attorney of record must be provided. It must be explained why no response was submitted to this Office action for such an extended period of time.**

As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996)(unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2), where the applicant deliberately chose not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 C.F.R. § 1.137(b).[2]

The language of both 35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.137(b) are clear and unambiguous, and furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 C.F.R. § 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated clear that any protracted delay (here, more than two years and two months) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. See Lawman Armor v.

2 See MPEP § 711.03(c).

Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. **Statements are required from Applicant and the attorney of record, explaining why this petition was not filed sooner.**

Moreover, Applicant must explain what prompted the decision to advance the prosecution of this application after the passage of so much time.

Punctuality and Due Diligence:

For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Louden, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894).

Similarly, an invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R.§§1.181, 182, 183.

The lengthy period of inaction does not appear to be consistent with the requirements of punctuality, due diligence, good faith, and the encouragement of reasonable promptness.

On renewed petition, each of these issues will need to be addressed, and statements from both the Applicant and the attorney of record must be included, if it is to be established that the entire period of delay was unintentional.

Applicant is reminded that any statement of facts should be made by one having firsthand knowledge of the facts set forth therein.

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 pursuant to 37 C.F.R. § 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C § 704.

Thereafter, there will be no further reconsideration of this matter.[3]

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] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[7]

If responding by mail, Applicant 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.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[8] All other inquiries concerning examination procedures should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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3 If, on request for reconsideration, Applicant fails to satisfy the showings burden required: (a) the resulting decision may be one viewed as final agency action; and (b) provisions for reconsideration, such as those at 37 C.F.R. § 1.137(e), will **not** apply to that decision.
4 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.
7 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
8 Applicant 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, Applicant is reminded that no telephone discussion may be controlling or considered authority for Applicant's further action(s).

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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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	:	
Himanshu PATEL, et al	:	
Application No. 10/027,418	:	DECISION ON PETITION
Filed: December 19, 2001	:	TO WITHDRAW
Attorney Docket No. 018489-002510US	:	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 October 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. 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 cannot be approved because there is no indication that the acts noted above have been performed.

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 the undersigned at 571-272-6735.

Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: POPOVICH, WILES & O'CONNELL, PA
650 THIRD AVENUE SOUTH, SUITE 600
MINNEAPOLIS, MN 55402

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 27, 2006

TO SPE OF : ART UNIT 2835

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/027442 Patent No.: 6,965,513

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: _____

LYNN FEILD

~~SUPERVISORY PATENT EXAMINER~~

SPE **Art Unit**

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON, MA 02210

Mail Date: 05/04/2010

Applicant	: Susan M. Coatney	: DECISION ON REQUEST FOR
Patent Number	: 7650412	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/027,457	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/21/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **943** 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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WASHINGTON, D.C. 2023
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Technology Center 2100

Paper No. 6

Gregory D. Caldwell
BLAKELY, SOKOLOFF, TAYLOR &
ZAFMAN LLP
12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1026

In re Application of:	)	
Alex Apollonsky	)	
Application No. 10/027,471	)	**DECISION ON REQUEST FOR**
Filed: December 21, 2001	)	**WITHDRAWAL AS ATTORNEY**
For: CONTEXTUAL RELEVANCE ENGINE KNOWLEDGE DELIVERY SYSTEM	)	

This is a decision on the Request To Withdraw from Representation filed February 05, 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 February 05, 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: THE PROCTER & GAMBLE CO.
INTELLECTUAL PROPERTY DIVISION
Winton Hill Technical Center - Box 161
6110 Center Hill Avenue
Cincinnati, OH 45224

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THE PROCTOR & GAMBLE CO.
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI OH 45224

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MAY 25 2006

OFFICE OF PETITIONS

In re Application of
Alex Appolonsky et al.
Application No. 10/027,471
Filed: December 21, 2001
Attorney Docket No.: **002659.P016**

ON PETITION

This is a decision on the petition filed February 23, 2006, 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 August 10, 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 November 12, 2004. Accordingly, a Notice of Abandonment was mailed March 7, 2005.

This matter is being referred to Technology Center 2164 for appropriate action on the amendment filed February 23, 2006.

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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[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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LAHIVE & COCKFIELD
28 STATE STREET
BOSTON MA 02109

In re Application of
Boehm, et al.
Application No. 10/027,484
Filed: December 21, 2001
Attorney Docket No. CVZ-001b

DECISION GRANTING
PETITION

This is a decision on the petition under 37 CFR 1.53(e), filed May 9, 2002 (certificate of mailing date April 30, 2002), requesting, in effect, withdrawal of the January 31, 2002 Notice to File Missing Parts of Nonprovisional Application (Notice) .

The application was deposited on December 21, 2001. On January 31, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners, *inter alia*, that drawing figures 20a-c and 21a-c described in the specification appeared to have been omitted.

In response to the Notice, on May 9, 2002 (certificate of mailing date April 30, 2002) petitioners filed the present petition, an executed declaration with the surcharge for its late filing, a petition for a one month extension of time and required fee, and 15 sheets of substitute drawings. Petitioners request that drawing figures 20a-c and 21a-c be accorded a filing date of December 21, 2001 on the basis that 14 sheets of drawing figures, including drawing figures 20a-c and 21a-c, were received in the Patent and Trademark Office (PTO) on December 21, 2001. In support, the petition is accompanied by a copy of applicants' Express Mail label with a date-in of December 21, 2001 and a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing December 21, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing included 14 sheets of drawings.

Petitioners are advised that the provisions of 37 CFR 1.10(e) cannot be utilized to prove the contents of a mailing. MPEP 513 states, "Where there is a dispute as to the contents of correspondence submitted to the Office,...an applicant may not rely upon the provisions of 37 CFR 1.10(e) to establish what document(s)... were filed in the Office with such correspondence. Rather, where the records of the Office (e.g. the file of the application) contain any document(s)... corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g., a postcard receipt under MPEP 503 containing specific itemization of the document(s)... purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s).. that is not among the official records of the Office."

Fortunately, petitioners have supplied their date stamped itemized postcard. The return postcard constitutes *prima facie* evidence that 14 sheets of drawing figures, including drawing figures 20a-c and 21a-c, were filed on December 21, 2001. MPEP 503. In addition, a review of the application papers in the file reveals that drawing figures 20a-c and 21a-c were present, albeit not with officially recognized labels. Accordingly, the request is granted.

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

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of December 21, 2001, using the 15 sheets of substitute drawings filed with the instant petition.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.

E. Shirene Willis

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

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Paper No. 11

Jon E. Hokanson
Small Larkin, LLP
18th Floor
10940 Wilshire Boulevard
Los Angeles, CA 90024

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OFFICE OF PETITIONS

In re Application of
Russell Morgan and Adam Hemsley
Application No. 10/027,485
Filed: December 21, 2001
Title of Invention: SECURE POINT-OF-SALE CELLULAR TELEPHONE DOCKING MODULE SYSTEM

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to the renewed petition under 37 CFR 1.47(a), filed December 20, 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 after having been presented with the application papers. Specifically, the petition attest a copy of the application was sent to non-signing inventor's last known address. Receipt of the application papers was confirmed via a signed return receipt. The non-signing inventor's' failure to respond to the application mailing sufficiently establishes that they refuse 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.

The Office apologizes for the delay in responding to the renewed petition which was not timely matched with the application file. Accordingly, the Notice of Abandonment is **withdrawn** as petitioner did in fact timely respond to the October 21, 2002 decision.

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

Charlema R. Grant
Petitions Attorney
Office of Petitions

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SEP 1 0 2003

OFFICE OF PETITIONS

Adam Hemsley
86 Lyon Street
Amsterdam, NY 12010

In re Application of
Russell Morgan and Adam Hemsley
Application No. 10/027,485
Filed: December 21, 2001
Title of Invention: SECURE POINT-OF-SALE CELLULAR TELEPHONE DOCKING MODULE SYSTEM

LETTER

Dear Mr. Hemsley:

You Adam Hemsley 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, applicant (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).

Charlema R. Grant

Charlema Grant
Petitions Attorney
Office of Petitions

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Paper No. 8

Jon E. Hokanson
Small Larkin, LLP
18th Floor
10940 Wilshire Boulevard
Los Angeles, CA 90024

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OFFICE OF PETITIONS

In re Application of
Russell Morgan and Adam Hemsley
Application No. 10/027,485
Filed: December 21, 2001
Title of Invention: SECURE POINT-OF-SALE CELLULAR TELEPHONE DOCKING MODULE SYSTEM

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

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

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

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application**. Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on December 21, 2001, without an executed oath or declaration. Accordingly, on January 30, 2002, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a $65.00 surcharge for its late filing.

In response, on April 9, 2002, applicant filed a $65.00 surcharge, a partially executed oath and the present petition. The petition was dismissed on July 23, 2002 for not providing sufficient evidence inventor Hemsley was provided with a copy of the entire application and was given an opportunity to join the application.

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) rule 47 applicant indicates a copy of the complete application was sent via certified mail to inventor Hemsley at his last known address. Applicant also indicates receipt was confirmed with the return receipt. However, although applicant indicates documentary evidence has been provided to establish the mailing and receipt of the application papers, such documentary evidence has not been provided with the petition. It should also be noted the petition has not been executed as such the Office

can not consider the petition as having been ratified. See 37 CFR 1.4. A phone call to obtain the documentary evidence and a signed petition went unanswered.

Accordingly, petitioner's request for withdrawal from prosecuting the application will not be addressed pursuant to MPEP 402.06.

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

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

for D Wood

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

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Paper No. 5

Jon E. Hokanson
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Los Angeles, CA 90024

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OFFICE OF PETITIONS

In re Application of
Morgan, et al.
Application No.10/027,485
Filed: December 21, 2001
Attorney Docket Number: 7976-1005

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed on April 9, 2002 under 37 CFR §1.47(a).

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR §1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR §1.136(a).

The above-identified application was filed on December 21, 2001, without an executed oath or declaration. Accordingly, on January 30, 2002, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a $65.00 surcharge for its late filing.

In response, on April 9, 2002, applicant filed a $65.00 surcharge, a partially executed oath and the present petition.

A grantable petition under 37 CFR §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and, (4) a statement of the last known address of the non-signing inventor.

Applicant lacks item (1) as set forth above. Rule 47 applicant indicates an inability to reach inventor Hemsley. However, rule 47 applicant has failed to provide any facts that would prove diligent efforts were made to reach inventor Hemsley. Applicant merely states unsuccessful efforts were made to contact inventor Hemsley via mail and telephone calls. Applicant failed to indicate what was mailed to inventor Hemsley and when it was mailed. Nor did applicant indicate who made phone calls to inventor Hemsley, when they were made and if inventor Hemsley was not available whether messages were left.

Upon renewed petition, rule 47 applicant may wish to supply a statement of facts that

describes with some degree of specificity what efforts were made to reach inventor Hemsley. Copies of documentary evidence such as certified mail receipts and cover letters of instruction may help to establish diligent effort was used to reach inventor Hemsley.

In addition before applicant can be granted rule 47 status, applicant must demonstrate inventor Hemsley was given the opportunity to execute an oath or declaration. Rule 47 applicant has failed to show that inventor Hemsley refused to sign the declaration after having been presented with the application papers. There is no indication application papers were submitted to inventor Hemsley. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d).

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

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

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

WOODARD, EMHARDT, NAUGHTON,
MORIARTY AND MCNETT
BANK ONE CENTER/TOWER
111 MONUMENT CIRCLE
INDIANAPOLIS, IN 46204-5137

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JUL 22 2005
JUL 22 2005
OFFICE OF PETITIONS
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In re Application of :
Bradley E. Goff :
Application No. 10/027,497 :
Filed: December 21, 2001 :
Attorney Docket No. 22062-3 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 8, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 27, 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 November 28, 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; (3) the required statement of unintentional delay have been received. Accordingly, the petition filed April 8, 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 3700, Art Unit 3728 for further processing.

Retta Williams

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 10

THE MATTHEWS FIRM
2000 BERING DRIVE
SUITE 700
HOUSTON TX 77057

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JUL 0 8 2005

OFFICE OF PETITIONS

In re Application of	:	
Mosing	:	DECISION
Application No. 10/027,502	:	ON PETITION
Filed: November 27, 2001	:	
Attorney Docket No. FRK-086	:	
For: SLIP GROOVE GRIPPING DIE		

This is a decision on the petition under 37 CFR 1.137(b), filed January 21, 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)." Petitioners are advised that this is not a final agency decision.

This application became abandoned for failure to timely and properly reply to the final Office action, mailed July 24, 2003, which set an extendable three month period for reply. Having obtained no extensions of time, this application became abandoned on October 25, 2003 for failure to timely reply. A Notice of Abandonment was mailed on January 29, 2004.

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.;

(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(d).

The instant petition does not satisfy requirement (1) above.

Petitioner has not filed a proper reply to the July 24, 2003 final Office action. Petitioner is reminded that after a final action, there are only five possible replies: (1) a Notice of Appeal, (2) the filing of a continuing application, (3) a 37 CFR 1.129(a) submission, if appropriate, (4) an amendment after final that makes the case ready for issuance or (4) a RCE. To be a proper reply, an amendment after final must eliminate all of the Examiner's objections and rejections, and thus place the case in *prima facie* condition for allowance.

The examiner of record has indicated that the proposed amendment filed January 21, 2005 with the petition to revive does not place the application in condition for allowance and will not be entered because it raises new issues. The application remains abandoned.

The statement of unintentional delay was not signed by a person who would have been in a position of knowing that the delay in filing a timely response was unintentional. In the event that petitioner has no knowledge that the delay was in fact unintentional, petitioner should make a reasonable inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

Regarding fees, pursuant to 37 CFR 1.136, an extension of time must be filed **prior to** the expiration of the maximum period obtainable for reply to avoid abandonment. The $1,020.00 extension of time was submitted on January 21, 2005. Since the$1,020.00 extension of time was submitted subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The Revocation and Power of Attorney and Appointment of New Power of Attorney, filed January 21, 2005, has been accepted and made of record. Please find enclosed Notices relating to the power of attorney change.

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

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

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

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

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

E Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

enclosures: Notices regarding change in power of attorney

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 14

THE MATTHEWS FIRM
2000 BERING DRIVE
SUITE 700
HOUSTON TX 77057

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AUG 2 5 2005

OFFICE OF PETITIONS

In re Application of	:	
Mosing	:	DECISION
Application No. 10/027,502	:	ON PETITION
Filed: November 27, 2001	:	
Attorney Docket No. FRK-086	:	
For: SLIP GROOVE GRIPPING DIE		

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

This application became abandoned for failure to timely and properly reply to the final Office action, mailed July 24, 2003, which set an extendable three month period for reply. Having obtained no extensions of time, this application became abandoned on October 25, 2003 for failure to timely reply. A Notice of Abandonment was mailed on January 29, 2004.

Applicants have submitted a RCE and required fee and amendment in reply to the July 24, 2003 final Office action, an acceptable statement of the unintentional nature of the delay in responding to the July 24, 2003 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 3600's technical support staff for processing the RCE and amendment filed on July 26, 2005.

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES
PATENT AND
TRADEMARK OFFICE

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

MAR 21 2003

#8

REINHART BOERNER VAN DEUREN S.C.
ATTN: LINDA GABRIEL, DOCKET COORDINATOR
1000 NORTH WATER STREET
SUITE 2100
MILWAUKEE WI 53202

In re Application of	:
Oscar S, Bassinson	:
Serial No.: 10/027,565	: PETITION TO MAKE SPECIAL
Filed: December 21, 2001	:
Attorney Docket No.: 6739	:

This is in response to applicants' petition filed October 21, 2002, to make the above-identified application special under the provisions of 37 CFR 1.102(d).

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, VIII. Therefor the petition is **GRANTED**.

The petition has also been considered under M.P.E.P. 708.02, XI (counter-terrorism), but is not considered to fully satisfy the requirements thereunder as the invention is not directed specifically or primarily towards countering terrorism.

The following condition applies to the grant of this petition: If, upon examination, it is determined that a restriction requirement is necessary because of multiple inventions being claimed, applicant will be required to make an election without traverse of a single invention to be prosecuted. Failure to make an election without traverse will void the special status accorded in this decision.

The application will be forwarded an the examiner for action on the merits commensurate with this decision.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, Washington, DC 20231, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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

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NOV 0 8 2007

OFFICE OF PETITIONS

In re Patent No. 6,688,803	:	
Issue Date: February 10, 2004	:	
Application No. 10/027,585	:	ON PETITION
Filed: October 16, 2001	:	
Attorney Docket No. MEISS46.001DV1	:	

This is a decision on the petition under 37 CFR 1.182, filed April 11, 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.

Finance records show that petitioner submitted $130 for treatment of the instant petition. However, a petition under 37 CFR 1.182 requires a $400 petition fee; therefore, the balance of $270 has been charged to petitioner's deposit account, as authorized.

A copy of this decision is being forwarded to the Office of Publications 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 571-273-9740)

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20100313

DATE : 03/09/10

TO SPE OF : ART UNIT 2465

SUBJECT : Request for Certificate of Correction for Appl. No.: 10027589 Patent No.: 7032013

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: All changes approved.

/Andrew Caldwell/ **AU 2442**
SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DENISE M. KETTELBERGER, Ph.D
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

COPY MAILED

JUN 25 2007

OFFICE OF PETITIONS

In re Application of	:	
Ferrara et al.	:	DECISION ON APPLICATION
Application No. 10/027,603	:	FOR
Filed: December 19, 2001	:	PATENT TERM ADJUSTMENT
Atty Docket No. GENENT.1516CP1	:	

This is a decision on the "REQUEST FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)" filed March 9, 2007. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to thirty-nine (39) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is thirty-nine (39) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 13, 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 0 days. On March 9, 2007, applicants timely[1] submitted an application for patent term adjustment (with required fee). Applicants assert that the Office erred in entering a period of reduction of 76 days for applicant delay stemming from a Notice to File Missing Parts mailed by the Office on February 7, 2002.

---

[1] PALM records indicate that the Issue Fee payment was received on March 12, 2007.

Applicants submit that the present application is not subject to a terminal disclaimer.

A review of the record reveals that the reduction of 76 days is not warranted. By Notice mailed May 31, 2002, the Notice mailed February 7, 2002 was withdrawn as mailed in error[2] and a new Notice mailed. On July 22, 2002, within the three-month period set forth in 37 CFR 1.704(b), applicants filed a response to the Notice mailed May 31, 2002. Applicants did not fail to engage in reasonable efforts to conclude prosecution of the application by delaying in replying to either the Notice mailed February 7, 2002 or the Notice mailed May 31, 2002. Accordingly, the period of reduction of 76 days has been removed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is thirty-nine (39) days.

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

The Office of Patent Publication has been advised of this decision. The application is being forwarded to the Publications Division for issuance of a patent.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PAIR Screen

---

[2] It is noted that, prior to the withdrawal of the Notice, on May 6, 2002 applicants filed a response.

Day : Saturday
Date: 6/23/2007

PALM INTRANET

Time: 11:33:49

PTA Calculations for Application: 10/027603			
Application Filing Date:	12/19/2001	PTO Delay (PTO):	230
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	267
Post-Issue Petitions:	0	Total PTA (days):	39
PTO Delay Adjustment:	76		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
72	06/23/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	76		
65	12/13/2006	MAIL NOTICE OF ALLOWANCE			
64	12/11/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
63	12/11/2006	ISSUE REVISION COMPLETED			
62	12/11/2006	NOTICE OF ALLOWABILITY			
61	12/07/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
60	10/03/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
59	10/03/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	57
58	10/04/2006	DATE FORWARDED TO EXAMINER			
57	10/03/2006	RESPONSE AFTER NON-FINAL ACTION		61	55
56	10/03/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
55	05/03/2006	MAIL NON-FINAL REJECTION			
54	05/01/2006	NON-FINAL REJECTION			
53	02/21/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
52	02/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		4	50
51	02/23/2006	DATE FORWARDED TO EXAMINER			
50	02/17/2006	RESPONSE AFTER NON-FINAL ACTION			
49	11/18/2005	MAIL NON-FINAL REJECTION			
48	11/14/2005	NON-FINAL REJECTION			
47	10/26/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			

46	09/12/2005	DATE FORWARDED TO EXAMINER			
45	09/06/2005	RESPONSE AFTER NON-FINAL ACTION		3	44
44	06/03/2005	MAIL NON-FINAL REJECTION			
43	05/31/2005	NON-FINAL REJECTION			
42	03/22/2005	DATE FORWARDED TO EXAMINER			
41	03/14/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
40	03/14/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
39	03/22/2005	DATE FORWARDED TO EXAMINER			
38	03/14/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		91	34
37	03/22/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
36	03/14/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
34	09/13/2004	MAIL FINAL REJECTION (PTOL - 326)			
33	09/07/2004	FINAL REJECTION			
32	06/25/2004	DATE FORWARDED TO EXAMINER			
31	06/17/2004	FEE PAYMENT RECORDED (FEES FILED SEPARATELY E.G. NOT WITH ORIGINAL PAPERS, ETC).			
30	06/01/2004	MISCELLANEOUS INCOMING LETTER			
29	06/07/2004	DATE FORWARDED TO EXAMINER			
28	06/01/2004	RESPONSE AFTER NON-FINAL ACTION		32	22
27	06/01/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
26	06/01/2004	WORKFLOW INCOMING PETITION IFW			
25	06/01/2004	WORKFLOW INCOMING AMENDMENT IFW			
24	02/12/2004	CORRESPONDENCE ADDRESS CHANGE			
23	02/13/2004	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
22	01/30/2004	MAIL NON-FINAL REJECTION			
21	01/26/2004	NON-FINAL REJECTION			
20	11/19/2003	DATE FORWARDED TO EXAMINER			
19	11/07/2003	RESPONSE TO ELECTION / RESTRICTION FILED			
18	10/07/2003	MAIL RESTRICTION REQUIREMENT	230		-1
17	10/06/2003	REQUIREMENT FOR RESTRICTION / ELECTION			
16	09/26/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
15	07/30/2003	CORRESPONDENCE ADDRESS CHANGE			

14	07/14/2003	CASE DOCKETED TO EXAMINER IN GAU			
13	08/27/2002	APPLICATION DISPATCHED FROM OIPE			
12	08/26/2002	APPLICATION IS NOW COMPLETE			
11	07/22/2002	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN		76	6
10	08/08/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
9	05/31/2002	SEQUENCE ERRORS			
8	05/31/2002	PRE-EXAM OFFICE ACTION WITHDRAWN			
7	05/06/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
6	02/07/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	01/31/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/14/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/19/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

JUN - 8 2004

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Paper Number: 8

In re application of
Kojiro Okuyama et al
Serial No. 10/027,620
Filed: December 19, 2001
For: DIELECTRIC CERAMIC COMPOSITION AND DIELECTRIC DEVICE:

DECISION ON PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT -OFFICE ACTION NOT RECEIVED, filed November 10, 2003. The petition requests that the abandonment, as set forth in the Notice of Abandonment of October 24, 2003, for failure to timely file a proper response to the Office letter dated March 28, 2003 be withdrawn. The petitioner asserts that the Office letter of March 28, 2003 was not received by applicants.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action. See MPEP 711.03(c)(II).

The evidence presented is sufficient to establish that the Office letter of March 28, 2003 was not received by petitioner. The evidence provided includes a statement by the petitioner that the Office letter of March 28, 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 of March 28, 2003 was not received. Also provided are a copy of the attorney's application docket records where the Office letter of March 28, 2003 would have been posted had it been timely received, and a Declaration from the Docketing Supervisor, Jodi Gandel-Klein, who confirms that the Office letter of March 28, 2003 was never received for docketing.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the above noted Office letter to the correspondence address and restarting of the statutory period of response from the remail date thereof.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

MERCHANT & GOULD P.C.
P.O.BOX 2903
MINNEAPOLIS, MN 55402-0903

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HALE AND DORR, LLP
60 STATE STREET
BOSTON MA 02109

COPY MAILED

JUN 23 2003

OFFICE OF PETITIONS

Applicant: Wang
Appl. No.: 10/027,632
Filing Date: December 21, 2001
Title: IDENTIFICATION AND MAPPING OF SINGLE NUCLEOTIDE POLYMORPHISMS IN THE HUMAN GENOME
Attorney Docket No.: 108827-129
Pub. No.: US 2002/0198371 A1
Pub. Date: December 26, 2002

Patent application publication No. US 2002/0198371 A1 published on December 26, 2002 without a copy of the sequence listing.

This is a decision to *sua sponte* issue a corrected patent application publication, publishing the application as originally filed.

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
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FROM DIRECTORS OFFICE

MAR 0 4 2005

TECHNOLOGY CENTER 3600

WILMER CUTLER PICKERING HALE AND DORR LLP
60 STATE STREET
BOSTON MA 02109

In re Application of :
David G. Wang : DECISION ON PETITION
Application No. 10/027,632 : UNDER 37 CFR §1.144
Filed: December 21, 2001 :
Attorney Docket No.: 108827-129 :
For: IDENTIFICATION AND MAPPING OF SINGLE NUCLEOTIDE POLYMORPHISMS IN THE HUMAN GENOME

This is a decision on applicant's petition under 37 CFR 1.144 filed May 27, 2004 requesting withdrawal of the restriction requirement mailed October 7, 2003

The petition is **GRANTED.**

The record reflects that on December 8, 2003, a request for Statutory Invention Registration (SIR) was filed in the instant application. Since a SIR is does not include an examination of the claims on the merits, there is no burden on the examiner.

The requirement for restriction is hereby withdrawn.

The petition is **GRANTED.**

Donald T Hajec, Director
Patent Technology Center 3600
Telephone No.: (703) 306-4180

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

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OCT 16 2003
OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
45 ROCKEFELLER PLAZA, SUITE 2800
NEW YORK NY 10111

In re Application of
Stuart J. Solomon et al.
Application No. 10/027,664
Filed: December 20, 2001
Attorney Docket No. 12587-022001 / 01316-00/U
Title: BUSINESS TRANSACTION MANAGEMENT

DECISION ON PETITION
UNDER 37 C.F.R. §1.137(f)

This is a decision on the petition filed on October 2, 2003[1], 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[2];
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
(3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner states that the instant nonprovisional application is the subject of an application filed in either a foreign or an international application on December 20, 2002. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

On January 21, 2003, a Notice of Rescission of Nonpublication Request was filed with the Office. Unfortunately, notification of the filing of the international application did not accompany this filing.

1 The petition contained a certificate of mailing dated September 30, 2003.
2 See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at http://www.uspto.gov/web/forms/index.html.

In view of the above, this application became abandoned pursuant to 35 U.S.C. §1.22(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) for failure to timely notify the Office of the filing of either a foreign application or an application under a multilateral international agreement that requires publication of applications 18 months after filing.

The petition under 37 C.F.R. §1.137(f) is **GRANTED**.

Petitioner has submitted the notification of either a foreign or an international filing, paid the petition fee, and has made the proper statement of unintentional delay.

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

The previous Request and Certification under 35 U.S.C. §122(b)(2)(B)(i), filed with the original application papers, has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of January 22, 2004 accompanies this decision on petition.

After this decision is mailed, the application will be forwarded to Technology Center 3600 for further processing.

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.

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[3]. 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 filing the instant petition was intentional, petitioner must notify the Office.

---

3 See 37 CFR 10.18(b); cf. 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).

Telephone inquiries concerning *this decision* should be directed to Attorney Paul Shanoski at (703) 305-0011.

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

cc: Frank R. Occhiuti
Fish & Richardson P.C. (Boston)
Boston, MA 02110-2804

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

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MAR 2 7 2006

OFFICE OF PETITIONS

In re Application of	:	
Mario Elmen Tremblay et al	:	
Application No. 10/027,667	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. 8828	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 17, 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 13, 2005, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The amendment submitted on October 13, 2005 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed October 24, 2005. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. A two (2) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on October 14, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Request for Continued Examination (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 May 13, 2005 is accepted as having been unintentionally delay.

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

This matter is being referred to Technology Center AU 1742.

Wan Laymon

Wan Laymon
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

Paper No. 3

HUGH R. KRESS
WINSTEAD SECHREST & MINICK P.C.
2400 BANK ONE CENTER
910 TRAVIS STREET
HOUSTON, TX 77002

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DEC 0 4 2002

OFFICE OF PETITIONS

In re Application of :
Daniel T. Colbert et al :
Application No. 10/027,668 :
Filed: December 21, 2001 :
Attorney Docket No. 11321-P011CD10 :

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 2800.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

HUGH R. KRESS
2400 BANK ONE CENTER
910 TRAVIS STREET
HOUSTON, TX 77002

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NOV 0 5 2002

OFFICE OF PETITIONS

In re Application of :
Colbert et al. :
Application No. 10/027,670 :
Filed: December 21, 2001 :
Attorney Docket No. :
11321-P011C1D6 :

DECISION ON PETITION

This is a decision on the Petition in Response to Notice of Incomplete Nonprovisional Application, filed October 2, 2002, requesting the application be accorded a filing date of December 21, 2002, including 14 sheets of drawings as part of the original disclosure.

The application was filed on December 21, 2001. However, on August 12, 2002, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application (hereinafter "Notice"), stating that the application had been deposited without drawings.

Petitioner argues that 14 sheets of drawings described in the specification were included among a complete application filed initially, on December 21, 2001, and were received by this Office as evidenced by the return-receipt postcard. In support, Petitioner provides a copy of a return receipt postcard acknowledging receipt of 14 sheets of drawings filed on December 21, 2001.

A review of the return receipt postcard reveals that Petitioner is correct. The postcard acknowledges receipt of 14 sheets of drawings by this Office on December 21, 2001. Petitioner has also re-submitted 14 sheets of drawings described in the specification, with the instant petition.

Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self-addressed postcard properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the postcard in the outgoing mail. "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 items listed thereon by the PTO." MPEP § 503.

The petition is **granted**. The Notice is hereby withdrawn.

No petition fee is required. The petition fee, $130.00, has been refunded to deposit account 23-2426 as authorized in the instant petition.

The application will be returned to the Office of Initial Patent Examination for further processing as a nonprovisional application with a filing date of December 21, 2001, using the original application papers filed and the 14 sheets of drawings submitted on October 2, 2002. The Office record should reflect that 14 sheets of drawings were present on filing.

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

Christina Tartera Donnell for

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

Conferee: Christina Donnell, Esq.

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

Robert Deberardine
Abbot Laboratories
100 Abbott Park Road
Dept. 377/AP6A
Abbott Park, IL 60064-6008

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JUL 22 2005

OFFICE OF PETITIONS

In re Application of :
T. Daniel Gross, et al. :
Application No. 10/027,681 : ON PETITION
Filed: December 21, 2001 :
Attorney Docket No. 033297-120 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 15, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

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

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(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 Commissioner may require additional information. See MPEP 711.03(c)(III)(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 May 28, 2004. 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, 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). A copy of the Examiner's Advisory Action is attached herewith.

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

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

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.

Marianne E. Jenkins
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WORKMAN NYDEGGER
1000 EAGLE GATE TOWER,
60 EAST SOUTH TEMPLE
SALT LAKE CITY UT 84111

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AUG 14 2006

OFFICE OF PETITIONS

In re Application of
T. DANIEL GROSS, et al.
Application No. 10/027,681
Filed: December 21, 2001
Attorney Docket No. 033297-120

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the **renewed** petition under the unintentional provisions of 37 CFR 1.137(b), filed September 14, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the Final Office action of May 28, 2004. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is August 29, 2004.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and the required fee along with the submission required by 37 CFR 1.114; (2) the petition fee of $1,500; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7414. All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center Art Unit 3734 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Amélia Au
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. 4

CHRISTIE PARKER & HALE, LLP
350 WEST COLORADO BOULEVARD
SUITE 500
PASADENA, CA 91105

COPY MAILED

AUG 0 7 2002

OFFICE OF PETITIONS

NOTICE

In re Application of :
Mark Skiba et al :
Application No. 10/027,700 :
Filed: December 20, 2001 :
Attorney Docket No. 47612/LTR/G319 :

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 2100.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 8

HUGH R. KRESS
WINSTEAD SECHREST & NIMICK P.C.
2400 BANK ONE CENTER
910 TRAVIS STREET
HOUSTON, TX 77002

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DEC 0 2 2002

OFFICE OF PETITIONS

In re Application of :
Daniel T. Colbert et al :
Application No. 10/027,726 : NOTICE
Filed: December 21, 2001 :
Attorney Docket No. 11321-P011C1D8 :

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 1754.

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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MERCHANT & GOULD PC
PO BOX 2903
MINNEAPOLIS MN 55402-0903

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MAY 12 2005

OFFICE OF PETITIONS

In re Application Presta et al. Application No. 10/027,736 Filed: December 19, 2001 Atty Docket No. 11669.92US01	DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," filed June 15, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred fifty-three (153) days to one hundred fifty-seven (157) days.

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

On March 15, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is one hundred fifty-three (153) days. On June 15, 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 one hundred fifty-seven (157) days.

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

---

[1] Applicants filed the instant application for patent term adjustment together with the payment of the issue fee.

The Office initially determined a patent term adjustment of one hundred fifty-three (153) days based on an adjustment for PTO delay of three hundred thirteen (313) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicants' delay of one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(7) and forty days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8) . The PTO delay of 313 days and applicants' delay of 40 days have been reviewed and found to be correct. The adjustment of one hundred twenty (120) days is at issue.

With respect to the one hundred twenty (120) days of applicant delay, Applicants assert that they filed a response pursuant to 37 C.F.R. 1.704(c)(7) on August 19, 2002, and therefore should have only been assessed delay of one hundred sixteen (116) days.

The Office mailed a Notice to File Missing parts of February 27, 2002, requiring an oath or declaration and a sequence listing. Applicants filed a response to the Notice on April 25, 2002. However, on June 17, 2002, the Office mailed a Notice to Comply, requiring a new sequence listing. Applicants filed a proper sequence listing on August 23, 2002. Applicants' response contained a Certificate of Mailing dated August 19, 2002.

However, under 37 C.F.R. § 1.703(f), "the date indicated on any certificate of mailing or transmission shall not be taken into account" in the PTA calculation. See also Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14 (Oct. 3 2000). Accordingly, the applicant delay of one hundred twenty (120) days for the filing of the sequence listing on August 23, 2002 was proper.

The correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one hundred fifty-three (153) days** (313 days of PTO delay, reduced by 160 (120+40) days of applicant delay).

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e).

The application file is being forwarded to the Office of Patent Publication to complete the issuance process for the 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MERCHANT & GOULD PC
PO BOX 2903
MINNEAPOLIS MN 55402-0903

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NOV 0 8 2005

OFFICE OF PETITIONS

In re Application	: DECISION ON APPLICATION
Presta, et al.	: FOR PATENT TERM ADJUSTMENT
Application No. 10/027,736	: AND
Filed: December 19, 2001	: NOTICE OF INTENT TO ISSUE
Patent No. 6,911,321	: CERTIFICATE OF CORRECTION
Issued: June 28, 2005	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed August 16, 2005. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred eighty-three (283) days to four hundred three (403) days.

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

The Patent Term Adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **four hundred three (403) days**.

On June 28, 2005, the above-identified application issued into patent No. 6,911,321. The patent stated that the patent term adjustment (PTA) is two hundred eighty-three (283) days. On August 16, 2005, patentees timely submitted an application for patent term adjustment, asserting that the correct number of days of PTA is four hundred three (403) days.

Patentees point out that they were improperly assessed applicant delay of one hundred twenty (120) days for previously filing an application for patent term adjustment on June 15, 2004.

The Office determined a patent term adjustment of two hundred eighty-three (283) days based on an adjustment for PTO delay of three hundred thirteen (313) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1) and two hundred fifty-three (253) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. §1.703(a)(6), reduced by Applicants' delays of one hundred twenty (120), forty (40), and three (3) days pursuant 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b) and one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(10). The adjustment of 120 days pursuant to 37 C.F.R. § 1.704(c)(10) is at issue.

Pursuant to 37 C.F.R. § 1.704(e), the submission of an application for patent term adjustment will not be considered a failure 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 issuance of the patent is **four hundred three (403) days** (566 (313+253) days of PTO delay, reduced by 163 (120+40+3) days of applicant delay).

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

The application file is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction, indicating a Patent Term Adjustment of **four hundred three (403) days**.

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 Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

COPY MAILED

MAR 0 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Douglas G. Vanderlaan et al	:	
Application No. 10/027,740	:	DECISION GRANTING PETITION
Filed: December 20, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. VTN-567	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 14, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action of March 25, 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 1616.

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 PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
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Paper No. 3

HUGH R. KRESS
WINSTEAD SECHREST & MINICK P.C.
2400 BANK ONE CENTER
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HOUSTON, TX 77002

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DEC 0 4 2002

OFFICE OF PETITIONS

In re Application of :
Daniel T. Colbert et al :
Application No. 10/027,753 :
Filed: December 21, 2001 :
Attorney Docket No. 11321-P011C1D4 :

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 2800.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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ATLANTA, GA 30309-3915

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OFFICE OF PETITIONS

In re Application of :
Kenneth Brigham, et al. :
Application No. 10/027,797 : ON PETITION
Filed: December 20, 2001 :
Attorney Docket No. 22000.0106U2 :

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

The petition is **GRANTED.**

A Notice of Non-Compliance was mailed on January 10, 2005. The Notice indicated that the Amendment filed December 27, 2004 was considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, June 30, 2003). Petitioner was given a time period of one (1) month or thirty (30) days from the mailing date of the notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment of the application. Accordingly, the application became abandoned on February 10, 2005.

The Change of Correspondence Address has been accepted and recorded.

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

The application matter is being referred to Technology Center 1600, Art Unit 1632 for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:

DATE :

TO SPE OF : ART UNIT

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

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

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

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

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

Note your decision on the appropriated box.

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

Comments:

The change to claim 30 does not apply since the alledged error is not the fault of the Patent Office but rather the applicants. No fee has been paid.

KENNEDY SCHAETZLE
PRIMARY EXAMINER

SPE: R. Pezzuto Art Unit 3766

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 7

DELLETT AND WALTERS
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APR 0 7 2004

OFFICE OF PETITIONS

In re Application of
Glover
Application No. 10/027,819
Filed: December 21, 2001
Attorney Docket No. G-165
For: DOOR HINGE

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), and in the alternative, under 37 CFR 1.137(b), to revive the above-identified application. Both petitions were filed in the same paper on March 25, 2004.

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

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

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

This application was filed on December 21, 2001. On February 1, 2002, the Office mailed a Notice to File Missing Parts of Nonprovisional Application (Notice), setting forth a 2 month extendable period to submit the basic filing fee, an executed oath/declaration, and a surcharge for their late filing. The Office did not receive a timely reply. Thus, this application became technically abandoned on April 2, 2002. A Notice of Abandonment was mailed on December 2, 2003.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). The instant petition lacks item (3).

Regarding (3), petitioner has not shown to the satisfaction of the Commissioner that the entire delay from the due date of the reply to the filing of a grantable petition was unavoidable.

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 alleges that the delay in responding to the February 1, 2002 Notice was unavoidable because the inventor was beset with a number of health problems that had started by the time the February 1, 2002 Notice was mailed, continued until some point in 2002, and then resumed again in mid 2003.

Thus, petitioner asserts incapacitation as a cause of the delay. A showing of "unavoidable" delay based upon incapacitation must establish that the incapacitation was of such a nature and degree as to render the incapacitated person unable to conduct business (e.g., correspond with the Office) during the period between April 1, 2002 (the due date for responding to the February 1, 2002 Notice) to the present. Such a showing must be supported by a statement from the incapacitated person's treating physician, and such statement must provide the nature and degree of incapacitation during the above-mentioned period.

Petitioner has not provided independent supporting evidence of the debilitating nature of his health problems. Moreover, petitioner has stated that in 2003 he began working again. If petitioner could work at that point, petitioner was not completely incapacitated. Petitioner could have attended to his outstanding patent business. Petitioner's preoccupation with other matters which took precedence over the above-identified application does not constitute unavoidable delay. See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

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

In the alternative, petitioners request consideration under 37 CFR 1.137(b).

Petitioner has submitted $665.00 in petition fees. The petition fee for the petition under 37 CFR 1.137(a) is $55.00. This leaves only $610.00 to apply towards the fee owed for the petition under 37 CFR 1.137(b).

Any petition under this section must be accompanied by the petition fee. The payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

The phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R.Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770 ("[the fees set forth in this section are due on filing the petition"). Accordingly, the Commissioner is statutorily precluded from further review of the petition until the petition fee is paid in full.

The petition under 37 CFR 1.137(b) is dismissed. **Petitioner is strongly encouraged to submit $55.00**, which, taken with the $610.00 balance, will make the $665.00 petition fee.

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 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202

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

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
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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
595 MINER ROAD
CLEVELAND OH 44143

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OFFICE OF PETITIONS

In re Application of :
Disilets et al. :
Application No. 10/027,843 :
Filed: October 19, 2001 :
Attorney Docket : US 018172
Title of Invention: Multimodality Medical Imaging System and Method With Intervening Patient Access Area :

DECISION ON PETITION

This is a decision on petition under 37 CFR 1.137(b), filed July 19, 2005, 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 September 21, 2004. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on December 22, 2005. A Notice of Abandonment was mailed on June 30, 2005.

This petition is hereby **Granted**.

The Request for Continued Examination (RCE) and the amendment submitted with the instant petition will be 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 Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 5

MICHAEL A. BLAKE
SIERRA PATENT GROUP, LTD.
P O BOX 6149
STATELINE NV 89449

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JUN 1 2 2002

OFFICE OF PETITIONS

In re Application of
Kristian Miller et al
Application No. 10/027,876
Filed: December 21, 2001
Attorney Docket No. SUN-P3434COB

ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 4, 2002, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of one or more prior-filed nonprovisional applications, namely, Application No. 09/573,042, filed May 15, 2000, and Application No. 09/274,742, filed March 23, 1999. For the reasons stated below, the communication entitled "Request to Correct Filing Receipt," received on February 8, 2002, will be treated as a petition under 37 CFR 1.182.

The petition under 37 CFR 1.78(a)(3) is **DISMISSED** as moot.

The petition under 37 CFR 1.182 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). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;[1]

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on December 21, 2001 and was copending with prior-filed nonprovisional Application No. 09/573,042. Further, nonprovisional Application No. 09/573,042 was copending with nonprovisional Application No. 09/274,742, at the time of filing. Petitioner now seeks to claim the benefit of priority to the above-noted nonprovisional applications under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2). A reference to the aforementioned, prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, which amendment was filed concurrently with the instant petition under 37 CFR 1.78(a)(3).

The reference to the above-noted, prior-filed nonprovisional application was not included in the manner specified in 37 CFR 1.78(a)(2) (i.e., in an ADS or in an amendment to the first sentence following the title of the specification) or filed within the period specified in 37 CFR 1.78(a)(2).

The current procedure where a claim for priority under 37 CFR 1.78(a)(2) is not included in an amendment to 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. However, on the other hand, if the USPTO does not

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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).

note the claim for priority to the prior filed application(s) in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR 1.78(a)(3).[2] In the instant case, the Office noted the claim for priority to nonprovisional Application Nos. 09/274,742 and 09/573,042 in the transmittal letter submitted with the application, as shown by its inclusion on the filing receipt. Therefore, since the application was scheduled for publication on the basis of the information contained elsewhere in the application, i.e., in the transmittal letter submitted with the application, the filing of the instant petition is unnecessary and is dismissed as involving a moot issue. In view thereof, the $1,280 petition fee submitted is unnecessary.

In reviewing the application file, it is noted that a communication was received on February 8, 2002 requesting issuance of a Corrected Filing Receipt to list Kristian Miller as the first named inventor and Joseph Ferguson as the second named inventor. In a further review of the application file, it is noted that the declaration submitted with the application lists Joseph Ferguson as the first inventor and Kristian Miller as the second inventor. Petitioner is advised that the Office takes the order of the names of the inventors as they appear on the declaration as originally filed. Any request to change the order of the names of the inventors as they appear on the original declaration is more appropriately a petition under 37 CFR 1.182. *Note* MPEP Section 605.04(f). Accordingly, the communication received on February 8, 2002 will be treated as a petition under 37 CFR 1.182 and is hereby granted.

It is noted that a Corrected Filing Receipt may have been issued in this application in view of the change in the database of the change in the order of the names of the inventors. Nevertheless, a Corrected Filing Receipt accompanies this decision which shows the claim for benefit of priority to the above-noted, prior-filed nonprovisional applications and the order of the names of the inventors.

A petition under 37 CFR 1.182 requires payment of a fee of $130. Since, as noted above, the $1,280 petition fee submitted with the petition under 37 CFR 1.78(a)(3) was unnecessary, $130 of the $1,280 fee submitted will be applied towards to the fee for the petition under 37 CFR 1.182. Petitioner may request a refund of the excess balance of $1,150 by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

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[2] Note 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

Any questions concerning this decision on petition may be directed to the undersigned at (703)305-8680. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center AU 2123 for examination in due course and for processing of the amendment filed June 4, 2002.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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6/6/07

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

In re Application of:
WEBLER, WILLIAM EARL
Serial No.: 10/027,877
Filed: Dec. 19, 2001
Docket: 5618P2977
Title: METHOD AND APPARATUS FOR DETERMINING INJECTION DEPTH AND TISSUE TYPE

DECISION ON PETITION TO ENTER AMENDMENT AFTER FINAL

This is a decision on the petition filed on Nov. 27, 2006 to enter the amendment after final under 37 CFR 1.116.

The petition is **DISMISSED**.

In the petition, petitioner requested a review of the Advisory Action issued by the examiner on Oct. 26, 2006. In the Advisory Action, the examiner refused to enter the amendment after final filed on July 5, 2006 because the newly amended claim 1 would require additional consideration. Petitioner stated that the newly amended claim 1 was same as the cancelled dependent claim 2. The limitation in the canceled dependent claim 2 was combined with independent claim 1 to establish antecedent basis of "needle" in claims 3 and 4 and correct a mistake by replacing "elongated member" with "needle" in lines 3 and 4 of claim 1. There was no new issue involved because the examiner already considered the limitation of dependent claim 2 in his previous Office actions. Petitioner requested that the amendment after final be entered for appeal purposes.

The record shows that:

1) In response to the non-final Office action of Jan. 24, 2006, on Apr. 27, 2006, the applicant submitted an amendment canceling claim 2 and placing all limitations with the independent claim 1. In particular, the applicant replaced the term "elongated member" with "needle" which was the term used in dependent claims 2. The applicant inadvertently failed to make the change of dependency of the dependent claims 3 and 4.

2) Subsequently, in the final rejection of May 23, 2006, the examiner brought to the applicant's attention by rejecting claims 3 and 4 under 35 USC 112, 2nd paragraph.
3) On Jul. 5, 2006, the applicant filed an amendment after final under 37 CFR 1.116 to correct the mistakes in claim 1 and the dependent claims 3 and 4.
4) The examiner issued the Advisory Action on Oct. 26, 2006 stating that the newly amended claim 1 containing the addition of "needle" which constitutes new limitation that would require further consideration.
5) On Nov. 27, 2006, the applicant filed the present petition to request entry of the amendment after final for appeal purposes.

Applicable Rule

37 CFR § 1.116 Amendments and affidavits or other evidence after final action and prior to appeal. (a) An amendment after final action 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, but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title): (1) An amendment may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action; (2) An amendment presenting rejected claims in better form for consideration on appeal may be admitted; or (3) An amendment touching the merits of the application or patent under reexamination may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

Analysis of File Records

In order to determine whether or not that the amendment after final raises new issue, a omparison of the newly amended claim 1 with other dependent claims filed on Jul. 5, 2006 and the previous cancelled dependent claim 2 with other dependent claims must be made. As correctly pointed out by petitioner, the scopes of the newly amended claims 1, 3 and 4 as filed on Jul. 5, 2006 were not changed from the now cancelled dependent claims 2 and amended claims 3 and 4 filed on April 27, 2006. However, the scopes of unamended dependent claims 5 and 10 of Jul. 5, 2006 were changed from dependent claims 5 and 10 of Apr. 27, 2006. In particular, dependent claim 5 now requires the claimed "elongated member is a rod" in combination with the newly amended "distal portion of the needle" in claim 1. Dependent claim 10 also requires the claimed "a portion of elongated member comprises an electrically conductive material... and coupled to a second end of the heating element" in combination with the "distal portion of the needle" of claim 1. Whereas the subject matter of the dependent claim 10 of April 27, 2006 did not include the combination with "distal portion of the needle" of claim 1 of Jul. 5, 2006. This limitation "distal portion of the needle" in claim 1 of Jul. 5, 2006 raised the new issue in dependent claims 5 and 10 that would require further consideration by the examiner. For example, in addition to the art rejection of the claims, the examiner still needs to consider each and every amended claim under 35 USC 112.

Based on the arguments presented in the petition, the amendment after final filed on Jul. 5, 2006 would have placed claims 1, 3 and 4 in better condition for appeal purposes if the applicant also

had canceled the unamended dependent claims 5 and 10. The new issue stated in the advisory action lies with the unamended dependent claims 5 and 10. The current amendment after final filed on Jul. 5, 2006 does not satisfy the conditions set forth in 37 CFR 1.116 (b) (1) and (2). Therefore, the amendment after final filed on Jul. 5, 2006 cannot be entered as correctly indicated by the examiner in his advisory action of Oct. 26, 2006.

The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3736 for further processing. Any renewed petition must be filed within TWO (2) MONTHS of the date of the Decision and the time for filing an appeal brief will not be stayed either by the filing of the instant petition or renewed petition (see 37 CFR 1.181f). 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 Program Examiner, at (571) 272-4856.

PETITION DISMISSED

Karen M. Young

for Frederick R. Schmidt, 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 22313-145

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TC 3600

WILLIAM C. FLYNN
ATTORNEY AT LAW
110110 Friendship Lane No.
Chaska, MN 55318

In re application of
Robert McLister
Application No.10/027,878 :
Filed: October 26, 2001 :
For: FINANCIAL MARKET TRANSACTION DEVICE AND METHOD OF USE :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on October 1, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

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

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

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

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

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

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.

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

SNM/pav: 10/15/04

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COMMISSIONER FOR PATENTS
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429 FOURTH AVENUE
PITTSBURGH PA 15219

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SEP 15 2006

OFFICE OF PETITIONS

In re Application of :
Mary M. Bendik :
Application No. 10/027,879 :
Filing Date: December 21, 2001 :
Attorney Docket No.: 99-024 CON :
Title: DOCUMENT MANAGEMENT :
SYSTEMS AND METHODS :

DECISION ON PETITION
UNDER 37 C.F.R. § 1.137(B)

This is a decision on the petition under 37 C.F.R §1.137(b)[1], filed June 15, 2006, to revive the above-identified application.

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed January 3, 2006, which set a shortened statutory period for reply of three months. No extensions of time are permitted for transmitting issue or publication fees[2]. Accordingly, the above-identified application became abandoned on April 4, 2006. A notice of abandonment was mailed on June 8, 2006.

With the present petition, Petitioner has submitted the petition fee, the issue fee, the publication fee, and the proper statement

---

1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 See MPEP §710.02(e).

of unintentional delay. It is noted that a terminal disclaimer is not necessary.

Petitioner has met all requirements for a grantable petition under 37 C.F.R. §1.137(b). As such, the petition is **GRANTED**. The Office of Patent Publication will be notified of this decision so that the present application can be processed into a patent.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[3]. 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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3 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).

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ACTIVE OPTICAL NETWORKS, INC.
4215 TECHNOLOGY DRIVE
FREMONT CA 94538

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OFFICE OF PETITIONS

Patent No. 6,827,866	:	
Application No. 10/027,882	:	
Filed: December 21, 2001	:	ON PETITION
Issued: December 7, 2004	:	
Attorney Docket No. PA4842US	:	

This is a decision on the petition under 37 CFR 1.378(c), filed February 2, 2009, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued December 7, 2004. The last day of the grace period for paying the 3.5-year maintenance fee was December 7, 2008. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

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

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

Petitioner should note that submission of a power of attorney and/or a change of correspondence address would not affect the fee address. Therefore, if petitioner desires to receive future correspondence, which **may** be mailed regarding maintenance fees for the above-identified patent, the "fee address" and/or "customer number" forms should be submitted to the Maintenance Fee Division.

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

Liana Walsh
Petitions Examiner
Office of Petitions

cc: SUSAN YEE
220 GENG ROAD
PALO ALTO, CA 94303

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Paper No. 04282005

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JUN 02 2005

OFFICE OF PETITIONS

E. Richard Skula
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003

In re Application of
Mark B. Roller et al
Application No. 10/027,891
Filed: February 20, 2001
Attorney Docket No. MIT-264

DECISION
ON PETITION
37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed 2/4/2005, to revive the above-identified application.

The petition is **GRANTED**.

The instant application became abandoned for failure to reply to the nonfinal Office action mailed on 5/20/2004, which set a shortened statutory period for reply of three months. As no reply was received, and no extensions of time were obtained, this application became abandoned on 8/20/2004. A notice of abandonment was mailed on 1/6/2005.

This application is being referred to TC 3731 for consideration of the reply filed on 2/4/2005.

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 3 month extension of time submitted with the petition on 2/4/2005 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.

Any questions concerning this matter may be directed to Gene Kim at 571 272-6052, or in his absence, the undersigned at 571 272-3217.

Brian Hearn

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

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DORSEY & WHITNEY LLP
555 CALIFORNIA STREET, SUITE 1000
SUITE 1000
SAN FRANCISCO CA 94104

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FEB 1 0 2006

OFFICE OF PETITIONS

In re Application of	:	
Moloney et al.	:	
Application No. 10/027,935	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. A-68359-1/RMA	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 31, 2006, to revive the above-identified application.

The petition is **GRANTED.**

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

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

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

Liana Chase
Petitions Examiner
Office of Petitions

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Silicon Valley Patent Group LLP
2350 Mission College Boulevard
Suite 360
Santa Clara, CA 95054

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OFFICE OF PETITIONS

In re Application of	:	
Rovira et al.	:	DECISION ON APPLICATION
Application No. 10/027,940	:	FOR
Filed: December 19, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. M-12332 US	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed February 6, 2006. Applicants request that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to five hundred fifty (550) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred seventy-five **(375)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 10, 2005, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date is zero (0) days. In response, applicants timely[1] filed the instant request for reconsideration of the patent term adjustment along with payment of the fee set

[1] PALM Records indicate that the Issue Fee payment was received on February 6, 2006.

forth in 37 CFR 1.18(e). Applicants request that the patent term adjustment be corrected to 550 days. Applicants assert that the Office's delay pursuant to 37 CFR 1.703(a)(2) should be calculated as 339 days, not 0 days. Further, applicants dispute the reduction pursuant to 37 CFR 1.704(b) of 278 days on the ground that they did not fail to engage in reasonable efforts to conclude examination of the application.

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

The application history has been reviewed and it has been determined that the initial patent term adjustment of zero (0) days is incorrect. The Office mailed an Office action under § 111 on March 2, 2004, within four months after the date of the filing of applicants' reply, December 2, 2003. However, the Notice was not mailed to the correspondence address of record. The record supports a conclusion that this was due to an error on the part of the Office in mailing the Office action to applicants. Accordingly, a letter restarting the period for reply (and re-mailing the Office action) was mailed on December 6, 2004.

Thus, the Office's delay should be calculated using the date of December 6, 2004. However, the period of delay is 249 days, not 339 days. Applicants' response was received on December 1, 2003. Thus, the period of adjustment is 249 days, 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, April 2, 2004, and ending on the date of mailing of an action under 35 U.S.C. 132, December 6, 2004.

However, applicants failed to engage in reasonable efforts within the meaning of § 1.704(b). Their response filed March 7, 2005, was received three months and one day after the date of the mailing of the Office action as re-mailed on December 6, 2004. Accordingly, a period of reduction of 1 day, not 278 days should have been entered.

The Office further notes that pursuant to 37 CFR 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution. It is

undisputed that after filing a response on December 1, 2003, on March 5, 2004, applicants filed a supplemental Information Disclosure Statement (IDS). The record does not support a conclusion that the IDS was expressly requested by the examiner.

A review of the IDS filed March 5, 2004, reveals that it did not include a § 1.704(d) statement.[2] Thus, the period of reduction of 84 days, beginning on the day after the date the initial reply was filed, December 2, 2003, and ending on the date that the supplemental reply or other such paper was filed, March 5, 2004, is warranted.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 375 days.

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

Applicants are reminded that 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. Further, in considering the overlap, 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

---

[2] Applicants are reminded that § 1.704(d) was revised, effective May 24, 2004, as follows:

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

This revision requires that the statement include the language "each item of information contained in the information disclosure statement was <u>first</u> cited ..." for the exception to apply. <u>See</u> 69 FR 21704, Apr. 22, 2004.

whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b) (1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f).

The Office of Patent Publication has been advised of this decision. This matter is, thereby, being referred to the Publishing Division for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

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WESTMAN CHAMPLIN & KELLY, P.A.
SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS MN 55402-3319

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OFFICE OF PETITIONS

In re Application of
Carlson et al.
Application No. 10/027,949
Filed: December 21, 2001
Title: Self-Adhering Friction Reducing Liner and Method of Use

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed November 14, 2006.

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

This above-identified application became abandoned for failure to timely file an Appeal Brief. A Pre-Brief Conference Decision was mailed on August 1, 2006. A Notice of Abandonment was mailed October 31, 2006.

Pursuant to the OG Notice of July 12, 2005 "New Pre-Appeal Brief Conference Pilot Program" paragraph 7, " the time period for filling an appeal brief will be reset to be one month from the mailing of the decision on the request, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further the time period for filing the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of the decision on the request or the receipt date of the notice of appeal, as applicable.

Thus the abandonment of the application was premature. In light of petitioner's submission of a continuing application, this application is again abandoned in favor of application no. 11/590,638.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES
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TRADEMARK OFFICE

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

MAR 24 2003

#10

STEPHEN B. DAVIS
BRISTOL-MYERS SQUIBB COMPANY
PATENT DEPARTMENT
P. O. BOX 4000
PRINCETON, NJ 08543-4000

In re Application of	:
Joel C. Barrish et al	:
Serial No.: 10/027,982	: PETITION DECISION
Filed: December 20, 2001	:
Attorney Docket No.: QA0238 NP	:

This is a decision on the petition under 37 CFR 1.144, filed January 6, 2003, requesting withdrawal of an improper restriction requirement.

BACKGROUND

A review of the file history shows that this application was filed under 35 U.S.C. 111 and contained, as filed, 22 claims. The examiner assigned to the application mailed applicants a first Office action on March 11, 2002, dividing the claims into two groups for examination purposes, as follows:

> Group I, claims 1-19, drawn to products of Formula I, variously classified;
> Group II, claims 20-22, drawn to methods of use of the products of Formula I, variously classified.

In addition, the election of a single species within whichever group was elected, was required. Applicants replied on April 18, 2002, electing Group I and compound 76 as the species, with traverse, contending that there is no serious burden on the examiner in searching the compounds and methods of use.

The examiner mailed an Office action to applicants on May 10, 2002, maintaining the restriction requirement and arguing that the compounds and methods of use are classified and searched separately. From the species elected the examiner created a generic concept of what was searched which is subgeneric to the compounds of Formula I in claim 1. The Office action objected to the claims as containing subject matter not encompassed within the concept drawn. Claims 1-14, 16-19 and 20-22 were then objected to as containing non-elected subject matter.

Applicants replied by canceling claims 1-6 and 20-22 and amending claims 7, 9 and 17. Applicants argue that the examiner is without authority to cast or recast applicants Markush claim in a narrower "generic concept" when no invalidating prior art is found.

The examiner replied by mailing a Final Office action to applicants on November 5, 2002, maintaining the objection to the claims as containing non-elected subject matter. The examiner continued to maintain that there are numerous independent and distinct inventions within applicants' claimed subject matter and that applicants have not argued to the contrary, but have argued a lack of unity standard which is improper as there is no special technical feature present. Applicants filed this petition to withdraw the holding of the examiner with respect to the restriction requirement on January 6, 2003.

DISCUSSION

As a first observation, it is noted that original claim 1 encompasses an incalculable number of individual compounds set forth in Markush format and including Formula I, the generic structural formula and excluding compounds defined by Formulas X, XI, XII(a) and (b), XIII, XIV, XV(a) and (b), XVI and XVII. Because of the extensive provisos within the claim it is clear that the claim was exceptionally broad and confusing such that numerous compounds were encompassed therein that would not be patentable. Also each of the variables was identified as having numerous values, usually more than 10 and frequently more than 100. The claim, as presented thus clearly encompassed numerous compounds which lack unity or common structure with each other.

In order to facilitate examination the examiner made first a restriction requirement under 35 U.S.C. 121 between the compounds and methods of use of the compounds, which restriction was proper. The examiner also required an election of species within whichever group was elected thus binding the examiner to follow the guidelines in M.P.E.P. 803.02. The guidelines state that the elected species will be examined appropriately and if found to be free of prior art which anticipates or renders obvious the species then the examiner will expand the search and examination to a reasonable number of other related species to determine if they are also free of the prior art. In doing this the examiner generally creates a subgeneric concept based on the species which is less than the generic concept defined in the claims. If no prior art is then found based on search and examination of the subgeneric concept the application will be allowed.

It appears that the examiner in this instance did examine the species and found it to be free of the prior art and then expanded the search and examination to additional species as defined by the subgeneric concept created. As a courtesy to applicants the examiner defined the extent of the search and examination by indicating the subgeneric concept which has unity with the elected species. The examiner then attempted to require applicants in their reply to the Office action to limit their claims to the subgeneric concept examined. As such this was improper without identifying to applicants those compounds which are not within the species or subgeneric concept - i.e. those compounds which the examiner alleges are independent and distinct from the allowed concept - which would not have unity with the species elected and could have withdrawn by

means of a restriction requirement within the claim. It is not incumbent upon applicants to define to the examiner compounds which are not within the realm of the elected species or subgeneric concept developed and searched by the examiner and which could be withdrawn by means of a restriction requirement.

The concept of unity of invention, as it relates to cases filed under 35 U.S.C. 111 does not require the presence of a "special technical feature" as does the concept of Unity under PCT Rule 13. Thus the examiner's argument based on a requirement for a "special technical feature" is flawed in this aspect. Unity here only requires a common structure which structure does not itself have to define over the prior art.

Applicants, in reply to the first Office action following the restriction requirement did significantly reduce the scope of the independent claim, but not to the subgenus limits searched and examined by the examiner. As a consequence, the examiner mailed a Final Office action to applicants repeating the requirement to limit the claims to the subgenus examined. The examiner has not provided any evidence that the unexamined portions of the currently claimed genus is/are not patentable and therefor they have not been rejected. The examiner's objection to the pending claims as containing non-elected subject matter (i.e. - subject matter which supposedly does not have unity with the generic or subgeneric concept) has not been supported by the examiner and must therefor be withdrawn.

Further, the examiner's formula representing the subgeneric concept examined is confusing in that Z_4 is defined as three separate values - in one instance it is a single bond, in another it is an alkyl group and another an aryl group, however, these groups are not interchangeable depending on where Z_4 appears.

DECISION

Applicants' petition is **GRANTED.**

The last Office action is withdrawn as improper. The application will be forwarded to the examiner for consideration of the reply filed January 6, 2003, and preparation of a new Office action.

There is no fee for this petition and the petition fee paid of $130.00 will be credited to applicants' Deposit Account No. 19-3880, as directed.

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

John Doll
Director, Technology Center 1600

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Snell & Wilmer L.L.P. (AMEX)
ONE ARIZONA CENTER
400 E. VAN BUREN STREET
PHOENIX, AZ 85004-2202

Mail Date: 04/23/2010

Applicant	: Fauziah B. Ariff	: DECISION ON REQUEST FOR
Patent Number	: 7613628	: RECALCULATION of PATENT
Issue Date	: 11/03/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/027,984	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/21/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1648** 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: R. DHARIA

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/12/07

TO SPE OF : ART UNIT 2141

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/028,010 Patent No.: 7165096

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

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

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

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: Corrections for form. They do not change scope of claims

SPE

2145
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

JASON CARDONE
SUPERVISORY PATENT EXAMINER

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In re Application of :
Mark G. Erlander et al. :
Application No. 10/028,018 :
Filed: December 21, 2001 :
Attorney Docket Number: :
485772004300 :
Title: BREAST CANCER :
PROGRESSION SIGNATURES :

DECISION ON PETITION
UNDER 37 C.F.R. §1.137(b)

This is a decision on the petition filed June 26, 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 submit an Appeal Brief within two months of the filing of the Notice of Appeal on May 13, 2005, pursuant to 37 C.F.R. §1.192. No extensions of time under 37 C.F.R. §1.136 were received. Accordingly, the above-identified application became abandoned on July 14, 2005.

With the present petition, Petitioner has indicated that a continuation of the present application was filed on June 26,

---

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.

2006. It is noted that this filing has been assigned an application number of 11/426,572.

As such, the present petition under 37 C.F.R. §1.137(b) is **GRANTED**.

Since 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 continuing application number 11/426,572.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[2]. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

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

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

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Paper No. 10

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OFFICE OF PETITIONS

In re Application of
Keith Malang et al
Application No. 10/028,068
Filed: December 20, 2001
Attorney Docket No. 3123-396

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 19, 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 April 10, 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 July 11, 2003.

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

The application file is being forwarded to Technology Center AU 2858.

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

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EDELL, SHAPIRO & FINNAN, LLC
1901 RESEARCH BOULEVARD
SUITE 400
ROCKVILLE, MD 20850

Mail Date: 04/20/2010

Applicant	: Arunkumar B. Thippeswamy	: DECISION ON REQUEST FOR
Patent Number	: 7602716	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/028,069	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/20/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2314** 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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MILTON S SALES
PATENT LEGAL STAFF
EASTMAN KODAK COMPANY
343 STATE STREET
ROCHESTER NY 14650-2201

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MAR 3 1 2008

OFFICE OF PETITIONS

In re Application of	:	
Brugger, et al.	:	
Application No. 10/028,133	:	ON PETITION
Filed: December 20, 2001	:	
Attorney Docket No. 82187NAB	:	

This is in response to paper titled "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)", filed January 29, 2008, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

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

The above-identified application became abandoned for failure to timely file a reply in response to the non-final Office action, mailed January 8, 2007. This Office action set an extendable period for reply of three (3) months. No reply having been received, the application became abandoned on April 9, 2007. A Notice of Abandonment was mailed on October 5, 2007.

A review of the file reveals that the January 8, 2007 Office action, for reasons not apparent to the Office, was not addressed to any address (the address field on the envelope was blank). Accordingly, it is obvious that the Office action was not received by Applicant.

In view thereof, the holding of abandonment is **WITHDRAWN**.

Given the basis for granting this petition, no petition fee was required, and none has been charged.

The matter is being forwarded to Group Art Unit 2625 for re-mailing of the January 8, 2007 Office action to the above address of record, setting a new period for reply.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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WOODCOCK WASHBURN
ONE LIBERTY PLACE - 46TH FLOOR
PHILADELPHIA, PA 19103

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MAY 04 2006

OFFICE OF PETITIONS

In re Application of	:	
Paul T. Watson et al	:	
Application No. 10/028,153	:	DECISION ON PETITION
Filed: December 20, 2001	:	TO WITHDRAW
Attorney Docket No. BELL-0164/01331	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 9, 2005.

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

A review of the file record indicates that the previously appointed power of attorney has been revoked by the assignee. 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 applicants.

This application is being referred to Technology Center AU 2623.

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

Amelia Au
Petitions Examiner
Office of Petitions

cc: MYERS BIGEL SIBLEY & SAJOVEC
P.O. BOX 37428
RALEIGH, NC 27627

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070926

DATE : September 26, 2007

TO SPE OF : ART UNIT 1773

SUBJECT : Request for Certificate of Correction on Patent No.: 6526588

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: Carol Chaney **Art Unit** 1773

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MOTOROLA, INC.
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG, IL 60196

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DEC 0 4 2006

OFFICE OF PETITIONS

In re Application of

Messerges, et al.

Application No. 10/028,164

Filed: October 25, 2001

Attorney Docket No.CR00287M

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed October 30, 2006.

The petition is **granted**.

This application was held abandoned May 4, 2006, after no reply was received to the non-final Office action mailed February 3, 2006. The notice set forth a shortened statutory period of reply of three-months from its mailing date. No response was received within the allowable period and the application became abandoned on May 4, 2006. The instant petition was filed on October 30, 2006. Petitioner maintains that the non-final Office action was never received and provides a copy of the relevant docketing calendar as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology Center 2100, GAU 2137 for further processing including re-mailing of the non-final Office action and resetting of time period for reply.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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ERICSSON INC.
6300 LEGACY DRIVE
M/S EVR 1-C-11
PLANO, TX 75024

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JUL 26 2007

OFFICE OF PETITIONS

In re Application of	:	
LINDQUIST et al	:	
Application No.: 10/028,176	:	DECISION ON PETITION
Filing Date: December 21, 2001	:	UNDER 37 CFR 1.137(B)
Attorney Docket No.: P14729 (27943-00422USP2)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed March 21, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed December 20, 2006, which set a statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on March 21, 2007.

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

This application is being referred to the Office of Publications.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3303.

Bryan Lin

Bryan Lin
Legal Examiner
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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PFIZER INC
150 EAST 42ND STREET
5TH FLOOR - STOP 49
NEW YORK NY 10017-5612

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MAR 2 3 2006

OFFICE OF PETITIONS

In re Application of	:	
Benson et al.	:	
Application No. 10/028,224	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. 268.04030121	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 16, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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

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

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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PFIZER INC
150 EAST 42ND STREET
5TH FLOOR - STOP 49
NEW YORK, NY 10017-5612

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APR 0 4 2007

OFFICE OF PETITIONS

In re Application of
Timothy E. Benson, et al.
Application No. 10/028,224
Filed: December 21, 2001
Attorney Docket No. 00403.CN1

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed November 21, 2006.

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue fee on or before October 2, 2006. A Notice of Abandonment was mailed on November 9, 2006. On November 21, 2006, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the requisite issue/publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.[1]

The application is being referred to the Office of Publications to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: KAO H. LU, ESQUIRE
1425 E. DARBY ROAD
HAVERTOWN, PA 19083

UNITED STATES PATENT AND TRADEMARK OFFICE

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MARK A. OATHOUT
3701 KIRBY DRIVE, SUITE 960
HOUSTON TX 77098

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SEP 27 2005

OFFICE OF PETITIONS

In re Application of Bashen et al. Application No. 10/028,235 Filed: December 21, 2001 Attorney Docket No. BASH001	: : : : :	ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed August 25, 2005, to change the order of the names of the inventors.

The petition is **GRANTED**.

The order of the names of the inventors will be changed as follows:

1. Janet Emerson Bashen
2. G. Steven Bashen
3. Marjana Lindsey Roach
4. Donnie Moore

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

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

Liana Chase
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

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APR 29 2008

OFFICE OF PETITIONS

In re Application of
Koichi ITO et al.
Application No. 10/028,265
Filed: December 28, 2001
Attorney Docket No. **1573.1010**

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 20, 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 January 15, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed October 15, 2007. Accordingly, the date of abandonment of this application is January 16, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1440 and the publication fee of $300, (2) the petition fee of $1540; and (3) a proper statement of unintentional delay. Accordingly, the Issue Fee and Publication Fee are accepted as having been unintentionally delayed.

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

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

David Buco
Petition Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

JOHN W. RYAN
WILMER, CUTLER & PICKERING
2445 M STREET, NW
WASHINGTON DC 20037

MAILED
APR 17 2003
Technology Center 2600

In re Application of	:	
Rangnekar et al.	:	
Application No. 10/028,267	:	DECISION ON REQUEST TO
Filed: December 28, 2001	:	WITHDRAW AS ATTORNEY
For: ROUTING PROTOCOL SELECTION FOR	:	
AN AD HOC NETWORK	:	

This is a decision on the request to withdraw as attorney/agent of record filed on March 19, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED.**

All attorneys of record are granted the request for withdraw of attorney/agent. The Patent Office does not recognize withdrawal of a firm. All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

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

cc: Brad Aaron
Aether Systems, Inc.
11460 Cronridge Drive
Owings, MD 21117

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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CANTOR COLBURN LLP - BELLSOUTH
55 GRIFFIN ROAD SOUTH
BLOOMFIELD CT 06002

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MAR 16 2006
OFFICE OF PETITIONS

In re Application of	:	
Smith et al.	:	
Application No. 10/028,271	:	ON PETITION
Filed: December 28, 2001	:	
Title: Mobile Gateway Interface	:	

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed February 10, 2006.

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

This above-identified application became abandoned for failure to timely file a response to a final Office Action which was mailed on March 16, 2005. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time pursuant to 37 CFR 1.136(a) were obtained. Accordingly, this application was held abandoned on June 17, 2005. A Notice of Abandonment was mailed on January 25, 2006.

In the present petition, petitioner contends the a Notice of Appeal, a petition for three month extension of time and accompanying fee were submitted on September 16, 2005. In support, petitioner has provided a copy of the certificate of transmission. The Office's Auto-Reply confirms the Office received a reply on September 16, 2005.

The response submitted September 16, 2005 has been located in the Office.

The Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn.

Petitioner is reminded the extendable reply period for submission of the Appeal Brief continues to run from the date the Notice of Appeal was filed on September 16, 2005. See 37 CFR §§ 41.31 and 41.37.

The application is being forwarded to the 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

BEST AVAILABLE COPY

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : 2-8-07

TO SPE OF : ART UNIT 3744

SUBJECT : Request for Certificate of Correction on Patent No.: 7144246 B2 (10/028276)

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.

Should Claims be enter?

Thank You For Your Assistance

E. James
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

Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7-7-08

TO SPE OF : ART UNIT 2616

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/028286 Patent No.: 7092360

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

Please Review COFC

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**.

Ennis Young

Certificates of Correction Branch

703-308-9390 ext. 117

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: THE PATENT CLAIMS WERE PROPERLY NUMBERED. SEE THE AMENDMENT OF 5/18/06. THE REQUESTED CHANGES/CORRECTIONS CHANGE THE SCOPE OF THE CLAIMS.

[signature] 2400

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date Mailed : July 20, 2009

Patent No. : 7,092,360 B2
Patent Issued : August 15,2006
Docket No. : TR-060-US
Re: Request for Certificate of Correction

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

The alleged error(s) The Patent claims were properly numbered.see the amendment of 5/18/06.The requested changes /corrections change the scope of the claims. the patent is printed in accordance with the record .In view of the foregoing, your request, in this matter(s), is hereby denied.

Further consideration/reconsideration will be given upon receipt of a Request for Reconsideration under, under the provision of U.SC.254 or 255 (C.F.R. 1.322 or 1.323), accompanied by the appropriate response or fee of $100, which should be directed to Decisions & Certificates of Correction Branch.

Ennis Young
Legal Instrument Examiner
(703) 756-1542

For Mary Diggs, Supervisor
Decisions & Certificates of Correction Branch
(703) 756-1580 or (703) 756-1814 (Receptionist)

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.
10/028,298	12/19/2001	David N. Goldberg	10019867-1	2928

7590 05/18/2009
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER
HO, CHUONG T

ART UNIT	PAPER NUMBER
2619	

MAIL DATE	DELIVERY MODE
05/18/2009	PAPER

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:6

DATE : April 15, 2009

TO SPE OF : ART UNIT 2419

SUBJECT : Request for Certificate of Correction on Patent No.: 7,447,146

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/Edan Orgad/
Supervisory Patent Examiner, Art Unit 2419

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 6

DATE : 04/24/09

TO SPE OF : ART UNIT 2419

SUBJECT : Request for Certificate of Correction for Appl. No.: 10028298 Patent No.: 7447146 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: _____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 10

FRANK S. DiGIGLIO
SCULLY, SCOTT, MURPHY & PRESSER
400 GARDEN CITY PLAZA
GARDEN CITY, NY 11530

COPY MAILED

APR 1 3 2004

OFFICE OF PETITIONS

In re Application of :
Abdullah et al. :
Application No. 10/028,346 :
Filed: December 20, 2001 : ON PETITION
Attorney Docket No. :
15179 :

This is a decision on the petition under 37 CFR 1.137(a), filed March 10, 2004, to revive the above-identified application. The petition is properly treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment.

The petition is **granted.**

The above-identified application became abandoned for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, mailed February 22, 2002. The Notice set a two (2) month period for reply. No reply having been received, the above-identified application became abandoned April 23, 2003. A Notice of Abandonment was mailed on January 6, 2004.

Applicant's Assertion

Applicant avers non-receipt of the Notice, mailed February 22, 2002. In support, Applicant has provided the necessary statements and copies of the docket record where the non-received Notice would have been entered had it been received and docketed. Applicant has demonstrated by a preponderance of the evidence that the Office action was not received.

The Notice of Abandonment is hereby withdrawn. A refund of the petition fee, $110.00, has been credited to deposit account no. 19-1013 as authorized in the Response to the Notice to File Missing Parts, filed with the instant petition.

The Oath/declaration has been entered and made of record.

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

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

June 21, 2005

Conrad J. Clark
Clark & Brody
Suite 600
1750 K St., N. W.
Washington, DC 20006

In re Application of:
Magnuson
Serial No: 10/028,371 On Petition
Filing Date: December 28, 2001
For: **BRACKET FOR MOUNTING EITHER A FIXED OR A PIVOTING ARMREST**

In response to the petitions received on December 4, 2003, to withdraw the holding of abandonment 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 January 28, 2002. Which set forth a shortened statutory period for reply of two months. Accordingly, the above-identified application became abandoned March 28, 2002. The notice of abandonment was mailed on November 24, 2003.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Part of Nonprovisional Application on April 10, 2002.

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 FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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OCT 0 2 2006
OFFICE OF PETITIONS

SUN MICROSYSTEMS/FINNEGAN, HENDERSON LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

In re Application of :
Steele, et al. : LETTER REGARDING PTA
Application No. 10/028,375 :
Filed: December 28, 2001 :
Atty. Dkt. No.: 06502.0374-00 :

This letter is in response to the "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT," filed June 28, 2006. The Office thanks applicants for their good faith and candor in bringing this to our attention.

Applicants indicate that the PTA of 747 days indicated on the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b), mailed April 27, 2006 may be in error and request a re-determination.

The correct patent term adjustment (PTA) at the time of the allowance is 568 days. The Office will adjust the PAIR screen to reflect that the PTA determination at the time of mailing of the Notice of Allowance reflects an adjustment of 568 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

A careful review of the application history reveals that the Office failed to assess a reduction of 30 days in connection with the Notice of Appeal filed September 30, 2005 under 37 CFR 1.704(b).

Moreover, the Office errantly calculated an adjustment of 149 days under 37 CFR 1.702(a)(2). The application is not entitled to an adjustment under 37 CFRF 1.702(a)(2) because the Notice of Allowance was mailed within four months of the reply (amendment placing application in condition for allowance) was filed on March 21, 2006. *See*, endnote for calculation of adjustments[i].

Accordingly, at the time of allowance, the application was entitled to an adjustment of 606 days. The adjustment is properly reduced eight days, as uncontested by applicants. *See*, endnote for calculation of reductions[ii].

In view thereof, at the time of allowance, the application is entitled to an adjustment of 568 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). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

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).

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

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

Kery Fries

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

Enclosure: Copy of Adjustment PAIR Calculation

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[i] An adjustment of 565 days was accorded under 37 CFR 1.702(a)(1) and 1.702(a)(1) for failure to mail at least one notification or Notice of Allowance within 14 months of the date the application was filed. An adjustment of 41 days was accorded under 37 CFR 1.702(a)(2) and 1.703(a)(2) for failure to respond to the amendment filed December 20, 2004 within four months from the date the amendment was filed.

[ii] A reduction of three days in accordance with 37 CFR 1.704(c)(8) was assessed in connection with the supplemental reply (IDS) submitted December 23, 2004; a reduction of five days in accordance with 37 CFR 1.704(b) was assessed in connection with the amendment after non-final Office action submitted December 20, 2004; and a reduction of 30 days is properly assessed in accordance with 37 CFR 1.704(b) in connection with the Notice of Appeal submitted September 30, 2005.

Day : Monday
Date: 10/2/2006

PALM INTRANET

Time: 07:40:21

PTA Calculations for Application: 10/028375			
Application Filing Date:	12/28/2001	PTO Delay (PTO):	755
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	8
Post-Issue Petitions:	0	Total PTA (days):	568
PTO Delay Adjustment:	-179		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
59	09/29/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		30	
58	09/29/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		149	
50	04/27/2006	MAIL NOTICE OF ALLOWANCE	149		27
49	04/27/2006	MAIL NOTIFICATION OF TERMINAL DISCLAIMER - ACCEPTED			
48	04/25/2006	ISSUE REVISION COMPLETED			
47	04/25/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
46	04/20/2006	NOTICE OF ALLOWABILITY			
45	01/20/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
44	04/12/2006	PARALEGAL TD ACCEPTED			
43	04/12/2006	NOTIFICATION OF TERMINAL DISCLAIMER - ACCEPTED			
42	03/21/2006	TERMINAL DISCLAIMER FILED			
41	04/11/2006	DATE FORWARDED TO EXAMINER			
40	03/21/2006	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
39	03/21/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	01/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	11/08/2005	MAIL APPEALS CONF. PROCEED TO BPAI			
36	11/04/2005	APPEALS CONF. PROCEED TO BPAI,			
35	09/30/2005	REQUEST FOR APPEAL CONFERENCE FILED			
34	09/30/2005	NOTICE OF APPEAL FILED			
33	09/30/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			

32	08/30/2005	MAIL ADVISORY ACTION (PTOL - 303)			
31	08/17/2005	ADVISORY ACTION (PTOL-303)			
30	07/29/2005	REFERENCE CAPTURE ON IDS			
29	07/29/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	27
28	08/09/2005	DATE FORWARDED TO EXAMINER			
27	07/29/2005	AMENDMENT AFTER FINAL REJECTION			
26	05/31/2005	MAIL FINAL REJECTION (PTOL - 326)	41		21
25	05/26/2005	FINAL REJECTION			
24	04/08/2005	CORRESPONDENCE ADDRESS CHANGE			
23	03/22/2005	CASE DOCKETED TO EXAMINER IN GAU			
22	03/16/2005	DATE FORWARDED TO EXAMINER			
21	12/20/2004	RESPONSE AFTER NON-FINAL ACTION		5	15
20	11/23/2004	REFERENCE CAPTURE ON IDS			
19	11/04/2004	REFERENCE CAPTURE ON IDS			
18	12/23/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		3	21
17	11/04/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	12/20/2004	WORKFLOW INCOMING AMENDMENT IFW			
15	09/15/2004	MAIL NON-FINAL REJECTION	565		-1
14	09/15/2004	NON-FINAL REJECTION			
13	08/13/2004	CASE DOCKETED TO EXAMINER IN GAU			
12	08/13/2004	CASE DOCKETED TO EXAMINER IN GAU			
11	06/14/2004	CASE DOCKETED TO EXAMINER IN GAU			
10	06/05/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	01/15/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	11/19/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	04/10/2002	PRELIMINARY AMENDMENT			
6	03/27/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	02/19/2002	CASE DOCKETED TO EXAMINER IN GAU			
4	01/29/2002	APPLICATION DISPATCHED FROM OIPE			
3	01/28/2002	APPLICATION IS NOW COMPLETE			
2	01/10/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/28/2001	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 Breitenstein et al. :
Application No. 10/028,388 :
Filing Date: December 21, 2001 :
Attorney Docket No. FR000143 :

Decision on Petition

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

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Non-Compliant Amendment mailed July 11, 2005, which set a shortened statutory period for reply of one (1) month. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on August 12, 2005. A Notice of Abandonment was mailed on February 9, 2006.

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 2621 will be informed of the instant decision and the application, including the papers filed February 23, 2006, will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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TRASKBRITT, P.C.
P.O. Box 2550
Salt Lake City, Utah 84110-2550

In re Application of
Huylebroeck et al.
Serial No. : 10/028,396
Filed : December 21,2001
Attorney Dkt No. : 2676-5174US

Decision on Petition

This letter is in response to the Petition under 37 C.F.R. 1.144, filed on 12 October 2004, to request reconsideration of the restriction requirement. The delay in acting on this petition is regretted.

BACKGROUND

Applicants filed the instant application on December 21, 2001, with 17 claims. A restriction requirement was made on 10/23/2003, in which the examiner restricted the claims into 21 distinct Groups. The restriction was based on the identification of the different inventions drawn to the use of one of four different nucleic acid sequences in a process of identifying transcription factors (Groups I-IV), a method for identifying compounds with an interference capability towards transcription (Groups V-VIII), a pharmaceutical compound (Group IX), a polynucleotide sequence (Groups X-XIII), a method for detecting an interaction between two proteins (Groups XIV-XVII), and a method for identifying a new target gene (Groups XVII-XXI). On 1/10/2003 applicants

elected with traverse to prosecute the claims of Groups I, claims 1 through 6, drawn to the sequence CAACCTNCACCT (SEQ ID No 1 and a second SEQ ID NO 1 separated by an N). On 3/12/2004 applicants' election was acknowledged and a first action on the merits was sent to applicants. On 6/18/2004, applicants amended the claims and argued the rejections made of record. On 9/16/2004 a non-final rejection was sent to applicants. On 10/12/2004 applicants filed the instant petition request asking that the restriction requirement between Groups I-IV be reviewed and reconsidered.

DISCUSSION

The application, prosecution history and petition have been reviewed and carefully considered. Applicants petition under 37 C.F.R. 1.144, to reconsider the restriction requirement be withdrawn as improper with respect to the Groups identified as Groups I-IV is considered moot in light of applicants cancellation of all claims of Groups II-IV. No claims of Groups II-IV, nor any claims linking original Groups I-IV currently exist. Claims 2-4 are drawn to a process of identifying transcription factors such as activators and/or repressors comprising the use of a nucleic acid sequence comprising CAACCTNCACCT (SEQ ID No 1 and a second SEQ ID NO 1 separated by an N) (Group I).

DECISION

For the reasons set forth above, the Petition under 37 C.F.R. 1.144 to withdraw the restriction requirement between Groups I-IV is **DISMISSED** in view of the fact that no claims of original Groups II-IV are currently pending.

Any request for consideration of this petition decision must be filed within two (2) months of the mailing date of this decision.

This application will be forwarded to the Examiner for consideration of the Amendment filed 20 December 2004.

Should there be any questions regarding this decision, please contact Special Program Examiner Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 703-872-9306.

Jasemine C. Chambers

Jasemine Chambers

Director, Technology Center 1600

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NEW BRUNSWICK NJ 08933-7003

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OFFICE OF PETITIONS

In re Application of :
Diana Zanini et al. :
Application No. 10/028,400 : ON PETITION
Filed: December 20, 2001 :
Attorney Docket No. VTN-568 :

This is a decision on the petition, filed March 9, 2006 under 37 CFR 1.137(b)[1], to revive the above-identified application.

The petition is **DISMISSED**.

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

A Final Office Action was mailed February 9, 2005. In response thereof, an amendment and a Notice of Appeal were filed on May 11, 2005 with a certificate of mail pursuant to 37 CFR 1.8, dated May 9, 2005. By advisory action, applicants were advised that the amendment did not place the application in condition for allowance and thus was not entered. The Notice of Appeal, however was entered and required the filing of an Appeal Brief within two months of the filing of the Notice of Appeal. As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed May 11, 2005 with a certificate of mail pursuant to 37 CFR 1.8, dated May 9, 2005, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the-above-identified application became abandoned on July 12, 2005. See MPEP 1215.04. A notice regarding the

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[1]A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

(2) the petition fee required by 37 CFR 1.17(l);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

appeal was mailed February 17, 2006.[2]

With the instant petition to revive, petitioners have submitted an amendment as the response required under 37 CFR 1.137(b).

The petition does not however satisfy requirement (1) above.

The application became abandoned for failure to file a response within the meaning of 37 CFR 1.113 to the final rejection of February 9, 2005, within the time period for response. The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application. Since the amendment submitted with the petition has been referred to the examiner, who has indicated that the amendment does not prima facie place the application in condition for allowance, the response required for a renewed petition must be a Notice of Appeal and requisite fee, or the filing of a continuing application under the terms set forth in 1031 O.G. 11.

Petitioner must submit a proper reply to the final Office action mailed on February 9, 2005, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay**.

The petition fee in the amount of $1500.00 has been charged to deposit account no. 10-0750 per the authorization included on the face of the petition.

A courtesy copy of an Advisory Action is included.

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

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

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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[2]A response was purportedly filed June 6, 2005, prior to the maximum period obtainable with an extension of time, but the date of the submission was not proven to the satisfaction of the Commissioner and thus was not accepted as timely filed.

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OFFICE OF PETITIONS

In re Application of :
Diana Zanini et al. :
Application No. 10/028,400 : ON PETITION
Filed: December 20, 2001 :
Attorney Docket No. VTN-568 :

This is a decision on the renewed petition, filed July 12, 2006 under 37 CFR 1.137(b)[1], to revive the above-identified application.

The petition is **GRANTED**.

A Final Office Action was mailed February 9, 2005. In response thereof, an amendment and a Notice of Appeal were filed on May 11, 2005 with a certificate of mail pursuant to 37 CFR 1.8, dated May 9, 2005. By advisory action, applicants were advised that the amendment did not place the application in condition for allowance and thus was not entered. The Notice of Appeal, however was entered and required the filing of an Appeal Brief within two months of the filing of the Notice of Appeal. As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed May 11, 2005 with a certificate of mail pursuant to 37 CFR 1.8, dated May 9, 2005, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the-above-identified application became abandoned on July 12, 2005. See MPEP 1215.04. A notice regarding the

[1]A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

(2) the petition fee required by 37 CFR 1.17(l);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

appeal was mailed February 17, 2006.[2] A petition to revive was filed March 9, 2006 but dismissed in a decision mailed April 27, 2006 because the amendment submitted with the petition did not prima facie place the application in condition for allowance.

Comes now petitioner with a 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 1616 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

[2]A response was purportedly filed June 6, 2005, prior to the maximum period obtainable with an extension of time, but the date of the submission was not proven to the satisfaction of the Commissioner and thus was not accepted as timely filed.

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OFFICE OF PETITIONS

In re Application of Radek Grzeszczuk et al. Application No. 10/028,414 Filed: December 21, 2001 Attorney Docket No.: 42390.P13155 Title: SURFACE LIGHT FIELD DECOMPOSITION USING NON-NEGATIVE FACTORIZATION	:	DECISION ON PETITION UNDER 37 C.F.R. §1.137(A)

This is a decision on the petition filed January 20, 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 Notice of Missing Parts (notice[2]), mailed January 28, 2002, which set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on March 29, 2002. A Notice of Abandonment was mailed on November 24, 2003.

With the instant petition, Petitioner has supplied a declaration, along with a statement of facts which asserts that the notice was never received, along with a copy of the "docket" in order to show that the correspondence was not received. It is noted that the Petitioner is not of record.

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

2 The notice required an executed oath or declaration, along with the surcharge associated with the late filing of an oath or declaration and substitute drawings.

The instant petition lacks item (3) above.

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

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

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

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

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]

"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

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

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8]

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

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

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

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

7 Id.

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

Nonawareness of a PTO rule will not constitute unavoidable delay[9]. The burden of showing the cause of the delay is on the person seeking to revive the application[10].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[11].

The portion of the MPEP relevant to the abandonment of this application

MPEP 711.03(c) states, in part:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION

In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based upon unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

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

10 Id.

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

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances that led to the abandonment of the application meet the aforementioned unavoidable standard and, therefore; petitioner qualifies for relief under 37 CFR 1.137(a). Petitioner explains that all incoming mail is sorted by the docketing department, and then routed to the attorney responsible for the file.

The printout petitioner has supplied fails to establish non-receipt of an Office communication, in that it has not been accompanied by an attestation to the fact that a search of the file, the file jacket and docket records indicates that the Office communication was not received.

Furthermore, no copy of the file jacket has been supplied.

Additionally, the printouts do not serve as a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed. The printouts supplied all pertain to a particular client, client number "42390," the Intel Corporation. A docket report is a mail log, recorded by the person who receives all incoming mail. A docket report should show all incoming mail received during the relevant time period. As the printout merely concerns the files of a particular client, it fails to show the correspondence at issue was not received and merely misplaced and filed with another file or mislabeled so as to be associated with the wrong client.

On the facts presented, this situation fails to constitute unavoidable delay. These facts might constitute an unintentional delay in prosecution, but it certainly does not rise to the level of unavoidable.

Therefore, it is determined that the petitioner cannot establish that the entire delay in filing the required reply until the filing of a grantable petition pursuant to 37 CFR §1.137(a) was unavoidable which is required in order for relief to be granted under 37 CFR §1.137(a).

As such, the petition is **DISMISSED**.

Any request for reconsideration or 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 reconsideration request 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 may wish to consider supplying a copy of the file jacket, conducting the required searches and stating that they were not successful, and submitting an acceptable docket report.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b) [12].

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12 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 reply to this letter may be submitted by mail[13], hand-delivery[14], or facsimile[15].

As petitioner has asserted that the notice of January 28, 2002 was not received, a copy has been provided.

A copy of the notice of January 28, 2002 has been enclosed.

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

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.

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

Encl.

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13 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
14 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.
15 (703) 872-9306, attention Office of Petitions, Attorney Paul Shanoski.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 10

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LOS ANGELES CA 90025

COPY MAILED
MAR 2 5 2004
OFFICE OF PETITIONS

In re Application of
Radek Grzeszczuk et al.
Application No. 10/028,414
Filed: December 21, 2001
Attorney Docket No.: 42390.P13155
Title: SURFACE LIGHT FIELD DECOMPOSITION USING NON-NEGATIVE FACTORIZATION

DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.137(A)

This is a decision on the renewed petition filed March 12, 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 Notice of Missing Parts (notice[2]), mailed January 28, 2002, which set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on March 29, 2002. A Notice of Abandonment was mailed on November 24, 2003.

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

2 The notice required an executed oath or declaration, along with the surcharge associated with the late filing of an oath or declaration and substitute drawings.

With the original petition, received January 20, 2004, Petitioner supplied a declaration, along with a statement of facts which asserts that the notice was never received, along with a copy of the "docket" in order to show that the correspondence was not received.

On February 25, 2004, the original petition was dismissed via the mailing of a decision which set forth that the original petition lacked item (3) above.

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

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

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

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

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]

"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

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

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

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

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

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

7 Id.

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8]

Nonawareness of a PTO rule will not constitute unavoidable delay[9]. The burden of showing the cause of the delay is on the person seeking to revive the application[10].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[11].

The portion of the MPEP relevant to the abandonment of this application

MPEP 711.03(c) states, in part:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION

In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

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

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

10 Id.

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

Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based upon unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

Application of the standard to the current facts and circumstances

In the decision on the original petition, the following was set forth:

In the instant petition, petitioner maintains that the circumstances that led to the abandonment of the application meet the aforementioned unavoidable standard and, therefore; petitioner qualifies for relief under 37 CFR 1.137(a). Petitioner explains that all incoming mail is sorted by the docketing department, and then routed to the attorney responsible for the file.

The printout petitioner has supplied fails to establish non-receipt of an Office communication, in that it has not been accompanied by an attestation to the fact that a search of the file, the file jacket and docket records indicates that the Office communication was not received.

Furthermore, no copy of the file jacket has been supplied.

Additionally, the printouts do not serve as a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed. The printouts supplied all pertain to a particular client, client number "42390," the Intel Corporation. A docket report is a mail log, recorded by the person who receives all incoming mail. A docket report should show all incoming mail received during the relevant time period. As the printout merely concerns the files of a particular client, it fails to show the correspondence at issue was not received and merely misplaced and filed with another file or mislabeled so as to be associated with the wrong client.

On the facts presented, this situation fails to constitute unavoidable delay. These facts might constitute an unintentional delay in prosecution, but it certainly does not rise to the level of unavoidable.

Therefore, it is determined that the petitioner cannot establish that the entire delay in filing the required reply until the filing of a grantable petition pursuant to 37 CFR §1.137(a) was unavoidable which is required in order for relief to be granted under 37 CFR §1.137(a).

The decision concluded with the following recommendation:

On renewed petition, Petitioner may wish to consider supplying a copy of the file jacket, conducting the required searches and stating that they were not successful, and submitting an acceptable docket report.

With the renewed petition, the Petitioner has failed to address any of the reasons which necessitated the dismissal of the decision of February 25, 2004[12]. Petitioner has merely set forth a timeline of the events from the abandonment of the application to the drafting of his renewed petition. No new evidence has been submitted: no arguments have been proffered, no searches have been conducted, and no documentation has been supplied.

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

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

Furthermore, Petitioner concludes his renewed petition with the following:

The undersigned, in conjunction with in-house counsel, are believed to have acted as reasonable and prudent persons would in relation to their most important business in gathering the required documents and responding to the original Notice of Abandonment and to the Decision on Petition.

On second renewed petition, Petitioner will need to explain why a reasonable person acting in relation to his most important business would read a decision which set forth that a docket report, a statement of a search, and a copy of the file jacket would be required - and include none of these in his response.

Petitioner will also need to explain why the failure to address any of the three points of dismissal does not constitute an intentional delay of the presentation of a grantable petition, which would constitute an absolute bar to revival. As the response fails to mention any search, or any attachment which might include a copy of the file jacket or a docket report, it does not appear that these items were included and subsequently misplaced by the Office.

Any request for reconsideration or 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 "Second 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.

As stated above, on second renewed petition, Petitioner may wish to consider supplying a copy of the file jacket, conducting the required searches and stating that they were not successful, and submitting an acceptable docket report.

Petitioner may also wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b) [13].

The reply to this letter may be submitted by mail[14], hand-delivery[15], or facsimile[16].

The reply should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner. The Petitioner may wish to consider telephoning the undersigned at the number provided below to confirm that the documents were delivered to the undersigned. Please note that the delivery process within the PTO can take as much as three weeks.

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

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13 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

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

15 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.

16 (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.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 12

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LOS ANGELES CA 90025

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MAY 1 1 2004

OFFICE OF PETITIONS

In re Application of
Radek Grzeszczuk et al.
Application No. 10/028,414
Filed: December 21, 2001
Attorney Docket No.: 42390.P13155
Title: SURFACE LIGHT FIELD DECOMPOSITION USING NON-NEGATIVE FACTORIZATION

DECISION ON SECOND RENEWED PETITION UNDER 37 C.F.R. §1.137(B)

This is a decision on the second renewed petition filed April 16, 2004, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice[2]), mailed January 28, 2002, which set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified

1 A grantable petition pursuant to 37 CFR §1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

2 The notice required an executed oath or declaration, along with the surcharge associated with the late filing of an oath or declaration and substitute drawings.

application became abandoned on March 29, 2002. A Notice of Abandonment was mailed on November 24, 2003.

With the original petition under 37 C.F.R. §1.137(a), received January 20, 2004, Petitioner supplied a declaration, along with a statement of facts which asserts that the notice was never received, along with a copy of the "docket" in order to show that the correspondence was not received.

On February 25, 2004, the original petition was dismissed via the mailing of a decision which set forth that the original petition lacked item (3) above.

On March 12, 2004, a renewed petition was received, which failed to address any of the points set forth in the decision mailed on February 25, 2004.

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

With the instant petition, the petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner has submitted the payment of the petition fee, has previously submitted an executed declaration, and has made a statement which is being construed as the proper statement of unintentional delay.

The petition is **GRANTED**.

After this decision is mailed, the application will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning *this decision* should be directed to the undersigned at (703) 305-0011.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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Paper No. 6

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WESTFIELD, NJ 07090

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FEB 2 1 2003

OFFICE OF PETITIONS

In re Application of :
Stephen Forrest et al :
Application No. 10/028,465 :
Filed: December 20, 2001 :
Attorney Docket No. PRN-30101 :

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 2800.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 9

Arthur I. Navarro
Godwin Gruber, P.C.
Suite 655
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Richardson TX 75081

COPY MAILED

FEB 19 2003

OFFICE OF PETITIONS

In re Application of
Denz, Natchu & Blake
Application No.: 10/028,473
Filed: December 28, 2001
Attorney Docket No.: P12692-US2/50001.2070
For: METHODS AND SYSTEM FOR DATA PACKET FILTERING USING TREE-LIKE HIERARCHY

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed July 28, 2002.

The petition is **DISMISSED**.

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

The above-identified application was filed on December 28, 2001 without an executed oath or declaration. Accordingly, on January 28, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring, *inter alia*, an executed oath or declaration and a surcharge for its late filing.

In response, on July 28, 2002, a declaration executed by joint inventors Denz and Blake and Attorney William D. Kolb on behalf of a company with proprietary interest in the invention, the surcharge, a four month extension of time with required fee, and the instant petition and required fee were filed. A declaration of facts of Mary Bensel accompanied the petition. Mary Bensel states that despite numerous attempts to contact Mr. Natchu through telephone, e-mail, and mailings, that Mr. Natchu refuses to sign the declaration for the above-identified application.

A grantable petition under 37 CFR 1.47(a) requires

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

This petition lacks item (2) 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 submitted with the instant petition was signed by two of the inventors. Attorney Kolb signed an addendum to the declaration on behalf of a company with proprietary interest.

It appears that petitioners have submitted documents with the intention of having an entity with a proprietary interest intervene and make the application on behalf of the non-signing inventor. Petitioners are reminded that when at least one joint inventor signs, the provisions of 37 CFR 1.47(a) apply. Where 37 CFR 1.47(a) is available, application cannot be made under 37 CFR 1.47(b). MPEP 409.03(b)

In this instance, inventors Denz and Blake signed the declaration. Therefore, the declaration with Attorney Kolb's signature is not acceptable.

Messrs. Denz and Blake must execute another declaration that contains information for Mr. Natchu. The declaration in the application file only lists his name. His citizenship,[1] his residence, his post office address must be included. As stated in MPEP 605.03, "In situations where an inventor does not execute the oath or declaration and the inventor is not deceased, such as in an application filed under 37 CFR 1.47, the inventor's most recent home address must be given to enable the Office to communicate directly with the inventor as necessary."

The signing inventors must sign another declaration for the application of behalf of themselves and on behalf on the non-signing inventor. The declaration will be acceptable if the signing inventors sign in their respective signature block and (1) the signature block of the non-signing inventor is left blank **OR** (2) the signing inventors sign a document that states they are signing on behalf of the non-signing inventor, as well. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by the Rule 1.47(a) applicant on behalf of Mr. Natchu is REQUIRED. See MPEP 409.03(a).

Pursuant to petitioners' authorization, deposit account no. 50-0530 will be charged the $130.00 fee associated with filing a Rule 47 petition.

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

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

By 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

---

[1] As listing the citizenship for each inventor is a statutory requirement under 35 USC 115, it cannot be waived

Telephone inquiries should 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

GREENBERG TRAURIG, LLP
ONE INTERNATIONAL PLACE, 20th FL
ATTN: PATENT ADMINISTRATOR
BOSTON MA 02110

MAILED

JUN 18 2010

OFFICE OF PETITIONS

In re Application of	:	
GIL et al.	:	
Application No. 10/028,542	:	ON APPLICATION FOR
Filed: December 19, 2001	:	PATENT TERM ADJUSTMENT
Atty. Docket No. 087367-013301/US	:	

This is in response to the "REQUEST FOR CONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.702(b)" filed September 4, 2009, which is properly treated as a petition under 37 CFR 1.705(b). Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand eight hundred twenty-nine (1,829) days, not one thousand twenty-one (1,021) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants seek this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined.

Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

---

[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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DARBY & DARBY P.C.
P.O. BOX 770
CHURCH STREET STATION
NEW YORK NY 10008-0770

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OFFICE OF PETITIONS

In re Patent No. 6,602,911 :
Issue Date: August 5, 2003 :
Application No. 10/028,547 :
Filed: December 19, 2001 :
Attorney Docket No. 20269/1201776-US1 :

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed May 29, 2008, which is being treated as a petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification to the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen-months after filing. *See* 37 CFR 1.137(f).

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

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on November 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. Therefore, pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), petitioner failed to timely notify the USPTO of the filing of a counterpart application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification to the USPTO of the filing of a counterpart application in an eighteen-month publication country must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

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

This application matured into Patent No. 6,602,911 on August 5, 2003. Therefore, no further action being required, this patented file is being referred to Files Repository.

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

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES
PATENT AND
TRADEMARK OFFICE

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

MAR 24 2003

#28

PATREA L. PABST
HOLLAND & KNIGHT LLP
ONE ATLANIC CENTER, SUITE 2000
1201 WEST PEACHTREE STREET N.E.
ATLANTA GA 30309-3400

In re Application of	:
Jay D. Kranzler et al	:
Serial No.: 10/028,547	: PETITION DECISION
Filed: December 19, 2001	:
Attorney Docket No.: CYPR-023/01US	:

This is in response to the petition under 37 CFR 1.181, filed March 7, 2003, to withdraw an affidavit under 37 CFR 1.131.

BACKGROUND

A review of the file history shows that the examiner mailed an Office action to applicants on August 27, 2002, setting a three month shortened statutory period for reply. Applicants replied on December 27, 2002 (Certificate of Mailing Date) including a one month extension of time, an amendment to the claims and argument of the rejections of record and two identical affidavits under 37 CFR 1.131, each signed by one of the two inventors. The affidavits contain exhibits indicated as being used in a presentation prior to April 19, 2001, the date of one of the references applied in the Office action.

On March 7, 2003, applicants filed a supplemental amendment to the application and provided a new affidavit under 37 CFR 1.131 which is different from the previous affidavit. Applicants also filed this petition to have the previous affidavit removed and returned to them as the affidavit allegedly contains proprietary material.

DISCUSSION

One purpose of an affidavit under 37 CFR 1.131 is to allow an applicant to establish an earlier date of conception or reduction to practice of a claimed invention in order to antedate an applied reference. 37 CFR 1.131 states:

> (a) When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject

matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.
(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence satisfactorily explained.

M.P.E.P. 715 states:

GENERAL REQUIREMENTS
The essential thing to be shown under 37 CFR 1.131 is priority of invention and this may be done by any satisfactory evidence of the fact. FACTS, not conclusions, must be alleged. Evidence in the form of exhibits may accompany the affidavit or declaration. Each exhibit relied upon should be specifically referred to in the affidavit or declaration, in terms of what it is relied upon to show. For example, the allegations of fact might be supported by submitting as evidence one or more of the following:
(A) attached sketches;
(B) attached blueprints;
(C) attached photographs;
(D) attached reproductions of notebook entries;
(E) an accompanying model;
(F) attached supporting statements by witnesses, where verbal disclosures are the evidence relied upon. Ex parte Ovshinsky, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989);
(G) testimony given in an interference. Where interference testimony is used, the applicant must point out which parts of the testimony are being relied on; examiners cannot be expected to search the entire interference record for the evidence. Ex parte Homan, 1905 C.D. 288 (Comm'r Pat. 1905);
(H) Disclosure documents (MPEP § 1706) may be used as documentary evidence of conception.
Exhibits and models must comply with the requirements of 37 CFR 1.91 to be entered into an application file. See also MPEP § 715.07(d). A general allegation that the invention was completed prior to the date of the reference is not sufficient. Ex parte Saunders, 1883 C.D. 23, 23 O.G. 1224 (Comm'r Pat. 1883). Similarly, a declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131. 37 CFR 1.131(b) requires that original exhibits of drawings or records, or photocopies thereof, accompany and form part of the affidavit or declaration or their absence satisfactorily explained.
ESTABLISHMENT OF DATES
If the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the oath or declaration.
When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date. However, the actual dates of acts relied on to establish diligence must be provided. See MPEP § 715.07(a) regarding the diligence requirement.

THREE WAYS TO SHOW PRIOR INVENTION
The affidavit or declaration must state FACTS and produce such documentary evidence and exhibits in support thereof as are available to show conception and completion of invention in this country or in a NAFTA or WTO member country (MPEP § 715.07(c)), at least the conception being at a date prior to the effective date of the reference. Where there has not been reduction to practice prior to the date of the reference, the applicant or patent owner must also show diligence in the completion of his or her invention from a time just prior to the date of the reference continuously up to the date of an actual reduction to practice or up to the date of filing his or her application (filing constitutes a constructive reduction to practice, 37 CFR 1.131). As discussed above, 37 CFR 1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter. The showing of facts must be sufficient to show:
(A) reduction to practice of the invention prior to the effective date of the reference; or
(B) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice; or
(C) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice).

All admitted affidavits and declarations are acknowledged and commented upon by the examiner in his or her next succeeding action.

As noted above, affidavits are for the purpose of showing prior invention compared to the date of a reference. No provision is made for withdrawal of an affidavit once submitted.

A comparison of the affidavits submitted with the initial reply of December 27, 2002, and the affidavit submitted on March 7, 2003, shows marked differences between the two. The first affidavit alleges a date of invention prior to April 19, 2001, based on exhibits presented at a meeting prior to that date. The second affidavit alleges invention prior to some undefined date in August, 2001, based on bills from applicants' representative and draft copies of the application. The affidavit refers to exhibits A, B, C, and D, however none of these exhibits are attached, and therefor cannot be evaluated. The affidavits are clearly not commensurate in scope with each other. Obviously the second affidavit cannot, without the attached exhibits, be relied upon to antedate a reference.

Further, the Office has established a procedure for submission of confidential or proprietary information for consideration by the examiner, which information may be expunged from the record at a later date if found not to be pertinent to the determination of patentability. Information contained in an affidavit submitted to antedate a reference cannot be subject to such confidential or proprietary provisions as it does have a bearing on patentability.

DECISION

Applicants' petition is **DENIED** for the reasons set forth above.

The application will be forwarded to the examiner for further consideration of the amendments filed December 27, 2002, and March 7, 2003.

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

John Doll
Director, Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : May 16, 2006

TO SPE OF : ART UNIT 1712

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/028,553 Patent No.: 7,012,110 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**.

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: _____

RANDY GULAKOWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

SPE

1712
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

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

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JUN 0 5 2006
OFFICE OF PETITIONS

In re Patent No. 6,859,309	:	DECISION ON REQUEST
Fischer et al.	:	FOR RECONSIDERATION OF
Issue Date: February 22, 2005	:	PATENT TERM ADJUSTMENT
Application No. 10/028,601	:	and
Filed: December 19, 2001	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 55841US002	:	CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, filed March 23, 2005. Patentees request that the patent term adjustment as indicated in the Issue Notification be corrected from twenty-seven (27) days to one hundred ninety-one (191) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED to the extent indicated herein**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **fifty-five (55)** days.

On February 22, 2005, the application matured into U.S. Patent No. 6,859,309, with a revised patent term adjustment of 27 days. On March 23, 2005, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), requesting that the Patent Term Adjustment be extended to 191 days. Patentees assert that the patent is entitled to 191 days of PTA on the basis that the Office failed to issue the patent within four months of the payment of the issue fee and satisfaction of all outstanding requirements. This is the sole basis for correction asserted by patentees.
Patentees' argument has been considered, but not found persuasive. Patentees are advised that the PTA of 27 days

indicated on the Issue Notification (and on the patent) properly includes entry of a period of adjustment of 192 days for the delay cited by patentees. Thus, patentees' argument is moot.

Nonetheless, a review of the application history reveals that pursuant to 37 CFR 1.704(c)(10)[1] and considering the period of overlap[2], periods of reduction of 28 days and 120 days were entered for applicants' filing respectively of an IDS on March 3, 2004 and of a miscellaneous incoming letter on March 31, 2004. (Reconsideration of these periods of reduction is timely under 1.705(d)). A reduction for the filing of the IDS is warranted.

However, as stated in MPEP 2732:

> Certain papers filed after allowance are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an application. See *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). The submission of the following papers after a "Notice of Allowance" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability;" and (7) letters related to government interests (e.g., those between NASA and the Office).

A review of the letter filed March 31, 2004 reveals that it was a "Comments on Statement for Reasons of Allowance," as provided

---

[1] 1.704(c)(10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (ii) Four months.

[2] Since the Office's response to both papers was mailed on November 30, 2004, the period of overlap is March 31, 2004 to November 30, 2004.

for in 6 above. Thus, no reduction was warranted. It is further noted that under the circumstances, no reduction is warranted for the paper filed April 13, 2004. As the IDS was filed after the mailing of the notice of allowance, this was the first opportunity for patentees to request a signed 1449 with respect to the IDS filed March 3, 2004.

Accordingly, the only basis for reduction pursuant to 1.704(c)(10) is the filing of the IDS on March 3, 2004. There is no overlap. Thus, the period of reduction is the lesser period of four months (120 days), rather than the non-overlapping period of 28 days. In other words, the period of reduction of 28 days associated with this paper is removed and a period of reduction of 120 days is entered.

Patentees are reminded that for full consideration all grounds for correction of the PTA (that are timely subject to consideration) should be included in any 1.705(b) or (d) filing.

In view thereof, the patent should have issued with a patent term adjustment of fifty-five (55) days.

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

The fee is required and will not be waived.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **FIFTY-FIVE (55)** days.

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Attachment: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 6,859,309 B2

DATED : February 22, 2005

INVENTOR(S) : Fischer et al.

DRAFT

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (27) days

Delete the phrase "by 27" and insert – by 55 days--

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Paper No. 9

Tom Chen
MacPherson Kwok Chen & Heid
1762 Technology Center Drive, Suite 226
San Jose, Ca 95110

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OFFICE OF PETITIONS

In re Application of :
Thomas R. Omstead et al. :
Application No. 10/028,610 :
Filed: December 19, 2001 :
Attorney Docket No. M-11953 US :

ON PETITION

This is a substitute decision on the petition under 37 CFR 1.137(b) filed September 26, 2003, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the Restriction mailed February 4, 2003, which set a shortened statutory period for reply of one (1) month 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 5, 2003.

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

The application file is being forwarded to Technology Center AU 1765 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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Alexandria, VA 22313-1450
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ROSENTHAL & OSHA
1221 MCKINNEY
SUITE 2800
HOUSTON TX 77010

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MAR 15 2007

OFFICE OF PETITIONS

In re Application of	:
Kaneda	: DECISION ON APPLICATION
Application No. 10/028,624	: FOR PATENT TERM ADJUSTMENT
Filed: December 20, 2001	:
Atty. Dkt. No.: 03310.023001	:

This is a decision on the "REQUEST FOR REINSTATEMENT OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705" filed January 5, 2007. This matter is being treated as an application for patent term adjustment under 37 CFR 1.705(b).

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED**.

Applicant requests that the Determination of Patent Term Adjustment be corrected from 40 days, as indicated on the Determination of Patent Term Adjustment mailed December 27, 2006, to an adjustment of 105 days. Applicant argues that a response to the non-final Office action re-mailed April 1, 2004 was timely submitted August 2, 2004.

The correct PTA at the time of the allowance is 105 days, as argued by applicant.

Applicant does not contest the adjustment of 341 days under 37 CFR 1.702(a)(1).

Applicant contests the 97 day reduction under 37 CFR 1.704(b) in connection with the response to the non-final Office action submitted August 2, 2004.

A review of the record reveals that the correct adjustment in this regard is 32 days, as argued by applicant. The reduction began July 2, 2004, the day after the date that is four months after the date that the non-final Office action was re-mailed, and ended August 2, 2004, the date the response was submitted.

Applicant does not contest the remaining reductions for applicant's failure to engage in reasonable efforts to conclude prosecution.

In review thereof, at the time of allowance, the application is entitled to an adjustment of 105 days, as argued by applicant.

The required PTA application fee of $200.00 has been charged to applicant's deposit account as authorized.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

The application file is being forwarded to the Publications Division for issuance of a patent.

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

Kery A. Fries

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

Enclosure: Adjusted PAIR Calculation

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : January 30, 2006

TO SPE OF : ART UNIT 1616

SUBJECT : Request for Certificate of Correction on Patent No.: 6,919,364/ 10/028631

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:

JOHANN RICHTER
SUPERVISORY PATENT EXAMINER
GROUP 1200

SPE

1616
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070816

DATE : August 16, 2007

TO SPE OF : ART UNIT 1615

SUBJECT : Request for Certificate of Correction on Patent No.: 6,919,364

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

Please complete this form and return with file, within **7** days to:
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:

NEIL S. LEVY
PRIMARY EXAMINER

MICHAEL P. WOODWARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE: MICHAEL WOODWARD **Art Unit** 1615

PTO/SB/44 (04-05)
Approved for use through 04/30/2007. OMB 0651-0033
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,919,364 B2

APPLICATION NO.: 10/028,631

ISSUE DATE : July 19, 2005

INVENTOR(S) : Jonathan N. Howarth; James L. McNaughton

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

On the title page, the statement "This patent is subject to a terminal disclaimer" should be removed from the face of the patent.

On the title page, under References Cited, U.S. Patent Documents, reads "2,888,787 A 1/1959 Paterson" and should read - - 2,868,787 A 1/1959 Paterson- - .

On the title page, under References Cited, Foreign Patent Documents, reads "EP 0228583 7/1987 " and should read - - EP 0228593 7/1987 - - .

On the title page, under References Cited, Foreign Patent Documents, reads "EP 0177845 4/1988 ". Delete this reference from the face of the Patent.

On the title page, under References Cited, Foreign Patent Documents, reads "EP 0206725 12/1988", and should read - - EP 0206725 12/1986 - - .

On page 3, first column, Foreign Patent Documents, reads " WO 9720548 8/1997", and should read - - WO 9720546 8/1997 - - .

On page 3, first column, Foreign Patent Documents, reads "WO 0034188 6/2000", and should read - - WO 0034186 6/2000 - - .

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Sieberth & Patty, L.L.C.
4703 Bluebonnet Boulevard
Baton Rouge, Louisiana 70809

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

OCT 19 2005

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Claim 15, Column 27, Line 43, reads "solution or slimy", and should read - - solution or slurry- - .

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4703 Bluebonnet Boulevard
Baton Rouge, Louisiana 70809

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,919,364 B2

APPLICATION NO.: 10/028,631

ISSUE DATE : July 19, 2005

INVENTOR(S) : Jonathan N. Howarth; James L. McNaughton

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4703 Bluebonnet Boulevard
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OCT 19 2005

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United States Patent and Trademark Office
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Mailed: 1-3-06

In re application of:	Emmett M. Flynn	:	DECISION ON PETITION
Serial No.	10/028,666	:	
Filed:	December 28, 2001	:	
For:	DISPLAY PACKAGES FOR FRUITS OR VEGETABLES	:	

This is a response to the PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT ON FAILURE TO RECEIVE OFFICE ACTION UNDER 37 CFR § 1.181 filed on July 11, 2005. The petition requests that the abandonment be withdrawn since the applicant did not receive the Notice of Non-Compliant Amendment mailed September 16, 2004.

DECISION

Since the petitioner asserts that the applicant did not receive the Non-Compliant Amendment mailed September 16, 2004, the request is accepted as a 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 711.02 - NEW PROCEDURE TMOG 1170 O.G. 114).

The evidence presented by the petitioner complies with the requirements set forth in MPEP § 711.03(c). The evidence presented is sufficient to establish that the Non-Compliant Amendment mailed September 16, 2004 was not received at the correspondence address. The evidence provided includes a statement by the petitioner that the Non-Compliant Amendment mailed September 16, 2004 was not received. Also provided is a copy of the application docket records where the Non-Compliant Amendment would have been posted had it been timely received. The instant petition also contains a statement attesting that a search of the file jacket was made, and the results of such a search revealed that the office communication was not received as is required by MPEP § 711.03(c).

Therefore any holding of abandonment for failure to timely file a proper response to the Non-Compliant Amendment mailed September 16, 2004 is hereby vacated, and the application is returned to pending status.

Note, that effective June 1, 2005, the office accepts amendments with the "previously amended" status identifier, and thus the notice of non-compliance is withdrawn. Thus, the application shall be forwarded to the examiner for consideration of the RCE filed September 3, 2004.

The Petition is **GRANTED**.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

BERESKIN AND PARR
40 KING STREET WEST
BOX 401
TORONTO ON M5H 3Y2 CA CANADA

caf

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3/5/07

Paper No.: ____

TO SPE OF : ART UNIT 2852

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/628668 Patent No.: 7079188 B2

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

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

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

Virginia Tolbert
Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: _____

DAVID M. GRAY
SUPERVISORY PATENT EXAMINER

SPE

2852
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22320

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OFFICE OF PETITIONS

In re Patent No. 6,846,513 :
Issue Date: January 25, 2005 :
Application No. 10/028,712 : ON PETITION
Filed: December 28, 2001 :
Attorney Docket No. 111604 :

This is a decision on the petition filed June 29, 2005, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee on the front page of the above-identified patent by way of Certificate of Correction.

The petition is granted.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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July 26, 2005

Steven W. Allis
OLIFF & BERRIDGE, PLC
P. O. Box 19928
Alexandria, VA 22320

Patent No.: **6846513 B2**
Inventor(s): **Masahiro Furusawa, et al.**
Issued: January 25, 2005
Title: **METHOD FOR FABRICATING A SILICON THIN-FILM**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(703) 872-9306 ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Virginia Tolbert
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) **308-9390 ext 113** or (703) 308-8309

vt

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of Wen-Hwa Lee, Huei-Jen Su Huang, Eva Y.H.P. Lee, Theodore Friedmann, and Jiing-Kuan Yee Application No. 10/028,726 Filed: December 21, 2001 Attorney Docket No. 20350	DECISION ON PETITIONS

This is a decision on the petitions under 37 CFR 1.47(a) and 37 CFR 1.48, both filed July 19, 2004. The petition under 37 CFR 1.47(a) is being treated as a petition under 37 CFR 1.183 to waive the requirement of 37 CFR 1.48(a)(3).

The petition under 37 CFR 1.183 is **DISMISSED**.

The petition under 37 CFR 1.48(a) is **DISMISSED**.

Petitioner is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.183 to waive the requirement of 37 CFR 1.48(a)(3)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on December 21, 2001 with a declaration executed by Wen-Hwa Lee, Huei-Jen Su Huang,

and Eva Y.H.P. Lee as joint inventors. On July 19, 2004, the instant petition under 37 CFR 1.48(a) was filed to amend the inventorship to add joint inventors Theodore Friedman and Jiing-Kuan Yee.

37 CFR 1.48(a) requires:

> (1) A request to correct the inventorship that sets forth the desired inventorship change;
>
> (2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
>
> (3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;
>
> (4) The processing fee set forth in § 1.17(i); and
>
> (5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

Petitioner has satisfied requirements (1), (2), and (4) above. The petition specifically requests the addition of inventors Friedman and Yee. Petitioner has included the required statements from Friedman and Yee. Petitioner has paid the processing fee.

With respect to requirement (3), petitioner has not submitted a 37 CFR 1.63 declaration executed by all of the inventors as required by 37 CFR 1.48(a)(3). The 37 CFR 1.63 declaration was not executed by inventors Lee, Huang, and Lee. In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules. In the "Declaration to Support Petition Under 37 CFR 1.48(a)", petitioner attested that copies of the corrected declaration were forwarded to Lee, Huang, and Lee. Inventors Lee and Lee made an oral refusal to sign the declaration during a telephone conversation with petitioner. The corrected declaration was received by Huang (as evidenced by Federal Express tracking receipts), but never returned.

However, petitioner has not satisfied requirement (5). While the petition includes a statement signed by Patricia Anderson Cotton, Director of assignee The Regents of the University of California, petitioner has not indicated the Reel and Frame number where the assignment is recorded.

On renewed petition, petitioner must submit a proper statement under 37 CFR 3.73(b). No additional fee is required on renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

Telephone inquiries related to this decision may be directed to Petitions Attorney Cliff Congo at (571)272-3207.

Charles Pearson
Director
Office of Petitions

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United States Patent and Trademark Office
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SAN FRANCISCO CA 94111-3834

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APR 25 2005

OFFICE OF PETITIONS

In re Application of Wen-Hwa Lee, Huei-Jen Su Huang, Eva Y.H.P. Lee, Theodore Friedmann, and Jiing-Kuan Yee Application No. 10/028,726 Filed: December 21, 2001 Attorney Docket No. 20350	DECISION ON PETITIONS

This is a decision on the "COMMUNICATION IN RESPONSE TO DECISION ON PETITION UNDER 37 CFR 1.48(a)", filed February 10, 2005, which is also being treated as a petition under 37 CFR 1.183 to waive the requirement of 37 CFR 1.48(a)(3.

The petition under 37 CFR 1.183 is **GRANTED**.

The petition under 37 CFR 1.48(a) is **GRANTED**.

The above-identified application was filed on December 21, 2001 with a declaration executed by Wen-Hwa Lee, Huei-Jen Su Huang, and Eva Y.H.P. Lee as joint inventors. On July 19, 2004, a petition under 37 CFR 1.48(a) was filed to amend the inventorship to add joint inventors Theodore Friedman Jiing-Kuan Yee. The petition was treated as a petition under 37 CFR 1.183 to waive the requirement of 37 CFR 1.48(a)(3) and dismissed in a decision mailed on November 24, 2004. Petitioner did not supply a 37 CFR 3.73(b) statement to demonstrate consent of the assignee.

37 CFR 1.48(a) requires:

> (1) A request to correct the inventorship that sets forth the desired inventorship change;
>
> (2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
>
> (3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;
>
> (4) The processing fee set forth in § 1.17(i); and
>
> (5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

Petitioner has satisfied requirements (1), (2), (4) and (5) above. The petition specifically requests the addition of inventors Friedman and Yee. Petitioner has included the required statements from Friedman and Yee. Petitioner has paid the processing fee. Finally, the petition includes a statement signed by Patricia Anderson Cotton, Director of assignee The Regents of the University of California.

However, petitioner has not submitted a 37 CFR 1.63 declaration executed by all of the inventors as required by 37 CFR 1.48(a)(3). The 37 CFR 1.63 declaration was not executed by inventors Lee, Huang, and Lee. In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules. In the "Declaration to Support Petition Under 37 CFR 1.48(a)", petitioner attested that copies of the corrected declaration were forwarded to Lee, Huang, and Lee. Inventors Lee and Lee made an oral refusal to sign the declaration during a telephone conversation with petitioner. The corrected declaration was received by Huang (as evidenced by Federal Express tracking receipts), but never returned.

Accordingly, the newly executed declaration filed on July 19, 2004 will be entered, despite the fact that the requirement set forth in 37 CFR 1.48(a)(3) that all the inventors sign a reexecuted oath or declaration has not been satisfied.

The application file is being forwarded to Group Art Unit 1632 for examination in due course.

Telephone inquiries related to this decision may be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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DORSEY & WHITNEY LLP
FOUR EMBARCADERO CENTER
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SAN FRANCISCO, CA 94111

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OFFICE OF PETITIONS

In re Application of :
Stanley R. Conston et al :
Application No. 10/028,738 :
Filed: October 22, 2001 :
Attorney Docket No. 08251-036001

ON PETITION

This is a decision on the petition, filed March 10, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 26, 2003 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (703) 306-5684.

The file will be forwarded to Technology Center AU 3737 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).

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SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS MO 63102

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OFFICE OF PETITIONS

In re Application of	:	
Koenig et al.	:	DECISION ON APPLICATION
Application No. 10/028,752	:	FOR
Filed: December 20, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. KCC 4742	:	
(14,442A)	:	

This is a decision on the "PETITION FOR APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(b)," filed February 2, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from thirty-three (33) days to two hundred twenty-six (226) days.

The application for patent term adjustment is **DISMISSED**.

On November 2, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 33 days. On February 2, 2006, applicants timely submitted the instant application for patent term adjustment[1]. Applicants dispute the reduction pursuant to § 1.704(b) of 2 days, and the reduction pursuant to § 1.704(c)(8) of 43 days, 98 days, and 50 days.

Applicants state that the patent issuing from this application is subject to a terminal disclaimer.

[1] PALM records show that the Issue Fee was also received on February 2, 2006.

Applicants request the removal of the reduction of 2 days on the ground that the response to the Office action mailed July 2, 2004, was filed timely on October 4, 2004. Applicants assert that the three (3) month shortened statutory period for response to the Office action of July 2, 2004, fell on Saturday, October 2, 2004, and therefore, they had until the next succeeding business day, October 4, 2004, to file a timely response.

Applicants were properly assessed a delay of 2 days for filing a response on October 4, 2004, to the Office action of July 2, 2004. Calculation of applicants' delay is based on the date of receipt of the response in the Office. 35 U.S.C. 154(b)(2)(C)(ii) does not require that a reply be filed in the Office within its three (3) month grace period, but simply specifies that there is a patent term adjustment reduction if a reply is not filed within this three (3) month period. Therefore, the "carry-over" provisions of 35 U.S.C. 21(b) does not apply to the three (3) month period in 35 U.S.C. 154(b)(2)(C)(ii).

Applicants request the removal of the reduction of 43 days, 98 days, and 50 days for filing of Information Disclosure Statements (IDS) on October 30, 2003, January 10, 2005, and October 4, 2005, respectively, after a reply had been filed. Applicants assert that the IDS filed October 30, 2003, and January 10, 2005, were actually filed October 28, 2003, and January 6, 2005, respectively, as evidenced by the accompanying certificates of mailing. In this regard, applicants' attention is directed to 37 C.F.R. § 1.703(f), which provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. See also, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000). Accordingly, the reduction for filing of IDS after a reply had been filed was calculated using the correct dates, October 30, 2003, January 10, 2005, and October 4, 2005.

Applicants contend that the IDS filed October 30, 2003, January 10, 2005, and October 4, 2005, are not supplemental replies

under § 1.704(c)(8)[2], but rather, are preliminary papers under § 1.704(c)(6)[3]. Applicants state that none of the supplemental IDS at issue were submitted for purposes of supplementing an Office response. Applicants further state that the supplemental IDS were submitted merely to report references for which applicants had become aware in compliance with their duty to disclose under 37 C.F.R. §§ 1.97 and 1.98.

It is undisputed that after filing responses on September 17, 2003, October 4, 2004, and August 15, 2005, applicants filed the IDS. The record does not support a conclusion that the examiner expressly requested the IDS. A review of the IDS filed October 30, 2003, January 10, 2005, and October 4, 2005, reveals that they did not include a § 1.704(d) statement[4]. Specifically, the IDS filed October 30, 2003, was accompanied by the statement:

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[2] 37 CFR § 1.704(c)(8) states:

> Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed[.]

[3] 37 CFR § 1.704(c)(6) states:

> Submission of a preliminary amendment or other preliminary paper less than one month before the mailing of an Office action under 35 U.S.C. 132 or notice of allowance under 35 U.S.C. 151 that requires the mailing of a supplemental Office action or notice of allowance, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> (i) The number of days, if any, beginning on the day after the mailing date of the original Office action or notice of allowance and ending on the date of mailing of the supplemental Office action or notice of allowance; or
>
> (ii) Four months[.]

[4] Applicants are reminded that § 1.704(d) was revised, effective May 24, 2004, as follows:

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8),

> No item of information contained in this Statement was cited in a communication from a foreign patent office in a counterpart foreign application or, to the knowledge of the person signing this document after making reasonable inquiry, was known to any individual designated in 37 CFR 1.56(c) more than *three* (3) months prior to the filing of this Statement.

Emphasis added. However, the required statement states, in pertinent part, that:

> Each item of information contained in the information disclosure statement was cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than *thirty* days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.
>
> *Emphasis added.*

The statements in the IDS filed January 10, 2005, and October 4, 2005, state that:

> In accordance with 37 C.F.R. 1.97 and 1.98 and MPEP 609, and in compliance with the duty of disclosure set forth in 37 C.F.R. 1.56, applicants submit the attached PTO/SB/08A for consideration by the Patent and Trademark Office in the above-entitled application and to be made of record therein.

The statements in the IDS filed October 30, 2003, January 10, 2005, and October 4, 2005, are not tantamount to a statement that the communication was not received by any individual

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> (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

This revision requires that the statement include the language "each item of information contained in the information disclosure statement was first cited ..." for the exception to apply. See 69 FR 21704, Apr. 22, 2004.

designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. Accordingly, it is concluded that the periods of reduction of 43 days, 98 days, and 50 days pursuant to § 1.704(c)(8)(not § 1.704(c)(6)) was properly entered for the filing of the IDS on October 30, 2003, January 10, 2005, and October 4, 2005, respectively.

The provisions of § 154(b), for adjustment due to examination delay, apply to original applications[1], other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

Lastly, applicants state that they filed a letter on January 25, 2006, after the mailing of the notice of allowance, in which they resubmitted the first and second supplemental IDS at the suggestion of the Office. Applicants assert that the submission of the letter of January 25, 2006, does not constitute a failure to engage in reasonable efforts to conclude processing or examination of the present application pursuant to § 1.704(c)(10). The Office reminds applicants that 37 C.F.R. § 1.705(d) provides for a revision of the patent term adjustment when revision is necessitated by events occurring <u>after</u> the mailing of the notice of allowance. Accordingly, applicants should raise this basis for seeking reconsideration of the patent term adjustment by filing a request for reconsideration under 37 C.F.R. § 1.705(d) with the required fee within TWO (2) MONTHS from the issue date of the patent.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance is 33 days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

In re Application of
FALLAHI, et al.
Application No. 10/028,781
Filed: December 28, 2001
For: IP TELEPHONE SYSTEM

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition filed September 13, 2002 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
P.O. BOX 272400
FORT COLLINS, CO 80527-2400

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OFFICE OF PETITIONS

In re Application of
Charles M. Patton, et al.
Application No. 10/028,808
Filed: December 21, 2001
Atty Docket No.: 10013447 -1

ON PETITION

This is a decision on the petition, filed October 6, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue.

It is noted that the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in 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.

The petition is **DISMISSED AS MOOT**.

Petitioners request that the application be withdrawn from issue for consideration of a request for continued examination (RCE) in compliance with 37 CFR 1.114, filed on October 6, 2006. Since the RCE is filed within the period set for paying the issue fee, as required by the Notice of Allowance and Issue Fee Due mailed July 10, 2006, prosecution is reopened in the present application. Consequently, no petition under 37 CFR 1.313 is necessary.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2143 for further processing of the RCE under 37 CFR 1.114 filed October 6, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: HEWLETT-PACKARD COMPANY
LEGAL DEPARTMENT
1000 NE CIRCLE BLVD.
CORVALLIS, OR 97330

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

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FEB 02 2004

OFFICE OF PETITIONS

Applicant: Wada et al.
Appl. No.: 10/028,827
Filing Date: December 28, 2001
Title: PROCESS FOR PRODUCING A FLUOROALKANOL
Attorney Docket No.: 217818US0CONT
Pub. No.: US 2002/0086134 A1
Pub. Date: July 4, 2002

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on August 13, 2002 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

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#12

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Bowers Harrison LLP
Gary K. Price, ESP.
25 Riverside Drive
PO Box 1287
Evansville, IN 47706-1287

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OCT 07 2004

TECHNOLOGY CENTER 3600

In re Application of
Byron Young
Application No. 10/028,853
Filed: December 21, 2001
For: BAG/BED ASSEMBLY

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in reply to applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on June 10, 2004.

The petition is **DISMISSED.**

A review of the file record reveals that a Notice of Allowability and Notice of Allowance and Issue Fees Due (hereinafter "Notices") were mailed to applicant on January 12, 2004. Since the issue fee was not received before the expiration of the three month statutory period for reply, the application was held abandoned, and a Notice to that effect was mailed on May 26, 2004.

Petitioner states that the Notices were never received.

There is a strong presumption that Office communications properly addressed and delivered to the United States Postal Services, are in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses of the firm of Felsman Bradley Vaden Gunter & Dillon LLP with the due date of April 12, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 OG 53 (November 16, 1993).

The petition fails to adequately meet requirements (2) and (3) above.

As per requirement (2), the petition does not state that a search of the file jacket and all docket records of the firm of Bowers Harrison, LLP was conducted.

As per requirement (3), no copy of all responses of the firm of Bowers Harrison, LLP with the due date of April 12, 2004 was provided.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Randolph A. Reese

Randolph A. Reese
Special Program Examiner
Patent Technology Center 3600
(703) 308-2121

RAR/vdb: 8/10/04

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#14 DW

DEC 22 2004

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TC 3600

Bowers Harrison LLP
Gary K. Price, ESP.
25 Riverside Drive
PO Box 1287
Evansville, IN 47706-1287

In re Application of
Byron Young
Application No. 10/028,853
Filed: December 21, 2001
For: BAG/BED ASSEMBLY

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is a decision on 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 October 26, 2004.

The petition is **DISMISSED.**

A review of the file record reveals that a Notice of Allowability and Notice of Allowance and Issue Fees Due (hereinafter "Notices") were mailed to applicant on January 12, 2004. Since the issue fee was not received before the expiration of the three-month statutory period for reply, the application was held abandoned, and a Notice to that effect was mailed on May 26, 2004.

Petitioner contends that the Notices were never received.

There is a strong presumption that Office communications properly addressed and delivered to the United States Postal Services, are in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all applications in petitioner's office having responses due on, or about, April 12, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The renewed petition fails to adequately meet requirement (3) above. In this regard, petitioner has not provided a copy of a list of applications having responses due on or about April 12, 2004. Petitioner explains, that in "the instant case, a Notice of Allowance was not received by Applicant's practitioner and therefore no Record made or maintained in the (petitioner's) word processing file." And, that the "list of Records listed on the subject word processing file does not include a Record for Applicant, Bryon Young", because a "Notice of Allowance was not received by Applicant's practitioner and therefore a Record was not made as discussed above." However, without providing a copy of a docket record of the type described above, the evidence provided by applicant is insufficient to grant a petition to withdraw the holding of abandonment.

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 $500. The fee for a petition under the unintentional standard is $1,500. If applicants have, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

Further correspondence with respect to a petition to revive should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: 2011 South Clark Place
Crystal Plaza Two, Lobby
Room 1B03
Arlington, VA 22202

By FAX: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9285.

Steven N. Meyers
Special Program Examiner
Patent Technology Center 3600
(703) 308-3868

SNM/rwg: 12/14/04

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TECHNOLOGY CENTER 3600

BOWERS HARRISON, LLP
Gary K. Price
25 N.W. Riverside Drive
P.O. Box 1287
Evansville, IN 47706-1287

In re Application of Byron Young Application No. 10/028,853 Filed: December 21, 2001	: : : :	DECISION ON RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT

For: BAG/BED ASSEMBLY

This is a decision on Applicant's petition to accept late papers, filed May 10, 2005, and Applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO) on January 7, 2005.

These petitions are **GRANTED**.

A review of the file record reveals that the application became abandoned for failure to respond to the Office Action (Notice of Allowance and Issue Fee Due) mailed to applicant on January 12, 2004. A Notice of Abandonment was mailed on May 26, 2004.

Applicant's petition indicates that the Office Action was never received. Applicant states that a renewed petition to withdraw the holding of abandonment was timely filed on January 7, 2005.

Regarding the timely filing of the renewed petition, Petitioner's evidence of a timely filing based on a Certificate of Mailing is considered to be sufficient. In this regard, any petition to withdraw the holding of abandonment based upon a Certificate of Mailing 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), by the person who signed the certificate.

Applicant submitted (on May 10, 2005) a copy of the renewed petition including a certificate of mailing signed by Gary K. Price. Also included was a statement by Mr. Price that the renewed petition was mailed on January 7, 2005.

Regarding the non-receipt of the Office Action, there is a strong presumption that the Office communication, properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating that the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of April 12, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Practitioner submits a statement that the above-noted Office Action was not received. Practitioner also attests to the fact that a search of the file jacket and docket records indicates that the Office Action was not received. Applicant's petition provides a copy of the docket record showing all responses due by practitioner's office between the dates of March 18, 2004 and August 12, 2004. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(571) 272-6587

KJD/js: 7/27/05

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Technology Center 2100

Paper No. 6

Blakely Sokoloff Taylor & Zafman
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025

In re Application of: Alex Apollonsky, et al.	)	
Application No. 10/028,856	)	
Filed: December 21, 2001	)	**DECISION ON REQUEST FOR**
For: CONFIGURABLE ARCHITECTURE	)	**WITHDRAWAL AS ATTORNEY**
FOR MANAGING CORPORATE	)	
AND INDUSTRY	)	
KNOWLEDGEBASES	)	

This is a decision on the Request To Withdraw from Representation filed February 5, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

for Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture and Software
(703) 305-9750

cc: The Procter & Gamble Company
Intellectual Property Division
Winton Hill Technical Center - Box 161
6110 Center Hill Avenue
Cincinnati, OH 45224

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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The Proctor & Gamble Company
Intellectual Property Division
Winton Hill Technical Center - Box 161
6110 Center Hill Avenue
Cincinnati OH 45224

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MAY 11 2006
OFFICE OF PETITIONS

In re Application of :
Apollonsky, et al. :
Application No. 10/028,856 : ON PETITION
Filed: December 12, 2001 :
Attorney Docket No. 002659.P017 :
For: CONFIGURABLE ARCHITECTURE FOR MANAGING CORPORATE AND INDUSTRY KNOWLEDGEBASES

This is a decision on the petition, filed February 23, 2006, under 37 CFR 1.137(b) to revive the above-identified application.

The above-identified application became abandoned for failure to timely submit a reply within three (3) months of the mailing of the June 8, 2004 non-final Office action. No response being received and no extensions of time being obtained, this application became abandoned on September 9, 2004. A Notice of Abandonment was mailed on January 12, 2005.

Applicants have submitted an amendment in reply to the June 8, 2004 6 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the June 8, 2004 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 AU 2165 for consideration of the amendment filed February 23, 2006.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
10/028856	12/21/01	APOLLONSKY, ALEX	002659.P017(9109*)

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION- WEST BLDG.
WINTON HILL BUSINESS CENTER - BOX 412
6250 CENTER HILL AVENUE
CINCINNATI OH 45224

EXAMINER	
ABEL JALIL, NEVEEN	
ART UNIT	PAPER NUMBER
2165	

DATE MAILED:

NOTICE OF RESCINDED ABANDONMENT

☐ **In response to your communication filed** 9/18/07

☒ **Through inadvertence, a Notice of Abandonment was mailed in the above-identified application. The Notice of Abandonment is hereby rescinded.**

For **Manager, Publications Division**
Office of Patent Publication
571-272-4200

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

Martin A. Farber
Suite 473
866 United Nations Plaza
New York, NY 10017

COPY MAILED

MAY 2 8 2002

OFFICE OF PETITIONS

In re Application of	:	
Hanawa	:	
Application No. 10/028,882	:	DECISION GRANTING
Filed: December 20, 2001	:	PETITION
For: VEHICLE SURROUNDINGS MONITORING APPARATUS	:	

This is a decision on the petition filed February 15, 2002, to establish that page 25 of the specification was part of the originally filed application.

On December 20, 2001, the application was filed.

On January 31, 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 December 20, 2001, and advising applicants that page 25 of the specification appeared to have been omitted.

In response, the present petition was filed alleging that page 25 was deposited on December 20, 2001. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "Continuing patent application 28 pages, abstract, specification, claims" on December 20, 2001.[1] Petitioner has also submitted a copy of the missing documentation-page 25 of the specification.

Upon review of the record, page 25, deposited on December 20, 2001, has not been located. However, the evidence is convincing that the application papers included page 25, and that page 25 was subsequently misplaced in the PTO.

In view of the above, the petition is **granted**. The copy of page 25 submitted with the petition will be used for examination purposes.

The petition fee of $130 will be credited to petitioner's deposit account.

The Notice mailed January 31, 2002, was sent in error and is hereby vacated.

---

[1] Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 20, 2001, using the application papers filed on December 20, 2001, and the copy of page 25 of the specification filed on February 15, 2002.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

Mail Date: 04/21/2010

Applicant	: Jeffrey G. Nowlin	: DECISION ON REQUEST FOR
Patent Number	: 7610248	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/028,888	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/19/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1623** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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John P. Ward
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles CA 90025-1026

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MAY 23 2006

OFFICE OF PETITIONS

In re Application of :
Grawrock :
Application No. 10/028,894 : ON PETITION
Filed: December 17, 2001 :
Attorney Docket No. 42390.P13483 :
For: CONNECTING A VIRTUAL TOKEN
TO A PHYSICAL TOKEN

This is a decision on the petition under 37 CFR 1.181, filed March 22, 2006 (certificate of mailing date January 20, 2006) to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **GRANTED**.

The Office contended that the above-identified application became abandoned for failure to submit the issue fee in response to the November 9, 2005 Notice of Allowance and Fee(s) Due, which set a three month period for reply. No reply being received, the Office contended that this application became abandoned on February 10, 2006. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

Petitioner alleges that the November 9, 2005 Notice not received.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[1]

[1] See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioner has proven nonreceipt. The petition is granted.

After the mailing of this decision, the application will be returned to Technology Center AU 2134 for the re-mailing of the November 9, 2005 Notice of Allowance and Fee(s) Due and Notice of Allowability with a new period for response.

Telephone inquiries may be directed to the undersigned at (571) 272-3230.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 5

THOMAS E. WATSON
WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE - 46TH FLOOR
PHILADELPHIA, PA 19103

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APR 17 2002

OFFICE OF PETITIONS

In re Application of :
Gregory Brown :
Application No. 10/028,921 :
Filed: December 28, 2001 :
Attorney Docket No. 1770-174USA1 :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to the Initial Patent Examination Unit.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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MOSER, PATTERSON & SHERIDAN
3040 POST OAK BLVD., SUITE 1500
HOUSTON TX 77056

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MAR 02 2005

OFFICE OF PETITIONS

In re Application of :
Stephen George Porter et al :
Application No. 10/028,940 : DECISION GRANTING PETITION
Filed: December 21, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. THOR/0010 :

This is a decision on the petition under 37 CFR 1.137(b), filed October 22, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of corrected drawings; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowability of February 19, 2004, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This matter is being referred to Patent Publication.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 17

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JUL 28 2004
OFFICE OF PETITIONS

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

In re Application of :
Hong Thi Nguyen :
Application No. 10/028,958 :
Filed: December 19, 2001 :
Atty Docket No. 36968.262343 (BS01261) :

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed March 17, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on December 16, 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.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

The application is being returned to Technology Center Art Unit 2642 for consideration of the Request for Continued Examination (RCE) under 37 CFR1.114 filed April 1, 2004.

Sherry D. Brinkley

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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JONES DAY
222 EAST 41ST ST
NEW YORK, NY 10017

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JAN 12 2007

OFFICE OF PETITIONS

In re Application of	:	
Pettis et al.	:	
Application No. 10/028988	:	
Filing or 371(c) Date: 12/28/2001	:	
Attorney Docket Number:	:	
500752999021	:	ON PETITION

This is a decision on the "Petititon Under 37 C.F.R. § 1.181(a) to Withdraw Holding of Abandonment", filed October 11, 2006. 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 February 9, 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 May 10, 2006. A Notice of Abandonment was mailed August 16, 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, were filed on August 9, 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 and extension of time on August 9, 2006.

A review of Office records also reveals that the Office received an amendment, petition for a three (3) month extension of time the fee on August 9, 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 3763 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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AUG 0 6 2008

OFFICE OF PETITIONS

In re Application of	:	
Ronald J. Pettis, et al.	:	
Application No.: 10/028,988	:	ON PETITION
Filed: December 28, 2001	:	
Attorney Docket No.: 500752999021	:	

This is a decision on the petition, filed July 31, 2008, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 27, 2007, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3763 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

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 Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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NEW YORK, NY 10017

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FEB 02 2009

OFFICE OF PETITIONS

In re Application of	:	
Ronald J. Petitis, et al.	:	
Application No.: 10/028,988	:	ON PETITION
Filed: December 28, 2001	:	
Attorney Docket No.: 500752999021	:	

This is a decision on the petition, filed January 29, 2009, 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 15, 2008, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3863 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/SDB/

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 Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201-4714

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JUL 1 5 2004

OFFICE OF PETITIONS

In re Application of	:
Atsuhiro Sumiya et al	:
Application No. 10/028,991	: DECISION GRANTING PETITION
Filed: December 28, 2001	: UNDER 37 CFR 313(c)(2)
Attorney Docket No. 461-45	:

This is a decision on the petition, filed July 1, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on June 21, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8680.

This matter is being referred to Technology Center AU 1755 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 6763046
Issue Date: July 13,2004
Application No. 10029008
Filed: December 20,2001
Attorney Docket No. PAT021US

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed August 11,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 11,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
6763046	2004-07-13	10029008	2001-12-20	PAT021US

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	/N. Stephan Kinsella/	Date (YYYY-MM-DD)	2008-08-11
Name	N. Stephan Kinsella	Registration Number	37657

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.

FEB 1 2 2002 JC48 PATENT & TRADEMARK OFFICE

COPY OF PAPERS ORIGINALLY FILED

Please type a plus sign (+) inside this box → [+]

PTO/SB/83 (08-00)
Approved for use through 10/31/2002. 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

Application Number	10/029,014
Filing Date	12/21/2001
First Named Inventor	Nair et al.
Group Art Unit	Unknown
Examiner Name	Unknown
Attorney Docket Number	75978/15420

#4

To: Assistant Commissioner for Patents
Washington, DC 20231

I hereby apply to withdraw as attorney or agent for the above identified patent application.

The reasons for this request are:

Applicant has procured other counsel and has requested the law firm of Arter & Hadden, including all attorneys associated with Customer No. 23380, to transfer applicant's file to the lawfirm of Baker & McKenzie, whose address is listed below.

Approved FEB 2 4 2005
JMStone
Jacqueline M. Stone, Director
Technology Center 1700

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☑ Change the correspondence address and direct all future correspondence to:

CORRESPONDENCE ADDRESS

☐ Customer Number [ ] → Place Customer Number Bar Code Label here

OR

☑ Firm or Individual Name	James D. Jacobs, Esq.,				
Address	Baker & McKenzie				
Address	805 Third Avenue				
City	New York	State	NY	ZIP	10022
Country	United States				
Telephone	(212) 891-3951	Fax	(212) 759-9133		

This request is enclosed in triplicate.

Name	Susan L. Mizer, Reg. No. 38,245
Signature	SLM
Date	1/23/02

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.

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, Washington, DC 20231.

Pet. Dec.

OIPE JC174
FEB 0 1 2005
PATENT & TRADEMARK OFFICE

PTO/SB/83 (05-03)
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

Application Number	10/029,023
Filing Date	December 28, 2001
First Named Inventor	Michael J. Hopmeier
Art Unit	1743
Examiner Name	Latoya Cross
Attorney Docket Number	544322000200

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby apply to withdraw as attorney or agent for the above identified patent application.

Approved
JMStone
Jacqueline M. Stone, Director
Technology Center 1700
3/30/05

The reasons for this request are:
Application is being transferred to another attorney.

This request is being made at the request of the assignee, **Unconventional Concepts, Inc.**

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☐ Change the correspondence address and direct all future correspondence to:

CORRESPONDENCE ADDRESS

☐ Customer Number [ ] → [ ]

OR

☒ Firm or Individual Name	James Remenick (Powell Goldstein LLP)				
Address	901 New York Avenue, NW Third Floor				
City	Washington	State	DC	Zip	20001-4413
Country	USA				
Telephone	(202)347-0066			Fax	(202) 624-7222

☒ This request is made on behalf of myself and
- ☐ all the attorneys/agents of record,
- ☐ the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- ☒ the attorneys/agents associated with Customer Number 25227

This request is enclosed in **triplicate** (including any attachments).

Name	Wayne C. Jaeschke, Jr. Registration No. 38,503
Signature	
Date	February 1, 2005

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.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: February 1, 2005 Signature: _____ (Chimin Taylor)

va-92227

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BROMBERG & SUNSTEIN LLP
125 SUMMER STREET
BOSTON, MA 02110-1618

MAILED
FEB 23 2006
TECHNOLOGY CENTER 2100

In re Application of: Gary Milo	)	
Application No. 10/029,088	)	
Filed: November 19, 2001	)	**DECISION ON REQUEST FOR**
For: HEURISTIC PROFILER FOR PACKET	)	**WITHDRAWAL AS ATTORNEY**
SCREENING	)	
	)	

This is a decision on the Request To Withdraw from Representation filed on September 6, 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. **A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).** The effective date of withdrawal is the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 10.40(a) further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

An Office action was mailed on August 1, 2005. Therefore, as of the mailing of this decision, less than thirty days remain in the maximum extendable period for response to the Office action.

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 Program Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
571-272-3613

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3/21/07

Paper No.: _____

TO SPE OF : ART UNIT 2814

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/029093 Patent No.: 6803248 B2

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Virginia Tolbert
Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- [X] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: OK to enter

SPE

2814
Art Unit

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 14

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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APR 1 5 2004

OFFICE OF PETITIONS

In re Application of
Michael Alan Maiers et al.
Application No. 10/029,099
Filed: October 19, 2001
Attorney Docket No.:
STL9968/40046.171USU1
Title: DISC DRIVE PRINTED CIRCUIT BOARD CONNECTOR LOCATING FEATURE

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a),[1] filed March 22, 2004, to revive the above-identified application.

Background

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 November 12, 2002, which set a shortened statutory period for reply of three (3) months. On February 12, 2003, an after-final amendment was received, and on March 12, 2003, an advisory action was mailed. No extensions of time under the provisions of 37 CFR §1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 13, 2003. A Notice of Abandonment was mailed August 12, 2003.

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.

With the instant petition, Petitioner has filed a Request for Continued Examination, the associated fee, the petition fee, and a statement of facts.

Petitioner has met requirements (1) and (2) above. Requirement (4) does not apply.

Regarding the first requirement, Petitioner has submitted payment in the amount of $1,330.00. The fee associated with the filing of a petition under 37 C.F.R. §1.137(a) is $130.00. If the petitioner wishes to have the excess $1,200.00 refunded, she should submit a request for refund to the Office of Finance[2]. A copy of this decision should accompany any such request.

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR 1.137(a).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]
"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]

"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

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2 The Refund Branch processes all customer requests for refunds. It generally takes four to six weeks for a request to be processed and a check generated. All requests for refund should be sent to: Mail Stop 16, Director of the US Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450. Office hours are Monday - Friday from 8:30 AM to 5:00 PM. To check the status of a request that has been filed please contact the Refund Branch directly at 703-305-4229.

3 Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency's interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

4 Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

5 Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. 706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

6 Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8]

Nonawareness of a PTO rule will not constitute unavoidable delay[9]

The burden of showing the cause of the delay is on the person seeking to revive the application[10].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[11].

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.

Such a showing should identify the specific error[12], the individual who made the error, and the business routine in place for performing the action which resulted in the error. The showing must establish that the individual who erred 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. The showing should include information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

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:

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7 Id.

8 See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

9 See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

10 Id.

11 See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

12 Petitioner must identify the error which caused the delay. If the specific error cannot be identified, the petitioner must identify any and all possible causes and prove that any of them, if they were the true cause, constitute unavoidable delay. A full and complete discussion for each possible error must be presented. A full and complete discussion of each possible error must be presented. Petitioner is reminded that petitioner has the burden of proof.

(1) the error was the cause of the delay at issue[13],
(2) a business routine was in place for performing the clerical function that could reasonably be relied upon to avoid errors in its performance, and;
(3) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

See MPEP 711.03(c)(III)(C)(2).

An adequate showing should include (when relevant):
(1) statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them;
(2) a thorough explanation of the docketing and call-up system in use;
(3) identification of the type of records kept;
(4) identification of the persons responsible for the maintenance of the system;
(5) copies of mail ledger, docket sheets, filewrappers and such other records as may exist which would substantiate an error in docketing;
(6) include an indication as to why the system failed in this instance, and;
(7) information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

The regulation and portion of the MPEP relevant to the abandonment of this application

37 CFR§ 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]

[13] Petitioner must identify the error which caused the delay. If the specific error cannot be identified, the petitioner must identify any and all possible causes and prove that any of them, if they were the true cause, constitute unavoidable delay. A full and complete discussion for each possible error must be presented. A full and complete discussion of each possible error must be presented. Petitioner is reminded that petitioner has the burden of proof.

MPEP 711.03(c) sets forth, in part:

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.

See In re Egbers, 6 USPQ2d 1869, 1872 (Comm'r Pat. 1988), rev 'd on other grounds sub nom., Theodor Groz & Sohne & Ernst Bechert Nadelfabrik KG v. Quigg, 10 USPQ2d 1787 (D.D.C. 1988); In re Katrapat, 6 USPQ2d 1863, 1867-68 (Comm'r Pat. 1988).

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances that led to the abandonment of the application meet the aforementioned unavoidable standard and, therefore; petitioner qualifies for relief under 37 CFR 1.137(a).

In support thereof, petitioner has submitted, *in toto:*

We received the Office Action that was mailed to us on March 12, 2003. Upon reviewing the correspondence, and our docketing system, our findings are an error on our behalf. This docketing error was totally inadvertent.

Petition, page 3.

Petitioner has not: identified the error which led to the abandonment of this application; identified that a business routine was in place; included statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them; proffered a thorough explanation of the docketing and call-up system in use; identified of the type of records kept; identified of the persons responsible for the maintenance of the system; provided copies of mail ledger, docket sheets, filewrappers and such other records as may exist which would substantiate an error in docketing; included an indication as to why the system failed in this instance, and; supplied information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

As such, the petition must be **DISMISSED**.

Any renewed petition under 37 CFR 1.137(a) must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)", and should address only the deficiencies set forth above. This is **not** a final agency action within the meaning of 5 U.S.C 704.

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

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0011.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

---

until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 16

SEAGATE TECHNOLOGY LLC C/O WESTMAN
CHAMPLIN & KELLY, P.A.
SUITE 1600 - INTERNATIONAL CENTRE
900 SECOND AVENUE SOUTH
MINNEAPOLIS MN 55402-3319

COPY MAILED

JUN 2 8 2004

OFFICE OF PETITIONS

In re Application of	:	
Michael Alan Maiers et al.	:	
Application No. 10/029,099	:	DECISION ON RENEWED PETITION
Filed: October 19, 2001	:	
Attorney Docket No.:	:	
STL9968/40046.171USU1	:	
Title: DISC DRIVE PRINTED CIRCUIT	:	
BOARD CONNECTOR LOCATING	:	
FEATURE	:	

This is a decision on the renewed petition filed June 18, 2004, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR §1.113 in a timely manner to the final Office action mailed November 12, 2002, which set a shortened statutory period for reply of three (3) months. On February 12, 2003, an after-final amendment was received, and on March 12, 2003, an advisory action was mailed. No extensions of time under the provisions of 37 CFR §1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 13, 2003. A Notice of Abandonment was mailed August 12, 2003.

1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

On March 22, 2004, the original petition was filed under 37 C.F.R. §1.137(a), which was dismissed via the mailing of a decision on April 15, 2004.

With the instant petition, Petitioner has submitted the petition fee (which has been charged to Petitioner's Deposit Account, as authorized in the petition), and has made the proper statement of unintentional delay. The required reply was submitted with the original petition.

Regarding the petition fee, $1,330 was submitted with the original petition. As such, $130 has been charged Petitioner's Deposit Account, and the portion of the previous decision which set forth that the Petitioner was entitled to a refund is hereby **VACATED**.

As such, the petition is **GRANTED.**

After this decision is mailed, the application will be forwarded to Technology Center 2800 for further processing of the RCE submitted with the original petition.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0011.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

cc: MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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DEC 1 2 2003

OFFICE OF PETITIONS

HELLER EHRMAN WHITE & MCAULIFFE
275 MIDDLEFIELD ROAD
MENLO PARK, CA 94025-3506

In re Application of
Jaime E. Ramirez-Vick
Application No. 10/029,113
Filed: December 19, 2001
Attorney Docket No. 25527-0001 C1

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed October 22, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of prior-filed provisional Application No. 60/134,110, filed May 14, 1999.

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 surcharge set forth in 37 CFR 1.17(t);

(2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional; and

(3) the reference to the prior-filed provisional application supplied in an application data sheet (ADS)(37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. *See* 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5)(iii). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on December 19, 2001. Prior-filed provisional Application No. 60/134,110, filed May 14, 1999, for which priority is now being claimed, was filed within twelve months of the May 15, 2000 filing date of prior-filed, intermediate, nonprovisional Application No. 09/571,084. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(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. 60/134,110 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. 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 Karen Creasy at (703) 305-8859.

The examiner of Technology Center AU 1637 will consider applicant's entitlement to claim benefit of priority under 35 U.S.C. §119(e) to prior-filed provisional Application No. 60/134,110, filed May 14, 1999.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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ROSS D. SNYDER & ASSOCIATES, INC.
PO BOX 164075
AUSTIN, TX 78716-4075

In re Application of :
Gaspard, et al. : DECISION ON PETITION
Application No. 10/029,123 :
Filed: December 19, 2001 :
Docket No.: 1400.1374880 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed September 25, 2006.

This application was held abandoned for failure to timely submit a proper reply to the non-final Office action mailed September 7, 2005. Notice of Abandonment was mailed March 20, 2006.

Petitioners assert that a response to the non-final Office action and a petition for extension of time were timely submitted on March 13, 2006 and have provided as proof of mailing and proof of USPTO receipt a return postcard dated March 13, 2006 acknowledging receipt of the reply.

The original response was received March 13, 2006 has been located in the application file. The response bears a certificate of mailing date of March 7, 2006 in accordance with 37 CFR 1.8 and is thus deemed to have been timely submitted.

In view of the evidence thereof, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

The application file is being forwarded to the Technology Center 2600 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P.O. BOX 458
ALAMEDA, CA 94501

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OFFICE OF PETITIONS

In re Application of :
Nguyen, Mai H. :
Application No. 10/029,137 : ON PETITION
Filed: December 19, 2001 :
Attorney Docket No. 407T-301400US :

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**.

When submitting a fee deficiency under 37 CFR 1.28, the large entity fees must be calculated by the current fee schedule. It appears that the petitioner used the old fee schedule and therefore underestimated the proper amount required for large entity. Accordingly, an additional $85.00 has been charged to petitioner's deposit account as authorized.

Inquiries related to this communication should be directed to Paralegal Liana Chase at (703) 306-0482.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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PAUL C. OESTREICH
TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY UT 84110

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OCT 25 2004

OFFICE OF PETITIONS

In re Application of :
Jonathan Dinerstein :
Application No. 10/029,142 :
Filed: December 20, 2001 :
Attorney Docket No. 2792-5177US :

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 undersigned at (571) 727-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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P.O. BOX 71355
MARLETTA, GA 30007-1355

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OFFICE OF PETITIONS

In re Application of :
Robert A. Koch et al :
Application No. 10/029,149 :
Filed: December 28, 2001 :
Attorney Docket No. BS01-082 :

DECISION ON 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 nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen months publication country on December 19, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen months publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of

such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122 (b) (2) (B) (i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of April 21, 2005 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Irvin Dingle at (571) 272-3210.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Notice Regarding Rescission of Nonpublication Request

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/23/04

TO SPE OF : ART UNIT 1771

SUBJECT : Request for Certificate of Correction on Patent No.: 6669019

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.

Please see COCIN dated 2-2-04 in the table of contents of IFW.

Diana T. Rose
Certificates of Correction Branch

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ✓ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: Changes approved.

Terrel Morris
SPE

1771
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Dorsey & Whitney LLP
555 California Street, Suite 1000
San Francisco, CA 94104-1513

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OFFICE OF PETITIONS

In re Application of	:	
Melvin, Suh and Oh	:	DECISION ON PETITION
Application No. 10/029,158	:	
Filed: December 21, 2001	:	
Attorney Docket No. A-69175-1/MSS	:	
(463035-650)	:	

This is a decision on the petition under 37 CFR 1.182, filed December 15, 2005, to change the order of the names of the inventors.

The petition is **granted**.

The Office of Petitions has changed the order of the names of the inventors in the USPTO computer records and printed a new bibliographic data sheet, which will be scanned into the Image File Wrapper.

A corrected filing receipt, reflecting the requested change, accompanies this decision.

Petitioners paid a $130.00 petition fee; however, the current fee for filing a petition under 37 CFR 1.182 is $400.00. Thus, the Office will charge petitioners' Deposit Account in the amount of $270.00, as authorized.

This matter is being referred to the Office of Patent Publication.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

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MARIETTA, GA 30007-1355

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DEC 30 2004

OFFICE OF PETITIONS

In re Application of :
P. Thomas Watson et al :
Application No. 10/029,173 : DECISION GRANTING PETITION
Filed: December 28, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 20009.0063US01 :
(BS01-325) :

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 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 December 10, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of April 7, 2005 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3220.

This matter is being referred to Technology Center Art Unit 2155 for examination in due course.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

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AT & T LEGAL DEPARTMENT – WK
ATTN: PATENT DOCKETING
ROOM 2A-207
ONE AT & T WAY
BEDMINSTER, NJ 07921

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JUL 1 0 2009

OFFICE OF PETITIONS

In re Application of	:	
P. Thomas WATSON, et al	:	
Application No. 10/029,173	:	DECISION ON PETITION
Filed: December 28, 2001	:	TO WITHDRAW
Attorney Docket No. BS01-325	:	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 22. 2009.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to Jeramie J. Keys, James D. Withers, Arno T. Naeckel and Daniel J. Layden, have been revoked by the assignee of the patent application on July 8, 2009. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

Telephone inquires concerning this decision should be directed to undersigned at 571-272- 6735.

Diane Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

MAR 22 2005

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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In re Application of :
Kazutaka Maeda *et al* :
Application No. 10/029,255 : DECISION ON PETITION
Filed: December 28, 2001 :
Attorney Docket No. 111319.01 :

This is a decision on the petition filed on January 25, 2005 by which petitioners request that the period for filing a reply to the Office action dated November 10, 2004 be reset to the date upon which a new copy of that Office letter is mailed to the correct correspondence address. The petition is being considered under 37 CFR 1.181, and no fee is required for the petition.

The petition is granted to the extent indicated below.

It appears that petitioners did not receive the Office letter in question at the correspondence address of record. It further appears that petitioners contacted the examiner because a routine review of the PTO PAIR information regarding the application showed that the Office letter in question had been mailed, but had not been received. It was discovered that a revocation of power of attorney and new correspondence address had been filed by petitioners, but had not been entered into the file. A copy of these papers, and the filing receipt that shows that they were received in the Office on March 4, 2002 are attached to the petition. The examiner forwarded a copy of the November 10, 2004 Office action to petitioners on January 19, 2005, as shown by the copy of the action attached to petition.

It is clear from the petition and from the record that the Office letter in question was not mailed to the proper correspondence address because the correspondence address of record was incorrect. Therefore, petitioners are entitled to have the date of the Office letter reset. Petitioners are also entitled to have the Office letter in question remailed if they so desire, notwithstanding that petitioners in fact have a copy of that Office letter. However, petitioners are not entitled to have the date reset to the new mailing date, but are entitled to have the date reset to the date upon which the action was received from the examiner. Compare the practice established by MPEP § 710.06(I) "Petitions to Reset a Period For Reply Due to Late Receipt of an Office Action."

Accordingly, the application will be forwarded to the Head Supervisory Applications Examiner, who will:

1. Enter the revocation and new power of attorney into the Image File Wrapper and into the PALM/PAIR system, using March 4, 2002 as the PALM date for the paper and making certain that the proper correspondence address is entered into the system as well as the correct Attorney Docket No.; and

2. Mail a copy of the November 17, 2004 Office action to the new correspondence address.

The period for filing a reply to the Office letter originally mailed on November 17, 2004 is reset to run ONE MONTH from January 17, 2005, the date upon which petitioners received the Office letter.

PETITION GRANTED-IN-PART.

E. R. Kazenske, Director
Technology Center 3700

Oliff & Berridge, PLC
P.O. Box 19928
Alexandria, VA 22320

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,270	12/28/2001	Masayuki Ueda	217833US2	4113

22850 7590 05/07/2008
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
WU, RUTAO

ART UNIT	PAPER NUMBER
3628	

NOTIFICATION DATE	DELIVERY MODE
05/07/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

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TECHNOLOGY CENTER 3600

OBLON, SPIVAK, MCCLELLAND,
MAIER & NUESTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

In re Application of: Masayki Ueda et al
Application No. 10/029,270
Filed: December 28, 2001

Attorney Docket No.: 217833US2
For: COMPONENT COST ESTIMATION SYSTEM, COMPONENT COST ESTIMATION METHOD, COST STANDARD DATA PROVIDING SYSTEM: COST STANDARD DATA PROVIDING METHOD, RECORDING MEDIUM, AND COMPUTER DATA SIGNAL

PETITION TO CONSIDER INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. 1.181

This is in response to applicant's petition filed on October 5, 2007, to request that the Information Disclosure Statement filed December 28, 2001 be considered by the examiner.

The petition is **GRANTED.**

As stated by Petitioner, an Information Disclosure Statement was filed on December 28, 2001, and petitioner has included a copy of this IDS along with a copy of a date-stamped filing receipt evidencing this filing.

A review of the file record indicates that, in the examiner's first action mailed December 23, 2005, the examiner objected to this IDS and stated that it failed to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP 609 because the applicant failed to provide an English translation of the reference. The examiner then indicated that the reference cited on the IDS has not been considered. In applicant's response to this, filed March 23, 2006, applicant stated that a statement of relevancy was filed along with the IDS on October 28, 2001. Examiner then acknowledged this in the final rejection mailed June 16, 2006, withdrew the objection, however, failed to consider the reference cited on the IDS.

MPEP 609.04(a)(III) states that "Each information disclosure statement must further includes a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information listed that is not in the English language".

Since applicant has provided the concise explanation of relevance for the non-English language information, the examiner was directed to consider the cited reference and has mailed a communication on 29 April 2008 indicating that the reference has been considered.

Any questions regarding this letter should be directed to John Hayes at (571) 272-6708.

Accordingly the petition is Granted.

Summary: ***Petition Granted***

for Katherin Matecki

Wynn Coggins
Director
Technology Center 3600
(571) 272-5350

JWH/SNM: 4/22/2008

SM

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HASSE GUTTAG & NESBITT LLC
7550 CENTRAL PARK BLVD.
MASON OH 45040

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Gary E. Wheat et al :
Application No. 10/029,311 :
Filed: December 20, 2001 :
Attorney Docket No. 13DV14196 :

This is a decision on the petition, filed November 19, 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 September 25, 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.

The examiner of Technology Center AU 1763 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).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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OCT 27 2004

In re Application of	:	
Jonathan N. Howarth	:	
Serial Number : 10/029,329	:	WITHDRAWAL
Filed : December 21, 2001	:	FROM
For : MICROBIOLOGICAL CONTROL	:	ISSUE
IN POULTRY PROCESSING	:	

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 application is being withdrawn to permit reopening of prosecution. The reasons therefore will be communicated to you by the examiner.

PTO records reveal that the issue fee has not been paid. If the issue fee has been submitted, the applicant may request a refund or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee to 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.

The application is being forwarded to the examiner for action.

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Sieberth & Patty, LLC
2924 Brakley Drive
Suite A-1
Baton Rouge, LA 7016

cc: Allowed Files, Pk3-910

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No. 8

Samuel H. Dworetsky
AT&T CORP.
P. O. BOX 4110
Middletown NJ 07748-4110

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JUN 1 7 2003

OFFICE OF PETITIONS

In re Application of
Devinne H. Brown, Hwey Chang, Romel R. Khan, Michael Koptiw, Antoinette Rule, and Tejanand Sarju
Application No. 10/029,343
Filed: December 28, 2001
Attorney Docket No. 2000-0424
Title METHOD AND SYSTEM FOR PROVIDING BILLING CAPABILITY FOR A SERVICE NODE IN AN ADVANCED INTELLIGENT NETWORK ENVIRONMENT

DECISION ON PETITION
UNDER 37 C.F.R. §1.137(f)

This is a decision on the petition filed on May 19, 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.

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 December 3, 2002, a Notice of Rescission of Nonpublication Request was filed with the Office. Unfortunately, notification of the filing of a foreign or international application did not accompany this filing.

Petitioner states that the instant nonprovisional application is the subject of an application filed in either a foreign country or an international application on December 20, 2002. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. §1.22(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

The petition is **GRANTED**.

Petitioner has submitted the notification of a foreign or international filing, paid the petition fee, and has made the proper statement of unintentional delay.

The instant petition has been found to be in compliance with 37 C.F.R. §1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. §122(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) is accepted as having been unintentionally delayed.

After this decision is mailed, the application will be forwarded to Technology Center 2600 for further processing.

Telephone inquiries concerning *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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 07, 2007

TO SPE OF : ART UNIT 1652 10/029345

SUBJECT : Request for Certificate of Correction on Patent No.: 7153678 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: Remove: John N. Feder
Thomas C. Nelson
from inventor list. – As per Applicants' request under 1.48(a)(i) filed 3-31-2005.

SHERIDAN SWOPE, PH.D.
PRIMARY EXAMINER

SPE

1652
Art Unit

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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BRISTOL MYERS SQUIBB COMPANY
PATENT DEPARTMENT
PO BOX 4000
PRINCETON NJ 08543-4000

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AUG 17 2005

OFFICE OF PETITIONS

In re Patent No. 6,858,407	:	
Feder, et al.	:	
Issue Date: February 22, 2005	:	DECISION ON
Application No. 10/029,347	:	PATENT TERM ADJUSTMENT
Filed: April 3, 2002	:	
Attorney Docket No. D0066 NP	:	

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENT PERIOD IN GRANTED PATENT", filed March 30, 2005. Patentees request that the patent term adjustment indicated on the patent be corrected from thirteen (13) days to one hundred twenty (120) days.

The application for patent term adjustment is **DISMISSED**.

On February 22, 2005, the above-identified application matured into U.S. Patent No. 6,858,407. The instant request for reconsideration filed March 30, 2005 was timely filed within two months of the date the patent issued. See §1.705(d). The Patent issued with a Patent Term Adjustment of thirteen (13) days. Patentees state that they should not have been assessed applicant delay of one hundred twenty (120) days for the submission of drawings after the Notice of Allowance.

The adjustment of one hundred twenty (120) days for the submission of drawings after the Notice of Allowance has been determined to be correct. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees

that the filing of certain papers after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). Drawings are listed as an example of a paper that is considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application.

In view thereof, the correct determination of PTA at the time of issuance is **thirteen (13)** days (220 days of PTO delay, reduced by 207 days of applicant delay).

The $200 fee pursuant to 37 C.F.R. §1.18(e) has been charged to Deposit Account No. 19-3880. The fee set forth in 37 C.F.R. §1.18(e) is charged to allow the Office to recover the estimated average cost of treating applications for patent term adjustment, and is not refundable, even in the event of Office error.[1]

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

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[1] See Comment 1 in Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14, 65 Fed. Reg. 54366 (Oct. 3 2000).

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

EDWARDS & ANGELL LLP
P O BOX 55874
BOSTON, MA 02205

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APR 0 4 2005

OFFICE OF PETITIONS

In re Application of	:
Jun Akiyama	:
Application No. 10/029,363	: DECISION GRANTING PETITION
Filed: December 20, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 70868/56816	:

This is a decision on the petition, filed March 30, 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 24, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2653 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
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 5

JACKSON WALKER LLP
2435 NORTH CENTRAL EXPRESSWAY
SUITE 600
RICHARDSON TX 75080

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MAR 17 2003

OFFICE OF PETITIONS

In re Application of
Chung J. Lee
Application No. 10/029,373
Filed: December 20, 2001
Attorney Docket No. DIEL-0006

DECISION ON PETITION

This is a decision on the "Petition to Reset Period for Response Due to Non-Receipt of Notice to File Missing Parts of Application." The petition will be treated as a petition under 37 CFR 1.181.

The petition is **moot**.

The application was filed on December 20, 2001. Though a Notice to File Missing Parts of Nonprovisional Application was first mailed on January 24, 2002, petitioner maintains that the notice was not received. Apparently, in response to the instant petition, another Notice to File Missing Parts of Nonprovisional Application was mailed on December 5, 2002, setting forth an extendable period for reply of two months from its mailing date. The notice of December 5, 2002, was apparently received by petitioner because the filing fee and surcharge as required by the notice were remitted on February 10, 2003.

As petitioner has received and responded to the Notice to File Missing Parts of Nonprovisional Application, there is no further remedy that could be provided by the instant petition under 37 CFR 1.181. The petition, therefore, moot.

Petitioner is advised that an oath or declaration pursuant to 37 CFR 1.63 was not found in the application file, although it was required by the notice. The application file is being forwarded to the Office of Initial Patent Examination for treatment of this outstanding issue.

Telephone inquiries concerning this decision 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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ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS MO 63102

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NOV 04 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Kent A. Franklin et al :
Application No. 10/029,375 :
Filed: December 20, 2001 :
Attorney Docket No. KCC 4769 (KC#16,648A) :

This is a decision on the petition, filed October 25, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on June 10, 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 1774 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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OFFICE OF PETITIONS

BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO CA 94303

In re Application of Caldwell et al. Application No. 10/029,407 Filed: December 26, 2001 Attorney Docket No. CALD-007	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 June 26, 2006 , to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED.**

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an Application Data Sheet or a substitute amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which states the relationship of the prior-filed application to this application, are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Charlema Grant at (571) 272- 3215 .

Frances Hicks
Petitions Examiner
Office of Petitions

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P.O. Box 1450
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1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO CA 94303

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FEB 05 2007

OFFICE OF PETITIONS

In re Application of
Caldwell et al.
Application No. 10/029,407
Filed: December 26, 2001
Attorney Docket No. CALD-007

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed August 29, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application no. 09/755,592 set forth in the application data sheet (ADS) filed with the petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt

accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Charlema Grant at (571) 272-3215. 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 1615 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

(Charles Steven Brantley)

for Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/029,407	12/26/2001	1615	587	CALD-007		23	3

CONFIRMATION NO. 3764
CORRECTED FILING RECEIPT
OC000000022240916
OC000000022240916

24353
BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO, CA 94303

Date Mailed: 01/30/2007

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)

Larry Caldwell, San Jose, CA;
Bradley S. Galer, West Chester, PA;

Power of Attorney: The patent practitioners associated with Customer Number **24353**.

Domestic Priority data as claimed by applicant

This application is a CIP of 09/755,592 01/05/2001 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 01/29/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/029,407

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Methods and compositions for treating headache pain with topical NSAID compositions

Preliminary Class

424

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof

unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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

MAILED

MAY 28 2009

OFFICE OF PETITIONS

In re Application of :
KANAYAMA et al. :
Application No. 10/029,441 : DECISION ON PETITION
Filed: 12/14/2001 :
Attorney Docket No. SAN 19.247 :

This is a decision on the petition under 37 CFR 1.181 (no fee), filed December 12, 2008, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the nonfinal Office action mailed February 11, 2004, which set a three (3) month shortened statutory period for reply. In the absence of a timely filed reply, the application became abandoned on May 12, 2004. On August 26, 2004, the Office mailed a Notice of Abandonment.

Petitioner asserts that the nonfinal Office action dated mailed February 11, 2004, was not received.

A review of the written record indicates no irregularity in the mailing of the nonfinal Office action and in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received.

As stated in Section 711.03(c)(I)(A) of the Manual for Patent Examining Procedure:

> In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to

withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The practitioner submitted a copy of the file jacket and docket records where the nonfinal Office action would have been entered had it been received and docketed. Additionally, the practitioner attested to the fact that a search of the records indicated that the nonfinal Office action was not received.

In view of the above, the holding of abandonment is withdrawn and the application is restored to pending status. No petition fee is required.

Technology Center Art Unit 2135 has been advised of this decision. The matter is being referred to the Technology Center's technical support staff for re-mailing of the nonfinal Office action. The three (3) month shortened statutory period for responding to the nonfinal Office action will be set to run from the re-mailing date of the Office action.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : May 21, 2008

TO SPE OF : ART UNIT 2625

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/029458 Patent No.: 7304757 B2

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within 7 days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**.

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within 7 days, to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

You can fax the Directors/SPE response to 571-270-9990

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: All changes apply

SPE

2624
Art Unit

PAGE 1/1 * RCVD AT 5/22/2008 10:18:41 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/44 * DNIS:2709990 * CSID:703 3088792 * DURATION (mm-ss):01-10

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

John E. Curtin, Esq.
Troutman Sanders LLP
1660 International Drive, Suite 600
McLean VA 22102

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JAN 04 2008

OFFICE OF PETITIONS

In re Application of
Dispenza et al.
Application No. 10/029,461
Filed: December 21, 2001
Attorney Docket No. Dispenza 8-3

ON PETITION

This is a decision on the petition, filed February 16, 2007, 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. In the alternative, petitioner has requested review under 37 CFR 1.137(b).

The petition to withdraw the holding of abandonment is **Dismissed**.

The petition to revive under 37 CFR 1.137(b) is **Granted**

This application was held abandoned for failure to reply to the restriction requirement mailed on February 16, 2007, which set a one (1) month shortened statutory period for reply. No timely request for extension of time was obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on May 15, 2006. A Notice of Abandonment was mailed on February 13, 2007.

Petitioner's representative asserts that the Restriction Requirement dated April 14, 2006 was never received. Petitioner states the correspondence address of record for the above-identified application was that of Troutman Sanders when the Restriction Requirement was mailed. However, counsel for petitioner no longer was employed at Troutman Sanders. At the time of mailing of the Restriction requirement, petitioner was employed at Harness, Dickey & Pierce. Counsel insists that the Restriction Requirement was not forwarded to Harness Dickey & Pierce. In support of petitioner's contention a declaration from the Manager of docketing at Harness Dickey & Pierce was provided. Counsel's efforts to obtain information regarding docket records at Troutman Sanders were unsuccessful. Counsel also states the Notice of Abandonment

was never received.

Petitioner's arguments have been considered but are not convincing to establish the holding of abandonment should be withdrawn. The Restriction Requirement was mailed on April 14, 2006 to the then correspondence address of record at Troutman Sanders. Where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address does not constitute unavoidable delay. See MPEP 711.03(c). Nor would the failure to promptly change the correspondence address allow for withdrawing the holding of abandonment.

Petition Under 37 CFR 1.137(b)

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 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 Response to the Restriction Requirement, (2) the petition fee of $1,500.00 ; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 1725 for processing of the Response to the Restriction Requirement and for appropriate action by the Examiner in the normal course of business.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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HANSRA PATENT SERVICES
4525 GLEN MEADOWS PLACE
BELLINGHAM WA 98226

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DEC 2 0 2005

OFFICE OF PETITIONS

In re Application of	:	
Pederson et al.	:	DECISION ON PETITION
Application No. 10/029,478	:	UNDER 37 CFR 1.137(b)
Filed: December 20, 2001	:	
Attorney Docket No. 3123-394	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 3, 2005, to revive the above-identified application.

This application became abandoned for failure to reply timely to the nonfinal Office Action mailed April 21, 2004, which set a three (3) month shortened statutory period to reply. Accordingly, this application became abandoned on July 22, 2004. A Notice of Abandonment was mailed on March 22, 2005.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of an amendment, paid the petition fee, and made the proper statement of unintentional delay.

The petition is **granted**.

This matter is being referred to Technology Center Art Unit 2651.

Telephone inquiries should be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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STEVEN E. SPAPIRO, ESQ.
MITCHELL, SILBERBERG & KNUPP LLP
11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA 90064

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JAN 3 1 2005

OFFICE OF PETITIONS

In re Application of :
Stephanie Wai Man Shiu :
Application No. 10/029,482 : ON PETITION
Filed: December 20, 2001 :
Attorney Docket No. 36691-00002 :

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**.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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NIRO, SCAVONE, HALLER & NIRO
181 W. MADISON
SUITE 4600
CHICAGO, IL 60602

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JUL 18 2008

In re Application of	:	
James BERIKER	:	
Application No. 10/029,483	:	DECISION ON PETITION
Filed: December 20, 2001	:	
Attorney Docket No. 63030.800US01	:	

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 a complete and proper appeal brief within the time period provided in 37 CFR 41.37(a)(1). As a complete and proper appeal brief was not filed within one (1) month of the Notification of Non-Compliance with 37 CFR 41.37(c)(1), mailed October 26, 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 November 27, 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 a corrected Appeal Brief, (2) the petition fee of $1540; and (3) the required statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at (571) 272-6735.

This application is being referred to Technology Center 2142 for appropriate action by the Examiner in the normal course of business on the reply received February 28, 2008.

Thurman K. Page

Thurman Page
Petitions Examiner
Office of Petitions

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P.O. Box 1450
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February 7, 2008

Song Zhu
SQUIRE, SANDERS & DEMPSEY L.L.P.
One Maritime Plaza, Suite 300
San Francisco, CA 94111

Patent No.: 7,251,594 B2
Application No.: 10/029497
Inventor(s): Sivaram Krishnan
Issued: July 31, 2007
Title: **EXECUTION TIME MODIFICATION OF INSTRUCTION EMULATION PARAMETERS**

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 matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-0025 ATTN: Office of Petitions

Virginia Tolbert
For Mary Diggs, Supervisor
Decisions & Certificate of Correction Branch
(703) 305-8309 or (703) **308-9390 ext 113**

vt

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Alexandria, VA 22313-1450
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SQUIRE, SANDERS & DEMPSEY, LLP
1 MARITIME PLAZA
SUITE 300
SAN FRANCISCO, CA 94111

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SEP 2 2 2008

OFFICE OF PETITIONS

In re Patent No. 7,251,594	:	
Issue Date: July 31, 2007	:	
Application No. 10/029,497	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. 36992.00134	:	

This is a decision on the petition filed March 11, 2008, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the April M. Wise at (571) 272-1642. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Carl Friedman
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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Paper No.

HOLLAND & KNIGHT LLP
131 S. DEARBORN STREET
30TH FLOOR
CHICAGO IL 60603

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APR 26 2007

OFFICE OF PETITIONS

In re Application of :
Dan Kikinis : DECISION ON PETITION
Application No. 10/029,508 :
Filed: October 19, 2001 :
Attorney Docket No. ISURFTV148:

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed February 8, 2007.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed March 28, 2006. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply considered timely filed and no extension of time considered obtained, the application became abandoned effective June 29, 2006. The instant petition precedes the mailing of a courtesy Notice of Abandonment.

The petition includes the required reply in the form of an amendment, the statement of unintentional delay and payment of the petition fee. No terminal disclaimer is required.

The petition also includes a fee of $1,020 for extension for response within the third month. The maximum period for extension for response to the Notice ended on September 28, 2006. Thereafter, no extension of time could be obtained. As

no extension of time is obtainable, the fee for such extension is being refunded to Deposit Account NO. 50-1667, as authorized.

Technology Center AU 2623 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply submitted on petition filed February 8, 2007.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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
10/029,522	12/21/2001	Lawrence A. Leske	2334P

SAWYER LAW GROUP LLP
P.O. Box 51418
Palo Alto CA 94303

CONFIRMATION NO.
5912

MAIL

JUN 3 0 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

#4

Decision Dismissing Petition under 37 CFR 1.138(c)

The declaration of express abandonment will not be recognized

This is in response to the petition under 37 CFR 1.138(c) for express abandonment to avoid publication of the above-identified application, for which a faxed copy of the original petition was received on June 9, 2003.

The petition is dismissed.

The express abandonment will **not** be recognized because the petition under 37 CFR 1.138(c) was not received in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication process.

Telephone inquiries should be directed to the Office of Patent Publication, the Pre-Grant Publication Division, at 703-605-4282.

Barbara J. Debnam
Office of Patent Publication
Pre-Grant Publication Division

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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KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP
535 SMITHFIELD STREET
PITTSBURGH PA 15222

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MAR 13 2008

OFFICE OF PETITIONS

In re Application of
Lin, Szu-Min
Application No. 10/029,532
Filed: December 21, 2001
Attorney Docket No. ASP0054USCIP2

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 19, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee, and (3) a proper statement of unintentional delay.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center 1797 for further examination on the merits.

Liana Walsh
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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MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.
ONE FINANCIAL CENTER
BOSTON, MA 02111

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:
Indu Parikh	:
Application No. 10/029,551	:
Filed: December 20, 2001	:
Attorney Docket No. WAPH.002.04US	:

This is a decision on the petition under 37 CFR 1.137(b), filed October 20, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 1, 2004, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on March 2, 2005.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $1020 extension of time submitted on October 20, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The Revocation by Assignee and New Power of Attorney submitted with petition on October 20, 2005 is not accepted. In order for an assignee to take action in a case before the Office, compliance with 37 CFR 3.73(b) must be satisfied. More specifically, 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment submitted for recording) or by specifying (*e.g.*, reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A blank 37 CFR 3.73(b) accompanies this decision.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 1646 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

Attachment: blank 37 CFR 3.73(b)

UNITED STATES PATENT AND TRADEMARK OFFICE

#8

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
10/029,552	12/21/2001	Lawrence A. Leske	2333P

SAWYER LAW GROUP LLP
P.O. Box 51418
Palo Alto CA 94303

CONFIRMATION NO.
4685

MAIL

JUN 3 0 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Decision Dismissing Petition under 37 CFR 1.138(c)

The declaration of express abandonment will not be recognized

This is in response to the petition under 37 CFR 1.138(c) for express abandonment to avoid publication of the above-identified application, for which a faxed copy of the original petition was received on June 9, 2003.

The petition is dismissed.

The express abandonment will **not** be recognized because the petition under 37 CFR 1.138(c) was not received in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication process.

Telephone inquiries should be directed to the Office of Patent Publication, the Pre-Grant Publication Division, at 703-605-4282.

Barbara J. Debnam
Office of Patent Publication
Pre-Grant Publication Division

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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OFFICE OF PETITIONS

In re Application of	:
Chobotov, Michael V., et al	: DECISION ON PETITION TO
Application No. 10/029,559	: WITHDRAW FROM RECORD
Filed: December 20, 2001	:
Attorney Docket No. 021630-001200US	:

This is a decision on the request to withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 1, 2005.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to the attorneys associated with Customer Number 20350 has been revoked by the assignee of the patent application on January 30, 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 assignee.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-3218.

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Hoffman & Baron, LLP
6900 Jericho Turnpike
Syosset, NY 11791

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TECHNOLOGY CENTER 2100

Kevin J. Zilka
Silicon Valley Group
P.O. Box 721120
San Jose, California 95172-1120

In re Application of: Herbert Joiner et al.	)	
Application No. 10/029,591	)	
Filed: December 21, 2001	)	DECISION ON PETITION TO
For: SYSTEM, METHOD AND	)	MAKE SPECIAL UNDER
COMPUTER PROGRAM PRODUCT	)	M.P.E.P. §708.02(II):
FOR A NETWORK ANALYZER	)	INFRINGEMENT
BUSINESS MODEL	)	

This is a decision on the petition, filed January 12, 2004, requesting to make the above-identified application special under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement.

A grantable petition under 37 C.F.R. §1.102(d), and M.P.E.P. §708.02, Section II, must be accompanied by payment of the fee under 37 C.F.R.§1.117(h) and a statement under 37 C.F.R. §1.102 by the applicant or assignee or statements by an attorney/agent registered to practice before the Patent and Trademark Office that (A) there is an infringing device or product actually on the market or method in use; (B) a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed: and (C) he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the prior art. Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims.

Applicants' submission meets all the criteria set out above, accordingly, the Petition is **GRANTED**.

The application file is being forwarded to the Examiner of Record for expedited examination.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

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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BINGHAM, MCCUTCHEN LLP
THREE EMBARCADERO, SUITE 1800
SAN FRANCISCO, CA 94111-4067

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NOV 1 2 2004

OFFICE OF PETITIONS

In re Application of	:	
Chung-Yang Huang	:	
Application No. 10/029,596	:	ON PETITION
Filed: October 24, 2001	:	
Attorney Docket No. M-12150 US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 3, 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 July 9, 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 October 10, 2003.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

The application matter is being forwarded to Technology Center 2800, Art Unit 2825 for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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DAVID A. HALL
HELLER EHRMAN LLP
4350 LA JOLLA VILLAGE DRIVE #700
7TH FLOOR
SAN DIEGO CA 92122

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MAY 26 2006
OFFICE OF PETITIONS

In re Application of	:	
John Bankier, et al.	:	
Application No. 10/029,638	:	DECISION ON REQUEST
Filed: December 19, 2001	:	TO WITHDRAW
Attorney Docket No. 24657-6045	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed December 5, 2005.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to David A. Hall and all the attorneys/agents associated with Customer No. 33123 has been revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 CFR § 1.36(b) is moot.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

It is noted that an Office action was mailed on March 21, 2006 that requires a reply from the applicant.

Telephone inquires concerning this decision should be directed to Sherry D. Brinkley at 571-272- 3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Conferee: BB

cc: LAW OFFICES OF BARRY N. YOUNG
260 SHERIDAN AVENUE
SUITE 410
PALO ALTO CA 94306-2047

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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JOSEPH S. TRIPOLI
THOMSON MULTIMEDIA LICENSING INC.
2 INDEPENDENCEY WAY
P.O. BOX 5312
PRINCETON, NJ 08543-5312

COPY MAILED
AUG 15 2008

In re Application of	:	
Ramaswamy et. al.	:	
Application No. 10/029,645	:	DECISION ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. PU010322	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 22, 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 January 4, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed October 4, 2007. Accordingly, the application became abandoned on January 5, 2008. A Notice of Abandonment was mailed January 28, 2008.

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. Cromarty appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1440 and the publication fee of $300, (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

This application is being referred to the Office of Data Management for processing into a patent.

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

THE LAW OFFICES OF MIKIO ISHIMARU
333 W. EL CAMINO REAL, SUITE 330
SUNNYVALE, CA 94087-2554

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MAR 19 2007

OFFICE OF PETITIONS

In re Application of	:	
Raymond L. Chong	:	
Application No. 10/029,662	:	NOTICE
Filed: December 18, 2001	:	
Attorney Docket No. 21-003	:	

This is a notice regarding your request filed September 1, 2006 for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3218.

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

Paper No. 7

CHRISTIE PARKER & HALE
350 WEST COLORADO BOULEVARD
SUITE 500
PASADENA, CA 91105

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AUG 25 2003

OFFICE OF PETITIONS

In re Application of	:	
Frans C.M. van Haastest	:	
Application No. 10/029,663	:	ON PETITION
Filed: December 18, 2001	:	
Attorney Docket No. 41419/VGG/P622	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 18, 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 January 15, 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 April 16, 2003.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.

The application file is being forwarded to Technology Center AU 1661.

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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ALEXANDRIA, VA 22313-1450
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#6

MAILED

JAN 28 2004

TECHNOLOGY CENTER 2100

Paper No. 6

Kevin J. Zilka
Silicon Valley Group
P.O. Box 721120
San Jose, California 95172-1120

In re Application of: Herbert Joiner	)	
Application No. 10/029,686	)	DECISION ON PETITION TO
Filed: December 31, 2001	)	MAKE SPECIAL UNDER
For: COMPREHENSIVE ENTERPRISE	)	M.P.E.P. §708.02(II):
NETWORK ANALYZER, SCANNER	)	INFRINGEMENT
AND INTRUSION DETECTION	)	
FRAMEWORK		

This is a decision on the petition, filed June 2, 2003, requesting to make the above-identified application special under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement.

A grantable petition under 37 C.F.R. §1.102(d), and M.P.E.P. §708.02, Section II, must be accompanied by payment of the fee under 37 C.F.R.§1.117(h) and a statement under 37 C.F.R. §1.102 by the applicant or assignee or statements by an attorney/agent registered to practice before the Patent and Trademark Office that (A) there is an infringing device or product actually on the market or method in use; (B) a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed: and (C) he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the prior art. Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims.

Applicants' submission meets all the criteria set out above, accordingly, the Petition is **GRANTED**.

The application file is being forwarded to the Examiner of Record for expedited examination.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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MAIL Paper No. 6

SILICON VALLEY INTELLECTUAL PROPERTY GROUP
P.O. BOX 721120
SAN JOSE CA 95172-1120

OCT 10 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of Herbert V. Joiner et al.
Application No.: 10/029,687
Filed: December 21, 2003
For: **ENTERPRISE INTERFACE FOR NETWORK ANALYSIS REPORTING**

DECISION ON PETITION FOR ACCELERATED EXAMINATION UNDER M.P.E.P. §708.02(II)

This is a decision on the petition, filed June 02, 2003 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement, to make the above-identified application special.

M.P.E.P. §708.02(II) states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(h), and (2) a statement by the applicant, assignee, or an attorney/agent registered to practice before the Office 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 or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art, and has sent one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petition filed June 02, 2003 meets all of the requirements above; accordingly, the Petition is **GRANTED**.

The application file is being forwarded to the Examiner of Record for promptly examining this application out of turn according to the procedures set forth in M.P.E.P. §708.02.

Bot LeDynh
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 305-0651

#5
8-1-03

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

AUG 01 2003

TECHNOLOGY CENTER 2100

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

Paper No. 5

Kevin J. Zilka
Silicon Valley IP Group
P.O. Box 721120
San Jose, California 95172-1120

In re Application of: Ken Elwell et al.	)	
Application No. 10/029,688	)	
Filed: December 21, 2001	)	DECISION ON PETITION TO
For: ENTERPRISE NETWORK	)	MAKE SPECIAL UNDER
ANALYZER HOST	)	M.P.E.P. §708.02(II):
CONTROLLER/ZONE	)	INFRINGEMENT
CONTROLLER INTERFACE	)	
SYSTEM AND METHOD	)	

This is a decision on the petition, filed June 2, 2003, requesting to make the above-identified application special under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement.

A grantable petition under 37 C.F.R. §1.102(d), and M.P.E.P. §708.02, Section II, must be accompanied by payment of the fee under 37 C.F.R.§1.117(h) and a statement under 37 C.F.R. §1.102 by the applicant or assignee or statements by an attorney/agent registered to practice before the Patent and Trademark Office that (A) there is an infringing device or product actually on the market or method in use; (B) a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed: and (C) he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the prior art. Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims.

Applicants' submission meets all the criteria set out above, accordingly, the Petition is **GRANTED**.

The application file is being forwarded to the Examiner of Record for expedited examination.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

UNITED STATES PATENT AND TRADEMARK OFFICE

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CHARLES E. BAXLEY
HART, BAXLEY, DANIELS & HOLTON
90 JOHN STREET, THIRD FLOOR
NEW YORK NY 10038

COPY MAILED
MAR 01 2010

In re Application of	:	
Jiang-Jen Lin et al.	:	
Application No. 10/029,727	:	NOTICE
Patent No. 6,822,019	:	
Filed: December 21, 2001	:	
Attorney Docket No. 12742 B		

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

There is no indication that the 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 documents 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.

Inquiries related to this communication should be directed to the undersigned at (571) 272-2991.

Terri Johnson
Petitions Examiner
Office of Petitions

cc: **LOWE HAUPTMAN HAM & BERNER, LLP**
1700 Diagonal Road, Suite 310
Alexandria, VA 22314

Receipt date: 09/23/2009 DO NOT ENTER: /E.M./

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Terry L. Thomas **Docket: 8383ZYXWVT**

Patent No: 7,189,894 **Dated: September 23, 2009**

Issued: March 13, 2007

For: Production Of Gamma Linolenic Acid By A Δ 6-Desaturase

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR CERTIFICATE OF CORRECTION UNDER 37 C.F.R. §1.323

Sir:

It appears that an error has occurred in the Patent issued in the above application, it is respectfully requested that the Commissioner issue a Certificate of Correction in the following respects:

(60) Continuation of application No. 08/934,254 filed Sep. 19, 1997, U.S. Pat. No. 6,355,861 which is a continuation-in-part of 08/789,936 filed Jan. 28, 1997, U.S. Pat. No. 5,789,220 **which is a continuation of 08/366,779 filed Dec. 30, 1994, U.S. Pat. No. 5,614,393** which is a continuation in part of 08/307,382 filed Sep. 14, 1994, U.S. Pat. No. 5,552,306 which is a continuation of 07/959,952 filed Oct. 13, 1992, abandoned, which is a continuation in part of 07/817,919 filed Jan. 8, 1992, abandoned, which is a continuation in part of 07/774,475 filed Oct. 10, 1991, abandoned.

Please charge deposit account 19-1013 the $100.00 fee.

Respectfully submitted,

/Xiaochun Zhu/

Xiaochun Zhu
Reg. No. 56,311

Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
(516) 742-4343

Receipt date: 09/23/2009

PTO/SB/44 (07-07)
Approved for use through 07/31/2007. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,189,894

Page 1 of 1

APPLICATION NO. : 10/029,756

ISSUE DATE : March 13, 2007

INVENTOR(S) : Terry L. Thomas

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

(60) Continuation of application No. 08/934,254, filed Sep. 19, 1997, U.S. Pat. No. 6,355,861 which is a continuation-in-part of 08/789,936 filed Jan. 28, 1997, U.S. Pat. No. 5,789,220 which is a continuation of 08/366,779 filed Dec. 30, 1994, U.S. Pat. No. 5,614,393 which is a continuation in part of 08/307,382 filed Sep. 14, 1994, U.S. Pat. No. 5,552,306 which is a continuation of 07/959,952 filed Oct. 13, 1992, abandoned, which is a continuation in part of 07/817,919 filed Jan. 8, 1992, abandoned, which is a continuation in part of 07/774,475 filed Oct. 10, 1991, abandoned.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Scully, Scott, Murphy & Presser P.C.
400 Garden City Plaza, Suite 300
Garden City, NY 11530

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing the burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10029756	12/21/01	THOMAS, TERRY L.	8383ZYXWVUT

EXAMINER
Elizabeth F.. McElwain

ART UNIT	PAPER
1638	20100421

DATE MAILED:

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, NY 11530

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

See the attached response to the request for a Certificate of Correction.

/Elizabeth F. McElwain/
Primary Examiner, Art Unit 1638

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 16, 2010

TO SPE OF : ART UNIT 1638

SUBJECT : Request for Certificate of Correction for Appl. No.: 10029756
Patent No.: 7189894

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-C
Palm Location 7580

Certificates of Correction Branch
703-756-1573

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.
- X **Denied** — State the reasons for denial below.

Comments: The Examiner does not have the authority to enter a change in the priority information on an issued patent.

/EM/

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

ANNE MARIE GRUNBERG
SUPERVISORY PATENT EXAMINER

1638

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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JUL 19 2010

OFFICE OF PETITIONS

SCULLY, SCOTT, MURPHY & PRESSER
400 GARDEN CITY PLAZA
GARDEN CITY, NY 11530

In re Patent No. 7,189,894
Issue Date: March 13, 2007
Application No. 10/029,756
Filed: December 21, 2001
Attorney Docket No. 8383ZYXWCUT

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.78(a)(3) AND
: REQUEST FOR CERTIFICATE OF
: CORRECTION
:

This is a decision on the petition, filed April 27, 2010, 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. 08/366,779, filed December 30, 1994, by way of a certificate of correction.

The petition is **granted**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 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 December 21, 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.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

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 above-noted, 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.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3208.

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 under 37 CFR 1.78(a)(3).

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/029,756	12/21/2001	1638	1490	8383ZYXWVUT	9	1

CONFIRMATION NO. 6460

CORRECTED FILING RECEIPT

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, NY 11530

OC000000042631295

Date Mailed: 07/19/2010

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Terry L. Thomas, College Station, TX;

Power of Attorney:
Leopold Presser--19827

Domestic Priority data as claimed by applicant

This application is a CON of 08/934,254 09/19/1997 PAT 6,355,861
which is a CIP of 08/789,936 01/28/1997 PAT 5,789,220
which is a CON of 08/366,779 12/30/1994 PAT 5,614,393
which is a CIP of 08/307,382 09/14/1994 PAT 5,552,306
which is a CON of 07/959,952 10/13/1992 ABN
which is a CIP of 07/817,919 01/08/1992 ABN
which is a CIP of 07/774,475 10/10/1991 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 01/23/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/029,756**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

PRODUCTION OF GAMMA LINOLENIC ACID BY A DELTA6-DESATURASE

Preliminary Class

800

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

United States Patent and Trademark Office

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 5

Chun M. Ng
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN
12400 Wilshire Blvd., Seventh Floor
Los Angeles, CA 90025-1026

FEB 28 2003

In re Application of)
YANG et al.)
Application No. 10/029,764) DECISION ON REQUEST TO
Filed: October 22, 2001) WITHDRAW FROM RECORD
For: Wafer Level Package and the Process of the Same)

This is a decision on the request under 37 C.F.R. § 1.36, filed on November 18, 2002, to withdraw all attorneys of record.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request meets all of the above listed requirements. Accordingly, the request is **APPROVED**.

All future communications from the Office will be directed to the correspondence address indicated in the request.

Hien H. Phan, Special Program Examiner
Group 2800 -- Semiconductors, Electrical
and Optical Systems and Components

cc: Clement Cheng
17220 Newhope Street, #127
Fountain Valley, CA 92708

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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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B. CRAIG KILLOUGH
P. O. DRAWER H
CHARLESTON, SC 29402

COPY MAILED

FEB 03 2005

OFFICE OF PETITIONS

In re Application of	:	
Jeffery L. Deal	:	
Application No. 10/029,787	:	ON PETITION
Filed: October 26, 2001	:	
Attorney Docket No. 25.010	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 17, 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 May 5, 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 August 5, 2004.

In response, petitioner submitted with the instant petition $750 for the petition to revive fee, an Amendment, and a Terminal Disclaimer to Obviate a Double Patenting Rejection, along with the required fee of $65.

The petition is **GRANTED**.

The application file is being referred to Technology Center Art Unit 1744, 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

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)
6637432	2003-10-28	10029791	2001-10-23	DEV-00003USP1

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
◉ 3 ½ year	(1551)	○ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Andrew M. Parial, Reg. No., 50,382/	Date (YYYY-MM-DD)	2008-08-28
Name	Andrew M. Parial	Registration Number	50382

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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In re Patent No. 6637432
Issue Date: October 28,2003
Application No. 10029791
Filed: October 23,2001
Attorney Docket No. 930001-2003

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 28,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 28,2008 .
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

OCT 17 2003

#11

In re Application of	:
Fumisato Goto, et al	:NOTICE OF WITHDRAWAL
Serial No. 10/029,851	: FROM ISSUE
Filed: December 31, 2001	: UNDER 37 CFR 1.313(b)
For: METHOD AND APPARATUS FOR	:
PREPARING FATTY ACID ESTERS	:

The above-identified application is withdrawn from issue after payment of the issue fee due to a mistake on the part of the Office. See 37 CFR 1.313(b).

The above-identified application is hereby withdrawn from issue.

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to Johann Richter at (703) 308-4532.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Bruce M. Kisliuk
Director, Technology Center 1600

Birch, Stewart, Kolasch & Birch
P.O. Box 747
Falls Church, VA 22040-0747

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Paper No. 8

FLIESLER MEYER, LLP
FOUR EMBARCADERO CENTER
SUITE 400
SAN FRANCISCO CA 94111

COPY MAILED

DEC 10 2004

OFFICE OF PETITIONS

In re Application of
James J. Nicholas
Application No. 10/029,887
Filed: December 20, 2001
Title: NON-INTRUSIVE INTERACTIVE NOTIFICATION SYSTEM AND METHOD

DECISION ON PETITION UNDER 37 C.F.R. §1.78(A)(3)

This is a decision on the petition pursuant to 37 C.F.R. §1.78(a)(3), filed December 5, 2003, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of a prior-filed non-provisional application.

On December 20, 2001, the above-identified application was filed with a declaration which identified the filing date of prior filed application numbers 09/314,128 and 09/632,474 as May 19, 1999 and August 4, 2000, respectively. The specification of the above-identified application set forth that it is a continuation-in-part (CIP) of the '474 application, but failed to indicate that the '474 application is a CIP of the '128 application.

35 U.S.C. 120 Benefit of earlier filing date in the United States:

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

(Amended Nov. 14, 1975, Public Law 94-131, sec. 9, 89 Stat. 691; Nov. 8, 1984, Public Law 98-622, sec. 104(b), 98 Stat. 3385; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-563 (S. 1948 sec. 4503(b)(1)).)

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications:

(a)(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. §§120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 35 U.S.C. §§120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The reference required by 35 U.S.C. §120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;

(ii) The surcharge set forth in §1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

37 C.F.R. §1.78(a)(3) requires a statement that the entire delay between the date the claim was due under 37 C.F.R. §1.78(a)(2)(ii) and the date the claim was filed was unintentional. Since the statement contained in the instant petition varies from the language required by 37 C.F.R. §1.78(a)(3), the statement contained in the instant petition is being construed as the statement required by 37 C.F.R. §1.78(a)(3) and petitioner must notify the Office if this is not a correct interpretation of the statement contained in the instant petition.

With the instant petition, Petitioner has included the appropriate reference to the prior-filed application, the required fee, and has made a statement which is being construed as the proper statement of unintentional delay.

As such, the petition under 37 CFR 1.78(a)(3) 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 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.

The petition under 37 C.F.R. §1.53:

Petitioner has also filed a request for a corrected filing receipt. A corrected filing receipt has been enclosed with this decision.

After this petition is mailed, the application will be forwarded Technology Center 2100 for further processing.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
United States Patent and Trademark Office

Encl. Corrected filing receipt

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Mailed:
AUG 2 5 2004

DWW

Paper No.

In re application of
Steven Gerard Mayorga, et al.
Serial No. 10/029,892
Filed: December 21, 2001
For: STABILIZERS TO INHIBIT THE POLYMERIZATION OF SUBSTITUTED CYCLOTETRASILONANE

DECISION ON PETITION

This is a decision on the PETITION FOR WITHDRAWAL OF ABANDONMENT, filed on October 30, 2003.

This petition has been dismissed because the notice of rescinded abandonment has been mailed out on December 5, 2003 and the office action of Final Rejection has been mailed out on February 13, 2004.

Jstone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Air Products and Chemicals, Inc.
Patent Department
7201 Hamilton Boulevard
Allentown, PA 18195-1501

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NOV - 2 2004

In re Application of PETTERSSON et al. Application No. 10/029,908 Filed: December 21, 2001 Attorney Docket No. 324-010771-US(PAR)	: : : : :	DECISION ON PETITION

This is a decision on the petition filed May 19, 2004, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is GRANTED.

A non-final Office action was mailed on September 15, 2003, setting forth a three-month period of response. A Notice of Abandonment was mailed on May 4, 2004.

Petitioner asserts that a Response/Amendment in response to the Office action and a one-month Extension of Time fee were timely mailed to the Patent and Trademark Office on January 15, 2004. This is evidenced by a copy of the Response/Amendment and the postcard receipt indicating receipt of the Response/Amendment and check in the Patent and Trademark Office on January 20, 2004.

The review of the application file reveals that the Response/Amendment in response to the September 15, 2003 Office action and the one-month Extension of Time fee were received and matched with the file. However, the Response/Amendment was not noticed by either the examiner or the technical support staff and consequently the application was held to be abandoned. The application is not abandoned in fact.

For the above reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. Inconvenience to petitioner is regretted.

The application file is being forwarded to the technical support staff for processing the response to the September 15, 2003 Office action. From there, it will be returned to the examiner for further prosecution.

Questions regarding this decision should be directed to Jose' G. Dees at 571-272-1569.

Richard K. Seidel, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : January 23, 2007

TO SPE OF : ART UNIT 2627

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/029910 Patent No.: 7107604 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: The proposed change to insert --English-translation of Japan Kokai Document No. 62-267985-- before "Japanese Office Action dated Jun. 3 2003." has not been approved since there are no PTO-1449's or PTO-892's in the file which list such an english translation of Japanese Doc. No. 62-267985

William Korzuch
SPE

2627
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9/23/07

Paper No.: _____

TO SPE OF : **Technology Center** 2627

10/029910

SUBJECT : Request for Certificate of Correction on Patent No.: 7107604 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:

The Supplemental Request for Certificate of Correction, filed August 17, 2007, has been approved. A missing PTO-892 (Paper No. 7) has been filed by Applicant verifying the existence of "English-translation of Japan Kokai Document No. 62-267985." WJK

William Korzuch
SPE

2627
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

Rabin & Berdo, P.C.
Suite 500
1101 14th Street, N.W.
Washington, D.C. 20005

MAILED

JUN 04 2003

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

In re application of
Zhen-Man Lin
Application No. 10/029,951
Filed: December 31, 2001
For: DEVICE FOR PRECAUTION SKYJACKING AND SYSTEM

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on December 4, 2003, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application. There is no fee for this request. The delay in responding to the petition is sincerely regretted.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks conditions A) and B) above.

The attorney who signed the request to withdraw as attorney is not of record and, therefore, cannot withdraw on behalf of those attorneys that are of record. It is also noted that petitioner appears to argue that petitioner's client by other conduct renders it unreasonable to represent the applicant effectively. If this is the case, petitioner should clearly state such as enumerated in subsection (1)-(6) of 37 CFR 10.40(c).

Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(703) 308-2121
Facsimile No.: (703) 605-0586

RAR/dxn: 6/2/03

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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Rabin & Berdo, P.C.
Suite 500
1101 14th Street N.W.
Washington, DC 20005

MAILED
FROM DIRECTORS OFFICE

NOV 04 2005

TECHNOLOGY CENTER 3600

In re Application of
Zhen-Man Lin
Application No. 10/029,951
Filed: December 31, 2001
For: DEVICE FOR PRECAUTION SKYJACKING AND SYSTEM

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicant's letter filed January 14, 2004 by facsimile transmission, which is taken as a petition to withdraw the holding of abandonment under 35 U.S.C. 1.181.

The petition is **DENIED**.

A review of the file record reveals that a Final Office action rejection was mailed on June 20, 2003, setting a three-month shortened statutory period for reply. Therefore, a response was due by September 20, 2003. Applicant had the option of requesting and purchasing extensions of time under the provisions of 37 CFR 1.136(a), which were available for purchase, for up to six months from the June 20, 2003 mailing date of the Office action. Applicant filed a response on December 9, 2003, with no request for the purchase of extensions of time. Having not responded within the three-month shortened statutory period for reply, and having not requested and purchased extensions of time, the application became abandoned at midnight on December 20, 2003. A notice of abandonment was mailed on January 7, 2004.

On January 14, 2004 applicant filed the present petition by facsimile transmission. In his petition applicant explains that he responded to the June 20, 2003 Office action by "registration mail" on November 28, 2003.

Applicant's petition is insufficient to withdraw the holding of abandonment. In this regard, applicant's response received by the USPTO on December 9, 2003, was received well outside the three-month shortened statutory time period for reply set in the Office action of June 20, 2003. Since no extensions of time were requested and purchased by applicant, the December 9, 2003 was late, and the application was properly held abandoned.

Thus, there is no Office error and the holding of abandonment will not be withdrawn.

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 $500. The fee for a petition under the unintentional standard is $1,500. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries should be directed to the Office of Petitions Staff at (571) 272-3282.

Randolph A. Reese

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(571) 272-6619

RAR/rwg: 11/3/05

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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POST OFFICE BOX 1404
ALEXANDRIA VA 22313-1404

COPY MAILED

MAR 29 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Jai-Young Kim :
Application No. 10/029,961 :
Filed: December 31, 2001 :
Attorney Docket No. 030681-349 :

This is a decision on the petition, filed March 28, 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 December 22, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 1773 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).

12 AUG 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Anthony P. Cho
CARLSON, GASKEY & OLDS
400 W. Maple, Suite 350
Birmingham, MI 48009

In re Application of	:	
EVANS, Michael, et al.	:	
U.S. Application No.: 10/030,024	:	DECISION ON PETITION
PCT No.: PCT/GB00/02540	:	UNDER 37 CFR 1.47(a)
International Filing Date: 30 June 2000	:	
Priority Date: 01 July 1999	:	
Attorney's Docket No.: 60130-`308	:	
For: LATCH ASSEMBLY	:	

This decision is issued in response to the "Petition Under Rule 37 CFR 1.47(a)" filed on 12 April 2002. Applicants have paid the required petition fee.

BACKGROUND

On 30 June 2000, applicants filed international application PCT/GB00/02540 which claimed a priority date of 01 July 1999 and which designated the United States. On 11 January 2001, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 30 January 2001, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 02 January 2002 (02 January 2002 was a federal holiday).

On 02 January 2002, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, a check in payment of the basic national fee.

On 06 March 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required. The Notification also informed applicants that the failure to submit the declaration within two months of the date of the Notification would result in abandonment of the application.

On 12 April 2002, applicants filed the petition considered herein, with accompanying materials.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the non-signing inventor; (3) an oath or declaration by the other inventors on behalf of themselves and the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort. As discussed below, applicants here have failed to satisfy items (3) and (4).

Regarding the petition fee, applicants submitted a payment in the amount of $130 with their petition. Item (1) is therefore satisfied.

The petition specifically sets forth the last known addresses of the nonsigning inventors, Mark Li and Michael Evans. Accordingly, item (2) is satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

> An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Applicants here have filed what appears to be a compilation of two declarations, one complete four-page declaration executed by co-inventor James Frost and containing unsigned signature blocks for the remaining inventors (including the two nonsigning inventors), and a copy of page three of the declaration, executed by co-inventor Nigel Spurr, which has been inserted into the complete declaration. Pursuant to the MPEP, the complete declarations executed by co-inventors Frost and Spurr and containing the unsigned signature blocks for the nonsigning inventors, not a compilation of the two (see MPEP section 602) are required. Until the two complete declarations are submitted (or one complete declaration executed by both signing inventors), item (3) is not satisfied.

Regarding item (4), applicants assert that Mr. Li has refused to execute the application and that Mr. Evans cannot be located after diligent effort.

With respect to Mr. Li, before a refusal to execute the application can be claimed, MPEP § 409.03(d) requires that the nonsigning inventor be provided with a copy of the complete application. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made." Here, the declaration of Mr. John Jones attached to the petition provides the required first-hand evidence that a copy of the application was presented to Mr. Li, and that Mr. Li has refused to execute the application. Item (4) is therefore satisfied with respect to Mr. Li.

With respect to Mr. Evans, the proof required to show that a nonsigning inventor cannot be reached after diligent effort is set forth in section 409.03(d) of the MPEP, which states:

> Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made. ...
>
> The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

Here, the attempts to contact the nonsigning inventor are set forth in Mr. Jones' declaration, and the attachments thereto. Mr. Jones provides firsthand evidence that two mailings were made to Mr. Evans' last known address and that no response was received. However, no evidence is provided of any additional efforts made to locate Mr. Evans (i.e., telephone calls, efforts to determine Mr. Evans' new address, ...). The two mailings described here to Mr. Evans' last known address do not constitute the "diligent effort" required to satisfy item (4) above. Accordingly, until proper evidence of further efforts to locate or contact Mr. Evans are provided, item (4) is not satisfied with respect to this nonsigning inventor.

Based on the foregoing, applicants have failed to satisfy all the requirements for a grantable petition under 37 CFR 1.47(a). Accordingly, the petition must be dismissed.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and should include complete copies of the declarations executed by the two signing inventors (and containing unsigned signature boxes for the nonsigning inventors), and evidence of further efforts made to contact nonsigning inventor Michael Evans, as discussed above and in the form required by MPEP § 409.03(d). No additional petition fee is required.

Failure to file a timely response will result in abandonment of the application.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

RMR/LS:rmr

07 FEB 2003
UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Anthony P. Cho
CARLSON, GASKEY & OLDS
400 W. Maple, Suite 350
Birmingham, MI 48009

In re Application of	:	
EVANS, Michael, et al.	:	
U.S. Application No.: 10/030,024	:	DECISION ON RENEWED
PCT No.: PCT/GB00/02540	:	PETITION UNDER
International Filing Date: 30 June 2000	:	37 CFR 1.47(a)
Priority Date: 01 July 1999	:	
Attorney's Docket No.: 60130-`308	:	
For: LATCH ASSEMBLY	:	

This decision is issued in response to the "Renewed Petition Under Rule 37 CFR 1.47(a)" filed by applicant on 11 October 2002. No petition fee is required.

BACKGROUND

The procedural background for this petition is set forth in detail in the decision mailed by this Office on 12 August 2002. In that decision, applicant's petition under 37 CFR 1.47(a) for acceptance of a declaration without the signature of inventors Mark Li and Michael Evans was dismissed without prejudice. The decision stated that the petition was deficient in that it failed to include; (1) a proper oath or declaration by the other inventors on behalf of themselves and the non-signing inventors; and (2) factual proof that the inventor Michael Evans refused to execute the application.

On 11 October 2002, applicant filed the Renewed Petition considered herein. The Renewed Petition was accompanied by complete declarations executed by three of the named inventors (including Mr. Evans, one of the previously non-signing inventors).

DISCUSSION

As noted above, the Renewed Petition was accompanied by complete copies of the declaration of inventors executed by three of the four inventors (including Michael Evans, one of the previously non-signing inventors). These declarations, which contain a signature block for the remaining nonsigning inventor Mr. Li, satisfy the requirement that the inventors provide an oath or declaration on behalf of themselves and the non-signing inventor (see discussion in previous decision).

The submission of a declaration executed on behalf of Mr. Evans renders the petition under 37 CFR 1.47(a) moot with respect to Mr. Evans.

With respect to Mr. Li, the submission of complete declarations executed by the signing inventors and including an unsigned signature block for Mr. Li satisfies the last remaining requirement for a grantable petition under 37 CFR 1.47(a). Accordingly, the petition is granted with respect to nonsigning inventor Mark Li.

CONCLUSION

Applicant's petition under 37 CFR 1.47(a) is **MOOT** with respect to inventor Michael Evans.

Applicant's petition under 37 CFR 1.47(a) is **GRANTED** with respect to inventor Mark Li.

The declaration filed on 11 October 2002 is accepted without the signature of inventor Mark Li.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and a notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

The application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accordance with this decision. The 35 U.S.C. 371(c) date is 11 October 2002.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

07 FEB 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Mark Li
New Hampton Loft, Apt. 3
91 Branston Street
Birmingham, United Kingdom
B18 6BF

In re Application of: EVANS, Michael, et al.
U.S. Application No.: 10/030,024
PCT No.: PCT/GB00/02540
International Filing Date: 30 June 2000
Priority Date: 01 July 1999
Attorney's Docket No.: 60130-`308
For: LATCH ASSEMBLY

Dear Mr. Li:

You are identified as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a). Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

Counsel of Record:
Anthony P. Cho
CARLSON, GASKEY & OLDS
400 W. Maple, Suite 350
Birmingham, MI 48009

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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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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS CO 80527-2400

MAIL

FEB 01 2006

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of BEALE ET AL.
Appl. No.: 10/030,041
Filed: January 07, 2002
For: **IMPROVEMENTS RELATING TO NETWORKING**

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed August 1, 2005, to expunge information from the above identified application.

The petition is granted.

Petitioner requests that a document entitled "Proprietary Information Disclosure Statement, filed August 20, 2003, be expunged from the record. Petitioner states that either (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The information in question has been determined by the examiner of record to not be material to the examination of the instant application.

Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

The expunged material has been removed from the official file.

Jim Ng, Director
Technology Center 2600
Communications

Enclosure: Proprietary Information Disclosure Statement

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 4-28-05

DATE : 4/26/2005

TO SPE OF : ART UNIT 1700(1712)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,846,435

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-922
Palm location **7580** - Tel. No. 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Ernest C. White, LIE305-8339
Certificates of Correction Branch

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☒ **Denied** — State the reasons for denial below.

Comments:

The COC request filed March 8, 2005 is improper since it does not properly reference the previous claim. It should not be published.

A correct COC would read:

In Column 8, line 12, add the word "prepared" after the word "aquoxide".

Said correction, although not required for an understanding of the claim, makes the product-by-process format explicit and is consistent with claims 20 and 21.

RANDY GULAKOV
SUPERVISORY PATENT L
TECHNOLOGY CENTER

SPE — 1712 **Art Unit**

(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO : 6,846,435 B1

DATED : January 25, 2005

INVENTOR(S) : Frank Michael Bohnen, Katja Siepen, Paul K. Hurlburt and Karen Reitz

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

In Column 8, line 12, add the words "a process of" after the word "to".

MAILING ADDRESS OF SENDER: C. James Bushman
Browning Bushman P.C.
5718 Westheimer, Suite 1800
Houston, Texas 77057-5771

PATENT NO. 6,846,435

No. of additional copies

MAR 2 5 2005

P15/REV02

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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td

Mailed: 5/27/05

In re application of	:	
Nagai et al.	:	DECISION ON
Serial No. 10/030,076	:	PETITION
Filed: January 10, 2002	:	

For: GASKET FOR FUEL BATTERY AND METHOD OR FORMING THE SAME

This is a decision on the PETITION UNDER 37 CFR 1.181 TO DIRECT THE EXAMINER ISSUE A NEW NON-FINAL OFFICE ACTION.

The instant application is a National Stage Application entry of PCT/JP00/03853 filed on January 10, 2002. On February 20, 2004, a non-final office action was mailed to Applicants. Applicants contacted the examiner on June 10, 2004 and pointed out that two claims were not addressed in the office action. Apparently, a preliminary amendment was lost or misplaced by the office and was never processed. On July 21, 2004, applicants again contacted the examiner. The examiner stated that no new office action would be sent out and that Applicants should respond to the outstanding office action. Applicants file a response to the outstanding office action on July 27, 2004. The instant petition was timely filed simultaneously with this response formally requesting that a new non-final office action be prepared and mailed. In response to the amendment, the examiner required a restriction requirement on August 12, 2004. In the office action, it was stated that any subsequent action would be made final because Applicants had already received a first action on the merits. In an interview on August 30, 2004, the examiner's supervisor told Applicant's representative that the restriction would rescinded in order for a decision to be made with regard to the instant petition.

The instant petition requests that a new non-final office action addressing all of the pending claims be prepared. It is also requested that applicants be given a refund of the extension of time fee paid on July 27, 2004.

DECISION

The request for a new non-final office action to be mailed will be addressed first. Applicants have submitted a copy of the post card receipt from the office dated January 10, 2002. This receipt lists the various papers that were hand carried to the office. Among the papers listed is a preliminary amendment and an Article 19 amendment. Applicants faxed copies of the post card receipt and the amendments filed with the application to the examiner on June 10, 2004. It is clear from these documents that the original papers were either lost or misplaced by the office. It

is unclear as to why the examiner would not immediately issue a new non-final office action due to error on the part of the office.

Next, the request for a refund of the extension of time fee will be addressed. As previously stated, the examiner should have issued a new non-final office action. Applicants should not have been made to file a response to the office action mailed February 20, 2004 because said action was based on an incomplete copy of the claims. The request for a refund of the fees is appropriate.

Lastly, while not specifically addressed in the petition, the restriction requirement made by the examiner on August 12, 2004 will be reviewed. Although the examiner's supervisor rescinded the requirement in an interview on August 30, 2004, it is noted that the restriction requirement was improper on its face. The examiner required a species election and an election between numerous groups under 35 USC 121. It is noted however, that the instant application was filed under 35 USC 371. National stage applications do not fall under 35 USC 121 but rather lack of unity practice should be followed.

Accordingly, the petition is **GRANTED.** The examiner is directed to prepare a new non-final office action addressing all of the pending claims on the merits. In addition, applicants are to be refunded the extension of time fee paid on July 27, 2004.

JMStone

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON DC 20004

UNITED STATES PATENT AND TRADEMARK OFFICE

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JAN 20 2010

BACON & THOMAS, PLLC
625 Slaters Lane, Fourth Floor
Alexandria, VA 22314-1176

In re Application of	: DECISION ON PETITION
Norbert ALBRECHT et al.	: UNDER 37 CFR 1.181
Application No. 10/030,078	:
Filed: June 21, 2002	:
For: SYSTEM FOR CARRYING OUT	:
A TRANSACTION	:

This is in response to applicants' petition under 37 CFR 1.181 filed July 30, 2008 requesting consideration of the Information Disclosure Statement (IDS) filed December 16, 2005.

The petition is **DISMISSED AS MOOT**.

A review of the record reveals that the examiner did consider the IDS as indicated in the miscellaneous communication to applicant mailed August 20, 2008.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Andrew Fischer at (571) 272-6779.

Wynn Coggins, Director
Technology Center 3600
(571) 272-5350

af/lm: 1/19/10
LM

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON, DC 20004

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OFFICE OF PETITIONS

In re Application of

Mouafak Arif Zaher

Application No. 10/030,109

Filed: March 20, 2002

Attorney Docket No. P6736USO

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 2, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 23, 2004, which set a shortened statutory period for reply of three months from its mailing date. No extensions of time were obtained within the allowable period. Accordingly, the application became abandoned on November 23, 2004. A Notice of Abandonment was mailed on June 3, 2005.

The amendment filed February 2, 2006, is noted and made of record.

The application is being forwarded to Technology 3700, GAU 3745 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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400 SEVENTH STREET N.W.
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WASHINGTON DC 20004

In re Application of	:	
Stott	:	DECISION
Application No. 10/030,137	:	
Filing Date: 28 January, 2002	:	
Attorney Docket No.: P67518USO	:	

This is a revised decision on the petition filed on 25 May, 2006, requesting withdrawal of 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 **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.181."

(If Petitioner is unable to present even a satisfactory showing to support a petition under 37 C.F.R. §1.137(a), and Petitioner's only alternative will be to file a petition under 37 C.F.R. §1.137(b).)

(2) Thereafter, there will be no further reconsideration of this matter.[1]

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the drawings requirement contained in the Notice of Allowance and Fees Due and Notice of Allowability mailed on 1 December, 2005, with reply due under a non-extendable deadline on or before 1 March, 2006;
- the application went abandoned after midnight 1 March, 2006;
- the Office mailed the Notice of Abandonment on 11 May, 2006;
- on 25 May, 2006, Petitioner filed a the instant petition with the allegation that he had been in contact with the Examiner and that Petitioner's corrected drawings had been filed months earlier on 25 January, 2006.

Such an allegation is not responsive to the issue as to the 1 December, 2005, drawings requirement.

An Office action issued, and by statute (35 U.S.C.), rule/regulation (37 C.F.R.) and practice (Manual of Patent Examining Procedure (MPEP)), Petitioner is bound to reply timely and properly.

Moreover, the allegation as to a conversation with the Examiner is of no merit–Petitioner is reminded of the provisions of 37 C.F.R. §1.2[2]

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition

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[1] For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Louden, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R.§§1.181, 182, 183.

[2] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing.The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation,or understanding in relation to which there is disagreement or doubt.

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 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.[3]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the

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[3] 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]

satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[4]

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.[5]

Delays in responding properly raise the question whether delays are unavoidable.[6] 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).[7] And the Petitioner must be diligent in attending to the matter.[8] 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.[9]))

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.[10]

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[4] 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.

[5] 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.

[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] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[8] 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.

[9] 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.

[10] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

The commentary at MPEP §711.03(c) provides:

* * *

B. Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed

37 C.F.R. §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 C.F.R. §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.

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.

<u>Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon</u> in a petition to withdraw the holding of abandonment, see 37 C.F.R. §1.8(b) and MPEP § 512. As stated in 37 C.F.R §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 C.F.R. §1.8).
>
> 37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. 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.
>
> * * *

Thus, Petitioner appears not to have satisfied the showing requirements described above.

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 hereby is **dismissed**.

ALTERNATIVE VENUE

It appears that, because Petitioner failed to fail of record a response to the 1 December, 2005, drawings requirement, Petitioner's only alternative to irretrievable abandonment may be petition alleging unintentional delay under 37 C.F.R. §1.137(b).[11]

Petitioner may wish to file such a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay. (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

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[11] The regulations at 37 C.F.R. §1.183 sets forth that waiver of the rules is "subject to such other requirements as may be imposed."

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply (the amendment), the petition fee, and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

Further correspondence with respect to this matter should be addressed as follows:[12]

By mail: Commissioner for Patents[13]
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: IFW Formal Filings
(571) 273-8300
ATTN.: Office of Petitions

By hand: Mail Stop: Petition
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[12] On July 15, 2005, the Central Facsimile (FAX) Number changed to (571) 273-8300. The old FAX number no longer is 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 .)

[13] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

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JACOBSON HOLMAN PLLC
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SUITE 600
WASHINGTON DC 20004

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AUG 17 2006

OFFICE OF PETITIONS

In re Application of :
Stott :
Application No. 10/030,137 :
Filing Date: 28 January, 2002 :
Attorney Docket No.: P67518USO :

DECISION

This is a decision on the petition (renewed) filed on 17 July, 2006,alleging unintentional delay under 37 C.F.R. §1.137(b).

For the reasons set forth below, the petition under 37 C.F.R.§1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the drawings requirement contained in the Notice of Allowance and Fees Due and Notice of Allowability mailed on 1 December, 2005, with reply due under a non-extendable deadline on or before 1 March, 2006;
- the application went abandoned after midnight 1 March, 2006;
- the Office mailed the Notice of Abandonment on 11 May, 2006;

- on 25 May, 2006, Petitioner filed a the original petition with the allegation that he had been in contact with the Examiner and that Petitioner's corrected drawings had been filed months earlier on 25 January, 2006, and requested withdrawal of the holding of abandonment–the petition was dismissed on 19 July, 2006, because:

  –an Office action issued, and by statute (35 U.S.C.), rule/regulation (37 C.F.R.) and practice (Manual of Patent Examining Procedure (MPEP)), Petitioner is bound to reply timely and properly; and

  –the allegation as to a conversation with the Examiner is of no merit (Petitioner was reminded of the provisions of 37 C.F.R. §1.2[1]);

  thus, such an allegation was not responsive to the issue as to the 1 December, 2005, drawings requirement;

- the instant petition seeks to overcome those deficiencies with a petition to revive under 37 C.F.R.§1.137(b), the fee, the reply in the form of drawings and Petitioner has made the statement of unintentional delay.

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 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]

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[1] 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.

[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).

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

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

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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]

[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.

[4] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6] And the Petitioner must be diligent in attending to the matter.[7] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

As to the Allegation
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) hereby is **granted**.

The instant application is released to Publications Branch to be processed into a patent in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[9]) and the

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[5] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[6] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[7] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[8] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

[9] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing.The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the

proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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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.

APR 08 2002

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1725 K Street, N.W., Suite 1000
Washington, DC 20006

In re Application of MONTAGUTELLI, Denis Claude Jean Application No.: 10/030,150 PCT Application No.: PCT/FR00/01783 International Filing Date: 26 June 2000 Priority Date: 09 June 1999 Attorney Docket No.: 020093 For: DEVICE FOR UNLOCKING A COMPARTMENT OF AN OPENING MECHANISM	DECISION ON PETITION UNDER 37 CFR 1.137(b)

Applicant's "Petition to Revive Under 37 C.F.R. 1.137(b)," filed in the United States Patent and Trademark Office on 28 January 2002 is **GRANTED**.

BACKGROUND

On 26 June 2000, applicant filed international application number PCT/FR00/01783, which claimed a priority date of 09 June 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) by the International Bureau on 18 January 2001. On 02 February 2001, a demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. The deadline for entry into the United States National Stage was thirty months from the priority date, that is 10 December 2001 (09 December 2001 was a Sunday).

On 28 January 2002, applicant filed a transmittal letter for entry into the national stage in the United States, accompanied by, *inter alia*, a petition to revive and the basic national fee.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) a proposed response, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

Applicant's statement that "the entire delay in filing from the deadline for entry into the U.S. national stage to the date of the present petition was unintentional," satisfies the requirements of 37 CFR 1.137(b)(3). Applicant has paid both the petition fee and the basic national fee. A terminal disclaimer is not required as application was filed on 26 June 2000. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED** as to the National Stage in the United States of America.

This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing, including preparation of a Notification of Missing Requirements indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and an English translation of the international application are required.

Richard Cole
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: (703) 305-0455
Facsimile: (703) 308-6459

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : August 22, 2007

TO SPE OF : ART UNIT ~~2800~~ 2838

SUBJECT : Request for Certificate of Correction for Appl. No. 10/030165 patent no. 6741065

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: The examiner ~~can~~ considers either form of the two CoCs filed to be approved. The Draftsman can choose, since neither introduce new matter. If the examiner must choose, choose the CofC scanned 2nd, stating "see attached"

KARL EASTHOM
SUPERVISORY PATENT EXAMINER

SPE _____ 2838 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED KINGDOM

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JUL 20 2005

OFFICE OF PETITIONS

In re Application	:	
Wiley, et al.	:	
Application No. 10/030,187	:	DECISION ON APPLICATION
Filed: February 4, 2002	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. 00219/US	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. §1.705)," filed March 4, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from twenty-eight (28) days to thirty-three (33) days.

The application for patent term adjustment is **DISMISSED**.

On December 18, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is twenty-eight (28) days. On March 4, 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 thirty-three (33) days.

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[1] Applicants filed the instant application for patent term adjustment together with the payment of the issue fee.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of twenty-eight (28) days based on an adjustment for PTO delay of thirty-three (33) 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 five (5) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8). The PTO delay of thirty-three (33) days has been reviewed and found to be correct. The adjustment of five (5) days is at issue.

The adjustment of five (5) days has been reviewed and found to be correct. The record reveals that applicants filed an Amendment and IDS via facsimile transmission on June 4, 2003. On June 9, 2003, applicants filed an "AMENDMENT OF INVENTORSHIP UNDER 37 C.F.R. 1.48(b)" and three IDS documents that were not filed on June 4, 2003. It is true that the June 9, 2003 submission contains a certificate of facsimile transmission dated June 4, 2003.[2] However, under 37 C.F.R. § 1.703(f), "the date indicated on any certificate of mailing or transmission shall not be taken into account" in the PTA calculation. See also Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14 (Oct. 3 2000). Accordingly, the applicant delay of five (5) days for the filing of the "AMENDMENT OF INVENTORSHIP UNDER 37 C.F.R. 1.48(b)" and the IDS documents on June 9, 2003 was proper.

The correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **twenty-eight (28) days**.

The Office acknowledges submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e).

The application file is being forwarded to Group Art Unit 1624 to consider the "AMENDMENT OF INVENTORSHIP UNDER 37 C.F.R 1.48(b)", filed June 9, 2003. See MPEP 1002.02(e).

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

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[2] However, it appears that the June 9, 2003 submission was not in fact filed via facsimile transmission, but rather by postal mail.

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OFFICE OF PETITIONS

In re	: DECISION ON APPLICATION
Wiley, et al.	: FOR PATENT TERM ADJUSTMENT
Application No. 10/030,187	: AND
Filed: February 4, 2002	: NOTICE OF INTENT TO ISSUE
Patent No. 6,946,467	: CERTIFICATE OF CORRECTION
Issued: September 20, 2005	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT AFTER ISSUE OF THE PATENT (37 C.F.R. §1.705(d))," filed November 14, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from twenty-eight (28) days to thirty-three (33) days.

The application for patent term adjustment is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **four hundred seventy-one (471)** days.

On September 20, 2005, the above-identified application matured into U.S. Patent No. 6,946,467. The instant request for reconsideration filed November 14, 2005 was timely filed within two months of the date the patent issued. See § 1.705(d). The Patent issued with a Patent Term Adjustment of three hundred fifty-one (351) days. Patentee states that he should not have been assessed applicant delay of one hundred twenty (120) days for the submission of foreign priority documents on March 29, 2004. Patentee states that he did not file priority documents on that date, but rather on that date the PTO received copies of the priority documents from WIPO.

It appears that patentee's assertion is correct. Accordingly, there should have been no applicant delay associated with the filing of priority documents on March 29, 2004.

The $200.00 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 50-1230, as authorized.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **four hundred seventy-one (471)** days, subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Kery Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

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OFFICE OF PETITIONS

Eli Lilly
Patent Division
PO Box 6288
Indianapolis, IN 46206-6288

In re Application of
Liebeschuetz et al.
Application No. 10/030,188
Filed: Feb. 4, 2002

: DECISION GRANTING PETITION

This decision is in response to applicant's "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE 37 C.F.R. 1.705(b)" timely filed. Applicants' request that the patent term adjustment at the time of the notice of allowance be adjusted to reflect 130 days.

The application for patent term adjustment is **GRANTED**. The Office will adjust the PTA calculation to reflect this decision.

Applicants assert that the Office erred in not granting a PTA delay of 130 days for failing to initially act upon the application within fourteen months of the filing date of the application under 37 CFR 1.702(a)(1). Applicants assert that this was the only delay in the application, that they did not fail to engage in any reasonable efforts to conclude prosecution of the application, and they no terminal disclaimer was filed in the application.

Applicants' arguments are persuasive. A review of the file history reflects that the Office did not meet the requirement of 37 CFR 1.702(a)(1) within fourteen months as asserted by applicants. The Office improperly entered the response to the restriction requirement as September 13, 2002 rather than the actual date of September 13, 2003. Accordingly, Office did treated the fourteen month requirement as having occurred prior to September 13, 2002. However, the correct history reflects that the Office mailed the restriction requirement on August 12, 2003 and that applicants responded on September 13, 2003. Accordingly, the 211 days of PTA and the 297 day reduction entered into the PTA calculation are incorrect. Accordingly, the only delay in the application was from the period beginning on April 5, 2002[1] and ending on August 12, 2003, a 130 day administrative delay under 37 CFR 1.702(a)(1).

After the mailing of this Office action, the file will be forwarded to the Office of Patent Publication for a prompt issuance of the patent. Any delays in issuing the application within four

[1]April 5, 2003 is the day after the 14th month deadline under 37 CFR 1.702(a)(1).

months of the payment of the issue fee and all other requirements being satisfied will be added at the time of the issuance of the patent and will be reflected in the issue notification letter that is mailed to applicant.

The $200.00 application fee will be charged to deposit account No 50-1230. No additional fees are required;

Any questions directed to this application should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

Kery A Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner for Patent
Examination Policy

cc: Copy of Adjusted PAIR calculation

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OFFICE OF PETITIONS

In re Application of	:	
Liebeschuetz et al.	:	
Application No. 10/030,189	:	DECISION ON APPLICATION
Filed: February 4, 2002	:	FOR PATENT TERM ADJUSTMENT
Patent No. 6,878,725	:	
Issued: April 12, 2005	:	
Attorney Docket Number:	:	
X14660	:	

This is a decision on the "Petition for Reconsideration of Patent Term Adjustment After Payment of Issue Fee (37 CFR § 1.705(d)), filed June 2, 2005.

The application for patent term adjustment is **DISMISSED**.

Patentee is given **two (2) months** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

On April 12, 2005, the above-identified application matured into U.S. Patent No. 6,878,725. The patent issued with a PTA of zero (0) days.

The Office determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of one hundred seventy-nine (179) days pursuant to 37 C.F.R. § 1.702(a)(4), reduced by Applicant's delay of three hundred forty-eight (348) days pursuant to 37 C.F.R. § 1.704(b).

Patentee asserts entitlement to a PTA of two hundred twenty-eight (228) days. Patentee does not address the submission of an Information Disclosure Statement on June 23, 2003, which accounted for an adjustment of sixty-seven (67) days. Patentee states that he timely responded to the non-final Office action mailed July 1, 2003, on October 1, 2003, not December 24, 2003, which accounted for an adjustment of eighty-four (84) days, as reflected in PAIR. Patentee also asserts that the Supplemental response filed March 10, 2004, which accounted for an adjustment of seventy-seven days (77), was necessitated by Office error.

With respect to these 2 reductions, patentee's argument is untimely raised, as this argument should have been made with an application for patent term adjustment pursuant to 37 C.F.R. § 1.705(b), submitted after the mailing of the Notice of Allowance and prior to payment of the issue fee. As stated in 37 C.F.R. § 1.705(d), any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

As to other arguments raised, patentee's arguments are timely and will be considered on the merits. On April 12, 2005, the above-identified application matured into U.S. Patent No. 6,878,725. The instant request for reconsideration, filed June 2, 2005, was timely filed within 2 months of the date the patent issued. See § 1.705(d).

Herein, patentee requests entry of a period of adjustment of 237 days on the basis that the projected issue date of the patent is four months and 237 days after the date of payment of the issue fee. In addition, patentee states that the reduction of 120 days from this patent after applicant's payment of the issue fee is erroneous.

The Patent issued with a revised Patent Term Adjustment of zero (0) days. The PTA of 228 days due to Applicant's delay as indicated in the notice of allowance and as iterated *supra*, was further reduced by 120 days pursuant to 37 CFR § 1.704(c)(10) for the submission of an Amendment after the mailing of the notice of allowance.

Regarding the reduction of 120 days, the entry has been reviewed and found to be correct. Patentee acknowledges submitting a "letter", asking this Office to check that certified copies of the priority documents had been received, after the mailing of

the notice of allowance. Patentee is advised that the filing of a letter after the mailing of a notice of allowance is properly a basis for reduction of patent term adjustment.

37 CFR § 1.704(c)(10) provides that:

> Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;
>
> or
>
> (ii) Four months;

By Notice entitled *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001), the Director set forth examples of papers deemed not to cause substantial interference and delay in the patent issue process. The OG Notice states that:

> … the Office is publishing this notice to provide guidance in interpreting the provisions of 37 CFR 1.704(c)(10) to clarify that submission of certain papers after a "Notice of Allowance," which do not cause substantial interference and delay in the patent issue process, are not considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application. The following are examples of such papers: (1) Issue Fee Transmittal (PTOL-85B), (2) Power of Attorney, (3) Power to Inspect, (4) Change of Address, (5) Change of Status (small/not small entity status), (6) a response to the examiner's reasons for allowance, and (7) letters related to government interests (e.g., those between NASA and the Office). Therefore, the submission of these papers after a Notice of Allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and would not result in reduction of a

patent term adjustment pursuant to 37 CFR 1.704(c)(10).

A Comment on the Statement of Reasons for Allowance was so identified; however, here, while Applicant entitled the letter "Comments on Notice of Allowability - Acknowledgment of Claim to Foreign Priority and of Receipt of Fpreign Priority Dopcuments", the letter, as admitted by Applicant, was "a letter asking the PTO to check that certified copies of the priority documents had been received". Petition at p.6. Other than those papers identified in this Notice, all papers filed after allowance of an application substantially delay the Office's ability to process an application for a patent because the Office does not wait until payment of the Issue Fee to begin the patent issue process. As a result, 37 CFR 1.704(c)(10) does not distinguish between papers that are and are not required by the Office. Filing of any papers after allowance, other than those identified in the Notice, will be treated as a failure to engage in reasonable efforts to conclude prosecution.

The period of reduction for Applicant's delay has been correctly calculated at three hundred forty-eight (348) days.

Finally, the application for patent was filed on February 4, 2002, and issued April 12, 2005, three years and 67 days later. However, the Office will not accord an additional period of adjustment for Office delay in issuing the patent. If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the period of delay totaling 179 days attributable to grounds specified in § 1.702(a)(4) overlaps with the 67 days attributable to the delay in the issuance of the patent. Thus, the period of adjustment cannot exceed the actual number of days of delay of 179 days.

In view thereof, it is concluded that the patent properly issued with a revised Patent Term Adjustment of zero (0) days (179 days of Office delay reduced by 348 days of applicant delay).

Receipt is acknowledged of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The address on the petition is different from the address of record. If Petitioner desires to receive further correspondence with respect to this application, a change of correspondence address must be filed. 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.

The application file is being returned to Files Repository for storage as a patented case.

Telephone inquiries specific to this matter should be directed to Attorney Derek L. Woods at (571) 272-3232.

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

CC: Martin A. Hay
13 Queen Victoria Street
Macclesfield Cheshire UK SK11 -6LP GB
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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
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In re Application of:
Erich Bayer
Application Serial No.: 10/030,192
Filed: February 4, 2002
For: **OTOPLASTY FOR BEHIND-THE-EAR HEARING AIDS**

DECISION
ON PETITION

This is a decision on the petition filed October 8, 2004 which is treated as a Petition to Withdraw the Holding of Abandonment pursuant to 37 CFR 1.181. No fee is required.

The petition is **GRANTED**.

This application was held abandoned for failure to timely file a proper response to the final Office action mailed September 8, 2003. A Notice of Abandonment was mailed on September 22, 2004.

A review of the record indicates that the final Office action was mailed September 22, 2003. An amendment and Notice of Appeal was subsequently filed on March 8, 2004. Furthermore, the Notice of Appeal included appropriate petition for three month extension of time and Notice of Appeal. An advisory action was mailed on April 2, 2004.

MPEP §1205 Notice of Appeal, states in part:...

> The notice of appeal and appropriate fee may be filed up to 6 months from the date of the final rejection, so long as an appropriate petition and fee for an extension of time is filed either prior to or with the notice of appeal. [emphasis added]

MPEP §1206 Appeal Brief, states in part:...

> TIME FOR FILING APPEAL BRIEF
> 37 CFR 1.192(a) provides 2 months from the date of the notice of appeal for the appellant to file an appeal brief. In an ex parte reexamination proceeding, the time period can be extended only under the provisions of 37 CFR 1.550(c). See also MPEP § 2274.
> The usual period of time in which appellant must file his or her brief is 2 months from the date of appeal. The Office date of receipt of the notice of appeal (and not the date indicated on any Certificate of Mailing under 37 CFR 1.8) is the date from which this 2 month time period is measured. See MPEP § 512. However, 37 CFR 1.192(a) alternatively permits the brief to be filed "within the time allowed for reply to the action from which the appeal was taken, if such time is later." These time periods may be extended under 37 CFR 1.136(a), and if 37 CFR 1.136(a) is not available, under 37 CFR 1.136(b) for extraordinary circumstances. [emphasis added]

37 C.F.R. § 1.136 Extensions of time, states in part:

> (a)
>
> (1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after

the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 1.193(b);

(iii) The reply is a request for an oral hearing submitted pursuant to § 1.194(b);

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.196, § 1.197 or § 1.304; or

(v) The application is involved in an interference declared pursuant to § 1.611.

Given that the two months from the date of a Notice of Appeal for filing an Appeal Brief, is nonstatutory, applicant could have extended the time period for filing their Appeal Brief up to five months (if appropriate petition for extensions of time were granted) following the expiration of the original two months set forth in 37 C.F.R. §1.192(a). Accordingly, applicant's Appeal Brief would not have been due until October 8, 2004. A review of the file contents reveals that applicant in fact did petition for five months extension of time on October 8, 2004.

Accordingly, the Notice of Abandonment mailed on September 22, 2004 was premature and is hereby vacated.

Further review of the application reveals that applicant did not file an Appeal Brief along with the petition for extension of time on October 8, 2004. Instead, the request (treated as a petition) for five months extension of time indicates that a continuation application was filed in lieu of an Appeal Brief. Therefore, the application file will be forwarded to the examiner for issuance of a new Notice of Abandonment.

From there, the application file will be forwarded to the Technology Center's technical support staff for re-crediting applicant's deposit account for the petition fee of $130.00. This petition was treated as a petition under 37 C.F.R. §1.181 whereby a petition fee is not required.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications

MAR 1 2 2002

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William C. Gerstenzang
Norris, McLaughlin & Marcus, P.A.
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In re Application of SAMANT et al	:	
U S. Application No.: 10/030,198	:	
Int. Application No.: PCT/EP01/02612	:	DECISION ON PETITION
Int. Filing Date: 08 March 2001	:	
Priority Date: 10 March 2000	:	UNDER 37 CFR 1.137(b)
Attorney Docket No.: Metal 1287-WCG	:	
For: METHOD AN DEVICE FOR	:	
CATALYTICALLY TREATING EXHAUST	:	
GAS CONTAINING DUST AND OXYGEN	:	

This is in response to applicant's "Petition to Revive Unintentionally Abandoned Application Pursuant to 37 CFR § 1.137(b)" filed 05 January 2002.

BACKGROUND

On 08 March 2001, applicant filed international application PCT/EP01/02612, which claimed priority of an earlier Germany application filed 10 March 2000. A copy of the international application was communicated to the USPTO from the International Bureau on 13 September 2001. The twenty-month period for paying the basic national fee in the United States expired at midnight on 13 November 2001 (10 November 2001 was a Saturday preceding a Monday holiday).

International application PCT/EP01/02612 became abandoned as to the United States at midnight on 13 November 2001 for failure to pay the basic national fee.

On 05 January 2002, applicant filed the present petition. The petition states that it is accompanied by a proper response under 35 U.S.C. 371, the petition fee set forth in 37 CFR 1.17(m), and a statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition pursuant to this paragraph was unintentional."

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment 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 was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required basic national fee under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), the petition states, "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition pursuant to this paragraph was unintentional " This statement is interpreted as 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 under 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.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497, a translation of the international application into English, and the appropriate late filing surcharges must be submitted.

Bryan Tung
PCT Legal Examiner
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In re Application of GO	:	
U.S. Application No.: 10/030,199	:	
PCT Application No.: PCT/DE98/00694	:	
Int. Filing Date: 10 March 1998	:	DECISION
Priority Date Claimed: 19 March 1997	:	
Attorney Docket No.: (none)	:	
For: MOTOR VEHICLE STEERING COLUMN AND SEAT BELTS WITH A PROTECTION DEVICE	:	

This is in response to applicant's "Objection to Notification of Abandonment" filed 26 September 2002, which is being treated as a petition under 37 CFR 1.181.

BACKGROUND

On 10 March 1998, applicant filed international application PCT/DE98/00694, which claimed priority of an earlier Germany application filed 19 March 1997. A copy of the international application was communicated to the USPTO from the International Bureau on 24 September 1998. The twenty-month period for paying the basic national fee in the United States expired on 19 November 1998.

On 09 July 1999, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was not accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 28 August 2002, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned as to the United States for failure to pay the requisite basic national fee.

On 26 September 2002, applicant filed the present petition under 37 CFR 1.181 to withdraw the holding of abandonment.

DISCUSSION

The petition states that a check for $2000.00 was submitted with the national stage application for PCT/DE97/00715 dated 01 October 1998. However, fees submitted for one application cannot be applied to a different application. The national stage submission for the present application did not contain an authorization to charge a valid deposit account. See MPEP 509.01.

Applicant submitted a credit card payment form on 26 September 2002. However, because the deadline for paying the basic national fee had already expired, the application remains abandoned.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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23 SEP 2003

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In re Application of GO	:	
U.S. Application No.: 10/030,199	:	
PCT Application No.: PCT/DE98/00694	:	
Int. Filing Date: 10 March 1998	:	DECISION
Priority Date Claimed: 19 March 1997	:	
Attorney Docket No.: (none)	:	
For: MOTOR VEHICLE STEERING COLUMN AND SEAT BELTS WITH A PROTECTION DEVICE	:	

This is in response to applicant's letter filed 29 August 2003, which is being treated as a renewed petition under 37 CFR 1.181.

BACKGROUND

On 10 March 1998, applicant filed international application PCT/DE98/00694, which claimed priority of an earlier Germany application filed 19 March 1997. A copy of the international application was communicated to the USPTO from the International Bureau on 24 September 1998. The twenty-month period for paying the basic national fee in the United States expired on 19 November 1998.

On 09 July 1999, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was not accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 28 August 2002, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned as to the United States for failure to pay the requisite basic national fee.

On 26 September 2002, applicant filed a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

On 17 July 2003, this Office mailed a decision dismissing the 26 September 2002 petition.

On 29 August 2003, applicant filed the present renewed petition under 37 CFR 1.181.

DISCUSSION

The renewed petition states that applicant previously made a request to open a deposit account. However, the deadline for submitting national stage papers in the United States was 19 November 1998. As shown in applicant's Exhibit A4, applicant's application for a deposit account was not received until 10 September 1999. Furthermore, a review of the application file reveals that applicant's national stage papers for the present application were not received until 09 July 1999. Therefore, applicant did not supply the required basic national fee in a timely manner. Applicant may wish to file a petition to revive the abandoned application under 37 CFR 1.137 along with the appropriate petition fee.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.181 is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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18 NOV 2003

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In re Application of GO	:	
U.S. Application No.: 10/030,199	:	
PCT Application No.: PCT/DE98/00694	:	
Int. Filing Date: 10 March 1998	:	DECISION
Priority Date Claimed: 19 March 1997	:	
Attorney Docket No.: (none)	:	
For: MOTOR VEHICLE STEERING COLUMN AND SEAT BELTS WITH A PROTECTION DEVICE	:	

This is in response to applicant's letter filed 10 November 2003, which is being treated as a petition under 37 CFR 1.137(b).

BACKGROUND

On 10 March 1998, applicant filed international application PCT/DE98/00694, which claimed priority of an earlier Germany application filed 19 March 1997. A copy of the international application was communicated to the USPTO from the International Bureau on 24 September 1998. The twenty-month period for paying the basic national fee in the United States expired on 19 November 1998.

On 09 July 1999, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was not accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 28 August 2002, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned as to the United States for failure to pay the requisite basic national fee.

On 26 September 2002, applicant filed a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

On 17 July 2003, this Office mailed a decision dismissing the 26 September 2002 petition.

On 29 August 2003, applicant filed a renewed petition under 37 CFR 1.181.

On 23 September 2003, this Office mailed a decision dismissing the 29 August 2003 petition.

On 10 November 2003, applicant filed the present petition under 37 CFR 1.137(b).

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment 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 was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), the petition states, "I, under oath, declare of having unintentionally delayed the procedure of paying the fee." This statement is interpreted as 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 under 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.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a Notification of Missing Requirements under 35 U.S.C. 371 (Form

PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed. It is noted that the purported declaration filed 09 July 1999 has missing pages.

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10 MAR 2003

#9

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In re Application of	:	
MATE, et al.	:	DECISION ON PETITION
U.S. Application No.: 10/030,207	:	
PCT No.: PCT/IB00/00962	:	UNDER 37 CFR 1.47(a)
Int. Filing Date: 03 July 2000	:	
Priority Date: 02 July 1999	:	
Attorney Docket No.: NOK-I14-00015	:	
For: METHOD AND SYSTEM FOR DATA	:	
RECEPTION ACKNOWLEDGMENT	:	

This decision is in response to applicant's "Petition Pursuant to 37 C.F.R. 1.47(a)" filed 30 September 2002 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 03 July 2000, applicants filed international application PCT/IB00/00962, which claimed priority of an earlier application filed 02 July 1999. A copy of the International Application was forwarded to the United States Patent and Trademark Office (USPTO) from the International Bureau (IB) on 11 January 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 01 February 2001, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 02 January 2002.

On 31 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a First Preliminary Amendment and an Information Disclosure Statement.

On 22 March 2002, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International Application number and international filing date. Applicant was further advised of the need to provide payment of the surcharge for providing an executed oath or declaration of the inventors later than thirty months from the priority date. Applicant was afforded two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 30 September 2002, applicant filed the present petition accompanied by a petition for a four month extension of time and payment of the appropriate extension fee. With the filing of the petition and payment of the extension fee, the response is considered timely filed.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(I), (2) factual proof that the missing joint investor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to Item (1), applicants have provided payment of the petition fee.

Regarding Item (3), applicants have provided the last known address of the non-signing inventor, Amit MATE.

As to Item (4), accompanying the petition is a declaration signed by the remaining inventor on his behalf, and on behalf of the non-signing inventor. Accordingly, Items (1), (3) and (4) have been satisfied.

As to item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (MPEP) states, in part:

> Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.
>
> The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47. Such a petition will be dismissed as inappropriate.
>
> The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.
>
> Where a refusal of the inventor to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Applicants appear to be alleging that co-inventor MATE cannot be found or located. However, no documentary evidence to support the failed attempts was provided with counsel's declaration; such as a returned envelope or tracking report. In addition, it does not appear that counsel has firsthand knowledge of the attempt to present the non-signing inventor with the application papers. Lastly, applicants have not provided any information as to whether a search of telephone directories or Internet search engines were performed in an attempt to find a current address for Mr. MATE.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED, without prejudice**.

Applicants are hereby afforded **TWO (2) MONTHS** from the mail date of this decision to file either 1) an oath or declaration in compliance with 37 CFR 1.497 (a)-(b) signed by all inventors or 2) a renewed petition satisfying all requirements under 37 CFR 1.47(a). Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter directed to the attention of the PCT Legal Office.

Boris Milef
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11 MAR 2004

#11

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In re Application of MATE, et al. U.S. Application No.: 10/030,207 PCT No.: PCT/IB00/00962 Int. Filing Date: 03 July 2000 Priority Date: 02 July 1999 Attorney Docket No.: NOK-I14-00015 For: METHOD AND SYSTEM FOR DATA RECEPTION ACKNOWLEDGMENT	DECISION ON RENEWED PETITION UNDER 37 CFR 1.47(a)

This decision is in response to applicant's "Request For Reconsideration of Petition Under 37 C.F.R. 1.47(a)" filed 10 July 2003 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 10 March 2003, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.47(a). Applicant was afforded two months to file any request for reconsideration and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 10 July 2003, applicant filed the present renewed petition accompanied by a declaration executed by inventor Amit MATE and a petition for a two month extension of time and payment of the appropriate extension fee. With the filing of the petition and payment of the extension fee, the response is considered timely filed.

DISCUSSION

Applicant has provided a declaration executed by the previously non-signing inventor, Amit Mate. Thus, the renewed petition under 37 CFR 1.47(a) is dismissed as moot. However, an examination of the filed declaration finds that it does not comply with 37 CFR 1.497(a)-(b). Specifically, 37 CFR 1.497(a)(3) states that a filed declaration must identify each inventor and the country of citizenship of each inventor. The present declaration does not identify the co-inventor, Mikko Rinne nor provide either of the inventor's residence, post office or citizenship information. (Applicant is also advised of the requirements of 37 CFR 1.63-1.68).

CONCLUSION

Applicant's petition under 37 CFR 1.47(a) is **DISMISSED as moot**.

Applicant is hereby afforded **TWO (2) MONTHS** from the mail date of this decision to file an oath or declaration in compliance with 37 CFR 1.497 (a)-(b) signed by co-inventor Amit MATE. No extensions of time will be permitted. Any response should include a cover letter entitled, "Response to Decision on Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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17 JUN 2004

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In re Application of	:	
MATE, et al.	:	
Application No.: 10/030,207	:	COMMUNICATION AND
PCT No.: PCT/IB00/00962	:	
Int. Filing Date: 03 July 2000	:	NOTICE OF
Priority Date: 02 July 1999	:	
Attorney Docket No.: NOK-I104-00015	:	ABANDONMENT
For: METHOD AND SYSTEM FOR DATA	:	
RECEPTION ACKNOWLEDGMENT	:	

This communication is in response to applicant's "Response to Decision on Petition Under 37 C.F.R. 1.47(a)" filed 17 May 2004 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 11 March 2004, applicant was mailed a decision dismissing as moot applicant's renewed petition under 37 CFR 1.47(a) as the previously non-signing inventor Amit MATE had executed a declaration. An examination of the document found it not to be in compliance with 37 CFR 1.497 and applicant was afforded two months to file a compliant declaration.

On 17 May 2004, applicant filed the present response which was accompanied by an application data sheet.

DISCUSSION

The filed application data sheet does not cure the defects identified in the declaration executed by co-inventor MATE filed 10 July 2003. As detailed in the decision mailed 11 March 2004, the filed declaration does not identify the other co-inventor, Mikko Rinne, and thus fails to satisfy 37 CFR 1.497(a)(3). In addition, while applicant has presently provided an application data sheet identifying the residence, post office address and citizenship of the inventors, the citizenship of the inventors must appear on the signed declaration itself. As applicant has failed to provide a compliant oath or declaration executed by inventor MATE within the time period prescribed this application is **ABANDONED** as to the National Stage in the United States. Applicant may wish to file a petition to revive pursuant to 37 CFR 1.137 (a) or 37 CFR 1.137 (b). A proper reply under this petition would be a compliant oath or declaration executed by co-inventor Amit MATE.

CONCLUSION

This application is **ABANDONED** as to the National Stage in the United States.

This application is being forwarded to the United States Designated/elected Office (DO/EO/US) for mailing of a "Notification of Abandonment" (Form PCT/DO/EO/909).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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13 SEP 2004

#17

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In re Application of MATE, et al. U.S. Application No.: 10/030,207 PCT No.: PCT/IB00/00962 Int. Filing Date: 03 July 2000 Priority Date: 02 July 1999 Attorney Docket No.: NOK-I14-00015 For: METHOD AND SYSTEM FOR DATA RECEPTION ACKNOWLEDGMENT	DECISION ON PETITION UNDER 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 10 August 2004 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing an acceptable reply from the original due date for the reply until the filing of this Petition was unintentional" and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has now provided a complete declaration and power of attorney in compliance with 37 CFR 1.497 (a)-(b). Therefore, applicant has satisfied the concerns raised in the decision mailed 11 March 2004 and the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

The application has an international filing date of 03 July 2000 under 35 U.S.C. 363 and will be given a date of **10 August 2004** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.

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18 MAR 2004

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In re Application of:	:	
RENNER, et al.	:	
U.S. Application No.: 10/030,224	:	DECISION ON PETITION
PCT No.: PCT/EP00/06301	:	
International Filing Date: 05 July 2000	:	
Priority Date: 24 August 1999	:	
Attorney's Docket No.: 32301 W250	:	
For: PROCESS FOR THE REGENERATION OF PLATINUM GROUP METAL SUSPENSION CATALYSTS	:	

This decision is issued in response to applicants' "Petition To Withdraw Holding Of Abandonment" filed 19 December 2003. No petition fee is required.

BACKGROUND

On 05 July 2000, applicant filed international application PCT/EP00/06301 which claimed a priority date of 24 August 1999 and which designated the United States. On 01 March 2001, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). The deadline for payment of the basic national fee was thirty months from the priority date, i.e., 24 February 2002.

On 08 January 2002, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment for the basic national fee and an English translation of the international application.

On 27 March 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) indicating that an executed declaration in compliance with 37 CFR 1.497 and the surcharge for filing the declaration later than thirty months after the priority date were required.

On 24 November 2003, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), indicating that the application was abandoned based on applicants' failure to file a response to the Notification Of Missing Requirements.

On 19 December 2003, applicants filed the petition considered herein. The petition asserts that on 23 April 2002, applicants filed a proper response to the Notification Of Missing Requirements, including an executed declaration and the required surcharge payment. Copies of

these materials are attached to the present petition, as is a copy of a return postcard itemizing these materials and bearing a USPTO receipt stamp dated 23 April 2002.

DISCUSSION

Based on applicants' statements in the present petition, the attached return postcard, and internal USPTO records which indicate the receipt of the $130 surcharge payment on 23 April 2002, it is concluded that the materials attached to the present petition, including the surcharge payment and the executed declarations, were originally filed in the USPTO on 23 April 2002 as a timely response to the Notification Of Missing Requirements. Accordingly, the Notification Of Abandonment mailed 24 November 2003, based as it was on applicant's purported failure to file a timely response to the Notification Of Missing Requirements, is appropriately vacated.

The declarations filed 23 April 2002 are acceptable under 37 CFR 1.497.

CONCLUSION

Applicants' petition under 37 CFR 1.181 is **GRANTED**.

The materials attached to the present petition, including the executed declaration and surcharge payment, are considered to have been filed on 22 April 2002 as a timely response to the Notification Of Missing Requirements mailed 27 March 2002.

The Notification Of Abandonment mailed 24 November 2003 is hereby **VACATED**.

This application is being returned to the National Stage Processing Branch of the Office of PCT Operations for further processing in accord with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 23 April 2002.

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SEP 03 2008

OFFICE OF PETITIONS

In re Application of	:	
Kessler et al.	:	
Application No. 10/030,278	:	ON PETITION
Filed: April 9, 2002	:	
Attorney Docket No. 1951	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 15, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and an Amendment, (2) the petition fee, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center 1616 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Liana Walsh
Petitions Examiner
Office of Petitions

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MAILED
JUL 20 2009
OFFICE OF PETITIONS

In re Application of	:	
Susanne KESSLER et al.	:	
Application No. 10/030,278	:	DECISION ON PETITION
Filed: April 09, 2002	:	
Attorney Docket No. **1951**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 15, 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, November 12, 2008 which set a shortened statutory period for reply of three (3) month. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 13, 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 restriction requirement of November 12, 2008 has been accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

The application is being referred to the Technology Center AU 1616 for appropriate action on the concurrently filed election.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

22 JUL 2003

UNITED STATES PATENT and TRADEMARK OFFICE

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Stephen W. Buckingham
Office of Intellectual Property Counsel
3M Innovative Properties Company
P.O. Box 33427
St. Paul, Minnesota 55133-3427

In re Application of	:	DECISION ON
OLMAN, A Cheryl et al	:	
Application No.: 10/030,311	:	
PCT No.: PCT/US00/11150	:	PETITION UNDER
Int. Filing Date: 25 April 2000	:	
Priority Date: 28 April 1999	:	
Attorney Docket No.: 54838US010	:	37 CFR 1.182
For: SHALLOW DEPTH BACK LIT	:	
ILLUMINATED SIGNAGE	:	

This decision is in response to applicants' "Petition Under 1.182- Response To Notification Of defective Response," filed on 30 May 03. The petition fee of $130.00 has been charged to Deposit Account No. 13-3723 as indicated in the petition.

BACKGROUND

In a decision of this Office on 05 May 2003, the decision stated that declaration of the inventors was not accepted because the name of the first named inventor, Cherly A. OLMAN, did not correspond to that set forth in the international application, which is Cherly A. Vrieze.

On 30 May 2003, petitioner submitted the instant petition, which includes an affidavit in support of the petition to change the name of inventor to Cherly A. OLMAN.

DISCUSSION

The affidavit submitted by Ms. Olman enumerating the reason for her change of name is sufficient to satisfy the USPTO that Cheryl A. Vrieze (maiden name) changed her name to Cheryl A. Olman (married name).

CONCLUSION

The petition under 37 CFR §1.182 for change of name of inventor is **GRANTED**. The application will be granted a 35 U.S.C. 371 (c) date of **03 June 2002.**

For the reasons above, the application may enter into national stage processing at this time. The application is being returned to the International Division for processing as the U.S. National Stage of the above-identified international application.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office

Richard Cole
PCT Legal Examiner
PCT Legal Office

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Peter L Berger
Levisohn Lerner Berger & Langsam
757 Third Avenue
New York, NY 10017

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OFFICE OF PETITIONS

In re Application of :
Hans Jorg Bauder :
Application No. 10/030,328 : ON PETITION
Filed: November 9, 2001 :
Attorney Docket No. 1540.004 :

This is a decision on the petition, filed June 29, 2004, to revive the above-identified application under the provisions of 37 CFR 1.137(b). The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed June 5, 2003.

The petition is found to comply with the requirements of 37 CFR 1.137(b). Accordingly, 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.

The application file is being forwarded to Technology Center Art Unit 3635 for consideration of the amendment filed June 29, 2004.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9282. All other inquiries regarding this application should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Peter L Berger
Levisohn Lerner Berger & Langsam, LLP
805 Third Avenue, 19th Floor
New York, NY 10022

4 JUN 2002
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#7

Louis S. Sorell
Baker Botts LLP
30 Rockefeller Plaza
New York, NY 10112-4498

In re Application of
WELKER, Hans-Herbert et al.
Application No.: 10/030,340
PCT Application No.: PCT/DE00/02117
International Filing Date: 29 June 2000
Priority Date: 07 July 1999
Attorney Docket No.: A34843-PCT-USA
For: METHOD AND DEVICE FOR PRODUCING A STRAND MADE FROM METAL

DECISION ON

PETITION

UNDER 37 CFR 1.137(b)

Applicants' "Petition To Revive Abandoned Application Pursuant To 37 CFR 1.137(b)," filed in the United States Patent and Trademark Office on 16 April 2002 is **GRANTED**.

BACKGROUND

On 29 June 2000, applicants filed international application number PCT/DE00/02117, which claimed a priority date of 07 July 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) by the International Bureau on 18 January 2001. On 27 December 2000, a demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. The deadline for entry into the United States National Stage was thirty months from the priority date, that is 07 January 2002.

On 20 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States, accompanied by, *inter alia*, a check for $740.

On 01 April 2002, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating the application went abandoned for failure to pay the basic national fee by thirty months and that the deposit account had insufficient funds.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) a proposed response, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

Applicants state "the abandonment was unintentional." This is construed to mean that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional as required by 37 CFR 1.137(b)(3). If this is not a correct interpretation, petitioner must notify PTO. The appropriate national fee, petition fee and international application have been submitted. A terminal disclaimer is not required as the application was filed on or after 08 June 1995. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED** as to the National Stage in the United States of America.

This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing, including preparation of a Notification of Missing Requirements indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration are required.

Richard Cole
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PCT Legal Administration

Erin M. Pender
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#12

DARBY & DARBY P.C.
POST OFFICE BOX 5257
NEW YORK, NY 10150-5257

In re Application of	:	
Takako Fujii	:	
Serial No.: 10/030,367	:	DECISION ON
Filed: January 2, 2002	:	PETITON TO MAKE SPECIAL
For: Tights-type leg support garment	:	

This is in response to applicants' petition filed January 7, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on infringement.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, II. Therefore the petition is **GRANTED**.

The application will be forwarded to the examiner for action on the merits commensurate with this decision.

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle
Director
Technology Center 3700/2900

MAR 01 2002

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Richard R Michaud
McCormick Paulding & Huber
CityPlace II
185 Asylum Street
Hartford, CT 06103-3402

In re Application of LARS HAKAN DELLDEN Serial No.: 10/030,373 PCT No.: PCT/SE00/00424 Int. Filing Date: 03 March 2000 Priority Date: 08 March 1999 Attorney's Docket No.: 6688-01WOUS For: METHOD AND DEVICE FOR INDICATING AN UNDESIRED OPERATION CONDITION OF A CENTRIFUGAL SEPARATOR	DECISION ON PETITION UNDER 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 22 October 2001 in the above-captioned application is hereby **GRANTED** as follows:

Applicants' statement that the "entire delay in entering the application into the national stage from the due date until the filing of the present petition was unintentional" has been interpreted as meaning that "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. If this is an incorrect interpretation in view of the rules, petitioner is required to promptly notify this office.

A review of the application file reveals that the basic national fee of $1,040 and the required petition fee of $1,280 have been paid and thus, the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing including issuance of a Notification of Missing Requirements indicating that an oath or declaration executed by the inventor and surcharge for filing the oath or declaration after the thirty month period is required.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

14 JUN 2002

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Nath & Associates PLLC
Sixth Floor
1030 15th Floor, N.W.
Washington, DC 20005

In re Application of SHULOV, Aharon, et al. Application No.: 10/030,380 PCT No.: PCT/IL99/00386 Int. Filing Date: 14 July 1999 Priority Date: None Attorney's Docket No.: 24871 For ANALGESIC FROM SNAKE VENOM	DECISION ON PAPERS UNDER 37 CFR 1.42

This decision is in response to applicants' response to Notification of Missing Requirements, filed 10 May 2002. A review of the Declaration reveals an indication that joint inventor Aharon Shulov is deceased. Applicants' submission has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 14 July 1999, applicants filed international application PCT/IL99/00386. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 18 January 2001. On 11 February 2001, a demand for international preliminary examination was filed within nineteen months from the priority date. As such, the deadline for entry into the national stage in the United States was 14 January 2002.

On 10 January 2002, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 13 March 2002, USPTO mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a)-(b) and the surcharge for furnishing the oath or declaration later than thirty months from the priority date were required.

On 10 May 2002, applicants filed a declaration accompanied by the fee for filing the declaration later than thirty months from the priority date.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the

deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42.

In this case, Ms. Shulov Barkan signed the declaration as "personal representative" of the deceased inventor. However, the declaration must list the citizenship, residence and postal address for both Ms. Shulov Barkan and inventor Shulov. See 37 CFR 1.497 and 37 CFR 1.63. The declaration only lists the information for either Ms. Shulov Barkan or inventor Shulov, not both as required.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT. Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

Leonard E. Smith
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
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19 AUG 2002

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Nath & Associates PLLC
Sixth Floor
1030 15th Floor, N.W
Washington, DC 20005

In re Application of
SHULOV, Aharon, et al.
Application No.: 10/030,380
PCT No.: PCT/IL99/00386
Int. Filing Date: 14 July 1999
Priority Date: None
Attorney's Docket No.: 24871
For: ANALGESIC FROM SNAKE VENOM

DECISION ON

PAPERS

UNDER 37 CFR 1.42

This decision is in response to applicants' "Submission of Supplemental Declaration," filed with the United States Patent and Trademark Office on 25 July 2002.

BACKGROUND

On 14 July 1999, applicants filed international application PCT/IL99/00386. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 18 January 2001. On 11 February 2001, a demand for international preliminary examination was filed within nineteen months from the priority date. As such, the deadline for entry into the national stage in the United States was 14 January 2002.

On 10 January 2002, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 13 March 2002, USPTO mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a)-(b) and the surcharge for furnishing the oath or declaration later than thirty months from the priority date were required.

On 10 May 2002, applicants filed a declaration accompanied by the fee for filing the declaration later than thirty months from the priority date.

On 14 June 2002, the Office mailed Decision on Papers Under 37 CFR 1.42 refusing applicants' request for status under 37 CFR 1.42.

On 25 July 2002, applicants submitted the instant supplemental declaration.

DISCUSSION

The declaration submitted on 25 July 2002 satisfies the deficiencies of the initial declaration. The declarations submitted on 10 May 2002 and 25 July 2002 taken together satisfy the requirements of 37 CFR 1.42 and 37 CFR 1.497.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **GRANTED**.

The application has an international filing date of 14 July 1999 under 35 U.S.C. §363 and a date of 25 July 2002 under 35 U.S.C. §371. This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.

Richard Cole
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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

Lucent Technologies Inc
101 Crawfords Corner Road
Holmdel NJ 07733-3030

In re Application of
Alessio CASATI, et al.
Application No. 10/030,387
Filed: June 4, 2002
For: **UMTS TELECOMMUNICATIONS SYSTEM FOR ENABLING A MOBILE STATION TO RECEIVE VOICE-OVER INTERNET PROTOCOL CALLS WHEN ROAMING**

DECISION GRANTING PETITION TO REFUND EXTENSION OF TIME FEES

This is a decision on the petition filed on January 31, 2007 (with certificate of mailing dated January 29, 2007), requesting withdrawal of the extension of time fees required under 37 CFR 1.136. The petition is being treated as a request to reset the shortened statutory period for reply set forth in the Office communication mailed on October 27, 2006 and refund the extension of time fees charged to applicant's deposit account.

The petition is **GRANTED**.

A review of the record finds an Office communication (Notice of Non-Compliant Amendment (37 CFR 1.121)) was mailed October 27, 2006 setting forth a one month shortened statutory period for reply, extendable under 37 CFR 1.136(a). Applicant's petition filed January 31, 2007 asserts that the Office communication mailed October 27, 2006 was not received by applicant, and that applicant only became aware of the communication when the examiner contacted them on January 8, 2007 to inform them that their response was two months overdue and provided them an incomplete faxed copy of the Office communication on January 18, 2007.

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the Practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received", 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c), section II. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

In support of their assertions that they did not receive the Office communication mailed October 27, 2006, the Petitioner attests to a search of the file jacket and docket records as well as providing a copy of their docket records along with the subject petition.

Accordingly, Petitioner has satisfied the requirements set forth above to establish non-receipt of the October 27, 2006 Office communication.

Since applicant has responded to the Office communication (complete copy apparently retrieved from the Office's PAIR system), it has not been re-mailed. Applicant responded on January 31, 2007 (with certificate of mailing dated January 29, 2007), which was within one month of receipt of both the January 8, 2007 notification by the examiner and the January 18, 2007 faxed copy of the Office communication. Furthermore, the response included the instant petition and authorization to charge any deficient fees to applicant's Deposit Account No. 12-2325.

Since it has been established that the Office communication mailed October 27, 2006 was not received, no extension of time fees were required. Accordingly, the extension of time fees charged to applicant's deposit account on June 19, 2007 in the amount of $1,020.00 will be refunded to Deposit Account No. 12-2325.

The application was previously forwarded to the examiner for treatment of applicant's response. A Notice of Allowance was mailed August 1, 2007 and the application issued as a patent on November 27, 2007. The Office sincerely apologizes for any inconvenience to applicant.

Krista Zele
Quality Assurance Specialist
Technology Center 2600
Communications

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In re Patent No. 6814959
Issue Date: November 9,2004
Application No. 10030425
Filed: April 8,2002
Attorney Docket No. 667-59186

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 10,2009 ,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 10,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6814959	2004-11-09	10030425	2002-04-08	

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	/jsm/	Date (YYYY-MM-DD)	2009-08-10
Name	Jeffrey S. Melcher	Registration Number	35950

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.

APR 0 8 2002

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James H. Walters
Dellett and Walters
310 S.W. Fourth Avenue, Suite 1101
Portland, OR 97204

In re Application of MIZONE et al	:	
U.S. Application No.: 10/030,448	:	DECISION ON PETITION
Int. Application No.: PCT/JP00/06884	:	
Int. Filing Date: 03 October 2000	:	UNDER 37 CFR 1.137(b)
Priority Date: 04 October 1999	:	
Attorney Docket No.: Y-190	:	
For: LOUDSPEAKER	:	

This is in response to applicant's "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 02 January 2002.

BACKGROUND

On 03 October 2000, applicant filed international application PCT/JP00/06884, which claimed priority of an earlier Japan application filed 04 October 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 12 April 2001. The twenty-month period for paying the basic national fee in the United States expired at midnight on 04 June 2001.

International application PCT/JP00/06884 became abandoned as to the United States at midnight on 04 June 2001 for failure to pay the basic national fee.

On 02 January 2002, applicant filed the present petition. The petition states that it is accompanied by a proper response under 35 U.S.C. 371, the petition fee set forth in 37 CFR 1.17(m), and a statement that abandonment of the application was unintentional.

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment 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 was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), applicant has provided the required statement.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

This application has an international filing date of 03 October 2000 and a date under 35 U.S.C. 371 of 02 January 2002.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
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24 SEP 2002

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

William R. Reid
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Intellectual Property
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Elkton, MD 21921

In re Application of	:	
Mario Sacchetti et al.	:	
U.S. Application No.: 10/030,466	:	
PCT No.: PCT/EP01/05254	:	
Int. Filing Date: 07 May 2001	:	DECISION ON PETITION
Priority Date: 12 May 2000	:	
For: PRE-POLYMERIZED CATALYST	:	UNDER 37 CFR 1.181
COMPONENTS FOR THE POLYMERIZATION	:	
OF OLEFINS	:	

This is in response to applicants' LETTER REGARDING MISSING REQUIREMENTS UNDER 35 USC 371 filed on 30 May 2002 which is being treated as a petition under 37 CFR 1.181 to vacate the Notice Of Missing Requirements Under 35 U.S.C. 371 In The United States Designated/Elected Office (DO/EO/US) mailed 13 March 2002.

The petition is **GRANTED**.

BACKGROUND

On 07 May 2001, applicants filed international application PCT/EP01/05254, which claimed priority of earlier European application 00201702.8 filed 12 May 2000. A copy of the international application was timely received by the United States Patent and Trademark Office (PTO) from the International Bureau. The twenty month period for entry into the

into the national stage in the United States expired at midnight on 14 January 2002 (12 January 2002 being a Saturday).

On 08 January 2002, applicants filed a Transmittal Letter (Form PTO-1390) for entry into the national stage in the United States under 35 USC 371, accompanied by, *inter alia*, the requisite basic national fee, a preliminary amendment, and a copy of the PCT Request (Form PCT/RO/101).

On 13 March 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) (Form PCT/DO/EO/905) requiring applicant to submit an oath or declaration in compliance with 37 CFR 1.497(a) and (b). The Notification set a TWO (2) Month period for response.

On 30 May 2002, applicants submitted the instant petition. The petition was accompanied by a copy of the PCT Request (Form PCT/RO/101) and indicates that a declaration of inventorship under PCT Rule 4.17(iv) was filed on the international filing date as a part of the PCT Request.

DISCUSSION

A review of the file indicates that applicants provided a copy of the PCT Request on 08 January 2002. The Request includes a declaration of inventorship under PCT Rule 4.17(iv) and is properly executed by virtue of the signatures of inventors Mario Sacchetti, Diego Brita, and Gianni Collina in Box No. X of the Request.

Furthermore, the International Bureau has now provided a complete copy of the PCT Request which includes the declaration of inventorship under PCT Rule 4.17 (iv).

CONCLUSION

For the reasons above, the Notification of Missing Requirements mailed 13 March 2002 is **VACATED**.

U.S. Application No.: 10/030,466

This application is being returned to the DO/EO/US for processing in accordance with this decision, including issuance of a Notification Of Acceptance Of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903) indicating a 35 U.S.C. 371 date of 08 January 2002.

Michael A. Neas
PCT Special Program Examiner
Office of PCT Legal Administration

Leonard Smith
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#11

26 MAY 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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William R. Reid
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In re Application of:	:
Mario SACCHETTI et al.	:
Application No.: 10/030,466	:
PCT Application No.: PCT/EP01/05254	: DECISION ON
Int. Filing Date: 07 May 2001	:
Priority Date: 12 May 2000	: PETITION
Applicant's File Ref. No.: US 19001	:
For: PRE-POLYMERIZED CATALYST	: UNDER 37 CFR 1.78(a)(6)
COMPONENTS FOR THE	:
POLYMERIZATION OF OLEFINS	:

This is a decision in response to applicants' PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM UNDER 37 C.F.R. 1.78(a)(6) filed 03 October 2003 and the amendment filed on the same date.

BACKGROUND

Applicants filed international application PCT/EP01/05254 on 07 May 2001. This application designated the United States of America (US) and claimed the priority of EP 00201702.8, filed on 12 May 2000. The 20 month time limit for national stage filing in the US expired at midnight on 14 January 2002 (12 January 2002 was a Saturday). Applicants filed the requisite basic national filing fee on 08 January 2002.

Applicants were granted a 35 U.S.C. 371(c) (1), (2) and (4) date of 08 January 2002 and the application was forwarded to the US examining corps for action on the merits. The examiner issued an office action on 03 July 2003 in which applicants were advised that they has "not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) or 120."

Specifically, applicants were advised that "An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application in the first sentence of the specification of(sic, "or") in an application data sheet (37 CFR 1.78(a)(2)

and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a priori application of a CPA assigned the same application number."

Applicants were also required in this office action to provide a "new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date. . . ." The oath or declaration was defective because "It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing."

In response to this office action, applicants filed on 03 October 2003 the instant petition under 37 CFR 1.78(a)(6) and an amendment requesting that a statement be placed before the first line of the specification indicating that "This application is the U.S. national phase of International Application PCT/EP01/05254 filed May 7, 2001."

DISCUSSION

37 CFR 1.78(a)(6) provides for the acceptance in a later-filed nonprovisional application of an unintentionally delayed claim for priority under 35 U.S.C.119(e) to a prior-filed U.S. provisional application when the claim is not presented in the later-filed nonprovisional application within the time period provided for in 37 CFR 1.78(a)(5)(ii).

The two applications which applicants are concerned with herein are PCT/EP01/05254 and EP 00201702.8 –neither of which is a provisional application.

Re: PCT/EP01/05254

PCT/EP01/05254 is an international application which designated the United States of America. Applicants are not seeking to add a priority claim to this application -- rather they seek to add an amendment before the first line of the specification indicating that the instant application is the national phase of international application PCT/EP01/05254.

It is not necessary for applicants to make the above-noted amendment before the first line of the specification. The instant application has been identified from the beginning as the national stage (phase) of PCT/EP01/05254. In these circumstances, there is no priority claim possible between the instant application and PCT/EP01/05154. Indeed, the instant application and PCT/EP01/05254 (in regards to the US designation therein) are regarded as one and the same application, and share the same filing date, 07 May 2001 (See 35 U.S.C. 363).

This relationship was officially noticed by the United States Patent and Trademark Office (USPTO) in the NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495 (Form PCT/DO/EO/903) mailed on 24 October 2002. In addition, this relationship was specified in the Official Filing Receipt mailed to applicants with the Form PCT/DO/EO/903.

Clearly in the instant application, no petition or amendment is necessary to claim the benefit of PCT/EP01/05254 because no such benefit claim is possible. If applicants wish to add the language quoted above from the 03 October 2003 amendment before the first line of the specification, there is no reason to prevent entry of the amendment since it does nothing more that state the recognized relationship of the instant application to PCT/EP01/05254.

RE: EP 00201702.8

Applicants are also attempting to receive benefit under 35 U.S.C. 119(a) of EP 00201702.8. As noted above, the 03 July 2003 office action required a new oath or declaration because the existing declaration did not identify EP 00201702.8 as a document for which foreign priority was being claimed.

Applicants have not presented any amendment to claim the priority of EP 00201702.8 and, as noted above, this application is clearly not a US provisional application. Therefore, the provisions of 37 CFR 1.78(a)(6) do not apply to any such priority claim for the benefit of EP 00201702.8.

It is noted that the oath or declaration filed on 08 January 2002, was a "Declaration of inventorship (PCT Rules 4.17(iv) and 51*bis*.1(a)(iv)) for the purposes of the designation of the United States of America." This declaration is used as part of the Request (Form PCT/RO/101). The declaration in question was included as part of the Request form filed with PCT/EP01/05254. The instant application contains a copy of sheets 1 – 9 of this Request form. Sheets 7 and 8 constitute the oath or declaration required by 35 U.S.C. 371(c)(4) for this international application to enter the US national phase.

This declaration states "I have identified in the request of said application, in compliance with PCT Rule 4.10, any claim to foreign priority. . . ." The Request form in Box VI on page 5 indicates a claim to European Patent application 00201702.8, filed on 12 May 2000. This declaration is acceptable for applications entering the US national stage. Thus the declaration has a proper claim for the benefit of the foreign application.

Clearly, no amendments, or petitions are necessary for applicant to claim the benefit under 35 U.S.C. 119(a) or 37 CFR 1.55 of EP 00201702.8.

DECISION

For the reasons discussed above, applicants' PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM UNDER 37 C.F.R. 1.78(a)(6) filed 03 October 2003 is **DISMISSED** as moot.

A corrected Filing Receipt accompanies this decision. This Filing Receipt indicates that the instant application is the national phase of PCT/EP01/05254 filed on 07 May 2001 and indicates a foreign priority claim to EP 00201702.8 filed on 12 May 2000.

Any further correspondence with respect to this mater should be addressed to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

Paul A. Bell
PCT Special Programs Examiner
Telephone (571) 272-3278

Inc: corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of	:	
Sacchetti, et al.	:	
Application No. 10/030,466	:	ON PETITION
Filed: January 8, 2002	:	
Attorney Docket No. US19001	:	

This is in response to the petition under 37 CFR 1.182, filed December 22, 2006, to withdraw a terminal disclaimer filed February 15, 2006.

The petition is granted.

Examiner David Sample has determined that the terminal disclaimer filed February 15, 2006, can be withdrawn. The terminal disclaimer is withdrawn, accordingly.

Petitioner is advised that the fee for petition under 37 CFR 1.182 is authorized under 37 CFR 1.17(f). The fee for the instant petition is, therefore, $400.00. Deposit account 08-2336 will be charged an additional $270.00, accordingly.

The application is being directed to Technology Center 1700, GAU 1755 for further processing including entry in the record of the withdrawal of the terminal disclaimer filed February 15, 2006.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re	: DECISION REGARDING
Cockerill, et al.	: PATENT TERM ADJUSTMENT
Application No. 10/030,527	:
Filed: January 9, 2002	:
Attorney Docket No. PU3743USW	:
	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 1.705(b)", filed February 9, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to ninety-six (96) 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 **ninety-six (96) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 12, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the instant application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days. On February 9, 2004, Applicants timely[1] submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is ninety-six (96) days.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants assert entitlement to a patent term adjustment of ninety-six (96) days on the basis that the PTO improperly assessed Applicants a delay of ninety-seven (97) days for responding to a Restriction Requirement mailed on July 2, 2003. Applicants assert that they timely filed a response on July 31, 2003, within the three month period pursuant to 37 C.F.R. §1.704(b).

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of one hundred fifteen (115) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by Applicants' delays of ninety-seven (97) and thirty-two (32) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b), and twenty-five (25) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8). The adjustments of 115, 32, and 25 days have been reviewed and found to be correct. The adjustment of 97 days is at issue.

The adjustment of 97 days has been found to be incorrect. A review of the application file reveals that applicants filed their response to the July 2, 2003 Restriction Requirement on July 31, 2003. Accordingly, Applicants should not have been assessed a delay of 97 days.

Furthermore, as Applicants timely filed the Response to Restriction Requirement on July 31, 2003, the PTO had until December 1, 2003 to mail a response. The PTO did not mail a response until January 8, 2004. Accordingly, pursuant to 37 C.F.R. § 1.703(a)(2), PTO delay should have been assessed as thirty-eight (38) days.

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[1] Applicants filed the application for patent term adjustment prior to filing the issue fee.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **ninety-six (96) days** (153 (115+38) days of PTO delay and 57 (32+25) 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. 07-1392, 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