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Hao Y. Tung
Heller Ehrman White & McAuliffe LLP
275 Middlefield Road
Menlo Park CA 94025-3506

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SEP 22 2003

OFFICE OF PETITIONS

In re Application of :DECISION DISMISSING
Freeman et al. :REQUEST FOR WITHDRAWAL
Application No. 10/127,395 : OF PUBLICATION
Filed: April 19, 2002 :
Attorney Docket No. 38187-2551 :
Pub. No.: US 2003/0083686 A1 :
Pub. Date: May 1, 2003 :

This is in response to the "Petition to Request WITHDRAWAL Of Publication" filed via facsimile on May 23, 2003.

The request is Dismissed.

Applicant argues that the Publication should be withdrawn because the application was published thirteen months from its earliest priority date, instead of eighteen months as required by 35 U.S.C. 122. Applicant states that the application as originally filed included several priority claims to a June 12, 2001, priority date on the first page of the specification, however papers filed on December 30, 2002, removed the priority claims. Applicant argues that a declaration removing the priority claims and several inventors and a preliminary amendment removing the priority information were filed on December 30, 2002, and that the papers were clearly processed as the published application removed the inventors requested and removed the first paragraph of the specification containing the priority information.

37 CFR 1.213(a) states:

> The publication of an application under 35 U.S.C. 122(b) shall include a patent application publication. The date of publication shall be indicated on the patent application publication. The patent application publication will be based upon the application papers deposited on the filing date of the application, as well as the executed oath or declaration submitted to complete the application, and any application papers or drawings submitted in reply to a preexamination notice requiring a title and abstract in compliance with § 1.72, application papers in compliance with § 1.52, drawings in compliance with § 1.84, or a sequence listing in compliance with §§ 1.821 through 1.825, except as otherwise provided in this section. The patent application publication will not include any amendments, including preliminary amendments, unless applicant supplies a copy of the application containing the amendment pursuant to paragraph (c) of this section.

On February 19, 2002, the instant application including a benefit claim to several provisional applications on the first page of the specification was filed.

On May 29, 2002, a Notice to File Missing Parts Of Nonprovisional Application including a requirement to supply a properly executed oath or declaration was mailed.

On December 30, 2002, applicant responded to the Notice of Missing Parts and supplied an executed Declaration and a preliminary amendment deleting the benefit claims on page 1 of the specification.

On January 21, 2003, a Filing receipt listing the inventors, the domestic priority data as originally claimed by applicant, and a projected publication date of May 1, 2003, based upon the benefit claim, was mailed.

On May 1, 2003, the instant application was published.

The application was properly scheduled for publication based on the June 12, 2001, benefit date originally claimed by applicant. Applicant's argument that the published application should be withdrawn because the application was improperly published before the eighteen month publication date, as papers removing some of the inventors and the priority information were processed by the Office is not persuasive. The inventorship was properly listed on the patent application publication and the filing receipt mailed to petitioner on January 21, 2003, because the declaration, filed on December 30, 2002 was the first-filed executed declaration and the executed declaration sets forth the inventorship. See MPEP 201.03. However, the amendment deleting the priority information was not processed because preliminary amendments are not entered in the Office of Initial Patent Examination (OIPE) for purposed of publication. While the first page of the published application omits the paragraph with the benefit information, it was omitted as an error in the publication. Patent application publications are based upon the application papers as originally filed and do not include any amendments, including preliminary amendments. See 37 CFR 1.215(a) (reproduced above). Furthermore, the deletion of a benefit claim will not delay the publication of an application unless the amendment or ADS is recognized by the Office within nine weeks prior to the projected publication date that was originally calculated based on the benefit claim. See MPEP 201.11(G).

Note the Filing Receipt mailed on January 21, 2003, (Copy enclosed) gives a projected publication date of May 1, 2003.

The petition fee ($130) under 37 CFR 1.181 has been charged to petitioner's deposit account (08-1641).

Any inquiries concerning this decision may be directed to Mark Polutta at (703) 308-8122.

Karin Ferriter

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

Enclosure: Corrected Filing Receipt

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JAN 6 2004

DAN M. DE LA ROSA, ESQ.
345 EAST 80TH STREET
SUITE 27H
NEW YORK NY 10021

In re Application of :
Dominique Freeman et al :
Serial No.: 10/127,395 :
Filed: 4/19/2002 :
For: Tissue Penetration Device :

DECISION PETITION

This is in response to applicants' petition filed December 19, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the age of the applicant.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, IV. Therefore the petition is **GRANTED**.

The application will be forwarded to the examiner for action on the merits commensurate with this decision.

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, P.O. Box 1450 Alexandria, VA 22313-1450, or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle
Director,
Technology Center 3700/2900

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Paper No. 9

RYNDAK & SURI
Suite 2630
30 N. LaSalle Street
Chicago IL 60602

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NOV 12 2003

OFFICE OF PETITIONS

In re Application of
Gerald A. Sus et al.
Application No. 10/127,398
Filed: April 22, 2002
Attorney Docket No. 25570-48200
Title: AUTOMATED DEVICE AND METHOD FOR PACKAGING FOOD

DECISION ON PETITION
UNDER 37 C.F.R. §1.137(f)

This is a decision on the petition filed on October 6, 2003, pursuant to 37 C.F.R. §1.137(f), to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

(1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication[1];
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
(3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner states that the instant nonprovisional application is the subject of an application filed in either a foreign or an international application on April 21, 2003. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in either an international application or a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. §1.22(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) for failure to timely notify the Office of the filing of

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.

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.

After this decision is mailed, the application will be forwarded to Technology Center 3700 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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RYNDAK & SURI
SUITE 2630
30 N. LASALLE STREET
CHICAGO, IL 60602

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MAY 1 1 2004

OFFICE OF PETITIONS

In re Application of :
Sus et al. :
Application No. 10/127,400 : DECISION GRANTING PETITION
Filed: April 22, 2002 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 25570-48128 :

This is a decision on the petition, filed October 6, 2003, 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 April 21, 2003. 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.

This application is being forwarded to Technology Center AU 3721 to await a reply to the outstanding non-final Office action mailed April 13, 2004. Failure to timely reply will again result in the abandonment of the application.

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

LianaChase

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

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CHICAGO, IL 60602

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AUG 0 5 2005

OFFICE OF PETITIONS

In re Application of :
Thomas Lee et al :
Application No. 10/127,455 : DECISION ON PETITION
Filed: April 23, 2002 : UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 02105.002255.1

This is a decision on the petition filed May 6, 2005, which is being treated as a petition under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional Application No. 60/287,215 filed April 27, 2001.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the provisional application. In addition, the petition must be accompanied by:

(1) 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.

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on April 23, 2002, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/287,215, which was filed on April 27, 2001, and for which priority is claimed. A reference to the prior-

filed provisional application has been included in an amendment to the first sentence of the specification following the title.

However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. See In re deSeversky, supra. Note also MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(6), is required.

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

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

---

[1] Note 37 CFR 1.121

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

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

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

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

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PEPSICO, INC.
C/O GOODWIN PROCTER LLP
599 LEXINGTON AVE
NEW YORK, NY 10022

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OFFICE OF PETITIONS

In re Application of	:	
Thomas Lee et al	:	
Application No. 10/127,455	:	DECISION ON PETITION
Filed: April 23, 2002	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 02105.002255.1	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed September 12, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED.**

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

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

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

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

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

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

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.

Any inquiries concerning this decision may be directed to Irvin Dingle at (571) 272-3210. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 1761 for consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional application.

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Ryndak & Suri
200 West Madison Street
Suite 2100
Chicago, IL 60606

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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BANNER & WITCOFF, LTD.
and ATTORNEYS FOR CLIENT NO. 006943
10 SOUTH WACKER DR.
SUITE 3000
CHICAGO, IL 60606

Mail Date: 04/21/2010

Applicant	: Thomas Lee	: DECISION ON REQUEST FOR
Patent Number	: 7579032	: RECALCULATION of PATENT
Issue Date	: 08/25/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/127,455	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/23/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **197** 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: A. Caldwell

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/9/07

TO SPE OF : ART UNIT 2142

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/127,463 Patent No.: 7149775

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: _____

ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER

2142

SPE **Art Unit**

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4/31 07 AC
Enter
Enter
To
To
Approved
Approved

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 7,149,775
DATED : December 12, 2006
INVENTOR(S) : GOLDFINGER 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 face of the patent, please add the following:

(30) Foreign Application Priority Data

October 6, 1996 (IL).....119364

MAILING ADDRESS OF SENDER:

Chris Comuntzis
NIXON & VANDERHYE P.C.
901 North Glebe Road, 11th Floor
Arlington, Virginia 22201

PATENT NO. 7,149,775

No. of addl' @ 50¢ per page

Form PTO 1050 (Rev. 2-93)

FEB 20 2007

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CHICAGO, IL 60602

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OFFICE OF PETITIONS

In re Application of	:
Thomas Lee et al	:
Application No. 10/127,473	: DECISION ON PETITION
Filed: April 23, 2002	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 40300-11280	:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed May 6, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior-filed provisional application.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

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

The instant pending nonprovisional application was filed on April 23, 2002, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/334,770, which was filed on October 31, 2001, and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v.

Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(6), is required.

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

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

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

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

---

[1] *Note* 37 CFR 1.121

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

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

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OFFICE OF PETITIONS

In re Application of :
Thomas Lee et al :
Application No. 10/127,473 : DECISION ON PETITION
Filed: April 23, 2002 : UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 40300-11280 :

This is a decision on the renewed petition under 37 CFR 1.78(6), filed October 31, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional Application No. 60/334,770, filed October 31, 2001, as set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

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

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the above-noted, prior-filed provisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 119(e) to the above-noted, prior-filed provisional application satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

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

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

Any inquiries concerning this decision may be directed to Wan Laymon at (571) 272-3220. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 1761 for appropriate action on the amendment submitted October 31, 2005, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to the above-noted, prior-filed provisional application.

Frances Hicks
Lead Petitions Examiner
Office of Petitions

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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JONDLE & ASSOCIATES P.C.
9085 EAST MINERAL CIRCLE
SUITE 200
CENTENNIAL CO 80112

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FEB 0 4 2005

OFFICE OF PETITIONS

In re Application of :
William H. Eby et al :
Application No. 10/127,486 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. N1421-039 :

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

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on October 28, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 1638 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

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COMMISSIONER FOR PATENTS
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Paper No. _____

Date : February 4, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of Application No. 10/127,486

Applicant(s) :William H. Eby et al
Application No. :10/127,486
Filed :April 23, 2002

The above-identified application has been assigned Patent No. 6,858,779 and an issue date of February 22, 2005.

It is hereby directed that this application be withdrawn from issue at the request of the applicants.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of February 22, 2005:

> "All reference to Patent No. 6,858,779 to William H. Eby et al of Iowa, for SOYBEAN CULTIVAR 0322580 appearing in the Official Gazette of February 22, 2005 should be deleted since no patent was granted."

Karen Creasy

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

cc: Paul Harrison, Crystal Park 3-441 (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane Davis (CDS), CM1-6A07
Tamara Greene, Crystal Park 3-908

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 4

HONEYWELL INTERNATIONAL INC.
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN NJ 07962-2245

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SEP 19 2002

OFFICE OF PETITIONS

ON PETITION

In re Application of
Siddaramanna, *et al.*
Application No. 10/127,519
Filed: April 22, 2002
Atty's Docket No. P02,0088 (H0002516)

Receipt is acknowledged of the paper filed on July 24, 2002, captioned "Submittal of Drawing" concerning the U.S. Patent and Trademark Office's handling of an application assigned Application No. 10/127,519. The response is treated as a petition under 37 CFR 1.53 to accord the application a filing date of April 22, 2002, with Figure 5 as part of the original disclosure.

The petition is dismissed.

The application was filed on April 22, 2002. However, on May 24, 2002, Initial Patent Examination Division mailed a Notice of Omitted Item(s) in a Nonprovisional Application stating that the application had been accorded a filing date of April 22, 2002, and advising applicant that Figure 5 described in the specification appeared to have been omitted.

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

In this case, petitioners neither assert that the missing figures were deposited on April 22, 2002, nor request the July 24, 2002 (the date the missing page was supplied) filing date. Rather, petitioners simply state that Figure 5 does not constitute new matter.

US 1012751907P1

Creation date: 03-22-2004
Indexing Officer: NAMBELU - NIGIST AMBELU
Team: OIPEBackFileIndexing
Dossier: 10127519

Legal Date: 11-07-2002

No.	Doccode	Number of pages
1	A...	2
2	DRW	1
3	LET.	4

Total number of pages: 7

Remarks:

Order of re-scan issued on .....

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STERNE KESSLER GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE NW
WASHINGTON, DC 20005

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MAR 29 2006

OFFICE OF PETITIONS

In re Application of :
Craig A. Rosen et al :
Application No. 10/127,551 : DECISION GRANTING PETITION
Filed: April 23, 2002 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. :
1488.100000X/HCC/LKMG

This is a decision on the petition, filed March 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 October 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 1647 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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Paper No. 8

BACON & THOMAS
625 Slaters Lane
Fourth Floor
Alexandria, VA 22314

JUN 22 2004

In re Application of:
Takeshi Ishigami
Serial No.: 10/127,564
Filed: April 23, 2002
For: **FEED FORWARD AMPLIFICATION APPARATUS FOR COMPENSATING NON-LINEAR DISTORTION**

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed July 11, 2003, and resubmitted, via facsimile transmission on October 29, 2003 and December 24, 2003, to withdraw the holding of abandonment in the above-identified application under 37 CFR § 1.181. No petition fee is required.

The petition is **GRANTED.**

The application was held abandoned for failure to timely reply to the non-final Office action of October 23, 2002. A Notice of Abandonment was mailed on April 28, 2003.

Petitioner asserts that the Office action of October 23, 2002 was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received and a copy of the docket records where the Office action would have been entered had it been received.

A review of the file record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

During a telephone conversation with Mr. Richard E. Fichter, petitioner's counsel, it was confirmed that the copy of the docket records provided was when an Office action with a due date for reply was received in an application having received an Office action that required a reply and was created when such Office action was received. The absence of a record for the instant application was evidence that petitioner did not receive the Office action. The evidence is sufficient to establish a showing of non-receipt of the Office action of October 23, 2003.

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

The application file is being forwarded to the Technology Center 2800 support staff for re-mailing the Office action. The shortened statutory period for response will be reset to run from the date the action is re-mailed. Extensions of time are available under 37 C.F.R. § 1.136.

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

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

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ROBINSON INTELLECTUAL PROPERTY LAW OFFICE
PMB 955
21010 SOUTHBANK STREET
POTOMAC FALLS, VA 20165

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JUN 1 0 2005

OFFICE OF PETITIONS

In re Application of :
Shunpei Yamazaki et al :
Application No. 10/127,581 : DECISION GRANTING PETITION
Filed: April 23, 2002 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 740756-2480 :

This is a decision on the petition, filed June 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 May 19, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2871 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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 5

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

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JUL 23 2002

OFFICE OF PETITIONS

In re Application of
Howard
Application No. 10/127,588
Filed: April 23, 2002
Attorney Docket No. 00364.004200
For: MOISTURIZING SKIN GEL AND METHOD

ON PETITION

This is a decision on the petition filed June 6, 2002 , requesting that the above-identified application be accorded a filing date of April 23, 2002 using the three sheets of drawing figures filed with the above-identified application on April 23, 2002. The petition will be treated under 37 CFR 1.53(e).

The application was filed on April 23, 2002. However, on May 22, 2002, the Office of Initial Patent Examination mailed a Notice Of Omitted Item(s) in a Nonprovisional Application (Notice) stating that the application had been accorded a filing date of April 23, 2002, and advising applicants that Figures 1, 2, and 3 described in the specification appeared to have been omitted.

In response, the present petition was filed. The petition does not allege and is not accompanied by any evidence that any sheets of drawings containing the labels "Fig. 1" , "Fig. 2", and "Fig. 3" were present in the Office on April 23, 2002. A review of the application file reveals that the specification refers to the drawings as "Figure 1" and "Figure 1a", etc. The drawings present in the application file and resubmitted with the instant petition show "Fig. 1A" and "Fig. 1B". Petitioners referred to the drawings in an inconsistent manner.

Therefore, the "Notice" mailed May 22, 2002, was correct in advising applicants that drawings of Figures 1, 2 and 3 appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn. The petition fee is required, since the petition was not necessary to correct any PTO error.

To avoid further delay in the examination of the application, a letter to the draftsman correcting the labeling of the drawing figures should be filed prior to the first Office action.

The petition is granted.

The application is being returned the Office of Initial Patent Examination for further processing with the presently accorded filing date of April 23, 2002.

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

E. Shirene Willis

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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March 2005

MAR 16 2005

Fitzpatrick Cella Harper & Scinto
30 Rockefeller Plaza
New York, NY 10112

In re Application of:	:	
Masahiko Kubota et al.	:	DECISION ON PETITION
Serial No.: 10/127,594	:	TO WITHDRAW THE
Filed: April 23, 2002	:	HOLDING OF ABANDONMENT
Attorney Docket No.: 03500.015453.1	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181 filed on September 27, 2004. There is no fee for this petition.

The petition is **GRANTED**.

This application became abandoned for failure to respond to the Notice of Non-Compliant Amendment mailed on January 16, 2004. A Notice of Abandonment was mailed on August 10, 2004. As pointed out in the petition, although the Notice of Abandonment stated that the application was abandoned for failure to file a proper reply to the Office action dated September 11, 2003, the application was actually abandoned for failure to reply to the Notice of Non-Compliant Amendment.

Petitioner asserts that the Notice of Non-Compliant Amendment was never received by the applicants. The petition provides the required showing under MPEP § 711.03(c) to establish nonreceipt of an Office action. It includes a statement from the practitioner stating that the Notice of Non-Compliant Amendment mailed January 16, 2004 was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Notice of Non-Compliant Amendment was not received. It also includes a copy of the docket records where the nonreceived Notice of Non-Compliant Amendment would have been entered had the Notice of Non-Compliant Amendment been received. The evidence is sufficient to establish that the Notice of Non-Compliant Amendment was not received.

Accordingly, the Notice of Abandonment mailed August 10, 2004 is hereby **VACATED** and the holding of abandonment is withdrawn.

Furthermore, a review of the application indicates that the Notice of Non-Compliant Amendment mailed January 16, 2004 was sent in error since the amendment filed on December 15, 2003 does meet the requirements of 37 C.F.R. § 1.121. Accordingly, the Notice of Non-Compliant Amendment is hereby **VACATED** and the amendment filed December 15, 2003 will be considered by the examiner.

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

Howard N. Goldberg, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

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caj

Mailed: 8/31/06

In re Application of : DECISION ON
Carson et al. : PETITION
Serial No. 10/127,604 :
Filed: April 23, 2002
For: MEDIATED ELECTROCHEMICAL OXIDATION OF BIOLOGICAL WASTE

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION mailed February 23, 2006.

The instant petition was filed on July 21, 2006. In the petition, it is urged that the final office action mailed February 23, 2006 was improperly made final.

DECISION

It is noted that a Request for Continued Examination was filed by applicants on August 23, 2006, thereby making the instant petition moot. Accordingly the petition is **DISMISSED.**

Jacqueline M. Stone

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

JAMES C. WRAY
SUITE 300
1493 CHAIN BRIDGE ROAD
MCLEAN VA 22101

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Alexandria, VA 22313-1450
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FROM DIRECTORS OFFICE

NOV 09 2005

TECHNOLOGY CENTER 3600

BAKER & HOSTETLER LLP
WASHINGTON SQUARE, SUITE 1100
1050 CONNECTICUT AVE. N.W.
WASHINGTON, DC 20036-5304

In re Application of
RALPH MARKEY
Application No. 10/127,608
Filed: April 23, 2002

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

For: FLOATING MULLION

This is a decision on applicant's petition to withdrawal the holding of abandonment filed on June 21, 2005.

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

☒ Postcard receipt date stamped by OIPE on July 21, 2004.

☐ USPTO receipt dated _____, which references the application by serial number and the amendment that was filed on that date.

☐ Certificate of Mailing/Transmission signed on _____. and supported by a statement under 37 C.F.R. 1.8(b)(3).

☐ Hand Delivery Receipt of the specific documents submitted dated _____.

☐ Certificate of Transmission of CPA under 37 C.F.R. 1.6 filed on _____.

☐ Express Mail Receipt under 37 C.F.R. 1.10 dated _____.

This application is being forwarded to the Supervisory Legal Instruments Examiner for withdrawal of the abandonment and then to the examiner for prompt action.

KJD/bkg: 10/21/05

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

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POSZ & BETHARDS, PLC
11250 ROGER BACON DRIVE
SUITE 10
RESTON VA 20190

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DEC 20 2004

OFFICE OF PETITIONS

In re Application of :
Takanori Teshima :
Application No. 10/127,613 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. 01-279 :

This is a decision on the petition, filed December 17, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 24, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2826 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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POLSTER, LIEDER, WOODRUFF & LUCCHESI
12412 POWERSCOURT DRIVE SUITE 200
ST. LOUIS MO 63131-3615

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JAN 0 8 2007

OFFICE OF PETITIONS

In re Application of	:	
Hussam, Ali A.	:	
Application No. 10/127,638	:	ON PETITION
Filed: April 22, 2002	:	
Attorney Docket No. 7785US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 21, 2006, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to Technology Center 2100 for further processing.

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

Liana Walsh
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of
Ali A. Hussam
Application No. 10/127,638
Filed: April 22, 2002
Attorney Docket No.ARAH 8117U1

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 22, 2008, 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 November 1, 2007, is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 2164 for appropriate action by the Examiner in the normal course of business on the reply received October 22, 2008.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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Washington, D.C. 20231
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Paper No. 6

Robert C. Klinger
Jackson Walker LLP.
Suite 600
2435 North Central Expressway
Richardson TX 75080

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OCT 0 9 2002

OFFICE OF PETITIONS

In re Application of :
Dan Martin Scott and Darin Wayne Higgins :
Application No. 10/127,648 : DECISION ON PETITION
Filed: April 22, 2002 :
Attorney Docket No. 108344.000010 :
Title: SYSTEM AND METHOD FOR :
GEOREFERENCING MAPS :

This is in response to the petition under 37 C.F.R. §1.47(a)[1], filed July 31, 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. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.47(a)."

On April 22, 2002, the application was deposited, identifying Dan Martin Scott and Darin Wayne Higgins as joint inventors. The application was deposited without an executed oath or declaration. On July 3, 2002, a "Notice to File Missing Parts of Nonprovisional Application – Filing Date Granted" (Notice) was mailed, indicating that an executed oath or declaration and a surcharge of $130.00 were required, as well as replacement drawings. This Notice set a two-month period for reply.

With the instant petition, the petitioner has included the filing fee for the petition, the $130.00 surcharge, a declaration executed by Dan Martin Scott, a statement of facts from the attorney of record, a copy of the employment agreement, and a statement of facts from two employees of the purported assignee.

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[1]A grantable petition under 37 C.F.R. §1.47(a) requires:
(1) the petition fee of $130;
(2) a surcharge of either $65 or $130 if the petition is not filed at the time of filing the application;
(3) a statement of the last known address of the non-signing inventors;
(4) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review;
(5) proof that the non-signing inventor refuses to sign the oath or declaration after having been presented with the application papers if the inventor refuses to sign, or proof that diligent efforts have been made to locate the non-signing inventor if he or she cannot be found, and;
(6) a declaration which complies with 37 CFR §1.63.

Petitioner has met requirements (1) - (2) and (4) of 37 C.F.R. §1.47(a) above.

It is noted that the statement of facts submitted with the instant petition sets forth that a co-worker of the non-signing inventor hand-delivered a complete copy of the application to his residential address, and requested that he execute the relevant documents on numerous occasions.

It is further noted that the statement of facts states "the invention was jointly invented by Howard (John Willard), Higgins, and Dan Martin Scott".

Perhaps this is a typographical error, as Howard is not listed on the declaration as being an inventor.

Regarding the third requirement, petitioner has failed to include a statement of the last known address of inventor Howard[2].

Regarding the fifth requirement above, no proof has been submitted that inventor Howard refused to sign an oath or declaration.

Regarding the sixth requirement, the declaration fails to list inventor Howard as a joint inventor.

In light of the recent events, the USPTO **strongly** prefers that the reply to this letter be submitted by facsimile[3]. However, if applicant cannot submit the reply to this letter by facsimile (or hand-delivery[4]), the reply may be mailed[5].

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

Notice regarding fees:

Historically the fees that the USPTO charges for doing business increase at the beginning of each fiscal year (October 1). However, no final determination has been made on fees for FY03 at this point, and fiscal year 2003 was started with the same fee structure as last fiscal year.

Please be advised that applicants should monitor the USPTO website for future updates whenever any necessary money is sent.

For more information, see www.USPTO.gov, click on "News and Notices", and under the "Patents" column you will find the above information6.

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

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

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2 See MPEP 409.03(e).
3 (703) 308-6916, Attn: Office of Petitions.
4 Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.
5 Commissioner for Patents, Box DAC, Washington, DC 20231.

6 The direct URL is: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/feenotice.htm

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 11

Finnegan, Henderson, Farabow, Garrett & Dunner LLP
1300 I Street NW
Washington DC 20005-3315

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OFFICE OF PETITIONS

In re Application of
Dan Martin Scott and Darin Wayne Higgins
Application No. 10/127,648
Filed: April 22, 2002
Attorney Docket No. 108344.000010
Title: SYSTEM AND METHOD FOR GEOREFERENCING MAPS

DECISION ON PETITION

This is in response to the renewed petition[1] under 37 C.F.R. §1.47(a)[2], filed March 31, 2003.

With the Renewed petition, the petitioner has included two supplemental declarations of fact which correct the previously mentioned deficiencies.

As such, 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.

1 The original petition, filed on July 31, 2002, was dismissed via a decision mailed on October 9, 2002.

2 A grantable petition under 37 C.F.R. §1.47(a) requires:
(1) the petition fee of $130;
(2) a surcharge of either $65 or $130 if the petition is not filed at the time of filing the application;
(3) a statement of the last known address of the non-signing inventors;
(4) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review;
(5) proof that the non-signing inventor refuses to sign the oath or declaration after having been presented with the application papers if the inventor refuses to sign, or proof that diligent efforts have been made to locate the non-signing inventor if he or she cannot be found, and;
(6) a declaration which complies with 37 CFR §1.63.

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

After this decision is mailed, the application will be forwarded to Technology Center 2600 for further processing.

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

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

United States Patent and Trademark Office

Darin Wayne Higgins
125 Willow Ridge Road
Fort Worth, TX 76103

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OFFICE OF PETITIONS

In re Application of
Dan Martin Scott and Darin Wayne Higgins
Application No. 10/127,648
Filed: April 22, 2002
Attorney Docket No. 108344.000010
Title: SYSTEM AND METHOD FOR GEOREFERENCING MAPS

LETTER

Dear Mr. Higgins:

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

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

Telephone inquiries regarding this communication should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

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

Finnegan, Henderson, Farabow, Garrett & Dunner LLP
1300 I Street NW
Washington DC 20005-3315

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OFFICE OF PETITIONS

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

In re
Scott, et al.
Application No. 10/127,648
Filed: April 22, 2002
Patent No. 7,038,681
Issued: May 2, 2006

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed November 13, 2009, and again on November 20, 2009.

The fee deficiency submission under 37 CFR 1.28 of $810 for the issue fee, and $490 for the maintenance fee, is hereby **accepted.**

The change of status to large entity has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Judson K. Champlin
Westman, Champlin & Kelly
Suite 1600
900 Second Avenue South
Minneapolis, MN 55402-3319

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OFFICE OF PETITIONS

In re Application of :
Liu, et al. :
Application No. 10/727,677 : ON PETITION
Filing Date: December 4, 2003 :
Attorney Docket No.: R74.12-0001 :

The above-identified application has been referred to the Office of Petitions for consideration of the "PETITION FOR CORRECTED FILING RECEIPT," filed April 12, 2004. This petition is being treated under 37 CFR 1.10(d) as a petition to accord the above-identified application a filing date of December 4, 2003.

Petitioners allege that the application was deposited into USPS Express Mail service on December 4, 2003.

Paragraph (a) of 37 CFR 1.10 states that:

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

(Emphasis supplied). Paragraph (d) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was

the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

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

The petition filed April 12, 2003, does not include: (1) a showing that the application was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for December 4, 2003; and (2) the corroborating evidence required by the rule.

Petitioners state that the application was deposited into USPS Express Mail service on December 4, 2003, but that the "date-in" on the Express Mail label was errantly entered as December 3, 2003. Petitioners have failed to provide a copy of an Express Mail label, an Express Mail log detailing the dates, times, and manner of Express Mail deposits, or any corroborative evidence

from the USPS to support petitioners' contention that the application was deposited into USPS Express Mail service on December 4, 2003.

However, a review of the USPS record (copy enclosed) concerning the delivery of the package bearing Express Mail label No. EV241973035US reveals that the package in question was accepted into Express Mail service on December 4, 2003. This evidence establishes, to the satisfaction of the Commissioner, that the present application was deposited in "Express Mail Post Office to Addressee" service on December 4, 2003. Thus, the application will be accorded that date as the filing date.

No fee is due in connection with this matter. Petitioners are entitled to a refund of the previously submitted petition fee of $130.00. Requests for refunds should be directed to the Finance Office, Refund Division. A copy of this decision should accompany any request for refund.

This application is being forwarded to the Office of Initial Patent Examination with a filing date of December 4, 2003.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of USPS Track/Confirm Printout

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PILLSBURY WINTHROP
SHAW PITTMAN, LLP
P.O. BOX 10500
MCLEAN VA 22102

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OFFICE OF PETITIONS

In re Application of :
Tuomo Syvanne :
Application No. 10/127684 :
Filing or 371(c) Date: 04/23/2002 :
Attorney Docket Number: :
P 291168 2010150US/A/HER : ON PETITION

This is a decision on the "Petition Under 37 C.F.R. 1.181(a) to Withdraw Holding of Abandonment Based on Failure to Receive Notice of Allowance Under M.P.E.P. § 711.03(c)", filed August 16, 2006.

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 October 4, 2005. The Office action set a three (3) month period for reply. No response having been received, the application became abandoned on January 5, 2006. A Notice of Abandonment was mailed July 14, 2006.

With the instant petition, Applicant has demonstrated non-receipt of the Notice by a preponderance of the evidence.

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

No petition fee has been charged and none is due.

The application will be referred to Technology Center Art Unit 2135 for re-mailing of the non-final Office action.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Mar-08

DANIEL CULBERT
16170 JASMINE WAY
LOS GATOS CA 95032

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OFFICE OF PETITIONS

In re Application of :
Daniel Culbert : DECISION ON PETITION
Application Number: 10/127796 :
Filing Date: 04/23/2002 :
Attorney Docket Number: CUL0004 :

This is a decision in reference to the "Petition for Revival" filed on January 23, 2008, which, in the absence of a fee, is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.[1]

The petition is **DISMISSED**.

The application became abandoned on May 24, 2006, for failure to timely file a proper reply to the final Office action mailed on December 23, 2005, which set a three (3) month shortened statutory period for reply. On May 24, 2006 (certificate of mailing date May 22, 2006), petitioner filed an amendment after final rejection and a two (2) month extension of time. The amendment failed to place the application in condition for allowance, however, and an Advisory Action was mailed on June 28, 2006. Notice of Abandonment was mailed on February 23, 2007.

Petitioner asserts that the USPTO did not enter a change of correspondence address filed on May 2, 2005, and that "with the exception of" the Office action mailed on December 23, 2005, petitioner has not received any other correspondence mailed by the USPTO.

A review of the official record reveals that a change of correspondence address signed by the applicant *pro se* was filed on May 2, 2005, but that correspondence continued to be mailed to the old address. The Advisory Action mailed on June 28, 2006,

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

and the Notice of Abandonment mailed on February 23, 2007, were returned to the USPTO as undeliverable on July 3, 2006, and March 5, 2007, respectively.

The petition must be dismissed, however, because a proper and timely reply to the final Office action mailed on December 23, 2005, was not timely filed.

It is undisputed that petitioner received the final Office action mailed on December 23, 2005, and filed an amendment after final rejection. That amendment, however, did not place the application in condition for allowance.

It is clear from 37 CFR 1.116 that abandonment of an application is risked when an amendment after a final Office action is filed. The rule clearly indicates that the mere filing of an amendment does not relieve petitioners of the duty of taking appropriate action to save the application from abandonment. Therefore, whether petition received an Advisory Action or not, prior to the expiration of the six month statutory period, the only right petitioner was entitled to was that of appealing the final rejection, filing a continuing application, or requesting continued examination by filing a submission and the required fee. This application became abandoned for failure on the part of petitioner to file an appeal, a continuing application, or a request for continued examination accompanied by a submission.

As a proper and timely reply to the final Office action was not filed, the case was properly held abandoned.

The petition is **dismissed.**

ALTERNATIVE VENUE

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after 8 June, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a

request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

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

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

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

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

Should petitioner decide to file a petition under 37 CFR 1.137(b), a petition fee of $770.00 (small entity) (or $1,540.00 if petitioner no longer qualifies for small entity status) will be due.

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

A copy of the Advisory Action mailed on June 28, 2006, is also enclosed.

The correspondence address has been changed in Office records. All correspondence will be mailed to the new address of record.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. **This period may not be extended.**[2]

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[2] 37 CFR 1.181(f).

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

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

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

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

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: Advisory Action Before the Filing of an Appeal Brief
PTO/SB/64

PTO/SB/64 (01-08)
Approved for use through 03/31/2008. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

First named inventor:

Application No.: Art Unit:

Filed: Examiner:

Title:

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee $ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity – fee $ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____(identify type of reply):

☐ has been filed previously on _____.
☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of $ _____.

☐ has been paid previously on _____.
☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

3. Terminal disclaimer with disclaimer fee

☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $ _____ for a small entity or $ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

_____ Signature

_____ Date

_____ Typed or printed name

_____ Registration Number, if applicable

_____ Address

_____ Telephone Number

_____ Address

Enclosures:
☐ Fee Payment
☐ Reply
☐ Terminal Disclaimer Form
☐ Additional sheets containing statements establishing unintentional delay
☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

_____ Date

_____ Signature

_____ Typed or printed name of person signing certificate

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/127,796	04/23/2002	Daniel Culbert	CUL0004	4867

7590 06/28/2006

Daniel Culbert
1035 Aster Ave #2196
Sunnyvale, CA 94086

EXAMINER	
PANDYA, SUNIT	

ART UNIT	PAPER NUMBER
3714	

DATE MAILED: 06/28/2006

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

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/127,796	Applicant(s) CULBERT, DANIEL	
	Examiner Sunit Pandya	Art Unit 3714	

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

THE REPLY FILED 24 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 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: 10-18.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: All of the claimed limitations were addressed in the previous rejection .

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Paper No. 4

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AUG 2 6 2002

OFFICE OF PETITIONS

In re Application of :
Gomez et al. :
Application No. 10/127,809 : ON PETITION
Filed: 23 April, 2002 :
Attorney's Docket No. MIM1568 :

This is a decision on the petition captioned under 37 CFR 1.182 filed on 31 July, 2002, which is treated as a petition under 37 CFR 1.53(e) requesting that the above-identified application be accorded a filing date of 23 April, 2002, with Pages 4,5, & 7 of the specification (description and claims) as a part of the original disclosure.

The petition is granted.

The application was filed on 23 April, 2002. However, on 3 June, 2002, Initial Patent Examination Division mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of 23 April, 2002, but that Pages 4, 5, and 7 of the specification (description and claims) appeared to have been omitted. A two (2)-month period for reply was set.

In response, on 31 July, 2002, petitioners filed Pages 4, 5, and 7 of the specification and the present petition. Petitioners argue that Pages 4, 5, and 7 of the specification were filed with the other application papers on 23 April, 2002, but were subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt shows a stamp from the USPTO dated 04/23/02, which contains the above-identified application number. The postcard also identifies the application by first-named inventor's name, docket number, and invention title, and itemizes the filing of, *inter alia*, 11 pages of specification and claims. Petitioners request that the application, including Pages 4, 5, and 7 of the specification, be accorded a filing date of 23 April, 2002.

A review of the record reveals that Pages 4, 5, and 7 of the specification are not located among the application papers deposited on 23 April, 2002. However, the evidence is convincing that the application papers deposited on 23 April, 2002, included Pages 4, 5, and 7 of the specification which were subsequently misplaced in the Office. Therefore, the application, including Pages 4,5, and 7 of the specification, is entitled to a filing date of 23 April, 2002.

The "Notice" mailed on 3 June, 2002, is vacated.

In view of the above, the petition is granted. As this petition was necesitated by USPTO error, petitioners may request a refund of the $130.00 petition fee by writing to the Office of Finance, ATTN: Refund Section. A copy of this decision should accompany petitioners' request.

The application will be processed and examined using the application papers filed on 23 April, 2002, and the copy of Pages 4, 5, and 7 of the specification supplied on 31 July, 2002.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 23 April, 2002, using the application papers filed on 23 April, 2002, and the copy of Pages 4, 5, and 7 of the specification (description and claims) supplied on 31 July, 2002.

Telephone inquires should be directed to the undersigned at 703 308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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HELLER EHRMAN WHITE & MCAULIFFE LLP
275 MIDDLEFIELD ROAD
MENLO PARK, CA 94025

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JAN 0 5 2009

OFFICE OF PETITIONS

In re Application of	:	
Kevin P. Baker, et al.	:	
Application No. 10/127,836	:	DECISION ON PETITION
Filed: April 22, 2002	:	TO WITHDRAW
Attorney Docket No. 39780-3330.097 US C	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) filed October 1, 2008.

The request is **NOT APPROVED**.

A review of the file record indicates that Leslie B. Overman does not have power of attorney in this patent application. See 37 C.F.R. § 10.40. 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 undersigned at 571-272-1642.

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

cc: GOODWIN PROCTER, LLP
ATTN: PATENT ADMINISTRATOR
135 COMMONWEALTH DRIVE
MENLO PARK, CA 94025-1105

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE 2/11/09

Paper No.: ---

TO SPE OF : ART UNIT 1645

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/127836 Patent No.: 7432345 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

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: _____

ROBERT MONDESI
SUPERVISORY PATENT EXAMINER

Robert B. Mondesi
SPE

1645
Art Unit

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GOODWIN PROCTER LLP
135 COMMONWEALTH DRIVE
MENLO PARK CA 94025

In re Application of :
Goddard, et al. : DECISION ON APPLICATION
Application No. 10/127,844 : FOR PATENT TERM ADJUSTMENT
Filed: April 22, 2002 :
Atty. Dkt. No.: GNE.3330R1C104 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed October 24, 2008.

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

The Determination of Patent Term Adjustment mailed October 2, 2008 indicated that the application is entitled to adjustment of 653 days. Applicants argue that the correct adjustment is 654 days and cite an incorrect reduction in connection with the request for continued examination (RCE) filed June 12, 2006.

The correct PTA at the time of the allowance is 587 days as indicated herein.

The calculation of adjustment has been carefully reviewed and two errors have been discovered.

The record indicates that an RCE was filed June 13, 2006. However, a review of the documents submitted by applicants sufficiently establishes that the RCE was filed June 12, 2006 in accordance with the procedures set forth at 37 CFR 1.10. Therefore, the adjustment of 813 days is properly reduced 63 days, and not 64 days, in accordance with 37 CFR 1.704(b). The reduction commenced April 11, 2006, the day after the date that is three months after the date that the final rejection was mailed, and ended June 12, 2006, the date that the RCE was filed.

A review of the calculation of adjustment further reveals that the Office neglected to assess a reduction of 67 days in accordance with 37 CFR 1.704(c)(8) in connection with the

supplemental response filed August 18, 2006. The reduction commenced June 13, 2006, the day after the date that the initial reply (RCE) was filed, and ended August 18, 2006, the date that the supplemental reply was filed.

In review thereof, as of the time of allowance, the application is entitled to an adjustment of 587 days (adjustments totaling 813 days less reductions totaling 226 days).

Submission of the required PTA application fee is a prerequisite prior to treatment on the merits of any request for reconsideration of PTA pursuant to 37 CFR 1.705(b). Accordingly, the required PTA application fee of $200.00 has been charged to applicants' 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 Division of Data Management for issuance of a patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Adjusted PAIR Calculation

Day : Thursday
Date: 6/18/2009

PALM INTRANET

Time: 18:36:21

PTA Calculations for Application: 10/127844			
Application Filing Date:	04/22/2002	PTO Delay (PTO):	813
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	160
Post-Issue Petitions:	0	Total PTA (days):	587
PTO Delay Adjustment:	-66		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
111	06/18/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		67	
110	06/18/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	1		
94	10/02/2008	MAIL NOTICE OF ALLOWANCE	87		85
93	09/29/2008	ISSUE REVISION COMPLETED			
92	09/29/2008	DOCUMENT VERIFICATION			
91	09/29/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
90	09/29/2008	CASE DOCKETED TO EXAMINER IN GAU			
89	09/29/2008	NOTICE OF ALLOWABILITY			
88	05/29/2008	AMENDMENT AFTER BRIEF			
87	03/15/2008	APPEAL BRIEF REVIEW COMPLETE			
86	09/15/2008	DATE FORWARDED TO EXAMINER			
85	03/07/2008	APPEAL BRIEF FILED			
84	01/29/2008	NOTICE OF APPEAL FILED		36	67
83	01/29/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
82	09/15/2008	CASE DOCKETED TO EXAMINER IN GAU			
72	02/19/2008	CASE DOCKETED TO EXAMINER IN GAU			
71	01/11/2008	MAIL ADVISORY ACTION (PTOL - 303)			
70	01/07/2008	ADVISORY ACTION (PTOL-303)			
69	11/16/2007	DATE FORWARDED TO EXAMINER			
68	11/13/2007	AMENDMENT AFTER FINAL REJECTION			
67	09/24/2007	MAIL FINAL REJECTION (PTOL - 326)			
66	09/17/2007	FINAL REJECTION			
65	07/10/2007	CASE DOCKETED TO EXAMINER IN GAU			
64	06/13/2007	DATE FORWARDED TO EXAMINER			
		AMENDMENT SUBMITTED/ENTERED WITH			

63	06/06/2007	FILING OF CPA/RCE			
62	06/13/2007	DATE FORWARDED TO EXAMINER			
61	06/06/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
60	06/13/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
59	06/06/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
58	06/06/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
57	02/08/2007	NOTICE OF APPEAL FILED		58	50
56	02/08/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
55	12/06/2006	MAIL ADVISORY ACTION (PTOL - 303)			
54	12/04/2006	ADVISORY ACTION (PTOL-303)			
53	11/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
52	11/02/2006	DATE FORWARDED TO EXAMINER			
51	10/31/2006	AMENDMENT AFTER FINAL REJECTION			
50	09/12/2006	MAIL FINAL REJECTION (PTOL - 326)			
49	09/05/2006	FINAL REJECTION			
48	08/18/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
47	09/05/2006	DATE FORWARDED TO EXAMINER			
46	08/18/2006	SUPPLEMENTAL RESPONSE			
45	09/05/2006	CORRESPONDENCE ADDRESS CHANGE			
44	09/05/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
43	06/13/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
42	05/22/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
41.7	06/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
41	06/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
40	06/20/2006	DATE FORWARDED TO EXAMINER			
39	06/13/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
38	06/20/2006	DATE FORWARDED TO EXAMINER			
37	06/13/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		64	32

36	06/20/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
35	06/13/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
34	06/13/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
33.7	05/22/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	05/22/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	01/10/2006	MAIL FINAL REJECTION (PTOL - 326)			
31	01/09/2006	FINAL REJECTION			
30	09/19/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29.7	09/19/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	26
29	09/19/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	09/19/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
27	09/29/2005	DATE FORWARDED TO EXAMINER			
26	09/19/2005	RESPONSE AFTER NON-FINAL ACTION		2	25
25	06/17/2005	MAIL NON-FINAL REJECTION	726		-1
24	06/15/2005	NON-FINAL REJECTION			
23	07/28/2004	CASE DOCKETED TO EXAMINER IN GAU			
22	08/20/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
21.7	09/27/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	09/27/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	09/16/2002	PRELIMINARY AMENDMENT			
19	04/22/2002	PRELIMINARY AMENDMENT			
18	02/11/2003	CASE DOCKETED TO EXAMINER IN GAU			
17	11/27/2002	APPLICATION DISPATCHED FROM OIPE			
16	11/26/2002	APPLICATION IS NOW COMPLETE			
12	10/11/2002	ADDITIONAL APPLICATION FILING FEES			
11	10/11/2002	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
10	10/11/2002	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			

9	11/07/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
8	08/15/2002	SEQUENCE ERRORS			
6	04/22/2002	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
5	05/13/2002	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
4	05/08/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	04/22/2002	INITIAL EXAM TEAM NN			
2	04/22/2002	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	04/22/2002	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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GOODWIN PROCTER LLP
135 COMMONWEALTH DRIVE
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In re Patent No. 7,566,774 :
Issued: July 28, 2009 :
Application No. 10/127,844 : PATENT TERM ADJUSTMENT
Filed: April 22, 2002 :
Dkt. No.: GNE.3330R1C104 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed September 21, 2009. Patentee requests correction of the patent term adjustment from 660 days to 1087 days. Patentee requests this correction on the basis that the Office took in excess of three years to issue the above-referenced patent. This matter is being properly treated as an application for patent term adjustment pursuant to 37 CFR 1.705(d).

The application for patent term adjustment (PTA) under 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,566,774 on July 28, 2009. The patent issued with a patent term adjustment of 660 days. Patentee argues that in view of Wyeth v. Dudas, Civil Action No. 07-1492, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. Sept. 30, 2008), the patent is entitled to an adjustment of 1087 days (942 days pursuant to 35 USC 154(b)(1)(A) *plus* 417 days pursuant to 35 USC 154(b)(1)(B) *less* 56 overlapping days *less* 216 days of applicant delay).

Under 37 CFR 1.703(f), patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR 1.702 reduced by the period of time equal to the period of time during which patentees failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704. In other words, patentees are entitled to the period of Office delay reduced by the period of applicant delay.

The Office asserts that as of the filing of the request for continued examination (RCE) on June 12, 2006, the application was pending three years and 415 days after its filing date (April 23, 2005 to June 11, 2006). The Office agrees that at the time of submission of the RCE, certain action was not taken within the specified time frame, and thus, the entry of a period of adjustment of 726 days is correct. At issue is whether patentees should accrue 415 days of patent term adjustment for the Office taking in excess of three years to issue the patent, as well as 726 days for Office failure to take a certain action within a specified time frame (or examination delay).

The Office contends that the period of 415 days of delay in issuing the patent overlaps with the 726 days of examination delay under 37 CFR 1.702(a)(1). Patentees' calculation of the period of

overlap is inconsistent with the Office's interpretation of this provision. 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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 permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

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

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[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.

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding §1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the period during which the application was pending before the Office beginning on the application filing date under 35 U.S.C. 111(a), April 22, 2002, and ending on June 11, 2006, the day before the date that the RCE was filed on June 12, 2006.

Pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1), 726 days of patent term adjustment were accorded during the pendency of the application for Office delay prior to the filing of the RCE. Pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b), 415 days of patent term adjustment accrued at the time of submission of the RCE for Office issuance of the patent more than three years after the application filing date.

The 415 days of patent term adjustment under 37 CFR 1.702(b) overlaps with the 726 days of patent term adjustment under 37 CFR 1.702(a)(1). Entry of both the 726 days and the 415 days is neither permitted nor warranted given that 726 days is the actual number of days issuance of the patent was delayed at the time of submission of the RCE.

Accordingly, at issuance, the Office properly entered 660 days of patent term adjustment, having considered the 415 days of Office delay under the three-year pendency provision in conjunction with the 726 days of delay under 37 CFR 1.702(a)(1) that occurred prior to the submission of the RCE as well as the 216 days under 37 CFR 1.702(a) that accrued subsequent to the filing of the RCE, reduced 282 days for applicant delay[2].

In view thereof, no adjustment to the patent term will be made.

Submission of the patent term adjustment application fee of $200.00 (37 CFR 1.18(e)) is a prerequisite prior to treatment on the merits of any application for patent term adjustment submitted pursuant to 37 CFR 1.705(d). Accordingly, the required patent term adjustment application fee of $200.00 has been charged to Deposit Acct. No. 50-4634, as authorized.

---

[2] The calculation of adjustment was determined as follows: 726 days of adjustment pursuant to 37 CFR 1.702(a)(1) *plus* 87 days of adjustment pursuant to 37 CFR 1.702(a)(2) *plus* 129 days of adjustment pursuant to 37 CFR 1.702(a)(4), or 942 days of adjustment, *less* two days of applicant delay pursuant to 37 CFR 1.704(b) *less* 63 days of applicant delay pursuant to 37 CFR 1.704(b) *less* 67 days of applicant delay pursuant to 37 CFR 1.704(c)(8) *less* 58 days of applicant delay pursuant to 37 CFR 1.704(b) *less* 36 days of applicant delay pursuant to 37 CFR 1.704(b) *less* 56 days of applicant delay pursuant to 37 CFR 1.704(c)(10), or 282 days of applicant delay. Patentee's attention is also directed to the decision on application for patent term adjustment mailed June 19, 2009 which references the reduction of 67 day reduction under 37 CFR 1.704(c)(8) as well the 63 day reduction under 37 CFR 1.704(b) in connection with the date of receipt of the RCE.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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BRIARCLIFF MANOR, NY 10510

MAILED

MAR 16 2009

OFFICE OF PETITIONS

In re Application of	:	
Marcel VAN OS	:	
Application No. 10/127,855	:	DECISION ON PETITION
Filed: April 22, 2002	:	
Attorney Docket No. US 028002	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 03, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, November 22, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 23, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (3).

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

(1) the delay in reply that originally resulted in the abandonment;

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 **would not be granted where the abandonment** or the failure to pay the fee for issuing the patent **was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). *See* In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay **(here almost four (4) years)** in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on **February 23, 2005**. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, as Philips Electronics North America Corporation, was counsel of record at the time of abandonment, Philips Electronics North America Corporation should explain why this application became abandoned while it was under their control and what efforts were made to further reply of itself and with whom this matter was discussed outside of Philips Electronics North America Corporation. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s), Philips Electronics North America Corporation, Marcel VAN OS and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons then at Philips Electronics North America Corporation and Marcel VAN OS, and the responsible person(s) having firsthand knowledge of

the circumstances surrounding the lack of a reply to the outstanding Office action. As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2):

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). *See* MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. *See* Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (**here, almost four (4) years**) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons then at MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC and the responsible person(s) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless

of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

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 change of address filed October 03, 2008 has been accepted and made of record.

Any renewed petition may be addressed as follows:

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

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

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

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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JAN 19 2010

In re Application of	:	
Marcel VAN OS	:	
Application No. 10/127,855	:	DECISION ON PETITION
Filed: April 22, 2002	:	
Attorney Docket No. US 028002	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed May 15, 2009, to revive the above-identified application.

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

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, November 22, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 23, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of amendment, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay. Accordingly, the reply to the non-final Office action mailed, November 22, 2004 is accepted has 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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

This application is being referred to Technology Center AU 2677 for appropriate action by the Examiner in the normal course of business on the reply received.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

Cc: **GREGORY L. THORNE**
THORNE & HALAJIAN, LLP
APPLIED TECHNOLOGY CENTER
111 WEST MAIN STREET
BAY SHORE, NY 11706

ARG

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20070808

DATE : 05/17/06

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/127875** Patent No.: **7005449**

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**.

C/Crecou

Certificates of Correction Branch

703-308-9390 ext. 123

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

_____

_____

_____

_____

_____ 1625

SPE **Art Unit**

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Paper No. 7

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CHATTANOOGA, TN 37402-2289

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OFFICE OF PETITIONS

In re Application of
Glenn H. Morris
Application No. 10/127,892
Filed: April 22, 2002
Attorney Docket No. 04813/0100

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed August 18, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on April 21, 2003. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

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

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

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of January 15, 2004 accompanies this decision on petition.

There is no indication that a reply to the non-final Office action of July 2, 2003 has been filed. Accordingly, a shortened statutory period of three (3) months for reply to the non-final Office action of July 2, 2003 is restarted with the mailing date of this decision. Extensions of time pursuant to the provisions of 37 CFR 1.136(a) are permitted. Failure to timely reply within the period restarted by this decision will result in the abandonment of this application.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

This application is being returned to Technology Center Art Unit 3727 to await a reply to the non-final Office action mailed July 2, 2003, the period of which is restarted to run from the mailing date of this decision on petition as noted above.

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

Conferee: Frances M. Hicks
Lead Petitions Examiner

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

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GATEWAY, INC.
ATTN: PATENT ATTORNEY
610 GATEWAY DR.
MAIL DROP Y-04
N. SIOUX CITY SD 57049

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FEB 28 2008

In re Application of	:	
Daniel C. Milius	:	DECISION ON PETITION TO
Application Number: 10/127895	:	WITHDRAW HOLDING OF
Filing Date: 04/23/2002	:	ABANDONMENT
Attorney Docket Number:	:	
P1763US00	:	

This is a decision on reference to the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR § 1.181," filed on January 24, 2008, which is treated as a petition to withdraw the holding of abandonment.

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the non-final Office action mailed on December 13, 2006, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on December 12, 2007.

Petitioner asserts that a proper and timely reply in the form of a Request for Reconsideration was filed on March 12, 2007. A copy of the reply has been provided with the subject petition. In support, a copy of a PTO Stamped Receipt, showing receipt of the Request for Reconsideration and bearing an "Office Date" stamp dated March 12, 2007, has been provided.

A review of the record reveals that the Request for Reconsideration, was filed on March 12, 2007, and is located in the Office's Image File Wrapper system.

As such, the papers filed on March 12, 2007, constituted a complete and timely response to the Office action mailed on December 13, 2006.

Therefore, the showing of record is that a response was timely filed, and there is no abandonment in fact.

The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

The Office apologizes for any inconvenience to petitioner.

The application will be referred to Technology Center Art Unit 2163 for further processing.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OSHA LIANG L.L.P./SUN
1221 MCKINNEY, SUITE 2800
HOUSTON, TX 77010

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JAN 12 2006

OFFICE OF PETITIONS

In re Application of :
Shivaram Bhat, et al. : DECISION ON PETITION
Application No. 10/127,898 : UNDER 37 CFR 1.78(a)(6)
Filed: April 22, 2002 :
Attorney Docket No. 03226.526002;P6854

This is a decision on the petition under 37 CFR 1.78(a)(6), filed December 6, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional Application No. 60/310,519, filed August 6, 2001.

The petition is **GRANTED.**

A petition for acceptance of a claim for late priority under 37 CFR § 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after 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 under 37 CFR § 1.78(a)(6) must be accompanied by:

(1) 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);

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR §1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

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

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the

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

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

Any inquiries concerning this decision may be directed to Retta Williams at (571) 272-3229. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 2135 for appropriate action on the amendment submitted December 29, 2005, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/310,519.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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Paper No.

HELLER EHRMAN LLP
275 MIDDLEFIELD ROAD
MENLO PARK CA 94025-3506

COPY MAILED

JAN 07 2008

OFFICE OF PETITIONS

In re Application No. 10/127,901 :
Goddard et al. : DECISION ON APPLICATION
Filed: April 22, 2002 : FOR
Attorney Docket No.: GNE.3330R1C86 : PATENT TERM ADJUSTMENT
Title: PRO1154 POLYPEPTIDE :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(B)" to adjust Patent Term Adjustment" filed on October 1, 2007. Applicants request that the initial determination of patent term adjustment set forth in the notice of allowance be corrected from three hundred and fifty-two (352) to three hundred and fifty-three (353) days.

The application for patent term adjustment is **GRANTED TO THE EXTENT INDICATED HEREIN**.

On August 22, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 352 days. The present application for patent term adjustment was timely filed[1] on or before payment of the issue fee. Applicants maintain that the reduction associated with the filing of a request for continued examination (RCE) should be 125 days, not 126 days, as the RCE was filed on June 26, 2006, not June 27, 2006.

1 PALM records indicate that the issue fee was paid on October 8, 2007.

Applicants' argument has been considered, and it has been found persuasive. Pursuant to 37 C.F.R. § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution. The Appeal Brief was filed on February 21, 2006, and a Request for Continued Examination (RCE) was treated as filed on June 27, 2006, which constitutes a delay of 126 days. However, with the present application for patent term adjustment, Applicants have indicated that the RCE was filed via the Express Mail Service of the United States Postal Service (USPS), and was deposited with the USPS on June 26, 2006. Applicants have provided a copy of the Express Mail label, and it contains a "date-in" of June 26, 2006. Moreover, the RCE has been reviewed, and the express mail label number is contained on the preliminary amendment that was filed concurrently with the RCE. As such, pursuant to 37 C.F.R. § 1.10(a), this correspondence should be considered filed with the Office on June 26, 2006. As such, the period of reduction for applicant delay is being corrected to 125 days.

However, a review of the record also reveals that the period of adjustment of 40 days for Office delay in mailing a final rejection on July 31, 2006 should not have been entered. Pursuant to 37 C.F.R. § 1.702(a)(2), the Office is required to respond to a reply under 35 U.S.C. § 132 or to an appeal taken under 35 U.S.C. § 134 not later than four months after the date on which the reply was filed or the appeal was taken. Applicant filed an Appeal Brief on February 21, 2006, and a final Office action was not mailed until July 31, 2006. This would constitute an Office delay of 40 days, however, such a reduction is improper. Section 1.703(a)(4) also pertains to the provisions of 35 U.S.C. § 154(b)(1)(A)(ii). Section 1.703(a)(4) specifies that the period is the number of days, if any, beginning on the day after the date that is four months after the date an appeal brief in compliance with Rule § 1.192 was filed and ending on the mailing date of any of an examiner's answer under Rule § 1.193, an action under 35 U.S.C. § 132, or a notice of allowance under 35 U.S.C. § 151, whichever occurs first. The phrase "the date on which" an "appeal was taken" in 35 U.S.C. § 154(b)(1)(A)(ii) means the date on which an appeal brief (and not a notice of appeal) was filed. The phrase "appeal brief in compliance with § 1.192" requires that:(1) the appeal brief fee (Rule § 1.17(c)) be paid (1.192(a)); and (2) the appeal brief complies with Rules §§ 1.192(c)(1) through (c)(9).

As the appeal brief was defective and Applicants did not correct this defect, the Office's clock did not start to run until the RCE was filed. Moreover, the final rejection was mailed on July 31, 2006, which was within four months of the filing of the RCE. Thus, there was no Office delay within the meaning of Rule 1.702(a)(2). As such, the period of adjustment of 40 days for Office delay is being removed.

The other periods of delay are not at issue.

Pursuant to 37 C.F.R. § 1.703(a)(1), the Office is required to Mail either a notice of allowance or an action under 35 U.S.C. § 132 not later than 14 months after the date on which the application was filed. The application was filed on April 22, 2002, and a non-final Office action was not mailed until November 16, 2004. This constitutes an Office delay of 513 days.

Pursuant to 37 C.F.R. § 1.702(a)(2), the Office is required to respond to a reply under 35 U.S.C. § 132 or to an appeal taken under 35 U.S.C. § 134 not later than four months after the date on which the reply was filed or the appeal was taken. An after-final amendment was filed on March 29, 2007, and a notice of allowance was not mailed until August 22, 2007. This constitutes an Office delay of 24 days.

Thus, the proper period of adjustment for Office delay at the time of the mailing of the notice of allowance is 537 (513 + 24) days.

Pursuant to 37 C.F.R. § 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. A response to a non-final Office action was filed on February 16, 2005, and an information disclosure statement (IDS) was filed on March 30, 2005. The IDS was not expressly requested by the Examiner, and the submission did not include a § 1.704(d) statement. This constitutes a delay of 42 days.

Pursuant to 37 C.F.R. § 1.704(b), the failure to submit a response within three months of the mailing of an Office action is a failure to engage in reasonable efforts to conclude prosecution. A final rejection was mailed on May 23, 2005, and

a notice of appeal was not received until October 19, 2005. This constitutes a delay of 57 days.

Thus, the proper period of reduction at the time of mailing of the notice of allowance is 224 (42 + 57 + 125) days.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 313 (537 - 224) days.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Encl. Copy of the Revised Patent Term Adjustment

PTA Calculations for Application: 10/127901			
Application Filing Date:	04/22/2002	PTO Delay (PTO):	577
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	225
Post-Issue Petitions:	0	Total PTA (days):	313
PTO Delay Adjustment:	-39		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
106	12/10/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		40	
105	12/10/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		125	
104	12/10/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	126		
93	08/22/2007	MAIL NOTICE OF ALLOWANCE	24		70
92	08/22/2007	MAIL EXAMINER'S AMENDMENT			
91	08/20/2007	ISSUE REVISION COMPLETED			
90	08/20/2007	DOCUMENT VERIFICATION			
89	08/20/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
88	08/20/2007	CASE DOCKETED TO EXAMINER IN GAU			
87	08/20/2007	EXAMINER'S AMENDMENT COMMUNICATION			
86	08/20/2007	NOTICE OF ALLOWABILITY			
85	07/21/2007	DATE FORWARDED TO EXAMINER			
84	07/16/2007	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
77	06/13/2007	NOTICE OF APPEAL FILED			
76	06/13/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
75	09/20/2002	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
74	09/20/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
73	04/16/2007	MAIL ADVISORY ACTION (PTOL - 303)			
72	04/13/2007	ADVISORY ACTION (PTOL-303)			
71	04/02/2007	DATE FORWARDED TO EXAMINER			
70	03/29/2007	AMENDMENT AFTER FINAL REJECTION			
69	12/29/2006	MAIL FINAL REJECTION (PTOL - 326)			
68	12/26/2006	FINAL REJECTION			

67	10/10/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
66	10/19/2006	DATE FORWARDED TO EXAMINER			
65	10/10/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
64	10/19/2006	DATE FORWARDED TO EXAMINER			
63	10/10/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
62	10/19/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
61	10/10/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
60	09/27/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
59	09/16/2002	PRELIMINARY AMENDMENT			
58	04/22/2002	PRELIMINARY AMENDMENT			
57	07/31/2006	MAIL FINAL REJECTION (PTOL - 326)	40		44
56	07/25/2006	FINAL REJECTION			
55	06/27/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
54.7	06/27/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		126	44
54	06/27/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
53	07/03/2006	DATE FORWARDED TO EXAMINER			
52	06/27/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
51	07/03/2006	DATE FORWARDED TO EXAMINER			
50	06/27/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
49	07/03/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
48	06/27/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
47	06/27/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
46	03/28/2006	NOTICE -- DEFECTIVE APPEAL BRIEF			
45	03/01/2006	DATE FORWARDED TO EXAMINER			
44.1	02/21/2006	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
44	02/21/2006	APPEAL BRIEF FILED			
43	02/21/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			

42	10/19/2005	NOTICE OF APPEAL FILED		57	36
41	10/19/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
40	08/18/2005	MAIL ADVISORY ACTION (PTOL - 303)			
39	08/12/2005	ADVISORY ACTION (PTOL-303)			
38	08/01/2005	DATE FORWARDED TO EXAMINER			
37	07/25/2005	AMENDMENT AFTER FINAL REJECTION			
36	05/23/2005	MAIL FINAL REJECTION (PTOL - 326)			
35	02/16/2005	PETITION FEE PAID			
34	05/18/2005	CORRESPONDENCE ADDRESS CHANGE			
33	05/13/2005	FINAL REJECTION			
32	03/30/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
31.7	03/30/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		42	21
31	03/30/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	04/08/2005	DATE FORWARDED TO EXAMINER			
29	03/30/2005	SUPPLEMENTAL RESPONSE			
28	03/08/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
27	03/22/2005	DATE FORWARDED TO EXAMINER			
26	03/08/2005	SUPPLEMENTAL RESPONSE			
25	02/16/2005	RULE 47 / 48 CORRECTION OF INVENTORSHIP PAPERS FILED			
24	02/16/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
23.7	02/16/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	02/16/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	03/10/2005	DATE FORWARDED TO EXAMINER			
21	02/16/2005	RESPONSE AFTER NON-FINAL ACTION			
20	02/16/2005	WORKFLOW INCOMING AMENDMENT IFW			
19	11/16/2004	MAIL NON-FINAL REJECTION	513		-1
18	11/15/2004	NON-FINAL REJECTION			
17	07/27/2004	CASE DOCKETED TO EXAMINER IN GAU			
16	11/14/2002	APPLICATION DISPATCHED FROM OIPE			
15	11/13/2002	APPLICATION IS NOW COMPLETE			
13	10/15/2002	ADDITIONAL APPLICATION FILING FEES			

12	10/15/2002	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
11	11/05/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
10	08/25/2002	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
9	08/14/2002	SEQUENCE ERRORS			
8	04/22/2002	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
7	05/13/2002	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
6	05/13/2002	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
5	05/07/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
4	05/03/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	04/22/2002	INITIAL EXAM TEAM NN			
2	04/22/2002	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	04/22/2002	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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SUITE 1450
DALLAS TX 75206

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APR 17 2007

OFFICE OF PETITIONS

In re Application of
Blauch, et al.
Application No. 10/127,905
Filed: 04-23-2002
Attorney Docket No. 2000-IP-001089 U1

DECISION ON PETITION

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

The above-identified application became abandoned for failure to file a timely response to the nonfinal Office Action, mailed June 15, 2004, which set a three-month shortened statutory period for reply. The above-identified application became abandoned on September 16, 2004. On November 30, 2006, the Office mailed a Notice of Abandonment.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply, paid the petition fee, and made the proper statement of unintentional delay. Accordingly, the petition is **granted.**

This matter is being referred to Technology Center Art Unit 3746.

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

BEYER WEAVER & THOMAS LLP
P.O. BOX 778
BERKELEY CA 94704-0778

In re Application of
Carl E. Youngberg et al
Application No. 10/127,948
Filed: April 22, 2002
Attorney Docket No. ELESP006

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 20, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

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

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

[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

The instant petition does not comply with item (1)

The instant pending nonprovisional application was filed on April 22, 2002, and was pending at the time of filing of the instant petition. However, Application No. 09/062,300, was not pending when the instant application was filed, since it issued on July 24, 2001. Therefore, copendency could not have been established.

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
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By hand: Customer Window located at:

U.S. Patent and Trademark Office
220 20th Street S.
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 (571) 272-3208 .

Karen Creasy

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

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JEFFREY J. HOHENSHELL
710 MEDTRONIC PARKWAY
MINNEAPOLIS, MN 55432

FAX RECEIVED
MAY 25 2005
OFFICE OF PETITIONS

In re Application :
Allen J. Tower et al :
Application No. 10/127,969 : LETTER
Filed: April 23, 2002 :
Attorney Docket No. 212_046 :

This is in response to the paper filed May 6, 2005 under 37 CFR 1.27(g)(2) requesting that status as a Small Entity be removed.

In accordance with the May 6, 2005 request, status as a Small Entity has been removed.

The Revocation of Power of Attorney... filed on May 6, 2005 is entered and made of record (Copies attached).

This matter is being referred to Technology Center AU 3731.

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

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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/127,986	04/23/2002	Nobuhiro Mishima	05058/74702	8114

24367 7590 03/22/2007

SIDLEY AUSTIN LLP
717 NORTH HARWOOD
SUITE 3400
DALLAS, TX 75201

EXAMINER	
EVANS, ARTHUR G	
ART UNIT	**PAPER NUMBER**
2622	
MAIL DATE	**DELIVERY MODE**
03/22/2007	PAPER

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : July 19, 2006 SPE David L. Ometz

TO SPE OF : ART UNIT 2622

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/127,986 Patent No.: 6859290 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**.

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

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

_____

_____

_____

_____

_____ 2625
SPE **Art Unit**

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In re Patent No. 6,859,290	:	
MISHIMA ET AL.	:	**DECISION GRANTING**
Issue Date: Feb. 22, 2005	:	**PETITION**
Appl No.: 10/127,986	:	*37 CFR 1.324*
Filed: April 23, 2002	:	
For: IMAGE FORMATION APPARATUS DISPLAYING THE CAPACITY OF DATA OF IMAGE TO BE FORMED	:	

This is a decision on the petition under 37 CFR 1.48, filed 7/19/2006. In view of the fact that the patent has already issued, the request under 37 CFR 1.48 has been treated as a petition to correct inventorship under 37 CFR 1.324.

The petition is granted.

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

Edward Coles
Supervisory Patent Examiner
Art Unit 2625
Patent Examining Group 2600

SIDLEY AUSTIN LLP
717 NORTH HARWOOD
SUITE 3400
DALLAS, TX 75201

UNITED STATES 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: March 18, 2007
TO: Certificates of Correction Branch
FROM: Edward Coles
SPE, Art Unit 2625
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 6,859,290 as specified on the attached Certificate.

Edward Coles, SPE
Art Unit 2625

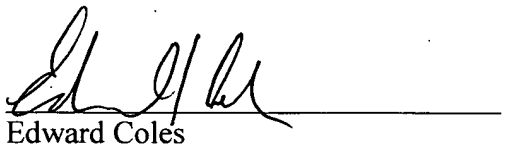
UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 6,859,290
Patented: Feb. 22, 2005

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

Nobuhiro Mishima



Edward Coles
Supervisory Patent Examiner
Art Unit 2625

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OFFICE OF PETITIONS

RICHARD O. BARTZ
SUITE 350
6750 FRANCE AVENUE SOUTH
EDINA, MN 55435

In re Application of
George W. Wood, et al.
Application No. 10/127,988
Filed: April 23, 2002
Attorney Docket No. L182.12.14

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed June 1, 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 2, 2003. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

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

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

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

This application is being forwarded to Technology Center Art Unit 3637 for further prosecution.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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GE HEALTHCARE, INC.
IP DEPARTMENT
101 CARNEGIE CENTER
PRINCETON, NJ 08540-6231

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JUL 25 2008

In re Application of :
Ken BOLAM, et al :
Application No. 10/128,048 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. 9036-23 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 8, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of May 15, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A three (3) extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is November 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, and the submission required by 37 CFR 1.114; (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 1797 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.

Christopher Bottorff

for Thurman Page
Petitions Examiner
Office of Petitions

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280 N. OLD WOODWARD AVE., SUITE 400
BIRMINGHAM, MI 48009

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APR 0 6 2004

OFFICE OF PETITIONS

In re Application of :
Larry Kirn :
Application No. 10/128,049 : NOTICE
Filed: April 23, 2002 :
Attorney Docket No. JAM-01502/29

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 2817.

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

SPE G. Epps

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/128,064

Paper No.: _____

DATE : 6/14/05

TO SPE OF : ART UNIT 2873

SUBJECT : Request for Certificate of Correction on Patent No.: 6880932

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

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Lamonte Newsome
Certificates of Correction Branch
Tel. No. 703-305-8309

Thank You For Your Assistance

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

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

Comments:

Georgia Y Epps
SPE

2873
Art Unit

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United States Patent and Trademark Office
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Paper No.

Dennis C. Bremer
Honeywell International Inc.
101 Columbia Road
P.O. Box 2245
Morristown, NJ 07962-2245

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NOV 17 2004

OFFICE OF PETITIONS

In re Application of :
William Platt : DECISION ON APPLICATION FOR
Application No. 10/128,071 : PATENT TERM ADJUSTMENT
Filed: April 23, 2002 :
Atty Docket No. H0002993 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed May 10, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred six (106) days to one hundred fourteen (114) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is one hundred fourteen **(114)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 27, 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 106 days. On May 10, 2004, applicants timely submitted the instant application for patent term adjustment[1]. Applicants assert that the PTA should not be reduced by 8 days for the filing of an IDS on January 20, 2004. In effect, applicants assert that the filing of this IDS falls within the exception under § 1.704(d).

The record supports a conclusion that the patent issuing from this application is not subject to a terminal disclaimer.

As to the submission of the IDSs, 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 January 12, 2004, on January 8, 2004, applicants filed an Information Disclosure Statements (IDS). The record does not support a conclusion that the IDS was expressly requested by the examiner. Nor was the IDS accompanied by a § 1.704(d) statement.

---

[1] PALM records show that the Issue Fee was received on May 24, 2004.

Nonetheless, the attorney of record now states that:

> each item cited in the Supplemental Information Disclosure Statement filed on January was cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in 37 C.F.R. § 1.56(c) more than thirty days prior to the filing date of this information disclosure statement.

Under the circumstances of this case, it is concluded that the filing of the January 20, 2004 IDS will not cause a reduction of the PTA.

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 first cited ..." for the exception to apply. See 69 FR 21704, Apr. 22, 2004.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance is 114 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 timely issuance of the patent.

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

Karen S. Ferriter
for

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

Enclosure: Copy of REVISED PAIR Screen

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Jon Nelson
Banner & Witcoff, Ltd.
10 South Wacker Drive
Suite 3000
Chicago, IL 60606

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JUL 0 2 2004

OFFICE OF PETITIONS

In re Application of :
Fred Downing, et. al. :
Application No. 10/128,088 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. 06454.00002 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 14, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed November 4, 2003, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned after midnight February 4, 2004.

In response, petitioner submitted with the instant petition $665 for the petition to revive fee, $665 for the issue fee, $300 for the publication fee, and $15 for five (5) advance order of soft copies.

The petition is **GRANTED**.

The Associate Power of Attorney filed April 14, 2004, has been accepted and made of record.

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

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

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

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Paper No. 5

Donald W. Meeker
#512
750 La Playa
San Francisco, CA 94121

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JUN 29 2005

OFFICE OF PETITIONS

In re Application of :
Brian J. Green :
Application No. 10/128,114 :
Filed: April 22, 2002 :
For: BELT WITH UNIVERSAL LEASH :
HOLDER AND QUICK-RELEASE :

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

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed October 16, 2003. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No reply having been received, the application became abandoned on January 17, 2004. A Notice of Abandonment was mailed on May 20, 2003.

With the instant petition, Petitioner has satisfied the requirements of a grantable petition under 37 CFR 1.137(b). An Amendment in response to the October 16, 2003 Office action is filed with the instant petition. Accordingly, the petition is granted.

This application is being forwarded to Technology Center Art Unit 3643 for processing of the Amendment, filed April 11, 2005, in due course.

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

Derek L. Woods
Petitions Attorney
Office of Petitions

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DORSEY & WHITNEY LLP
555 CALIFORNIA STREET, SUITE 1000
SUITE 1000
SAN FRANCISCO CA 94104

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SEP 12 2006
OFFICE OF PETITIONS

In re Application of :
Meade :
Application No.: 10/128,131 :
Filed: April 22, 2002 : ON PETITION
Attorney Docket No.: 468901-0002 /A-71446-001 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 10, 2006 (Express Mail date April 6, 2006), to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to properly reply to the final Office action mailed October 6, 2004. No extensions of time were obtained pursuant to 37 CFR 1.136(a) and no reply was received. Therefore, this application became abandoned on January 7, 2005. A Notice of Abandonment was mailed on July 6, 2005.

The Notice of Appeal filed April 10, 2006 (Express Mail date April 6, 2006) has been entered and made of record. Accordingly, the 2-month period for filing the Appeal brief, in triplicate, accompanied by the fee required by law, runs from the date of this decision.

The correspondence address has been changed, as requested. All future correspondence will be mailed to the above-noted correspondence address of record.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $510.00 three month extension of time submitted with the petition was submitted subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account no. 50-2319.

After the mailing of this decision, the file will be forwarded to Technology Center AU 1618 to await receipt of an Appeal brief.

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

Shirene Willis Brantley
Petitions Attorney
Office of Petitions

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THE LUTHER LAW FIRM
12198 E. COLUMBINE DR.
SCOTTSDALE, AZ 85259

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JUN 2 2 2006

OFFICE OF PETITIONS

In re Application of :
Bomberger, et al :
Application No. 10/128,147 : ON PETITION
Filed: April 22, 2002 :
Attorney Docket No. BAYR-001DVCON :

This is a decision on the petition under 37 CFR 1.137(b), filed November 3, 2005 (certificate of mailing date November 1, 2005), to revive the above-identified application.

This application became abandoned for failure to timely pay the issue fee and publication fee within three (3) months of the mailing of the Notice of Allowance and Fee(s) Due, mailed January 26, 2005. Accordingly, this application became abandoned on April 27, 2005. A Notice of Abandonment was mailed on July 11, 2005.

Applicants have submitted a proper reply in the form of the issue fee, the publication fee and a completed PTOL-85, an acceptable statement of the unintentional nature of the delay in responding to the January 26, 2005 Notice of Allowance and Fee(s) Due, and the petition fee.

The petition is **granted**.

This application is being forwarded to Publishing Division for processing into a patent.

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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

Mail Date: 04/20/2010

Applicant	: Robert C. Landick	: DECISION ON REQUEST FOR
Patent Number	: 7595147	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/128,151	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/23/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **889** 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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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

Mail Date: 05/17/2010

Applicant : Robert C. Landick
Patent Number : 7595147
Issue Date : 09/29/2009
Application No: 10/128,151
Filed : 04/23/2002

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

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

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

The patent term adjustment has been determined to be **993** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (PTA) days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days** from the mail date of this notice, whichever is longer, to file a request for reconsideration of this PTA calculation. See 35 U.S.C. § 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4).

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

Patentee should be aware that in order to preserve the right of review of the USPTO's PTA determination in the United States District Court for the District of Columbia, patentee must ensure that the steps required under 35 U.S.C. § 154 (b)(4) are taken in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. § 154(b)(4).

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SYNNESTVEDT & LECHNER
2600 ARAMARK TOWER
1101 MARKET STREET
PHILADELPHIA, PA 19107-2950

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AUG 16 2006
OFFICE OF PETITIONS

In re Application of :
S. Kim :
Application No. 10/128,154 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. P21,330-C USA :

This is a decision on the petition under 37 CFR 1.137(b), filed May 15, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the Issue fee in a timely manner in reply to the Notice of Allowance mailed February 16, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on May 17, 2005.

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

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HICKMAN PALERMO TRUONG & BECKER, LLP
2055 GATEWAY PLACE
SUITE 550
SAN JOSE, CA 95110

Mail Date: 04/21/2010

Applicant	: Anton Okmianski	: DECISION ON REQUEST FOR
Patent Number	: 7600003	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/128,163	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/22/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1458** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 7

Pillsbury Winthrop LLP
Intellectual Property Group
Suite 2800
725 South Figueroa Street
Los Angeles, CA 90017-5406

COPY MAILED

AUG 1 5 2002

OFFICE OF PETITIONS

In re Application of :
Arditi, et al. :
Application No. 10/128,166 : DECISION ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. PW 277466 :

This is a decision on "Petition to Accept Apparently Omitted Figures Under 37 C.F.R. §1.81(c)," filed July 1, 2002, which is properly treated as a petition under 37 CFR §1.182, requesting, in effect, that the "Notice of Omitted Items in a Nonprovisional Application" mailed May 22, 2002 be withdrawn.

Application papers in the above-identified application were filed on April 23, 2002. However, on May 22, 2002, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Item(s) in a Nonprovisional Application." Applicants were notified that the application papers had been accorded a filing date; however, Figures 2f - 21 described in the specification appeared to have been omitted.

In reply, applicant timely filed the instant petition, asserting that the drawing figures, though improperly labeled due to typographical error, were present in the application as filed. Petitioner states that as originally filed, Figure 1 was inadvertently labeled as Figure 2, and similarly, Figure 2 was inadvertently labeled as Figure 1. Accompanying the petition were three sets of substitute drawings of drawing sheets 1 of 3 and 2 of 3, containing Figs. 1A-1E and Figs. 2A-2L respectively. The figures were correctly labeled and the drawings were in color. A petition to accept color drawings/photographs was previously filed April 23, 2002 along with the original three sets of the drawings in color.

It is obvious from the petition (and a review of the application file) that no drawing was actually missing on April 23, 2002. Rather, the drawings of Figures 2f-21 were simply mislabeled as a result of applicant's filing error. However, the "Notice of Omitted Item(s)" mailed May 22, 2002, was correct in stating that Figures 2f-21 described in the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.

Accordingly, the petition is **DISMISSED**.

The petition fee is required, since the petition was not necessary to correct any PTO error.

Color photographs and color drawings are acceptable only for examination purposes unless a petition filed under 37 CFR 1.84(a)(2) is granted permitting their use as acceptable

drawings. Petitions to accept color photographs or color drawings are considered by the Supervisory Patent Examiner. A grantable petition under 37 CFR 1.84(a)(2) must explain why the color drawings or color photographs are necessary and must be accompanied by: (1) the fee set forth in 37 CFR 1.17(h); (2) three sets of the color photographs or color drawings; and (3) an amendment to the specification inserting the following statement:

> The file of this patent contains at least one drawing/photograph executed in color. Copies of this patent with color drawing(s)/photograph(s) will be provided by the Office upon request and payment of the necessary fee.

See 37 CFR 1.84(a)(2)(iv) and MPEP §608.02.

This application is being forwarded to the Office of Initial Patent Examination for processing with a filing date of April 23, 2002, using 1 sheet of color drawings (sheet 3 of 3) filed April 23, 2002 (and correctly labeled); and the 2 sheets of color drawings (sheets 1 and 2 of 3) filed on July 1, 2002 to correct the error in labeling of figures 2f - 21.

The petition to accept color drawings/photographs will be considered by the Supervisory Patent Examiner in due course.

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
Office of the Deputy Commissioner
for Patent Examination Policy

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AMERICAS HOLDING, INC.
1200 FIRESTONE PARKWAY
AKRON, OH 44317

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AUG 2 5 2004

OFFICE OF PETITIONS

In re Application of :
Maurizio Farne :
Application No. 10/128,173 : ON PETITION
Filed: April 22, 2002 :
Attorney Docket No. P01020US1A :

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 submit the issue/publication fee in a timely manner in reply to the Notice of Allowance mailed April 26, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on July 27, 2004.

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

This matter is being referred to Publishing Division.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
1300 I Street, N.W.
Washington DC 20005-3315

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APR 0 2 2003

OFFICE OF PETITIONS

In re Application of :
Pinkas, Sander, and Horne :
Application No. 10/128,182 :
Filed: April 22, 2002 : DECISION ON PETITION
Attorney Docket No. 7451.0045-00 :
Invention:SYSTEMS AND METHODS FOR CONDUCTING :
TRANSACTIONS AND COMMUNICATIONS USING A :
THIRD PARTY :

This is in response to the petition under 37 CFR 1.47(a), filed December 26, 2002.

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

The instant petition was filed in response to the "Notice to File Missing Parts of Nonprovisional Application" (the "Notice") mailed may 29, 2002, which required an oath or declaration be filed and a surcharge to be remitted. The Notice set forth an extendable period for reply of two months from its mailing date. The instant petition was filed on December 26, 2002, along with a request for an extension of time within the fifth month.

Petitioner has established that, despite being presented with a complete copy of the application papers, inventor Pinkas 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.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Binyamin Pinkas
1 River court
Jersey City, NJ 07310

In re Application of
Pinkas, Sander, and Horne :
Application No. 10/128,182 :
Filed: April 22, 2002 : LETTER
Attorney Docket Number: 7451.0045-00 :
For: SYSTEMS AND METHODS FOR CONDUCTING: TRANSACTIONS AND COMMUNICATIONS USING : A THIRD PARTY

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APR 0 2 2003

OFFICE OF PETITIONS

Dear Mr. Pinkas:

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

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

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

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
1300 I Street, N.W.
Washington DC 20005-3315

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BAKER & DANIELS LLP
111 E. WAYNE STREET
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FORT WAYNE, IN 46802

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OFFICE OF PETITIONS

In re Application of	:	
Cox et al.	:	
Application No. 10/128,184	:	
Filed: April 23, 2002	:	DECISION ON
Atty Docket Number: TEP0192-01/P-101	:	PETITION

This is a decision in response to the Petition to Withdraw Abandonment, filed June 29, 2004. The petition is properly treated Under 37 CFR 1.181. The delay in treating this petition is regretted.

The petition is **granted.**

The above-identified application became abandoned for failure to timely and properly respond to the non-final Office action, mailed November 25, 2005. The Notice set a three (3) month period for reply. No response having been received, the application became abandoned February 26, 2004. A Notice of Abandonment was mailed June 1, 2004.

Applicant avers non-receipt of the non-final Office action. In support, Applicant has provided the necessary statements and copies of the docket record where the non-received Office action would have been entered had it been received and docketed. Applicant has demonstrated by a preponderance of the evidence that the non-final Office action was not received.

The Notice of Abandonment is hereby withdrawn.

No petition fee has been charged and none is due.

The application file is being referred to Technology Center 1772 for re-mailing of the non-final Office action.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

BAKER & DANIELS
111 E. WAYNE STREET
SUITE 800
FORT WAYNE IN 46802

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SEP 0 6 2002

OFFICE OF PETITIONS

In re Application of : DECISION GRANTING
Coates et al. : PETITION
Application No. 10/128/185 :
Filed: April 23, 2002 :
Attorney Docket No. LPL0002 :

This is a decision on the petition filed July 8, 2002, requesting that the above-identified application be accorded a filing date of April 23, 2002.

On April 23, 2002, applicants filed the above-identified application. However, on June 5, 2002, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application," requiring drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on April 23, 2002, describes a drawing containing Figure 1; however, it appears the United States Patent and Trademark Office (Office) did not receive that drawing.

In response, applicants filed the present petition, and paid the petition fee. Applicants admitted that the application was deposited without drawings. Applicants asserted that Figure 1 was not necessary for an understanding of the subject matter, which they seek to patent, and therefore, was not necessary under 35 USC 113. Applicants stated that upon granting the present petition, applicants will submit Figure 1 to the examiner as supplementing the written description found in Example 3.

As stated in MPEP § 601.01(f), it is the practice of the Office to treat an application that contains at least one process or method claim as an application for which a drawing is 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 and the names of all the inventors.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Application" mailed June 5, 2002, was sent in error and is hereby vacated. The application is accorded a filing date of April 23, 2002.

Accordingly, the petition is granted.

No petition fee is necessary. The $130.00 petition fee will be credited to Deposit Account No. 02-0385.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 23, 2002, indicating in the Office records that "0" sheets of drawings were present on filing, and the mailing of a corrected filing receipt.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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OFFICE OF PETITIONS

In re Application of :
KAO, et al. :
Application No. 10/128,198 : DECISION GRANTING PETITION
Filed: April 23, 2002 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 096429-9156-US01 :

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 August 15, 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 should be directed to Monica A. Graves at (571) 272-7253.

This application is being referred to Technology Center AU 1796 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

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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OFFICE OF PETITIONS

In re Application of	:	
Kao, et al.	:	DECISION ON APPLICATION
Application No. 10/128,198	:	FOR
Filed: April 23, 2002	:	PATENT TERM ADJUSTMENT
Atty Docket No. 096429-9156-US01	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)," filed April 1, 2009. Applicants request that the initial determination of patent term adjustment be corrected from two hundred thirty-five (235) days to two hundred seventy-seven (277) days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED to the extent indicated herein**.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is ONE HUNDRED FOURTEEN (114) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On January 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 235 days. On April 1, 2009, applicants timely[1] submitted an application for patent term adjustment. Pursuant to applicants' authorization, applicants' deposit account will be charged a $200.00 fee under 37 CFR 1.18(e). This fee is required and will not be refunded. Applicants request correction of the PTA to 277 days.

[1] The Issue Fee payment was also received on August 15, 2007.

Applicants state that this patent is not subject to a terminal disclaimer.

Applicants' basis for increasing the patent term adjustment has been considered and found persuasive.

Applicants are correct that the patent term adjustment should be increased by 42 days due to an erroneous duplicate entry of applicant delay associated with the filing of a response to a non-final Office action on April 16, 2007. Therefore, the second of the duplicate 42 day periods of reduction is being removed.

However, there are bases for decreasing the patent term adjustment.

The Office was erroneously charged with a 99 day adjustment in connection with the Examiner's Answer mailed on August 24, 2005. There was no Office delay, within the meaning of 35 U.S.C. 154(b)(1)(A)(ii), in taking action in response to the date on which an appeal was taken in this application.

35 U.S.C. 154(b)(1)(A) provides, in pertinent part, that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to –
>
> ...
>
> (ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken;

37 CFR 1.702(a) provides, in pertinent part that subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

> (2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

However, as provided in 37 CFR 1.703(a), this period is calculated as:

> (4) The number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

Furthermore, as stated in the Final Rule[2],

> Section 1.703(a)(4) also pertains to the provisions of 35 U.S.C. 154(b)(1)(A)(ii). Section 1.703(a)(4) specifies that the period is the number of days, if any, beginning on the day after the date that is four months after the date an appeal brief in compliance with 1.192 was filed and ending on the mailing date of any of an examiner's answer under 1.193, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first. As discussed below, the phrase "the date on which" an "appeal was taken" in 35 U.S.C. 154(b)(1)(A)(ii) means the date on which an appeal brief (and not a notice of appeal) was filed. The phrase "appeal brief in compliance with 1.192" requires that:(1) the appeal brief fee (1.17(c)) be paid (1.192(a)); and (2) the appeal brief complies with 1.192(c)(1) through (c)(9). (*See also* the Response to Comment 38).

In this instance, an appeal brief in compliance with 1.192 was filed on June 30, 2006 and the Office took action in response on August 24, 2006 by mailing an Examiner's Answer. As this was within four months of the filing of the compliant appeal brief there was no Office delay within the meaning of the statute or the rules. The period of adjustment of 99 days is being removed.

There are three additional bases of applicant delay that result in decreasing the patent term adjustment.

First, a period of reduction of 35 days should be entered in connection with a response to a non-final Office action, filed

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[2] See *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 56366 (September 18, 2000).

on June 20, 2005. On February 16, 2005, the Office mailed a non-final Office Action. Applicants replied on June 20, 2005. Pursuant to 37 CFR 1.704(b), a 35 day period of reduction should be entered, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request, May 17, 2005, and ending on the date the reply was filed, June 20, 2005.

Second, a period of reduction of 3 days should be entered in connection with a supplemental response, filed on October 27, 2006. On October 24, 2006, applicants filed a Request for Continued Examination (RCE). On October 27, 2006, applicants filed an Information Disclosure Statement (IDS). 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 October 24, 2006, applicants filed an IDS on October 27, 2006. The record does not support a conclusion that the IDS was expressly requested by the examiner. Further, a review of the IDS filed on October 27, 2006, reveals that it did not include a proper § 1.704(d) statement.[3]

Accordingly, a period of reduction of 3 days is being entered.

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[3] Applicants are reminded that 37 CFR 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 first cited ..." for the exception to apply. See 69 FR 21704, Apr. 22, 2004.

Third, a review of the record reveals that after the issue fee was paid on August 15, 2007, a further period of reduction should have been entered.

Specifically, a reduction of 26 days should have been entered based on 37 CFR 1.704(c)(10). 37 CFR 1.704(c) provides that:

> Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:
>
> (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;

In this instance, it is undisputed that 1) an Information Disclosure Statement (IDS) that did not include a proper § 1.704(d) statement, 2) a Request for Continued Examination (RCE), and 3) a Petition to Withdraw from Issue were filed after the mailing of the July 20, 2007 Notice of Allowance and the August 15, 2007 payment of the issue fee. An IDS, an RCE, and a Petition to Withdraw from Issue were filed on February 22, 2008. A Petition Decision was mailed on February 29, 2008 (a 8 day reduction) and a non-final Office action in reply to the RCE and IDS was mailed on March 18, 2008 (a 26 day reduction). Since the 8 day reduction for the Petition overlaps with the 26-day reduction for the RCE and IDS, a total period of 26 days for applicant delay is being entered.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is ONE HUNDRED FOURTEEN

(114) days (338 days for Office delay minus 45 + 35 + 3 + 3 + 42 + 26 + 61 + 9 days for applicant delay).

It is noted that applicants paid the issue fee twice. Applicants paid $700.00 on August 15, 2007 and applicants paid $755.00 on April 16, 2009, after the second Notice of Allowance was mailed. As the current issue fee is $755.00, applicants' credit card will be credited 700.00.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PALM calculation

Day : Wednesday

PALM INTRANET

Date: 9/30/2009
Time: 20:26:35

PTA Calculations for Application: 10/128198			
Application Filing Date:	04/23/2002	PTO Delay (PTO):	437
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	202
Post-Issue Petitions:	0	Total PTA (days):	114
PTO Delay Adjustment:	-121		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
184	09/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		26	
183	09/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		3	
182	09/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		35	
181	09/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	42		
180	09/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		99	
174	01/28/2009	MAIL NOTICE OF ALLOWANCE			
173	01/26/2009	ISSUE REVISION COMPLETED			
172	01/26/2009	DOCUMENT VERIFICATION			
171	01/26/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
170	01/26/2009	NOTICE OF ALLOWABILITY			
169	01/16/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
168	01/21/2009	DATE FORWARDED TO EXAMINER			
167	01/16/2009	AMENDMENT AFTER FINAL REJECTION		9	163
166	01/16/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
165	01/16/2009	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
164	01/16/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
163	10/07/2008	MAIL FINAL REJECTION (PTOL - 326)			
162	10/01/2008	FINAL REJECTION			
160	09/21/2008	DATE FORWARDED TO EXAMINER			
159	08/18/2008	RESPONSE AFTER NON-FINAL ACTION		61	156
158	08/18/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
156	03/18/2008	MAIL NON-FINAL REJECTION			

155	03/12/2008	NON-FINAL REJECTION			
153	02/22/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
152	02/28/2008	FINISHED INITIAL DATA CAPTURE			
151	02/27/2008	DATE FORWARDED TO EXAMINER			
150	02/22/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
149	02/29/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
148	03/03/2008	MAIL-RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
147	02/29/2008	RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
146	02/29/2008	TC RETURN TO PUBS			
142	02/27/2008	CASE DOCKETED TO EXAMINER IN GAU			
141	02/22/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
140	02/22/2008	PETITION ENTERED			
139	02/22/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
138	02/22/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
137	02/16/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
136	02/15/2008	WORKFLOW - QUERY REQUEST - FINISH			
135	02/13/2008	TC RETURN TO PUBS			
134	02/13/2008	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
133	02/08/2008	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
129	01/31/2008	PUBS CASE REMAND TO TC			
128	02/01/2008	WORKFLOW - QUERY REQUEST - BEGIN			
127	08/30/2007	TC RETURN TO PUBS			
126	08/13/2007	PUBS CASE REMAND TO TC			
125	08/15/2007	ISSUE FEE PAYMENT VERIFIED			
124	08/15/2007	ISSUE FEE PAYMENT RECEIVED			
123	08/15/2007	WORKFLOW - QUERY REQUEST - BEGIN			
122	08/10/2007	SEQUENCE FORWARDED TO PUBS ON TAPE			
121	07/23/2007	EXPORT TO INITIAL DATA CAPTURE			
120	07/20/2007	MAIL NOTICE OF ALLOWANCE			
120	07/20/2007	MAIL NOTICE OF ALLOWANCE			

119	07/18/2007	ISSUE REVISION COMPLETED			
119	07/18/2007	ISSUE REVISION COMPLETED			
118	07/18/2007	DOCUMENT VERIFICATION			
118	07/18/2007	DOCUMENT VERIFICATION			
117	07/18/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
117	07/18/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
116	07/17/2007	NOTICE OF ALLOWABILITY			
116	07/17/2007	NOTICE OF ALLOWABILITY			
115	07/09/2007	DATE FORWARDED TO EXAMINER			
115	07/09/2007	DATE FORWARDED TO EXAMINER			
114	07/06/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
114	07/06/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
113	07/09/2007	DATE FORWARDED TO EXAMINER			
113	07/09/2007	DATE FORWARDED TO EXAMINER			
112	07/06/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
112	07/06/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
111	07/09/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
111	07/09/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
110	07/06/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
110	07/06/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
109	05/08/2007	MAIL FINAL REJECTION (PTOL - 326)			
109	05/08/2007	MAIL FINAL REJECTION (PTOL - 326)			
108	05/07/2007	FINAL REJECTION			
108	05/07/2007	FINAL REJECTION			
107	04/10/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
107	04/10/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
106	04/10/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
106	04/10/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			

105	04/18/2007	DATE FORWARDED TO EXAMINER			
105	04/18/2007	DATE FORWARDED TO EXAMINER			
104	04/16/2007	RESPONSE AFTER NON-FINAL ACTION		42	99
104	04/16/2007	RESPONSE AFTER NON-FINAL ACTION		42	99
103.7	04/10/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
103.7	04/10/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
103	04/10/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
103	04/10/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
102.7	04/10/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
102.7	04/10/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
102	04/10/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
102	04/10/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
101	03/16/2007	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
101	03/16/2007	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
100	03/13/2007	DATE FORWARDED TO EXAMINER			
100	03/13/2007	DATE FORWARDED TO EXAMINER			
99.1	03/05/2007	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
99.1	03/05/2007	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
99	03/05/2007	RESPONSE AFTER NON-FINAL ACTION			
99	03/05/2007	RESPONSE AFTER NON-FINAL ACTION			
98	12/05/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
98	12/05/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
97	12/06/2006	MAIL NON-FINAL REJECTION			
97	12/06/2006	MAIL NON-FINAL REJECTION			
96	12/05/2006	NON-FINAL REJECTION			
96	12/05/2006	NON-FINAL REJECTION			
95	10/27/2006	INFORMATION DISCLOSURE STATEMENT			

		CONSIDERED			
95	10/27/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
94	10/27/2006	REFERENCE CAPTURE ON IDS			
93.7	10/27/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
93	10/27/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
92	10/24/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
91	10/27/2006	DATE FORWARDED TO EXAMINER			
90	10/24/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
89	10/27/2006	DATE FORWARDED TO EXAMINER			
88	10/24/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
87	10/27/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
86	10/24/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
85	09/21/2006	EXAM. ANS. REVIEW COMPLETE			
84	09/21/2006	APPEAL BRIEF REVIEW COMPLETE			
83	08/24/2006	MAIL EXAMINER'S ANSWER	99		65
82	08/21/2006	EXAMINER'S ANSWER TO APPEAL BRIEF			
81	07/12/2006	DATE FORWARDED TO EXAMINER			
80	06/30/2006	SUPPLEMENTAL APPEAL BRIEF			
79	07/10/2006	CORRESPONDENCE ADDRESS CHANGE			
78	07/11/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
77	07/06/2006	DATE FORWARDED TO EXAMINER			
76	06/30/2006	APPEAL BRIEF FILED			
75	06/16/2006	MISCELLANEOUS INCOMING LETTER			
74	06/16/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
73	06/06/2006	NOTICE -- DEFECTIVE APPEAL BRIEF			
72	04/24/2006	DATE FORWARDED TO EXAMINER			
71.1	04/17/2006	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
71	04/17/2006	APPEAL BRIEF FILED			
70	04/05/2006	CORRESPONDENCE ADDRESS CHANGE			
69	04/04/2006	CORRESPONDENCE ADDRESS CHANGE			

68	04/05/2006	NOTICE -- DEFECTIVE APPEAL BRIEF			
67	12/23/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
66	01/20/2006	DATE FORWARDED TO EXAMINER			
65.1	01/17/2006	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
65	01/17/2006	APPEAL BRIEF FILED			
64.7	12/23/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
64	12/23/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
63	12/20/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
62	12/13/2005	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
61	11/14/2005	NOTICE OF APPEAL FILED		3	52
60	10/26/2005	MAIL ADVISORY ACTION (PTOL - 303)			
59	10/24/2005	ADVISORY ACTION (PTOL-303)			
58	10/20/2005	DATE FORWARDED TO EXAMINER			
57	10/14/2005	AMENDMENT AFTER FINAL REJECTION			
56	09/28/2005	MAIL ADVISORY ACTION (PTOL - 303)			
55	09/26/2005	ADVISORY ACTION (PTOL-303)			
54	09/14/2005	DATE FORWARDED TO EXAMINER			
53	09/09/2005	AMENDMENT AFTER FINAL REJECTION			
52	08/11/2005	MAIL FINAL REJECTION (PTOL - 326)			
51	08/04/2005	FINAL REJECTION			
50	08/05/2005	MAIL NOTICE OF WITHDRAWN ACTION			
49	08/04/2005	LETTER WITHDRAWING / VACATING OFFICE ACTION			
48	07/26/2005	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
47	06/23/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
46	06/28/2005	DATE FORWARDED TO EXAMINER			
45.1	06/20/2005	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
45	06/20/2005	RESPONSE AFTER NON-FINAL ACTION			
44	06/20/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
43	06/20/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S)			

		RECEIVED			
42	02/16/2005	MAIL NON-FINAL REJECTION			
41	02/15/2005	NON-FINAL REJECTION			
40	01/03/2005	DATE FORWARDED TO EXAMINER			
39	12/09/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
38	12/09/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
37	12/09/2004	WORKFLOW INCOMING AMENDMENT IFW			
36	10/12/2004	MAIL RESTRICTION REQUIREMENT			
35	10/08/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
34	09/23/2004	DATE FORWARDED TO EXAMINER			
33	09/20/2004	RESPONSE TO ELECTION / RESTRICTION FILED		45	29
32	09/20/2004	WORKFLOW INCOMING AMENDMENT IFW			
31	09/14/2004	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
30	08/30/2004	DATE FORWARDED TO EXAMINER			
29.1	08/06/2004	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
29	08/06/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
28	08/06/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
27	08/06/2004	WORKFLOW INCOMING PETITION IFW			
26	05/26/2004	MAIL RESTRICTION REQUIREMENT	338		-1
25	05/25/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
24	04/20/2004	CASE DOCKETED TO EXAMINER IN GAU			
23	01/23/2004	REFERENCE CAPTURE ON IDS			
22.7	09/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	09/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	07/08/2002	MISCELLANEOUS INCOMING LETTER			
20	06/04/2002	MISCELLANEOUS INCOMING LETTER			
19	06/04/2002	MISCELLANEOUS INCOMING LETTER			
18	01/23/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
17	01/23/2004	CASE DOCKETED TO EXAMINER IN GAU			
16	12/17/2003	TRANSFER INQUIRY TO GAU			
14	08/25/2002	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			

13	08/09/2002	APPLICATION DISPATCHED FROM OIPE			
12	08/08/2002	APPLICATION IS NOW COMPLETE			
11	07/08/2002	ADDITIONAL APPLICATION FILING FEES			
10	07/08/2002	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
9	07/30/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
8	06/25/2002	SEQUENCE ERRORS			
7	06/04/2002	ADDITIONAL APPLICATION FILING FEES			
6	06/04/2002	SMALL ENTITY STATEMENT (37 CFR 1.27)			
5	06/04/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	05/15/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	05/13/2002	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
2	05/08/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	04/23/2002	INITIAL EXAM TEAM NN			

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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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MICHAEL BEST & FRIEDRICH LLP
100 East Wisconsin Avenue
Suite 3300
Milwaukee, WI 53202

Mail Date: 04/21/2010

Applicant	: Weiyuan John Kao	: DECISION ON REQUEST FOR
Patent Number	: 7615593	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/128,198	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/23/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **408** 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.

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)
6656158	2003-12-02	10128203	2002-04-23	59249-0036 (INSL-123)

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	/R. Anthony Diehl, Reg. No. 38432/	Date (YYYY-MM-DD)	2008-02-20
Name	R. Anthony Diehl	Registration Number	38432

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. 6656158
Issue Date: December 2,2003
Application No. 10128203
Filed: April 23,2002
Attorney Docket No. 59249-0036 (INSL-123)

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

This is a decision on the electronic petition, filed February 20,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 20,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6656159
Issue Date: December 2,2003
Application No. 10128205
Filed: April 23,2002
Attorney Docket No. 59249-0035 (INSL-122)

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

This is a decision on the electronic petition, filed February 20,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 20,2008 . 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

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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)
6656159	2003-12-02	10128205	2002-04-23	59249-0035 (INSL-122)

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)
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○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

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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	/R. Anthony Diehl, Reg. No. 38432/	Date (YYYY-MM-DD)	2008-02-20
Name	R. Anthony Diehl	Registration Number	38432

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

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

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

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JJGJR.: 03-05

Paper No: __

INSULET CORPORATION
9 OAK PARK DRIVE
BEDFORD MA 01730

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MAR 2 4 2005

OFFICE OF PETITIONS

In re Application of
Flaherty, et al. :
Application No. 10/128,206 :
Filing Date: 23 April, 2002
Attorney Docket No. 59249-033 (INSUL-121) :

This is a decision on the petition filed on 14 March, 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) **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. §1.137(b)."

(2) Thereafter, there will be no further reconsideration of this matter.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Notice of Allowance and Fees Due

mailed on 15 November, 2004, with reply due under a non-extendable deadline on or before 15 February, 2005;

- the instant application went abandoned after midnight 15 February, 2005;
- it does not appear that the Office mailed a Notice of Abandonment before the instant petition was filed;
- with the instant petition and fee, Petitioner filed as the reply a credit card authorization for payment of the Issue Fee under the prior schedule, and Petitioner apparently failed to review the current fee schedule at www.uspto.gov –with the result that the fees authorized and paid were $685.00 rather than the current $700.00, and so were $15.00 less than required.

At the time of filing any paper with a fee, Petitioner always should review the fee schedule at the Office website to ascertain what fee changes, if any, are effective at that time.

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

---

[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).

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

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.

As indicated above, Petitioner has failed to satisfy the "reply" requirement (*i.e.*, the Issue Fee) of the regulation.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) is **dismissed**.

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

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

By FAX: IFW Formal Filings
(703) 872-9306
ATTN.: Office of Petitions

---

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

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

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

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

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JJGJR.: 07-05

Paper No: __

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OFFICE OF PETITIONS

In re Application of
Flaherty, et al. :
Application No. 10/128,206 :
Filing Date: 23 April, 2002
Attorney Docket No. 59249-033 (INSUL-121) :

This is a decision on the petition filed on 29 March, 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 Allowance and Fees Due mailed on 15 November, 2004, with reply due under a non-extendable deadline on or before 15 February, 2005, and the instant application went abandoned after midnight 15 February, 2005;

- the Office did not mail a Notice of Abandonment before the original petition was filed;

- because Petitioner filed with the original petition (and credit card form) as the reply a credit card authorization for payment of the Issue Fee under the prior schedule, and Petitioner apparently failed to review the current fee schedule at www.uspto.gov –with the result that the fees authorized and paid were $685.00 rather than the current $700.00,

and so were $15.00 less than required–the petition was dismissed on 24 March, 2005;

- with the instant petition, Petitioner has paid the proper Issue Fee as the reply.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[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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MAR 15 2005

OFFICE OF PETITIONS

In re Application of :
Scott H. Gillis :
Application No. 10/128,208 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. 14072-011001

This is a decision on the petition, filed March 15, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 18, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter will be forwarded to Technology Center AU 1616 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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Fish & Richardson
225 Franklin Street
Boston, Massachusetts 02110

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OCT 16 2006

OFFICE OF PETITIONS

In re :
Gillis :
Application No. 10/128,208 : RECONSIDERATION OF
Patent No. 6,989,156 : PATENT TERM ADJUSTMENT
Filing Date: April 23, 2002 :
Attorney Docket No. 14072-011001

This decision is in response to applicants' REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT under 37 CFR 1.705(d) timely[1] filed on February 17, 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 TWENTY-FIVE (25) DAYS.

Applicant's request for reconsideration of PTA is **GRANTED**. The correct amount of PTA at the time of the issuance of the patent is TWENTY-FIVE (25)days. The Office will *sua sponte* issue a certificate of correction reflecting this decision. In addition, the Office will correct the PTA determination displayed in PAIR to be consistent with this decision.

Applicant asserts that the Office erred in the 103 days of applicant delay assessed for the MISCELLANEOUS INCOMING LETTER filed on October 14, 2005.[2] Applicants do not contest the ninety-two days (92) days pursuant to 37 CFR 1.702(a)(1);the twenty-seven (27) day reduction under 37 CFR 1.704(b; or the 40-day reduction under 37 CFR 1.704(b)

Applicant's arguments are persuasive. The Office has reviewed the Image File Wrapper (IFW) to determine what has been submitted

[1]Issued on January 24, 2006.

[2]Although applicant did not expressly mention such reduction, the process of elimination leads this Office to conclude that the reduction in question was the one hundred and three day period assessed after the mail date of the notice of allowance.

by applicant after the mail date of the notice of allowance. Applicant merely submitted the required issue fee transmittal form as well as a paper which advises the Office to reapply the previously paid issue fee to the present notice of allowance. Although the PTOL-85 (Part B) expressly says to apply the previously applied issue fee to the present notice of allowance, the Office will not view such paper as a failure to engage in reasonable efforts to conclude prosecution of the application.

Accordingly, at the time of the issuance of the patent, the correct amount of PTA was 25 days (92-(40+ 27)=25).

After the mailing of this decision, the file will be forwarded to the certificate of correction branch for prompt issuance of the certificate of correction.

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 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

Day : Saturday
Date: 10/14/2006

PALM INTRANET

Time: 11:07:25

PTA Calculations for Application: 10/128208			
Application Filing Date:	04/23/2002	PTO Delay (PTO):	92
Issue Date of Patent:	01/24/2006	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	170
Post-Issue Petitions:	0	Total PTA (days):	25
PTO Delay Adjustment:	103		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
107	10/14/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	103		
103	01/24/2006	PATENT ISSUE DATE USED IN PTA CALCULATION			
102	12/15/2005	RECEIPT INTO PUBS			
101	12/15/2005	DISPATCH TO FDC			
100	12/15/2005	APPLICATION IS CONSIDERED READY FOR ISSUE			
99	10/14/2005	ISSUE FEE PAYMENT VERIFIED			
98	10/14/2005	MISCELLANEOUS INCOMING LETTER		103	
97	12/02/2005	RECEIPT INTO PUBS			
96	08/01/2005	EXPORT TO INITIAL DATA CAPTURE			
95	07/26/2005	MAIL NOTICE OF ALLOWANCE			
94	07/25/2005	ISSUE REVISION COMPLETED			
93	07/25/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
92	07/25/2005	NOTICE OF ALLOWABILITY			
91	06/23/2005	DATE FORWARDED TO EXAMINER			
90	06/13/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			
89	06/23/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
88	06/13/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
87	06/13/2005	WORKFLOW - REQUEST FOR RCE - FINISH			
86	06/13/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
85	04/20/2005	EXPORT TO INITIAL DATA CAPTURE			
84	04/12/2005	EXPORT TO INITIAL DATA CAPTURE			
83	04/19/2005	RECEIPT INTO PUBS			

82	04/18/2005	RECEIPT INTO PUBS			
81	04/13/2005	MAIL NOTICE OF ALLOWANCE			
80	04/12/2005	ISSUE REVISION COMPLETED			
79	04/12/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
78	04/12/2005	NOTICE OF ALLOWABILITY			
77	03/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
76	04/12/2005	DATE FORWARDED TO EXAMINER			
75	03/15/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		27	66
74	04/12/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
73	03/15/2005	WORKFLOW - REQUEST FOR RCE - FINISH			
72	03/15/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
71	03/15/2005	RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
70	03/15/2005	PETITION ENTERED			
69	03/14/2005	RECEIPT INTO PUBS			
68	09/11/2004	EXPORT TO INITIAL DATA CAPTURE			
67	01/18/2005	ISSUE FEE PAYMENT RECEIVED			
66	11/16/2004	MAIL NOTICE OF ALLOWANCE			
65	11/15/2004	ISSUE REVISION COMPLETED			
64	11/15/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
63	11/15/2004	CASE DOCKETED TO EXAMINER IN GAU			
62	11/15/2004	NOTICE OF ALLOWABILITY			
61	10/22/2004	REFERENCE CAPTURE ON IDS			
60	10/22/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59	09/20/2004	REFERENCE CAPTURE ON IDS			
58	09/20/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
57	11/12/2004	DATE FORWARDED TO EXAMINER			
56	09/20/2004	REQUEST FOR CONTINUED EXAMINATION (RCE)			
55	11/12/2004	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
54	10/25/2004	WORKFLOW - REQUEST FOR RCE - FINISH			
53	10/12/2004	RECEIPT INTO PUBS			

52	10/06/2004	RECEIPT INTO PUBS			
51	09/20/2004	WORKFLOW INCOMING AMENDMENT IFW			
50	09/20/2004	WORKFLOW - REQUEST FOR RCE - BEGIN			
49	09/02/2004	MAIL NOTICE OF ALLOWANCE			
48	09/02/2004	MAIL OATH OF DECLARATION REQUIRED			
47	09/02/2004	MAIL EXAMINER'S AMENDMENT			
46	05/06/2004	REFERENCE CAPTURE ON IDS			
45	09/01/2004	ISSUE REVISION COMPLETED			
44	09/01/2004	OATH OR DECLARATION REQUIRED			
43	09/01/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
42	09/01/2004	EXAMINER'S AMENDMENT COMMUNICATION			
41	09/01/2004	NOTICE OF ALLOWABILITY			
40	04/23/2002	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
39	05/06/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38	07/30/2004	DATE FORWARDED TO EXAMINER			
37	05/06/2004	REQUEST FOR CONTINUED EXAMINATION (RCE)			
36	07/30/2004	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
35	04/23/2002	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
34	07/21/2004	WORKFLOW - REQUEST FOR RCE - FINISH			
33	06/30/2004	RECEIPT INTO PUBS			
32	05/07/2004	RECEIPT INTO PUBS			
31	05/06/2004	WORKFLOW INCOMING AMENDMENT IFW			
30	05/06/2004	WORKFLOW - REQUEST FOR RCE - BEGIN			
29	04/30/2004	WORKFLOW - FILE SENT TO CONTRACTOR			
28	03/19/2004	MAIL NOTICE OF ALLOWANCE			
27	03/19/2004	MAIL OATH OF DECLARATION REQUIRED			
26	03/19/2004	MAIL EXAMINER'S AMENDMENT			
25	03/18/2004	ISSUE REVISION COMPLETED			
24	03/18/2004	OATH OR DECLARATION REQUIRED			
23	03/18/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
22	03/18/2004	EXAMINER'S AMENDMENT COMMUNICATION			
21	03/18/2004	NOTICE OF ALLOWABILITY			

20	01/12/2004	REFERENCE CAPTURE ON IDS			
19	01/09/2004	IFW AMENDED CASE PROCESSING COMPLETE			
18	01/09/2004	DATE FORWARDED TO EXAMINER			
17	12/22/2003	RESPONSE AFTER NON-FINAL ACTION			
16	07/11/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	09/23/2003	MAIL NON-FINAL REJECTION	92		-1
14	09/22/2003	NON-FINAL REJECTION			
13	12/14/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	04/01/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	03/05/2003	CORRESPONDENCE ADDRESS CHANGE			
10	03/06/2003	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
9	01/22/2003	CASE DOCKETED TO EXAMINER IN GAU			
8	10/17/2002	APPLICATION DISPATCHED FROM OIPE			
7	10/16/2002	APPLICATION IS NOW COMPLETE			
5	09/30/2002	ADDITIONAL APPLICATION FILING FEES		40	3
4	09/30/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
3	05/21/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
2	05/04/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	04/23/2002	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 6,989,156 B2

DATED : Jan. 24, 2006

INVENTOR(S) : Gillis

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (0) days

Delete the phrase "by 0 days" and insert – by 25 days--

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

Maurice J. Pirio
PERKINS COIE LLP/MSFT
P.O. BOX 1247
SEATTLE, WA 98111-1247

In re Application of: Su, Jinyan et al.
Application No. **10/128,218**
Filed: April 23, 2002
Atty Docket No: 418268766US
Title of Invention: SYSTEM FOR PROCESSING MESSAGES TO SUPPORT NETWORK TELEPHONY SERVICES

DECISION ON PETITION UNDER 37 CFR § 1.181

This is a decision on the Request for Withdrawal of a holding of abandonment and for oral hearing filed on March 7, 2008. The Request has been treated as a petition under 37 C.F.R. § 1.181.

The petition to withdraw the holding of abandonment is **GRANTED**. However, the request for oral hearing is **DISMISSED**.

BACKGROUND

On April 19, 2007, Appellant filed an Appeal Brief under 37 C.F.R. § 41.37 (a).

On July 30, 2007, the USPTO issued a Non-Compliant stated that the brief does not contain a concise statement of each ground of rejection presented for review. The Appeal Brief does not contain a proper summary of the claimed subject matter.

On August 30, 2007, Applicants filed a second Appeal Brief in order to move the description of the prior art under a different heading as argued by the Examiner. Applicants also requested clarification as to precisely what the Examiner believes "appears" to be an argument in the issues subsection.

On February 7, 2008, the USPTO issued another office action to dismiss the Appeal Brief since Applicant did not comply with the reasons for the non-compliance.

RULES, REGULATIONS AND PROCEDURES

MPEP 1205.02 [R-3] states in part that:

(v) Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) Grounds of rejection to be reviewed on appeal. A concise statement of each ground of rejection presented for review. ***For example, the statement*** "Whether claims 1 and 2 are unpatentable" would not comply with the rule, while the statements "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones," and "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 112, first paragraph, as being based on a nonenabling disclosure" would comply with the rule. *The statement cannot include any argument concerning the merits of the ground of rejection presented for review. Arguments should be included in the "Argument" section of the brief.*

MPEP 1209 [R-3] Oral Hearing states in part that:

37 CFR 41.47(b) provides that an appellant who desires an oral hearing before the Board must request the hearing by filing, in a separate paper captioned "REQUEST FOR ORAL HEARING," a written request therefor, accompanied by the appropriate fee set forth in 37 CFR 41.20(b) (3), within 2 months after the date of the examiner's answer or supplemental examiner's answer.

OPINION

A review of the file indicates that the Appeal Brief filed on April 19, 2007 contained under the "*V. Summary of claimed subject matter*" subheading, the following sections: "**A.** Overview of Appellant's Technology and Prior Art" under which included a: **1.** "Appellant's Technique" and **2.** "The Oberland Reference" and **B.** "Independent claim 14".

"The Oberland Reference" subheading under "*V. Summary of claimed subject matter*" does not pertain to a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters, as required by the above mentioned rule.

Supplemental Appeal Brief filed August 30, 2007 and March 07, 2009 included under the "*V. Summary of claimed subject matter*" subheading an: "**A.** Overview of Appellant's Technology" and "**B.** Independent claim 14" which included a concise explanation of the subject matter defined in this independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters, as required. Thus, effectively removing the subheading "The Oberland Reference" section from the "*V. Summary of claimed subject matter*" heading.

A review of the file indicates that the Appeal Brief filed on April 19, 2007 contained under "*VI. Grounds of rejection to be reviewed on appeal*" subheading included the following subheading sections: "**A**. The Examiner's Rejections" and "**B**. Issues".

The "**B**. Issues" section set forth by Appeal Brief included a concise statement of each ground of rejection presented for review, including the statements: "*1. Whether Oberlander's checking of message parameters to determine whether a proxy vendor service is being requested is the same as Appellant's checking an entry to determine whether the message has been previously processed by the next executable module.", ...etc,* which comply with the above-mentioned rule(s).

The "**A**. The Examiner's Rejections" section, the Appeal brief appears to attempt to clarify Examiner's position with respect to the claimed element and the features of the Oberlander reference by discussing a response to argument section of a previous office action. Given that the above-mentioned rules do exemplify what constitute a concise statement of each ground of rejection presented for review, the Brief's discussion as to Examiner's position with respect to the claimed element and the features of the Oberlander reference, would not reasonably appear to comply with the above-mentioned rules in accordance with the exemplarily statements provided thereon (see MPEP §1205.02 (vi)).

Subsequent Supplemental Appeal Brief filed August 30, 2007, contained under "*VI. Grounds of rejection to be reviewed on appeal*" subheading included the following subheading sections: "**A**. The Examiner's Rejections" and "**B**. Issues" substantially the same as presented on April 19, 2007.

Further, Supplemental Appeal Brief filed March 07, 2007 enclosed with instant petition contained under "*VI. Grounds of rejection to be reviewed on appeal*" subheading included only the subheading section: "**B**. Issues" and under "VII. Argument" section, sub-header "**A**. Appellant's Understanding of the Examiner's Rejection and Issues", effectively, removing the sub-heading "**A**. The Examiner's Rejections" (now "A. Appellant's Understanding of the Examiner's Rejection") from under the subheading section "*VI. Grounds of rejection to be reviewed on appeal*", into the "VII. Arguments" section, thus complying with the above-mentioned rule(s).

For the above-mentioned reasons, request for withdrawal of a holding of abandonment is hereby **GRANTED**.

Regarding Petitioner's request for oral hearing (p. 2 of petition), in accordance with 37 CFR 41.47(b) which provides that an appellant who desires an oral hearing before the Board: such request (i) must be filed, in a separate paper captioned "REQUEST FOR ORAL HEARING," a written request therefor, (ii) accompanied by the appropriate fee set forth in 37 CFR 41.20(b)(3), within 2 months after the date of the examiner's answer or supplemental examiner's answer.

Because Petitioner's request fail to comply with the above-mentioned requirements (i-ii) (see MPEP §1209, 37 CFR 41.47(b)), Petitioner's request for oral hearing is hereby **DISMISSED**.

Instant application will be forwarded to Technical Support Staff for withdrawal of abandonment including entry of the Appeal Brief filed 3/07/08 and further forward to Examiner of record for treatment of the Appeal Brief filed 3/07/08.

Any inquiry regarding this decision should be directed to Beatriz Prieto, Quality Assurance Specialist, at (571) 272-3902. A second point of Contact is Kim Huynh, Quality Assurance Specialist which can be reached at (571)-272-4147.

/id/

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Security

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United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/128,218	04/23/2002	Jinyan Su	418268766US	6039

45979 7590 07/28/2009

PERKINS COIE LLP/MSFT
P. O. BOX 1247
SEATTLE, WA 98111-1247

EXAMINER	
FORD, GRANT M	

ART UNIT	PAPER NUMBER
2141	

MAIL DATE	DELIVERY MODE
07/28/2009	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.

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

Mail Date: 04/20/2010

Applicant	: Masahiro Hanya	: DECISION ON REQUEST FOR
Patent Number	: 7625456	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/128,231	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/24/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **0** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

MCGINN & GIBB PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA VA 22182-3817

In re Application of :
Minoru Sasaki :
Application No. 10/128,234 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. 5-079US :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed September 7, 2006.

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

The holding of abandonment is **WITHDRAWN**.

The above-identified application was held abandoned for failure to timely file a reply to the Office action mailed December 14, 2005. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on March 15, 2006. A Notice of Abandonment was mailed on August 22, 2006.

A review of the file reveals that the Office action, for reasons not apparent, was returned to the Office as undeliverable on December 15, 2005. The Office action was addressed to the proper address of record.

The matter is being forwarded to Group Art Unit 2132 for re-mailing of the December 14, 2005 Office action, setting a new period for reply.

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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OCT 13 2005

TECHNOLOGY CENTER 3600

Michael K. Mutter
BIRCH, STEWART, KOLASCH & BIRCH, LLP
P.O. Box 747
Falls Church, VA 22040-0747

In re Application of :
Takumi Fujikawa et al. :
Application No. 10/128,235 :
Filed: April 24, 2002 :
For: NETWORK SYSTEM FOR ONBOARD EQUIPMENT :

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in reply to applicants' petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office, on February 9, 2005.

The petition is **GRANTED.**

A review of the file record reveals that an Office action was mailed March 22, 2004. No reply to the Office action mailed March 22, 2004 was received by the Office and a Notice of Abandoned was mailed to applicants on January 27, 2005.

Applicants state that the Office action mailed March 22, 2004 was never received. Applicants further state that the Office action of March 22, 2004 was returned to the Office as undeliverable because the mailing address was not visible in the window of the envelope and that this was an error on the part of the USPTO.

Further review of the application file record reveals that the Office action mailed on March 22, 2004 was returned to the Office as being undelivered on March 24, 2004. The application file record also reveals that there has been no change in address for the applicants and that all other Office communications mailed to the applicants' address were received. The application file record and the applicants' statement that the Office action mailed on March 22, 2004, was not received by the applicants, provides sufficient proof that the applicants did not receive the Office action mailed on March 22, 2004.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the holding of abandonment and restore the application to pending status, before re-dating and re-mailing the Office Action, originally mailed on March 22, 2004.

Randolph A. Reese
Special Program Examiner
Patent Technology Center 3600
(571) 272-6619

RAR/bkg: 10/6/05

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BIRCH STEWART KOLASCH & BIRCH LLP
PO BOX 747
FALLS CHURCH VA 22040-0747

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OFFICE OF PETITIONS

In re	:
Yamamoto, et al.	: DECISION REGARDING
Application No. 10/128,237	: PATENT TERM ADJUSTMENT
Filed: April 24, 2002	: AND
Patent No. 6,858,559	: NOTICE OF INTENT TO ISSUE
Issued: April 24, 2005	: CERTIFICATE OF CORRECTION

This decision is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT", filed April 24, 2005, requesting correction of the patent term adjustment (PTA) indicated on the patent.

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 **one hundred sixteen (116) days**.

On April 24, 2005, the above-identified application matured into U.S. Patent No. 6,858,559. The patent issued with a Patent Term Adjustment of one hundred forty-seven (147) days.

However, as pointed out in the application for patent term adjustment, there was an error in the determination of the PTA.

A review of the file reveals that the PTO mailed a final Office action on April 27, 2004. Applicants did not file a proper reply until they filed an RCE August 27, 2004. Accordingly, pursuant to 37 C.F.R. § 1.704(b), applicant delay of thirty-one (31) days should have been assessed.

In view thereof, the correct determination of patent term adjustment is **one hundred sixteen (116) days** (147 days of PTO delay, reduced by 31 days of applicant delay).

Accordingly, issuance of a certificate of correction pursuant to 35 U.S.C. 254 and 37 C.F.R. §1.322 is appropriate.

Give the basis for granting this decision, no fee is required and none has been charged. The Office thanks Patentees for their good faith and candor in bringing this matter to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. 254 and 37 C.F.R. §1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **one hundred sixteen (116) days,** subject to any disclaimers.

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

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

Enclosure: draft Certificate of Correction

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Paper No. 20

MITCHELL W. SHAPIRO
MILES & STOCKBRIDGE PC
1751 PINNACLE DRIVE, SUITE 500
McLEAN, VA 22102-3833

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OFFICE OF PETITIONS

In re Application of
YASUHISA SHIMAZAKI ET AL
Application No. 10/128,263
Filed: April 24, 2002
Attorney Docket No. XA-9472A

:DECISIONS ON PETITIONS
: UNDER 37 CFR 1.181 AND
: 37 CFR 1.313(c)(2)

This is a decision on the petition, filed October 1, 2003, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment, and on the petition, filed November 20, 2003, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

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

The petition under 37 CFR 1.313(c)(2) is **GRANTED**.

This application was held abandoned for failure to timely reply to the Notice to File Corrected Application Papers, mailed April 25, 2003, which set a period for reply of 30 days within which to supply the correct residence for inventor Yasuhisa Shimazaki.

Petitioner asserts that the holding of abandonment is in error since a timely reply was mailed and received in the U.S. Patent and Trademark Office (USPTO). In support thereof, petitioner has supplied a copy of the previously submitted reply and a copy of a stamped return post card which evidences receipt in the USPTO of a "Response to Notice to File Corrected Application Papers" on May 9, 2003.

The reply acknowledged as having been received in the USPTO on May 9, 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 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 reply was timely received in the USPTO but lost after receipt thereof.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

However, the reply acknowledged as having been received in the USPTO on May 9, 2003 is defective in that it does not comply with 37 CFR 1.63(c)(1), which states:

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> (c) **Unless such information is supplied on an application data sheet in accordance with § 1.76, the oath or declaration must also identify**:
>
> (1) The mailing address, and the residence if an inventor lives at a location which is different from where the inventor customarily receives mail, of each inventor *** [emphasis supplied].

In view of the above, since the residence of the inventor was not provided on either an oath or declaration or an Application Data Sheet in accordance with 37 CFR 1.76, the reply is considered to be nonresponsive. Nevertheless, the reply is considered a *bona fide* attempt to advance the application to issuance. In view of the withdrawal of this application from issue at the request of petitioner, no time period is being set at this time to submit a responsive reply to the Notice of April 25, 2003. However, petitioner should promptly supply the required information in accordance with 37 CFR 1.63(c)(1) or at such time as required by the examiner.

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 21, 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.

The application file will be forwarded to Technology Center AU 2819 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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Ralph A. Dowell of DOWELL & DOWELL P.C.
2111 Eisenhower Ave
Suite 406
Alexandria VA 22314

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OFFICE OF PETITIONS

In re Application of :
Akiyoshi et al. :
Application No. 10/128,342 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. 13976 :
Title of Invention: Method and Apparatus for Coding and Decoding Image Data :

This is a decision on the petition under 37 CFR §1.181 filed April 18, 2006 to withdraw the holding of abandonment.

This above-identified application was held abandoned for failure to timely reply to the restriction requirement mailed August 24, 2005. The Restriction Requirement set a one (1) month shortened statutory period for reply. A reply was not received. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application was held abandoned on September 24, 2005. A Notice of Abandonment was mailed on March 22, 2006.

Petitioner maintains that a response to the Restriction Requirement was mailed and received in the Office on September 23, 2005. Petitioner acknowledges a typographical error resulted in the incorrect application being provided on the response. The transmittal of the restriction response contained application number 10/125,342 rather than 10/128,342. The restriction did contain the correct art unit, name of the examiner, attorney docket number, and title of invention. In support of petitioner's contention that a response was timely submitted to the Office Action, petitioner has submitted a copy of a stamped post card receipt and a copy of the response.

The response to the restriction requirement has been located in application 10/125,342. Based on the facts stated in the instant petition and the corroborative evidence provided, it is concluded that the holding of abandonment was improperly imposed.

The requirements for a grantable petition under 37 CFR §1.181 have been met. This petition is hereby **Granted**.

This 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
Petition Attorney
Office of Petitions

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Paper No. 6

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

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TECHNOLOGY CENTER 2800
SPECIAL PROGRAM CENTER

In re Application of:
Timothy J. Maloney *et al.*
Serial No.: 10/128,373
Filed: April 24, 2002
For: ELECTROSTATIC DISCHARGE PROTECTION CIRCUIT HAVING A RING OSCILLATOR TIMER CIRCUIT

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed June 26, 2003.

The request is APPROVED.

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

Paul J. Skwierawski signed the request on behalf of all attorneys of record who are associated with customer No. 20457.

Applicant is reminded that there is no attorney of record at this time. The correspondence address of record has been changed and the new correspondence address is the address indicated below.

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

The application file is being forwarded to the examiner for examination.

Hien H. Phan, Special Program Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components
(571) 272-1606

CC: Anne Richards
Schwegman, Lundberg, Woessner & Kluth P.A.
1600 TCF Tower
121 S. 8th Street
Minneapolis, MN 55402

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TRIANGLE PATENTS, P.L.L.C.
P.O. BOX 28539
RALEIGH, NC 27611-8539

In re Application of
Richard C. KRUEGER
Application No. 10/128,378
Filed: April 23, 2002
Attorney Docket No. 1277-002

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 11, 2007.

The request is **NOT APPROVED**.

The request cannot be approved because no reasons for withdrawal have been provided. The Office cannot, at this time, determine whether practitioner's request is one of the mandatory or permissive reasons enumerated in 37 CFR 10.40. Any subsequent requests must include reasons for withdrawal. Please note that there is a space provided for on PTO/SB/83 (Request to Withdraw as Attorney or Agent) to supply practitioner's reasons.

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

There are no pending Office actions at the present time.

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at 571-272-6735.

April Wise
Petitions Examiner
Office of Petitions

cc: RICHARD KRUEGER
106 FOUNTAIN BROOK CIRCLE
SUITE A
CARY, NC 27511

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Kevin J. Dunleavy
KNOBLE & YOSHIDA, LLC.
Eight Penn Center
1628 John F. Kennedy Blvd.
Philadelphia PA 19103

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OFFICE OF PETITIONS

In re Application of	
Rosenbloom et al.	
Application No. 10/128,382	
Filed: April 23, 2002	
For: ZINC FORMULATIONS AS A PROPHYLACTIC TREATMENT FOR THE COMMON COLD	DECISION GRANTING PETITION
Attorney Docket No.: QUIG-1010US	
Pub. No.: US 2003/0199430 A1	
Pub. Date: October 23, 2003	

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on December 29, 2003, which is also being treated as a petition to accord the application a filing date of April 23, 2002 with pages 3, 5, 9 and 10 as part of the original disclosure.

The request and the petition are granted.

Applicant requests that the application be republished because the patent application publication omits page 3 of the application as filed.

Upon review of the application file, it was noted that pages 5, 9 and 10 of the specification were also missing from the Patent Application Capture and Review (PACR) system and from the patent application publication. The application papers have been corrected in the Image File Wrapper (IFW) system.

In support of the request for corrected publication, applicants submitted a copy of their stamped post card receipt on May 4, 2004. Applicants' stamped post card receipt acknowledges receipt in the United States Patent and Trademark Office on April 23, 2002 of inter alia, 10 pages of description, and 2 pages of claims and 1 page of abstract. The evidence has been considered and it is persuasive that pages 3, 5, 9 and 10 were filed on April 23, 2002.

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).

Karin Ferriter

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

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APR 09 2004

Benesch, Friedlander, Coplan & Aronoff LLP
Attn: IP Department Docket Clerk
2300 BP Tower
200 Public Square
Cleveland, OH 44114

Paper No.

In re Application of	:	DECISION ON PETITION
Jeffrey E. Thomas	:	TO WITHDRAW
Serial No. : 10/128,396	:	HOLDING OF
Filed : April 22, 2002	:	ABANDONMENT
For : Localizing Device for Ventriculostomy	:	

This is a decision on a paper received March 4, 2004, that is being treated as a request to review the holding of abandonment mailed January 8, 2004, for failure to respond to the Office action mailed June 6, 2003. There is no fee required for this petition/request.

In support of the request, petitioner has submitted a copy of a response, a copy of a one-month extension of time request, and a copy of a PTO stamped post card receipt dated July 23, 2003. It is noted that the communication of July 23, 2003 did not include the proper Serial Number. However, the communication included sufficient additional information that should have resulted in the matching of the papers with the correct file.

In view of the above, the Notice of Abandonment mailed January 8, 2004 is in error and is hereby vacated. The holding of abandonment is withdrawn. Upon the mailing of this decision, the application will be forwarded to the Examiner for consideration of the response filed July 23, 2003. It is also noted that accompanying the instant request there is a showing that formal drawings were submitted November 20, 2003 (additional copy provided). The drawings submitted November 20, 2003 have not been matched with the instant application, most likely because the cover letter accompanying the drawings also included the wrong serial number. The drawing submission will likewise be considered by the examiner as well as the Information Disclosure Statement filed March 18, 2004.

Summary: Holding of Abandonment Withdrawn.

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

ak/03/30/04

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OSHA & MAY L.L.P./SUN
1221 MCKINNEY, SUITE 2800
HOUSTON TX 77010

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OFFICE OF PETITIONS

In re Application of :
Bhat et al. : DECISION ON PETITION
Application No. 10/128,415 : UNDER 37 CFR 1.78(a)(6)
Filed: April 22, 2002 :
Attorney Docket No. SUN-P6855.PSP :

This is a decision on the petition under 37 CFR 1.78(a)(6), filed December 6, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional application No. 60/310,530, filed August 6, 2001.

The petition is **DISMISSED**.

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

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

The petition fails to comply with item (1) above.

37 CFR 1.78(a)(5)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference to each such prior-filed provisional application, identifying it by the

provisional application number (consisting of the series code and serial number).

It appears that petitioner attempted to include an amendment, containing a reference to the prior-filed provisional application No. 60/310,530, in the body of the petition. However, petitioner failed to comply with the requirements of 37 CFR 1.78(a)(5)(iii).

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a renewed petition under 37 CFR 1.78(a)(6) and an amendment[1] or an Application Data Sheet, containing a reference to the prior-filed provisional application is required.

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

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

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

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

Any questions concerning this matter may be directed to Petitions Attorney Christina Tartera Donnell at (571) 272-3211.

Frances Hicks

Frances Hicks
Lead Paralegal
Office of Petitions
Office of the Deputy Commission
for Patent Examination Policy

[1] *Note* 37 CFR 1.121 and 37 CFR 1.4(c).

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OSHA & MAY L.L.P./SUN
1221 MCKINNEY, SUITE 2800
HOUSTON TX 77010

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JUL 12 2005

OFFICE OF PETITIONS

In re Application of	:	
Bhat et al.	:	DECISION ON PETITION
Application No. 10/128,415	:	UNDER 37 CFR 1.78(a)(6)
Filed: April 22, 2002	:	
Attorney Docket No. SUN-P6855.PSP	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed April 27, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional application No. 60/310,530, filed August 6, 2001, and set forth in the concurrently filed application data sheet.

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 the expiration of the period specified in 37 CFR 1.78(a)(5)(ii). In addition, the petition must be accompanied by:

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

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

The instant nonprovisional application was pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(iii). Additionally, the instant nonprovisional application was filed within twelve months of the filing date of the prior-filed provisional application, No. 60/310,530, filed on August 6, 2001, for which priority is claimed.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed provisional application has been included in an application data sheet in accordance with 37 CFR 1.76; (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 119(e) to the above-noted, prior-filed provisional application satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

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

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

Any inquiries concerning this decision may be directed to Petitions Attorney Christina Tartera Donnell at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 2136 for appropriate action on the application data sheet submitted on April 27, 2005, including consideration by the examiner of the claim under

35 U.S.C. § 119(e) for the benefit of priority to prior-filed provisional Application No. 60/310,530.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC
ATTN: JOHN CURTIN
P.O. BOX 1995
VIENNA, VA 22183

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SEP 14 2007

OFFICE OF PETITIONS

In re Application of :
Thomas A. Hoch :
Application No. 10/128,423 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. 129250-000985/US :

This is a decision in response to the petition, filed May 29, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed March 20, 2006. A Notice of Abandonment was mailed on March 6, 2007. In response, on May 29, 2007, the present petition was filed.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

The application is being referred to Technology Center AU 2616 for consideration of the amendment filed May 9, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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OCT 0 7 2003

REEXAM UNIT

SUGRUE MION, PLLC
2100 Pennsylvania Ave. N.W.
Washington DC 20037-3213

In re Application of :
Tetsuro IDE et al. :
Appl. No. 10/128,430 :
Filed April 24, 2002 :
For : SHIELDED STRUCTURE OF :
FLAT SHIELDING :
ELECTRIC WIRE :

DECISION ON PETITON
TO EXPUNGE UNDER
37 CFR 1.59

The petition to expunge information (under 37 CFR 1.59) from the application file, filed on July 24, 2003, is before the Office of Patent Legal Administration for consideration.

The petition is granted.

DISCUSSION

A petition to expunge information unintentionally submitted in an application (other than information forming part of the original disclosure) may be filed under 37 CFR 1.59(b), provided that:

(A) the Office can effect such return prior to the issuance of any patent on the application in issue;

(B) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;

(C) the information has not otherwise been made public;

(D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;

(E) it is established to the satisfaction of the Commissioner that the information to be returned is not material information under 37 CFR 1.56; and

(F) the petition fee as set forth in 37 CFR 1.17(h) is included.

37 CFR 1.59(b) also covers the situation where an unintended heading has been placed on papers so that they are present in an incorrect application file. In such a situation, a petition should request return of the papers rather than transfer of the papers to the correct application file. The grant of such a petition will be governed by the factors enumerated above in regard to the unintentional submission of information.

The present application was filed on April 24, 2002. On June 3, 2003, an Information Disclosure Statement (IDS) was filed including a "substitute for Form 1449/PTO" and copies of a number of cited references.

Petitioner requests in the present petition that the IDS filed on June 3, 2003, be removed from the file and returned to petitioner. The petition states that the paper was inadvertently filed in the wrong application and has no relevance in the present application.

It is obvious from a cursory inspection of the cited references in the noted IDS that they have no relevance to the examination of the present invention.

The present petition requests return of the inadvertently filed papers and, in addition, satisfies provisions (A) through (F) listed above.

Accordingly, the IDS will be removed form the file and returned to petitioner.

CONCLUSION

The present petition is granted.

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

application and return of the IDS papers submitted to the party that submitted them.

The application will then be returned to Technology Center 2800.

For questions related to this decision, please call Joseph Narcavage, Senior Special Projects Examiner, at (703) 305-1795.

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

OIPE JC98 MAR 18 2005 PATENT & TRADEMARK OFFICE

PATENT
Customer No. 22,852
Attorney Docket No. 08142.0005-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
ED BRINSKELE et al.	Group Art Unit: 3624
Application No.: 10/128,488	Examiner: Wasylchak, Steven R.
Filed: April 24, 2002	Confirmation No.: 8457
For: METHOD FOR PRESENTING ACCOUNT INFORMATION TO A USER	

APPROVED
5/9/05

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

Sir:

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT

I hereby request withdrawal as attorney of record for the above-identified patent application for myself and all attorneys and agents of Finnegan, Henderson, Farabow, Garrett & Dunner listed on the Power of Attorney filed for this application. We request withdrawal for the following reason: Quantumshift, Inc., a former client of Finnegan, Henderson, Farabow, Garrett & Dunner, has filed for dissolution in California and there has been a breakdown in the attorney-client relationship related to the above-referenced application.

Furthermore, there are no outstanding office actions in the above-referenced application and there are no deadlines within the next thirty days.

The undersigned has authority to sign this request on behalf of Finnegan, Henderson, Farabow, Garrett & Dunner and all attorneys and agents listed on the Power of Attorney filed for this application.

PATENT
Customer No. 22,852
Attorney Docket No. 08142.0005-00000

Please send all future correspondence for this application to:

Richard Rosenfeld
General Counsel
Vercuity, Inc.
500 Lanidex Plaza, 3rd Floor
Parsippany, NJ 07054

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 18, 2005

By: _____
Christopher P. Isaac
Reg. No. 32,616

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FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

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DEC 21 2005

OFFICE OF PETITIONS

In re Application of :
Yamaguchi, et al. : LETTER REGARDING PTA
Application No. 10/128,524 :
Filed: April 24, 2002 :
Atty. Dkt. No.: 065905-0252 :

This letter is in response to the "STATEMENT (UNDER A GENERAL OBLIGATION OF CANDOR AND GOOD FAITH IN PRACTICE BEFORE THE OFFICE)," filed June 13, 2005. The Office thanks patentees for their good faith and candor in bringing this to our attention.

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the instant letter reflects an adjustment of 429 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicants state that the PTA of 431 days indicated on the Determination of Patent Term Adjustment Under 35 U.S.C. 154(d) mailed March 23, 2005 is incorrect, and that the correct PTA at the time of allowance is 429 days.

A review of the application history reveals that at the time of allowance, an adjustment of 429 days can be attributed to the Office. An adjustment of 428 days can be attributed to the Office. See, C.F.R §§ 1.702(a)(1) and 1.703(a)(1). A further adjustment of one day can be attributed to the Office. See, 37 C.F.R. §§ 1.702(a)(2) and 37 CFR 1.703(a)(2).

In view thereof, at the time of allowance, the application was entitled to a PTA of 429 days, as indicated by applicants.

As applicants are advising us of an error in providing too much patent term adjustment in this application, no fee is due in connection to this matter.

This application is being forwarded to the Publications Division for processing into a patent. Any delays by the Office pursuant

to 37 C.F.R §§ 1.702(a)(4) or 1.702(b) will be reflected in the determination that is mailed to applicants as the issue notification letter approximately three weeks prior to issuance.

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

Kay A. Fries

Kezy ~~Kries~~ Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Enclosure: Copy of Adjustment PAIR Calculation

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

LSI Logic Corporation
1551 McCarthy Blvd.
M/S: D-106 Patent Department
Milpitas CA 95035

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SEP 2 5 2002

OFFICE OF PETITIONS

In re Application of
Behkami, Seale, Chiesl, Giewont, and Powell
Application No.: 10/128,534
Filed: April 23, 2002
Attorney Docket No:01-348
For: WEB-BASED INTERFACE WITH DEFECT DATABASE TO VIEW AND UPDATE FAILURE EVENTS

DECISION ACCORDING STATUS UNDER RULE 47(a)

This is in response to the petition under 37 CFR 1.47(a), filed August 27, 2002.

The petition is **GRANTED**.

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

A "Notice to File Missing Parts of Non-Provisional Application" ("Notice") was mailed to petitioner on June 3, 2002, indicating that petitioner neglected to file a proper oath or declaration in compliance with 37 CFR 1.63 and did not remit required filing and claim fees. The Notice also advised petitioner that a $130.00 surcharge was also due because a proper oath or declaration was not timely filed. The Notice set forth a period of reply of two months from its mailing date and indicated that extensions of time for reply were available pursuant to 37 CFR 1.136(a).

In response thereto, petitioner filed a request for a one-month extension of the time set for reply and the instant petition. Petitioner also filed several accompanying exhibits through which petitioner established that although the inventor Chiesl was presented with a complete copy of the application papers, inventor Chiesl has, to date, failed to execute the same. Inventor Chiesl's failure to return the declaration, in spite of his presumed receipt of the same, will be interpreted as constructive refusal to join the prosecution of the application.

Petitioner has shown that the non-signing inventor has refused to join the filing of the above-identified application after having been presented with the application papers, and 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.

Pursuant to the authorization provided by petitioner, deposit account 12-2252 will be charged $130.00 for the petition fee.

Petitioner is advised that the address as cited on the instant petition differs from the address of record. Although a courtesy copy of the instant petition is being mailed to the address as cited on the instant petition, petitioner is advised that all future correspondence will be mailed solely to he address of record until appropriate written instructions to the contrary are received.

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

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

K. A. McLaughlin

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

cc:
Nathan T. Grebasch
Suiter & Associates PC
14301 FNB Parkway, Suite 220
Omaha, NE 68154-5299

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Newell E. Chiesl
2526 Elite Terrace
Colorado Springs, CO 80909

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SEP 2 5 2002

OFFICE OF PETITIONS

In re Application of
Behkami, Seale, Chiesl, Giewont, and Powell
Application No. 10/128,534
Filed: April 23, 2002
Attorney Docket Number:01-348
For: WEB-BASED INTERFACE WITH DEFECT DATABASE TO VIEW AND UPDATE FAILURE EVENTS

LETTER

Dear Mr. Chiesl:

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

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

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).

K. A. McLaughlin

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

cc: LSI Logic Corporation
1551 McCarthy Blvd.
M/S: D-106 Patent Department
Milpitas CA 95035

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

Peter Andre de la Porte
11765 Castleton Lane
Grafton, OH 44044

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JUL 3 0 2003

OFFICE OF PETITIONS

In re Application of :
ANDRE DE LA PORTE :
Application No. 10/128,549 : ON PETITION
Filed: April 22, 2002 :
For: EXPANDABLE SCREEN DOOR :

This application has been referred to the Office of Petitions for review of the applicant's response filed July 22, 2002 in response to the Notice of Incomplete Nonprovisional Application mailed May 22, 2002. This response is being treated as a petition to accord the above-identified a filing date of April 22, 2002.

The application was filed April 22, 2002. The Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application ("Notice") May 22, 2002. The Notice indicated, *inter alia*, that the application had not been accorded a filing date as the application as deposited lacked drawings in accordance with 35 USC 113 (first sentence).

Petitioner argues that the application as deposited included one (1) sheet of drawings. Petitioner has included as proof of mailing and proof of receipt of the drawings in question a return postcard date stamped by the Office on April 22, 2002. Petitioner has also supplied a copy of the original drawing sheet purportedly filed with the application on April 22, 2002.

The original drawing sheet submitted with the application papers has not been located. However, in view of the evidence presented, the Notice is hereby WITHDRAWN and the petition to accord the application a filing date of April 22, 2002 is GRANTED.

Since the original drawing sheet cannot be located in the Office, the copy supplied with the instant petition will be used for examination purposes.

No fee is due in connection with this matter. Petitioner is entitled to a refund of the previously submitted petition fee of $130.00. Petitioner may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

This application will be returned to the Office of Initial Patent Examination for further processing with a filing date of April 22, 2002.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 11

MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, N.W.
WASHINGTON, DC 20006

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NOV 3 0 2004

OFFICE OF PETITIONS

In re Application of	:	
Soon Bum Kwon et al	:	
Application No. 10/128,556	:	ON PETITION
Filed: April 24, 2002	:	
Attorney Docket No. 8733.605.00	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 8, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed January 29, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on April 30, 2004.

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

The application is being forwarded to Technology Center AU 1756 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAY 26 2004

B.J. SADOFF
NIXON & VANDERHYE, P.C.
1100 NORTH GLEBE ROAD, 8TH FLOOR
ARLINGTON VA 22201-4714

In re Application of	:
BOSMAN et al	:
Serial No. 10/128,590	: Decision on Petition
Filing Date: 24 April 2002	:
Attorney Docket No. 2551-75	:

This letter is in response to the Petition filed 16 March 2004, requesting withdrawal of the restriction requirement of 1 October 2003.

BACKGROUND

This application was filed under 35 USC 111(a) on 24 April 2002. The examiner made a nine-way restriction requirement and required an election of three species in an action which was subsequently made final.

DISCUSSION

The application, file history and petition have been considered carefully. The petition requests that the restriction requirement and the election of species requirement be withdrawn.

> Restriction to one of the following inventions is required under 35 U.S.C. 121:
>
> Group I. Claims 1, 3-19, 26-33, 41, drawn to an isolated recombinant HCV envelope protein characterized in that more than 80% of the N-glycosylation sites are core-glycosylated, classified in class 424, subclass 189.1.
>
> Group II. Claims 1-19, 26-27, 41, drawn to an isolated recombinant HCV envelope protein characterized in that more than 70% of core glycosylation sites are glycosylated with an oligomannose containing 8-10 mannoses, classified in class 424, subclass 192.1.
>
> Group III. Claim 20, drawn to a method for producing an isolated HCV envelope protein, classified in class 435, subclass 69.1.

Group IV. Claims 21-23, drawn to a method for detecting the HCV antibody, classified in class 435, subclass 7.1.

Group V. Claims 24-25, drawn to a diagnostic kit, classified in class 435, subclass 975.

Group VI. Claims 34 and 37-39, drawn to a method for inducing a HCV specific immune response, classified in class 435, subclass 5.

Group VII. Claim 35, dawn to a method of using an isolated HCV envelope protein and an adjuvant for inducing HCV specific antibodies, classified in class 435, subclass 3.

Group VIII. Claim 36, dawn to a method of using an isolated HCV envelope protein and an adjuvant to induce a HCV specific T-cell immune response, classified in class 435, subclass 2.

Group IX. Claim 40, drawn to a method for treating a mammal infected with HCV, classified in class 424, subclass 93.1.

Representative claims from Groups I and II are reproduced and discussed below:

1 . An isolated HCV envelope protein or a fragment thereof comprising at least one N-glycosylation site, said protein or fragment thereof characterized in that it is the product of expression in a eukaryotic cell and further characterized in that on average up to 80% of the N-glycosylation sites are core-glycosylated.

2. The isolated HCV envelope protein or fragment thereof according to claim 1 wherein more than 70% of said core-glycosylated sites are glycosylated with an oligomannose containing 8 to 10 mannoses.

It is noted that Claim 2 depends upon and is narrower in scope than Claim 1. As such, the restriction requirement between Group I and Group II is improper because the scope of the Groups overlap.

Representative claims from Group V are reproduced and discussed below:

24. A diagnostic kit for the detection of the presence of anti-HCV antibodies in a sample suspected to comprise anti-HCV antibodies, said kit comprising a HCV envelope protein or pad thereof according to any of claims 1 to 2.

25. The diagnostic kit according to claim 24 wherein said HCV envelope protein or part thereof is attached lo a solid support.

The kit of Group V comprises the products of rejoined Groups I/II. As such, the restriction requirement between Groups I/II and Group V is improper because the scope of the Groups overlap.

Within each of Groups I and II, the examiner set forth an additional restriction to a single sequence of HCV envelop protein, selected from the group listed in Claim 10. Additionally, the restriction requirement set forth 3 election of species of molecules (types of HCV polypeptides; species of adapter protein A and species of PS sequence) recited in claims 10 and 11, as follows:

> 10. The isolated HCV envelope protein or fragment thereof according to claim 8 wherein A has an amino acid sequence chosen from SEQ ID Nos:63-65, 70-72 and 74-82, wherein PS has an amino acid sequence chosen from SEQ ID Nos: 66-68 and 83-84 or wherein PS is a dibasic site such as Lys-Lys, Arg-Arg, Lys-Arg and Arg-Lys or a monobasic site such as Lys, and wherein HCVENV is chosen from SEQ ID Nos:2 and 85-98 and fragments thereof.
>
> 11. The isolated HCV envelope protein or fragment thereof according to any of claims 1 to 2 which is comprised in a structure chosen from the group consisting of monomers, homodimers, heterodimers, homo-oligomers and hetero-oligomers.

The Office action mailed 16 December 2003 states:

> Claims 6-10, 13 are free of rejection in that no prior art to teach using a particular HCV envelope protein construct for producing a core-glycosylated HCV envelope although the sequence of HCV E1 has been disclosed in the prior art. The claims are not in the condition for allowance because they dependent on the rejected claims 1-5.

Because generic claims 7 and 8 upon which claim 10 depends have been found free of the prior art, it is improper to maintain the election of species to the sequences recited within Claim 10. Moreover, in view of applicants' arguments that a heterodimer of claim 11 may encompass two different HCV envelop sequences linked together, the election of species of the types of molecules set forth within Claim 11 is also improper.

Representative claims from Groups VI, VII, VIII and IX are reproduced and discussed below:

> 34. A method of inducing a HCV-specific immune response in a mammal, said method comprising administering to said mammal an effective amount of a HCV envelope protein or part thereof according to any of claims 1 to 2 optionally comprising a pharmaceutically acceptable adjuvant.
>
> 35. A method of inducing HCV-specific antibodies in a mammal, said method comprising administering to said mammal an effective amount of a HCV envelope protein or part thereof according to any of claims 1 to 2 optionally comprising a pharmaceutically acceptable adjuvant.

36. A method of inducing a specific T-cell function in a mammal, said method comprising administering to said mammal an effective amount of a HCV envelope protein or part thereof according to any of claims 1 to 2 optionally comprising a pharmaceutically acceptable adjuvant.

40. A method of treating a mammal infected with HCV, said method comprising administering to said mammal an effective amount of a HCV envelope protein or pad thereof according to any of claims 1 to 2 optionally comprising a pharmaceutically acceptable adjuvant.

While the methods of Groups VI, VII, VIII and IX differ in their preambles, they all contain one identical active step, administrating HCV envelop protein to a mammal. When the HCV envelop protein is administered to a mammal, the resulting HCV-specific immune function (Group VI) encompasses induction of HCV-specific antibodies (Group VII) and/or T-cell specific function (Group VIII which results in a method of treating a mammal infected with HCV (Group IX). In view of this overlapping scope, the restriction requirement between these groups VI, VII, VIII and IX is improper.

The method of producing the isolated HCV envelop protein of claim 1 or 2 is reproduced below:

20. A method for producing the isolated HCV envelope protein or fragment thereof according to any of claims 1 to 2.

This claim contains only a preamble. This claim is devoid of any essential active steps delineating how the protein is to be made. Because the active steps are missing, the Office is not certain what invention is encompassed by the claim. None-the-less, this claim will be considered for the purposes of the restriction requirement as a method of producing a product.

The Groups are restricted under 35 USC 122, as follows:

Group A, Claims 1-19, 24-33, 41 drawn to proteins, classified in Class 424, subclass 189.1 and 192.1 for example.
Group B, Claim 20, drawn to a method for producing an isolated HCV envelope protein, classified in class 435, subclass 69.1.
Group C, Claims 21-23 drawn to methods of detecting an antibody using a protein, classified in Claim 435, subclass 7.1, for example.
Group D, Claims 34-40 drawn to methods of administering the protein, classified in Class 435, subclasses 2, 3 and 5, and Class 424, subclass 93.1, for example.

Group A corresponds to rejoined Groups I, II, V. Group B corresponds to Group III. Group C corresponds to Group IV. Group D corresponds to Groups VI, VII, VIII and IX.

The inventions are distinct, each from each other, because of the following reasons.

Inventions B and A appear to be related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process

as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the method claim is incomplete and contains no essential, active steps, it not clear by what method the product is made. The protein of Group I can be made by multiple, materially different processes, for example, by recombinant expression, by biochemical purification, by in vitro translation. For this reason, restriction between Invention B and A is proper.

Inventions C and D are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects. (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation and different effects. Invention C is a detection method which requires contacting the HCV envelop protein with a sample and detecting complexes formed. Invention D is a method of administering HCV envelop protein to a mammal in order to induce an immune response. Invention C does not require administration to a mammal. Invention D does not require detection of any complexes formed. For these reasons, Invention C and D are unrelated.

Inventions A and inventions (C and D) are related as product and processes of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product of invention A can be used to practice either the diagnostic method of Invention C or the treatment method of Invention D.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and the literature searches required for the Groups and in view of their divergent subject matter, restriction for examination purposes as indicated is proper.

Because applicant has elected a product claim, the following reminder concerning rejoinder practice is included in this decision.

> The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.
>
> In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the

requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

DECISION

This petition has been **GRANTED-IN-PART** for the reasons set forth above. Groups I, II and V have been rejoined and the restriction requirement to a single HCV envelop protein has been withdrawn. Additionally, the various species elections required for examination of Claims 10 and 11 have been withdrawn. Finally, the restriction requirement between Groups VI, VII, VIII and IX has been withdrawn.

The application will be forwarded to the examiner for consideration of the amendment and response filed 16 March 2004 and the Information Disclosure Statement filed 17 March 2004 and for completion of an Office action on the full scope of the claims 1-19, 24-33 and 41, drawn to HCV envelop protein, as pending.

Any request for consideration must be filed within two (2) months of the mailing date of this decision.

Should there be any question with regard to this letter, please contact Special Program Examiner Julie Burke by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria VA 22313-1450 or by telephone at 571-272-1600.

Jasemine C. Chambers

Jasemine Chambers
TC1600 Group Director

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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MAY 21 2008

OFFICE OF PETITIONS

NORTH OAKS PATENT AGENCY
45 ISLAND ROAD
NORTH OAKS MN 55127

In re Application of :
Kasriel et al. :
Application Number: 10/128597 : DECISION ON PETITION
Filing Date: 04/22/2002 :
Attorney Docket Number: D33-022-02-US :

This is a decision on the petition, filed on April 16, 2008, under 37 CFR 1.183 seeking waiver of 37 CFR 1.131 in that it requires that a declaration filed thereunder by signed by all inventors.[1]

The petition is **dismissed.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. **FAILURE TO TIMELY RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.183."

This application was filed on April 22, 2002, and named Stephane Kasriel and Sara Swanson as joint inventors.

On April 16, 2007, a final Office action was mailed, setting a three (3) month period for reply.

On October 16, 2007, a Notice of Appeal was filed, along with a three (3) month extension of time.

On April 16, 2008, the present petition, along with a Request for Continued Examination (RCE), submission under 37 CFR 1.114, a petition for a four (4) month extension of time, and a declaration under 37 CFR 1.131 signed by joint inventor Swanson, was filed.

---

[1] Once an application has received a fully executed oath or declaration under 37 CFR 1.63 and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. See MPEP 603.

Petitioners state that an email was sent to Kasriel asking him to sign the declaration under 37 CFR 1.131. Kasriel initially stated that he would sign the declaration under 37 CFR 1.131, and was emailed a copy of the declaration, but subsequently demanded compensation to sign it. On April 14, 2008, an email was sent to Kasriel, again requesting that he sign and return the declaration, and offering compensation in return for his signature. Petitioners state that no response to the April 14, 2008, email was received.

Suspension of the rules under 37 CFR 1.183 may be granted in an "extraordinary situation, when justice requires." The facts presented on the record do not adequately establish an extraordinary situation. Petitioner has not sufficiently established any special circumstances of equities that would require suspension of the rules in the interests of justice.

There is no requirement for a showing under 37 CFR 1.47, as noted above. This application bears an original Declaration executed by all joint inventors, and thus, the provisions of 37 CFR 1.47 do not apply in this instance. Nevertheless, it is appropriate to apply the principles thereof to the situation at hand.

The showing of record is deficient in that petitioners sent the last email to Kasriel on April 14, 2008, and filed the subject petition two (2) days later. As such, petitioners have not shown that Kasriel had sufficient time to evaluate and respond to petitioners' most recent request. Consequently, petitioners have not shown that diligent efforts have been made to obtain Kasriel's signature on the declaration under 37 CFR 1.131.

Petitioners should explain whether Kasriel responded to the email, and whether any other correspondence was sent to and/or received from Kasriel after the filing of the subject petition.

If repeated efforts to locate the inventor(s) and obtain the declaration under 37 CFR 1.131 are unsuccessful, petitioners will have shown that the inventor(s) has refused to sign the declaration under 37 CFR 1.131.

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

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

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

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

Telephone inquiries related to this decision should be directed to the undersigned at 571.272.3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NORTH OAKS PATENT AGENCY
45 ISLAND ROAD
NORTH OAKS MN 55127

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SEP 11 2008

In re Application of	:	
Kasriel et al.	:	
Application Number: 10/128597	:	DECISION ON PETITION
Filing Date: 04/22/2002	:	
Attorney Docket Number: D33-022-02-US	:	

This is a decision on the renewed petition, filed on July 21, 2008, under 37 CFR 1.183 seeking waiver of 37 CFR 1.131 in that it requires that a declaration filed thereunder by signed by all inventors.[1]

The petition is **GRANTED**.

In view of the efforts recounted to obtained the signature of joint inventor Stephane Kasriel, it is agreed that justice would be served by waiving the requirement for his signature on the declaration filed under 37 CFR 1.131.

The $400.00 petition fee has been received.

The application is being referred to the Technology Center for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 571.272.3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[1] Once an application has received a fully executed oath or declaration under 37 CFR 1.63 and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. See MPEP 603.

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ALEXANDRIA, VA 22313-1450
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Paper No. 14

RICHARD A. NAKASHIMA
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
7TH FLOOR
12400 WILSHIRE BOULEVARD
LOS ANGELES, CA 90025

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NOV 0 5 2003
OFFICE OF PETITIONS

In re Application of :
Larry R. Green :
Application No. 10/128,608 : DECISION GRANTING PETITION
Filed: April 22, 2002 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 005593.P001 :

This is a decision on the petition, filed June 15, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on October 9, 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 1641 for examination in due course.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

Colgate-Palmolive Company
909 River Road
PO Box 1343
Piscataway, NJ 08855-1343

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JAN 0 6 2003

OFFICE OF PETITIONS

In re Application of
Eliav et al.
Application No. 10/128,617
Filed: April 23, 2002
Attorney Docket No. 6893-00

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 13, 2002, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed May 29, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 30, 2002.

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

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

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

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OCT 1 0 2002

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

UNITED STATES PATENT & TRADEMARK FFICE

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

John D. Natale, Jr.
81-17 Beaver Spur
Moriches, NY 11955

Paper No. 5

In re Application of:
John D. DeNatale Jr.
Serial No. 10/128,620
Filed: April 23, 2002
For: ROTATING,DVD,VCR,AND VIDEO GAME DISPLAY HOLDER

: DECISION ON PETITION
: TO MAKE SPECIAL
: (APPLICANT'S HEALTH)

This is a decision on the petition filed September 17, 2002 under 37 CFR 1.102 (c) to make the above-identified application special under the procedure set forth in MPEP 708.02, Section III: Applicant's Health. There is no fee for this petition.

A grantable petition to make an application special under 37 C.F.R. 1.102(c), MPEP 708.02, Section III requires evidence that the state of health of the applicant is such that he might not be able to assist in the prosecution of the application if it were to run it's normal course.

The petition includes a medical certificate from the applicant's doctor dated August 27, 2002 attesting to the fact that the applicant was diagnosed with ischemic cardiomyopathy with significant arrhymias. It is therefore evident that the applicant might not be able to assist in the prosecution of the application due to the diagnosed illness if said prosecution were to run it's normal course.

For the above stated reasons, 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.

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

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

kjd: 10/8/02

Copied from 10730225 on 10-03-2004

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Paper No. 8

CHARLES L. ROBERTS
WORKMAN NYDEGGER & SEELEY
1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UT 84111

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FEB 2 6 2004

OFFICE OF PETITIONS

In re Application of
Webber et al.
Application No. 10/128,646
Filed: April 22, 2002
Attorney Docket No. 14187.146.1

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 13, 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 June 5, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 6, 2002. A Notice of Abandonment was mailed on January 13, 2004.

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

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $2010.00 extension of time fee submitted with the petition on February 13, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

The 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 PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 6

Thomas A. O'Rourke
Wyatt, Gerber & O'Rourke, L.L.P.
99 Park Avenue
New York, NY 10016

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MAY 14 2003

OFFICE OF PETITIONS

In re Application of
Dale F. Jacobs
Application No. 10/128,651
Filed: April 19, 2002
For: Trust Preferred Security Method

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 28, 2003, to revive the above-identified application.

The petition is **granted.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed May 28, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 29, 2002.

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

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

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

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

Frances Hicks
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, New York 11747

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 4

KLAUBER & JACKSON
411 HACKENSACK AVENUE
HACKENSACK, NJ 07601

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JUL 30 2002

OFFICE OF PETITIONS

In re Application of
Michael F. Chou
Application No. 10/128,652
Filed: April 23, 2002
Attorney Docket No. 2582-1-001

: DECISION GRANTING
: PETITION

This is a decision on the paper styled "PETITION TO THE COMMISSIONER UNDER 37 C.F.R. 1.181 TO CORRECT INCORRECTLY ENTERED DATE-IN FOR PATENT APPLICATION" filed June 6, 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 April 23, 2002, rather than the presently accorded filing date of April 25, 2002.

On petition, attorney states that two packages were deposited under the provisions of 37 CFR 1.10. Attorney Smith provides copies of the USPS shipment history statement for both packages, which contains identical tracking information. Petitioner submits a copy of their postcard for the other application showing a date of receipt of April 23, 2002. Petitioner further asserts that the accordance of a filing date of April 23, 2002, to the other application corroborates their claim that the instant application is entitled to a filing date of April 23, 2002.

The evidence is convincing that the package bearing Express Mail label No. EV052401389US was filed pursuant to the requirements under 37 CFR 1.10. Accordingly, the petition is granted. The $130 petition fee is being credited to counsel's deposit account.

The application is being returned to the Office of Initial Patent Examination to await applicant's response to the Notice mailed May 16, 2002, and for correction of the filing date to April 23, 2002.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : September 12, 2007

TO SPE OF : ART UNIT 3627

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/128661 Patent No.: 7177824 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

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: _____

_____

_____

_____

_____

_____ 3621
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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Paper No. 7

BAKER & MCKENZIE
805 THIRD AVENUE
NEW YORK NY 10022

MAR 2 2 2005

In re Application of:
Linkai Bu *et al.*
Serial No.: 10/128,663
Filed: April 23, 2002
Attorney Docket No.: 87141181-562006

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition under 37 C.F.R. § 1.181, filed September 8, 2003, and resubmitted June 18, 2004, via facsimile transmission, to withdraw the holding of abandonment in the above-identified application. The petition is being treated as a petition to accept the payment of issue fee submitted therewith as being timely. No petition fee is required.

The petition is **GRANTED.**

The application was allowed and a Notice of Allowance and Fee(s) Due (Notice) was mailed October 2, 2002. Applicant was required to pay the fees by January 2, 2003. In the absence of a receipt of the payment of the requisite fees, the application was held abandoned and a Notice of Abandonment was mailed on February 25, 2003.

Petitioner asserts that the Notice mailed on October 2, 2002, was not received until July 25, 2003, when a copy of the Notice was facsimile transmitted by W. Stapor, a staff member of TC 2800 customer Service. To support this assertion, petitioner includes a declaration by Irene Keselman, a patent paralegal at petitioner's law office attesting to the fact that a search of the patent legal file and the docket record indicates that the Notice was not received. A copy of the front cover of the patent legal file and a copy of the docket record where the non-received Notice would have been entered had it been received in a timely manner, were enclosed with the declaration. Also enclosed is an issue fee transmittal form that authorizes the Office to charge petitioner's Deposit Account the requisite publication fee and the issue fee.

A review of the application file indicates no irregularity in the mail. However, pursuant to MPEP § 711.03(c), petitioner has provided a sufficient showing that the Notice mailed October 2, 2002, was not received.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The Fee(s) Transmittal filed with the petition is hereby accepted as being timely filed.

Inconvenience to the applicant is regretted.

The application is being returned to the Office of Patent Publication for processing the fees and issuance of a patent.

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

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

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P.O. Box 1450
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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

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MAR 19 2010

In re Patent No. 7,027,741 :
Issued: April 11, 2006 :
Application No. 10/128,672 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. 1460.1039 :

This is a decision on the petition under 37 CFR 1.182, filed January 13, 2010, requesting issuance of a duplicate Letters Patent for the above-identified application.

The petition is **GRANTED**.

The Publishing Division is directed to issue a duplicate Letters Patent.

Any questions concerning this matter may be directed to Joan Olszewski at 571-272-7751. Any questions concerning issuance of the duplicate Letters Patent should be directed to Niomi Farmer at (703) 756-1556.

A copy of this decision is being forwarded to Publishing Division for issuance of a duplicate Letters Patent.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: Niomi Farmer, RSQ, 9th Floor, Room D30-B. (FAX 571-270-9753)

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : September 14,2007

TO SPE OF : ART UNIT 1646

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/128,694 Patent No.: 7189813 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

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: _____

Gary B. Michl — SPE

1646 — 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. 25

DEL CHRISTENSEN
SHELL OIL COMPANY
P.O. BOX 2463
HOUSTON TX 77252-2463

COPY MAILED

AUG 16 2004

OFFICE OF PETITIONS

In re Application of :
Scott L. Wellington et al :
Application No. 10/128,695 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. 5659-16000/EBM :

This is a decision on the petition, filed August 13, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

After receipt of the file in the Office of Petitions, the application will be forwarded to Technology Center AU 3672 for processing of the request for continued examination under 37 CFR 1.114.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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www.uspto.gov

Paper No. 24

DEL CHRISTENSEN
SHELL OIL COMPANY
P.O. BOX 2463
HOUSTON, TX 77252-2463

COPY MAILED

AUG 2 3 2004

OFFICE OF PETITIONS

In re Application of :
Eric de Rouffignac, et al. :
Application No. 10/128,699 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. 5659013500/EBM :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 16, 2004 to withdraw the above-identified application from issue after payment of the issue fee.

It does not appear that the instant petition is signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of David W. Quimby appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. However, if Mr. Quimby desires to receive correspondence regarding this file, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to Mr. Quimby, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The petition is **GRANTED**.

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

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

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

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220.

The application is being forwarded to Technology Center AU 3672 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

cc: DAVID W. QUIMBY
MEYERTONS, HOOD, KIVLIN, KOWERT
& GOETZEL, P.C.
P. O. BOX 398
AUSTIN, TX 78767-0398

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. 29

DEL CHRISTENSEN
SHELL OIL COMPANY
P O BOX 2463
HOUSTON, TX 77252-2463

COPY MAILED

AUG 2 0 2004

OFFICE OF PETITIONS

In re Application of :
Scott Lee Wellington et al :
Application No. 10/128,701 : DECISION GRANTING PETITION
Filed: April 24, 2002 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 5659-15800/EBM :

This is a decision on the petition, filed August 16, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

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

Upon receipt of the file in the Office of Petitions and association of the petition, RCE, IDS and decision on petition with the file, the file will be forwarded to Technology Center AU 3672 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
www.uspto.gov
DIW 09-04

DICKE, BILLIG & CZAJA, P.L.L.C.
FIFTH STREET TOWERS
100 SOUTH FIFTH STREET, SUITE 2250
MINNEAPOLIS MN 55402

COPY MAILED

SEP 0 9 2004

OFFICE OF PETITIONS

In re Patent No. 6,731,083	:	
Issued: 4 May, 2004	:	
Application No. 10/128,715	:	ON PETITION
Filed: 22 April, 2002	:	
Attorney Docket No. K315.123.101	:	

This is a decision on the petition filed on 2 June, 2004, to waive the rules and accept the correction of the assignee on the front page of the above-identified patent.

The petition is granted.

The petition fee of $130.00 and certificate of correction fee of $100.00 have been paid.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries regarding this communication should be directed to the undersigned at 703.308.6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mailed: 5/16/05

wak
Paper Number

In re application of	:	
Oh et al.	:	DECISION ON
Serial No. 10/128,735	:	PETITION
Filed: April 23, 2002	:	
For: COMPACT STEAM REFORMER	:	

This is a decision on the petition filed on December 6, 2004. The petition requests that the response to Non-Compliant Amendment of December 6, 2004 be entered. Applicant did not receive the initial notice that should have been mailed out July 19, 2004. Applicant has provided a copy of the docket sheet for the subject application. Applicant became aware of the notice after receiving a telephone call from the examiner of record. The examiner then faxed applicant a copy of the notice.

DECISION

The Instant PETITION is accepted as a petition under 37 CFR 1.181(no fee).

A review of the application record and the petitioner's evidence indicates that the request has merit and is sufficient to establish that the Notice of Non-Compliant Amendment was not received.

The petition is **GRANTED**.

Applicant's submitted response will be entered and the application forwarded to the examiner.

JMStone

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

Jay S. Cinamon
Abelman Frayne &Schwab
150 East 42nd Street
New York, New York 10017-5612

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: 7/18/05

WAK

In re application of
Smalley et al.
Serial No. 10/128,735
Filed: April 23, 2002
For: COMPACT STEAM REFORMER

DECISION ON
PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT, filed December 6, 2004 for failure to respond to the Notice of Non-Compliant Amendment dated July 19, 2004. On June 29, 2004, Applicants filed an amendment that responded to the Office Action of March 31, 2004. A Notice of Non-Compliant Amendment was mailed on July 19, 2004.

Applicants assert that they became aware for the first time about the Notice after receiving a phone call on December 2, 2004 from the Examiner asking whether a response to the Notice of Non-Compliant amendment was filed. The Examiner faxed the notice to applicant on December 2, 2004.

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. Applicants have provided a copy of their docket reports and file jacket showing no receipt of the Notice of Non-Compliant Amendment.

The holding of abandonment is withdrawn

The application is returned active status and the response to the Notice of Non-Compliant Amendment submitted with the petition will entered into the application. The application will be forwarded to the examiner of record for consideration of applicant's response.

The petition is **GRANTED.**

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

Jay S. Cinamon
Abelman Frayne & Schwab
150 West 42nd. Street
New York, New York
10017-5612

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins CO 80527-2400

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SEP 29 2006

OFFICE OF PETITIONS

In re Application of :
Shinya Nakagawa : DECISION ON TWO PETITIONS
Application No. 10/128,773 : UNDER 37 CFR 1.78(A)(3)
Filed: April 19, 2002 : AND 37 CFR 1.55(C)
Attorney Docket No. 40003066-4 :

This is a decision on the petitions under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c), filed on June 16, 2006, 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 and in the oath filed July 29, 2002.

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 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

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

All requirements being met, the petition to accept an unintentionally delayed claim for priority under 37 CFR 1.78(a)(3) is **GRANTED.**

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 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.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) is **GRANTED**.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) and 35 § U.S.C. 119(a)-(d) and 37 CFR 1.55(a)(1) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

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

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

Technology Center Art Unit 2624 will be made aware of this decision, so that the Examiner may consider Applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120, 365(c) and 35 U.S.C. § 119(a)-(d) of the prior-filed applications.

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.

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

ATTACHMENT: Corrected Filing Receipt

cc: GREELEY,PAUL
Ohlandt Greeley Ruggiero and Perle LLP
One Landmark Square 10th Floor
Stamford, CT 06901-2682

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/128,773	04/19/2002	2624	2110	40003066-4	6	24	5

CONFIRMATION NO. 6501

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

CORRECTED FILING RECEIPT

OC000000020473024

Date Mailed: 09/18/2006

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Shinya Nakagawa, Tokyo, JAPAN;

Power of Attorney:

Paul Greeley--31019

Domestic Priority data as claimed by applicant

This application is a CON of PCT/US01/26927 08/30/2001

Foreign Applications

JAPAN 2000-262096 08/31/2000

If Required, Foreign Filing License Granted: 05/28/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/128,773

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

CHARACTER RECOGNITION SYSTEM

Preliminary Class

382

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

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

Paper No.

Joseph R. Robinson
Darby & Darby P.C.
805 Third Ave
New York NY 10022

COPY MAILED

JAN 25 2007

OFFICE OF PETITIONS

In re Application of :
Abrams et al. : DECISION ON APPLICATION
Application No. 10/128,783 : FOR
Filed: April 22, 2002 : PATENT TERM ADJUSTMENT
Atty Docket No. 39144-20051.00:

This is a decision on the "REQUEST FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §§ 1.705(b)" filed October 12, 2006. Applicants submit that the correct patent term adjustment as of the date of allowance is one hundred sixty-four (164) days. In part, Applicants make this assertion on the basis that the Office has failed to issue a patent within 3-years of the actual filing date of the application.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Applicants are correct that the patent term adjustment will not include the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed, February 28, 2006, and ending on the date the patent was issued. However, applicants are incorrect in their consideration of the period of overlap. 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).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

As to the application for patent term adjustment at the time of mailing of the notice of allowance, this request is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is zero (0) days (including 14 days of Office delay and 158 days of applicant delay). A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On July 12, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 0 days. On October 12, 2006, applicants timely[1] filed the instant application for patent term adjustment. Applicants maintain that the patent term adjustment should be at least 164 days. To the extent that this correction is based on the patent issuing more than 3 years after the actual filing date of this application, the decision is being held in abeyance.

Entitlement to at least 164 days of PTA is also based on the Request for Continued Examination (RCE) being filed on February 28, 2006, not March 3, 2006. In support thereof, applicants submit a copy of their itemized and date-stamped postcard. Applicants argue that given the February date of filing, the RCE was filed within three months of the Office action mailed November 28, 2005, and thus, its filing does not constitute a failure to engage within the meaning of § 1.704(b). Furthermore, given that the RCE was filed February 28, 2005, the period of adjustment for Office delay in taking action in response is 14 days (not 9 days). In addition, applicants disclose that a reduction of 65 days is warranted, pursuant to 37 CFR 1.704(c)(8), for the filing of an Information Disclosure Statement on May 2, 2006.

A review of the record confirms that the RCE should have been treated as filed February 28, 2006. In view thereof, applicants are correct that removal of the period of reduction of 3 days for applicant delay in responding to the Office action mailed November 28, 2005 is warranted. In addition, applicants are correct that the Office delay in taking action in response is calculated as 14 days. Moreover, the record supports a conclusion that a further reduction is warranted for applicants' filing of an IDS on May 2, 2006, after having filed a reply on February 28, 2006. However, the number of days in the period beginning on the day after the filing of a reply on February 28, 2006 to the filing of an IDS on May 2, 2006, is 63 days.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is zero (0) days (including 14 days of Office delay and 158 days of applicant delay).

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[1] PALM records indicate that applicants also submitted the Issue Fee payment on October 12, 2006.

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

PTA Calculations for Application: 10/128783			
Application Filing Date:	04/22/2002	PTO Delay (PTO):	9
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	98
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-55		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
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72	01/23/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		63	
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70	01/23/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	14		
63	07/12/2006	MAIL NOTICE OF ALLOWANCE	9		55
62	07/10/2006	ISSUE REVISION COMPLETED			
61	07/10/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
60	07/10/2006	NOTICE OF ALLOWABILITY			
59	05/02/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
58	03/03/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
57	05/02/2006	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
56	04/28/2006	DATE FORWARDED TO EXAMINER			
55	03/03/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		3	48
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53	03/03/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
52	03/03/2006	MISCELLANEOUS INCOMING LETTER			
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50	02/28/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
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33	01/14/2005	CORRESPONDENCE ADDRESS CHANGE			
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31	01/14/2005	RECORD PETITION DECISION OF GRANTED RELATED TO ATTORNEY			
30	12/27/2004	PETITION ENTERED			
29	01/12/2005	CORRESPONDENCE ADDRESS CHANGE			
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Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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OFFICE OF PETITIONS

In re Patent No. 7,192,609	:	
Abrams et al.	:	LETTER REGARDING
Issue Date: March 20, 2007	:	PATENT TERM ADJUSTMENT
Application No. 10/128,783	:	and
Filed: April 22, 2002	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 39144-20051.00	:	CERTIFICATE OF CORRECTION

This is in response to the "LETTER OF GOOD FAITH AND CANDOR REGARDING REQUEST FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §§ 1.705(b)," filed May 16, 2007. Patentees disclose that the above-identified patent is entitled to four fewer days of patent term adjustment than is indicated on the face of the patent or two hundred three (203) days instead of two hundred seven (207) days.

The request for review of the patent term adjustment is **GRANTED to the extent indicated herein**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred fifty-four **(154)** days.

On March 20, 2007, the application matured into U.S. Patent No. 7,192,609, with a revised patent term adjustment of 207 days. Patentees disclose that the period of adjustment for the Office taking in excess of three years to issue the patent pursuant to 1.703(b) should be 311 days not 315 days, given that a Request for Continued Examination (RCE) was deposited in the Express Mail service pursuant to 37 CFR 1.10 on February 28, 2006.

Patentees' arguments and evidence have been considered and found persuasive. A review of the RCE papers and of the USPS track and confirm record available through www.usps.gov confirms deposit of the RCE on February 28, 2006. The date of deposit of the RCE in Express Mail, February 28, 2006, not the date of receipt of the RCE, March 3, 2006, should have been used in the calculation of the over 3 year period. However, this period is calculated as 312 days, not 311 days, counting the number of days in the period beginning on April 23, 2005 and ending on February 28, 2006.

Moreover, 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 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). In this instance, the period of delay of 315 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 14 and 36 days attributable to grounds specified in § 1.702(a)(2) and (4). Thus, no additional period of adjustment beyond the 315 days should have been entered for Office delay. The overlapping 50 day period of adjustment has been removed.

In view thereof, the patent should have issued with a revised patent term adjustment of one hundred fifty-four (154) days.

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

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-

identified patent is extended or adjusted by one hundred fifty-four **(154)** days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,192,609 B2

DATED : March 20, 2007

INVENTOR(S) : Abrams 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 (207) days

Delete the phrase "by 207" and insert – by 154 days--

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Shlesinger Fitzsimmons & Shlesinger
183 East Main Street – Suite 1323
Rochester, NY 14604

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OFFICE OF PETITIONS

In re Application of :
Gino Franch :
Application No. 10/128,786 : ON PETITION
Filed: April 22, 2002 :
Attorney Docket No. 5055/180 :

This is a decision on the petition under 37 CFR 1.137(b) filed January 21, 2004, to revive the above-identified application.

The petition is Granted.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 11, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 12, 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 $475 extension of time submitted with the petition on January 21, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The application file is being forwarded to Technology Center AU 3746 for further processing.

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

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

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APR 15 2005

OFFICE OF PETITIONS

In re Application of :
Richard W. Cruse :
Application No. 10/128,804 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. 1302-45 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 24, 2005, to revive the above-identified application.

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

The above-identified application became abandoned for failure to timely file a response to the non-final Office action mailed October 1, 2003. This Office action set a shortened statutory period for reply of one month. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 2, 2003. A Notice of Abandonment was mailed on June 25, 2004.

With the instant petition, petitioner paid the petition fee, filed a reply in the form of a response to restriction requirement, and made the proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

Receipt of the petition fee of $1,500 is acknowledged.

The application file is being forwarded to Group Art Unit 1621 for consideration of the response to restriction requirement, filed March 24, 2005.

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

Cliff Congo
Petitions Attorney
Office of Petitions

cc: Dilworth & Barrese, LLP
333 Earle Ovington Blvd
Uniondale, NY 11553

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MAY 1 0 2006

In re Application of:
WUNNICKE et al.
Serial No.: 10/128,815
Filed: April 24, 2002
Attorney Docket No.: DE 010114

DECISION TO RESET
PERIOD FOR REPLY

This is a decision on the petition filed May 17, 2004 under 37 CFR 1.181 for Redating a Deficiently Mailed Office Action.

The petition is DENIED.

A Notice of Non-Compliant Amendment Office action was mailed January 21, 2004, setting a one-month period of response.

Petitioner asserts the Notice of Non-Compliant Amendment Office action reached the correspondence address on May 3, 2004, i.e. about 100 days from the mailing date of said action. Included with the petition is a copy of the Notice of Non-Compliant Amendment Office action having a "received" date stamp of May 3, 2004.

The Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:

(A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;
(B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and
(C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being

presented establishes the date of receipt of the Office action at the correspondence address.

Petitioner does not provide a copy of the envelope that contained the Office action nor the required statement explaining how the evidence being presented establishes the date of receipt of the Office action on May 3, 2004.

For the above stated reasons, the petition to restart the period for reply to the Office action is denied.

It is noted that the petition also included a complete response to the Notice of Non-Compliant Amendment Office action minus the necessary petition for an extension of time and the requisite fee.

Under 37 CFR 1.135(a) an application becomes abandoned if applicant "fails to reply" to an office action within the fixed statutory period.

Petitioner may wish to consider filing a petition under 37 CFR § 1.137(a) or (b) requesting that the application be revived. A petition under 37 CFR § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action; (2) 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; (3) any terminal disclaimer required pursuant to 37 CFR § 1.137(c); and (4) the petition fee as set forth in 37 CFR § 1.17(m). No consideration to the substance of a petition will be given until this fee is received.

Inquiries related to this decision should be directed to Jose' G. Dees at (571) 272-1569.

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

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In re Application of:
WUNNICKE *et al.*
Serial No.: 10/128,815
Filed: April 24, 2002
Attorney Docket No.: **DE 010114**

SUA SPONTE
DECISION WITHDRAWING HOLDING OF ABANDONMENT

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

A Notice of Non- Compliant Amendment Office action was mailed on January 21, 2004. A response to the Notice of Non-Compliant Amendment Office action was filed on May 17, 2004, but minus the necessary petition for an extension of time and the requisite fee.

A review of the written record indicates that on April 24, 2002, authorization pursuant 37 CFR § 1.136 (a)(3) and to charge Deposit Account No. 14-1270 was filed to treat any concurrent or future reply as incorporating a petition for extension of time for the appropriate length of time.

> Under 37 CFR § 1.136 (a)(3), a written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission.

For the above stated reasons, the response to the Notice of Non-Compliant Amendment Office action is treated as timely filed and Deposit Account No. 14-1270 has been charged $570.00 for an additional three months of extendable time period to reply to the Notice of Non- Compliant Amendment Office action.

The application file is being forwarded to the examiner for consideration of the response.

Inquiries related to this decision should be directed to Jose' G. Dees at (571) 272-1569.

Sharon A. Gibson, Director
Technology Center 2800
Semiconductors, Electrical and Optical
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ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

Mail Date: 04/21/2010

Applicant	: Curtis R. Rousseau	: DECISION ON REQUEST FOR
Patent Number	: 7577598	: RECALCULATION of PATENT
Issue Date	: 08/18/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/128,825	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/24/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2050** 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.

Ex. T. Le

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/17/06

TO SPE OF : ART UNIT ~~2818~~ 2827

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/128,838 Patent No.: 6724674

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: _____

TL

SPE

2827
Art Unit

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,724,674 B2

DATED : April 20, 2004

INVENTOR(S) : Abraham 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 page one add:

Related U.S. Application Data:
"Continuation-in-part of Application No. 708,253, filed on Nov. 8, 2000, Patent No. 6,385,082 B1."

In column 1 after the title add:

"This appliation is a Continuation-in-part of Application No. 708,253, filed on Nov. 8, 2000, Patent No. 6,385,082 B1."

MAILING ADDRESS OF SENDER:

PATENT NO. 6,724,674 B2

Dr. Daniel P. Morris, Esq.
IBM Corporation - T.J. Watson Research Center
Route 134, Kitchawan Road, Yorktown Heights, N.Y. 10598

No. of additional copies

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

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Certificate
MAY 11 2006
of Correction

In re Application of Applicants: Abraham et al.
U.S. Patent No.: 6,724,674 B2
Serial No.: 10/128,838
Filed: April 23, 2002
For: MEMORY STORAGE DEVICE WITH HEATING ELEMENT

Date: May 10, 2006
Group Art Unit: 2818
Examiner: Thong Quoc Le
Docket No.: YOR920010260US1

Attn: CERTIFICATE OF CORRECTION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this Request for Certificate of Correction Under 35 U.S.C. 255 and 37 C.F.R. 1.323 (2 Pages) and Certificate of Correction (1 Page) are being facsimile transmitted under Rule 37 CFR 1.61(d) to the U.S. Patent and Trademark Office to (571) 273-8300 on May 10, 2006.

Dr. Daniel P. Morris, Esq.
Reg. No. 32,053

REQUEST FOR CERTIFICATE OF CORRECTION UNDER 35 U.S.C. 255 AND 37 C.F.R. 1.323

Remarks

Applicants request granting of the attached Certificate of Correction in which the claim of priority under 37 U.S.C. 120 is corrected to read:

"This application is a continuation-in-part of Application Serial No. 708,253, filed on November 8, 2000, which now issued as U.S. Patent No. 6,385,082 B1".

MAY 11 2006

PAGE 1/3 * RCVD AT 5/10/2006 11:24:12 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/0 * DNIS:2738300 * CSID:19149453281 * DURATION (mm-ss):01-08

U.S. Patent 6,724,674 B2 at Col. 5, lines 50-53, states "U.S. Patent application Serial No. 09/708,253 to B. Beaman et al.,... filed November 8, 2000, incorporated herein by reference".

As required by 37 CFR 1.78 the claim of priority of U.S. 6,724,674 B2 is being corrected to:

1.) Claim priority to copending Application No. 09/708,253 filed on November 8, 2000; and

2.) There is a least one common inventor between U.S. 6,724,674 B2 and copending Application No. 09/708,253 filed on November 8, 2000.

The requested Certificate of Correction corrects errors of a clerical nature and does not constitute adding new matter. Thus the request for Certificate of Correction complies with 37 CFR 1.78 and should be granted.

Please charge deposit account 09-0468 the fee under 37 CFR 1.20(a) and any fee necessary to enter this paper.

Respectfully submitted,

By:

Dr. Daniel P. Morris, Esq.
Reg. No. 32,053
Phone No. (914) 945-3217
Fax No. (914) 945-3281

IBM Corporation
Intellectual Property Law Dept.
P. O. Box 218
Yorktown Heights, New York 10598

PAGE 2/3 * RCVD AT 5/10/2006 11:24:12 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/0 * DNIS:2738300 * CSID:19149453281 * DURATION (mm-ss):01-08

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RYAN, MASON & LEWIS, LLP
1300 POST ROAD
SUITE 205
FAIRFIELD CT 06430

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JUL 25 2006
OFFICE OF PETITIONS

In re Patent No. 6,724,674 :
Issue Date: April 20, 2004 : DECISION ON PETITION
Application No. 10/128,838 : UNDER 37 CFR 1.78(a)(3)
Filed: April 23, 2002 :
Attorney Docket No. YOR920010260US1 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 1, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 09/708,865, filed November 8, 2000, by way of a certificate of correction filed concurrently herewith. This decision also responds to the petition under 37 CFR 1.182 to expedite the processing of the petition under 37 CFR 1.78(a)(3).

The petition under 37 CFR 1.78(a)(3) is **GRANTED**.
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)(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.

Application no. 10/128,138 which was filed after November 29, 2000, matured into Patent No. 6,724,674 on April 20, 2004. The claim for the benefit of priority to a prior-filed nonprovisional application was submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR

1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional application has been included in a certificate of correction; (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The petition fee in the amount of $1,370 for the late priority claim and the fee for the certificate of correction in the amount of $100.00 has been charged to petitioner's deposit account no. 09-0468. As well, the fee in the amount of $400.00 for expedited treatment of this matter has been applied.

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

This application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction noting the priority claim to prior filed application 09/708,865 filed November 8, 2000, which matured into Patent No. 6,385,082 on May 7, 2002.

Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. Any questions regarding the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

DR. DANIEL P. MORRIS, ESQ.
IBM CORPORATION
INTELLECTUAL PROPERTY LAW DEPT.
P.O. BOX 218
YORKTOWN HEIGHTS, NY 10598

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www.uspto.gov

November 10, 2005

Michael J. Striker
STRIKER, STRIKER, STENBY
103 East Neck Road
Huntington, NY 11743

Patent No.: **6932864 B2**
Inventor(s): **Lutz Parthier, et al.**
Issued: August 23, 2005
Title: **METHOD AND APPARATUS FOR MEASURING THE POSITION OF A PHASE INTERFACE DURING CRYSTAL GROWTH**

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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Alexandria, VA 22313-1450
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STRIKER, STRIKER & STENBY
103 East Neck Road
Huntington NY 11743

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In re Patent of :
Parthier, et al. :
Patent No. 6,932,864 :
Issue Date: August 23, 2005 : Decision on Request
Application No. 10/128,856 :
Filing Date: April 23, 2002 :
Attorney Docket No. 2110 :

This is a decision on the request filed January 6, 2006, under 37 CFR 3.81(b) to accept the correction of the assignee data after the patent has issued.

The request under 37 CFR 3.81(b) is **granted**.

37 CFR 3.81(b) currently states:

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

In other words, the request under 37 CFR 3.81(b) will be granted when:

(1) a request under 37 CFR 3.81 and the fee set forth in 37 CFR 1.17(i) are filed,
(2) the assignment was submitted for recordation prior to issuance of the patent, and
(3) a request for a certificate of correction and the fee set forth in 37 CFR 1.20(a) are submitted.

Pursuant to petitioners' authorization, deposit account no. 19-4675 will be charged the $130.00 processing fee associated with filing a request under 37 CFR 3.81(b) and the $100.00 Certificate

of Correction fee.

Petitioners have met the requirements set forth above. Therefore, the request is granted.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

E. Shirene Willis
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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07202004

THE LAW OFFICES OF MIKIO ISHIMARU
1110 SUNNYVALE-SARATOGA ROAD
SUITE A1
SUNNYVALE CA 94087

RECEIVED
AUG -5 2004
TECHNOLOGY CENTER 2800

In re Application of:
Yeow Kheng Lim et al.
Application No. 10/128,875
Filed: April 23, 2002
Attorney Docket No.: 1016-014

DECISION ON PETITION

This is a decision on the petition filed on February 19, 2004, requesting that the filing date of the Notice of Appeal in the instant application be changed from January 8, 2004 to December 19, 2004. The petition is being treated as a request to accept the Notice of Appeal as being timely filed.

The request is GRANTED.

Requester asserts that on December 19, 2003, a Notice of Appeal was filed via facsimile transmission. To support this assertion, petitioner has provided a copy of an Auto-Reply Facsimile Transmission from the US Patent and Trademark Office acknowledging receipt of a 4-page transmission on December 19, 2003. The copy of Notice of Appeal transmitted bears a Certificate of Transmission dated December 19, 2003. Petitioner states that upon inquiring the Group Art Unit about the Notice of Appeal filed, it was learned that it has not been "received or entered." A copy of the Notice of Appeal was re-sent, via facsimile transmission, on January 8, 2004. The Notice of Appeal was entered as being filed on January 8, 2004 and the extension of time fee of one-month was charged.

In view of the Certificate of Transmission dated December 19, 2003 on the Notice of Appeal, the statement by the requester, and the copy of the Auto-reply Facsimile Transmission of December 19, 2003, it is hereby accepted that a Notice of Appeal was timely filed on December 19, 2004 but was misplaced after receipt thereof. The copy of the Notice of Appeal filed January 8, 2004 is accepted in place of the originally filed Notice of Allowance that is apparently lost.

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

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

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032006

THE LAW OFFICES OF MIKIO ISHIMARU
333 W. EL CAMINO REAL
SUITE 330
SUNNYVALE CA 94087

MAR 0 9 2006

In re Application of:
Yeow Kheng Lim et al.
Serial No.: 10/128,875
Filed: April 23, 2002
Attorney Docket No.: 1016-014

DECISION ON PETITION
TO ACCEPT PAPER AS BEING TIMELY
FILED

This is a decision on the petition filed on February 19, 2004, requesting that the filing date of the Notice of Appeal in the instant application be changed from January 8, 2004 to December 19, 2004. The petition is being treated as a request to accept the Notice of Appeal as being timely filed.

This decision also clarifies the application file record. The clarification appears at the end of this decision.

The request is GRANTED.

Requester asserts that on December 19, 2003, a Notice of Appeal was filed via facsimile transmission. To support this assertion, requester has provided a copy of an Auto-Reply Facsimile Transmission from the US Patent and Trademark Office acknowledging receipt of a 4-page transmission on December 19, 2003. The copy of Notice of Appeal transmitted bears a Certificate of Transmission dated December 19, 2003. Requester states that upon inquiring the Group Art Unit about the Notice of Appeal that was filed, it was learned that it has not been "received or entered." A copy of the Notice of Appeal was re-sent, via facsimile transmission, on January 8, 2004. The Notice of Appeal was entered as being filed on January 8, 2004 and the extension of time fee of one-month was charged.

In view of the Certificate of Transmission under 37 CFR 1.8(a) dated December 19, 2003 on the Notice of Appeal, the statement by the requester, and the copy of the Auto-reply Facsimile Transmission of December 19, 2003, it is hereby accepted that a Notice of Appeal was timely filed on December 19, 2004 but was not associated with the application file after receipt thereof. The copy of the Notice of Appeal filed January 8, 2004 is accepted in place of the originally filed Notice of Appeal that is apparently lost.

A copy of a decision on the petition filed February 19, 2004, was apparently mailed to the petitioner without being signed, a mail date or made part of the application file record. A copy of that decision was submitted by petitioner on August 5, 2004 along with an appeal brief. Because that decision was not properly executed and did not contain a mail date, it is an improper decision and must be vacated. The previous decision on petition is hereby vacated and replaced with this decision. The vacating of the decision does not adversely affect the filing of the appeal brief.

The appeal brief will be entered and considered. An action by the examiner will be issued in due course.

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

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

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CHRISTIE, PARKER & HALE, LLP
PO BOX 7068
PASADENA, CA 91109-7068

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JAN 3 2005

OFFICE OF PETITIONS

In re Application of :
Jose Miguel Arias Lopez :
Application No. 10/128,894 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. 48106/VGG/P353 :

This is a decision on the petition, filed December 30, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 24, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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

The application is being referred to Technology Center AU 1661 for further processing of the request for continued examination under 37 CFR 1.114 filed December 30, 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

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APPLIED MATERIALS, INC.
2881 SCOTT BLVD. M/S 2061
SANTA CLARA CA 95050

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MAR 14 2005

OFFICE OF PETITIONS
ON PETITION

In re Application of
Lee et al.
Application No.10/128,907
Filed: April 23, 2002
Attorney Docket Number:
005968/ALRT/ETCH/Silicon
Title of Invention: ETCHING METHOD HAVING HIGH SILICON-TO-PHOTORESIST SELECTIVITY

This is a decision on the petition filed February 8, 2005, under 37 CFR 1.137(b) to revive the above-identified application.

This petition is dismissed as moot.

A Notice of Allowance and Fee (s) Due mailed on November 10, 2004 set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). The reply period expired on February 11, 2005. Accordingly, this application has not been held abandoned as the reply to the Notice of Allowance in the form of the issue fee payment was timely submitted prior to the expiration date.

Deposit account 50-1074 will be charged the $1400 issue fee and $6.00 towards advance copies.

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

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

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FROM DIRECTORS OFFICE

OCT 27 2004

TECHNOLOGY CENTER 3600

Erwin J. Basinski
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

In re application of
Gurdip Singh Sidhu et al.
Application No. 10/128,910 : DECISION ON REQUEST
Filed: April 22, 2002 : FOR WITHDRAWAL OF
For: METHOD AND APPARATUS FOR :
IDENTIFYING INVESTOR PROFILE

This is a decision on the request filed on June 14, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

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

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

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

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

The request to withdraw as attorney in the above-identified application is not approved because the request does not comply with Item B). While a reason may be provided by referencing a **specific** portion of 37 CFR 10.40, simply reciting that the reason is that "Transfer to New Counsel" is insufficient. A more specific reason or referencing a specific portion of 37 CFR 10.40(c), is required for approval.

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

KJD/slb: 10/12/04

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
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WASHINGTON, D.C. 20231
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Paper No. 3

ANDREA F. SELLERS
STINSON, MAG & FIZZELL, P.C.
1201 WALNUT STREET, SUITE 2800
P.O. BOX 419251
KANSAS CITY, MO 64141-6251

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NOV 1 5 2002

OFFICE OF PETITIONS

In re Application of :
Vernon Rowe :
Application No. 10/128,947 : NOTICE
Filed: April 24, 2002 :
Attorney Docket No. MRNR.85688 :

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 1600.

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

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Paper No. 7

CHARMASSON, BUCHACA & LEACH, LLP
1545 HOTEL CIRCLE SOUTH, SUITE 150
SAN DIEGO, CA 92108-3412

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JUN 1 5 2004

OFFICE OF PETITIONS

In re Application of
Broersma et al.
Application No. 10/128,982
Filed: April 23, 2002
Attorney Docket No. 1044.1-11

: DECISION ON PETITION;
: NOTICE OF MISSING PARTS

This decision concerns the June 1, 2004 petition under 37 CFR 1.137(b).

The petition is **GRANTED.**

Petition under 37 CFR 1.137(b)

The application became abandoned on August 4, 2002 for failure to timely submit the application basic filing fee and replacement drawings as required by the June 3, 2002 "Notice to File Missing Parts of Nonprovisional Application."

The instant petition encloses the $665 petition fee (small entity); the $385 application basic filing fee and the $65 surcharge for late filing of the fee (both in small entity amounts); a set of replacement drawings which have been approved by the draftsperson; and a statement that the entire delay in filing the requested items was unintentional. The petition is thus granted.

Notice to File Missing Parts of Nonprovisional Application

The Office also notes that the "Declaration for Utility or Design Patent Application (37 CFR 1.63)" filed on April 23, 2003 is not signed. Applicants are hereby given an extendable, non-statutory 2-month period for filing a properly signed oath or declaration along with the $65 surcharge (small entity) for late filing of such an oath or declaration.

The file is being returned to the Office of Initial Patent Examination to await the filing of a properly signed oath or declaration. Upon completion of pre-examination, the application file will be forwarded to Technology Center 3700 for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No. 10

KENYON & KENYON, LLP
ONE BROADWAY
NEW YORK, NY 10004

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JUN 19 2007

OFFICE OF PETITIONS

In re Application of :
Michael Miller, et. al. :
Application No. 10/128,991 : ON PETITION
Filed: April 22, 2002 :
Attorney Docket No. 2520/49401 :

This is a decision on the petition under 37 CFR 1.137(b), filed on January 21, 2005, to revive the above-identified application. The delay in responding is sincerely regretted.

The application became abandoned for failure to respond to the non-final Office action mailed September 4, 2003. A Notice of Abandonment was mailed on March 29, 2004.

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 an amendment; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2838, for review of the amendment filed with the instant petition.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Benjamin J. Hauptman
1700 Diagonal Road – Suite 300
Alexandria, VA 22314

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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FAEGRE & BENSON LLP
PATENT DOCKETING - INTELLECTUAL PROPERTY (32469)
2200 WELLS FARGO CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MN 55402-3901

Mail Date: 04/20/2010

Applicant	: Randy Westlund	: DECISION ON REQUEST FOR
Patent Number	: 7628801	: RECALCULATION of PATENT
Issue Date	: 12/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/128,997	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/23/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **957** 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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MAR 2 1 2005

Technology Center 2100

Donald J. Daley
HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 8910
Reston, VA 20195

In re Application of:
Thomas Valfridsson et al.
Application No. 10/129,013
Filed: September 27, 2002
For: METHOD FOR REENCRYPTION OF A DATABASE

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed November 30, 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.

for

Vincent N. Trans
Special Program Examiner
Technology Center 2100

3/16/05

cc: Faustino A. Lichauco
FISH & RICHARDSON, P.C.
225 Franklin Street
Boston, MA 02110

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Paper No. 8

LAW OFFICE OF LAWRENCE E. LAUBSCHER JR.
1160 SPA RD
SUITE 2B
ANNAPOLIS, MD 21403

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DEC 12 2003

OFFICE OF PETITIONS

In re Application of
Masayoshi Sakai et al
Application No. 10/129,016
Filed: April 30, 2002
Attorney Docket No. 23071

: NOTICE OF WITHDRAWAL
: FROM ISSUE

The purpose of this communication is to inform you that the above-identified application, which has not received a patent number or an issue date, is being withdrawn from issue pursuant to 37 CFR 1.313.

The application is being withdrawn from issue "so that the application can be properly treated as a filing under 35 USC 111(a)." This withdrawal was requested by the Director of PCT Legal Administration.

This application is being returned to the Office of the Director of PCT Legal Administration to take prompt appropriate action on this case, including notifying applicant of the new status of this application.

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

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

20 SEP 2004

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ALEXANDRIA, VA 22313-1450
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#9

Lawrence E. Laubscher, Jr.
1160 Spa Road, Suite 2B
Annapolis, MD 21403

In re Application of	:	
Sakai et al.	:	
Application No. 10/129,016	:	
Filing Date: 10 June 1999	:	
Priority Date: 30 April 2002	:	DECISION
Atty. Docket No.: 23071	:	
For: Flaw Detection System	:	

This is in response to the "Request To Treat Application Under 35 U.S.C. § 111(a) And To Correct Filing Receipt" filed on 31 July 2002.

BACKGROUND

On 12 December 2003, a Notice Of Withdrawal From Issue was mailed to applicants, indicating that this application had been withdrawn from issue so that the instant "Request To Treat Application Under 35 U.S.C. § 111(a)..." could be treated.

DISCUSSION

Counsel states that

> Applicant respectfully requests that the application be treated as an application of PCT application No. PCT/JP00/08549 under 35 U.S.C. § 111(a), rather than as a national application under 35 U.S.C. § 371.
>
> As set forth on page 1, line 2 of the specification, the application is identified as a continuation of PCT/JP00/08549. Accordingly, the claims to be examined are those submitted with the application. Moreover, the application was filed before abandonment of the prior application (i.e., within twenty months of the December 1, 2000 filing date of the prior application) as required by 35 U.S.C. § 120.

Review of the application file reveals that, on 30 April 2002, applicant filed a transmittal letter to enter the national stage under 35 U.S.C. 371 for international application PCT/JP00/06000. The specification submitted with the initial filing indicated that "this application is a continuation of PCT/JP00/08459 filed December 01, 2000."

Any intended filing of an international application as a national stage application must

clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

> The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.
>
> To clearly indicate an international application is being filed under 35 U.S.C. 371 the applicant should use the "Transmittal Letter for United States Designated Office" (Form PTO-1390) as the transmittal letter.
>
> Alternatively, one of the following indications may be used:
>
> 1) the applicant shall clearly state in the transmittal or cover letter that he or she is filing under 35 U.S.C. 371 or entering the national stage under PCT; or
>
> 2) the applicant clearly identifies in the oath or declaration the specification to which it is directed by referring to a particular international application by PCT Serial Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the invention described in the identified international application.

In view of the conflict between the instructions described above, there was no clear indication that the papers were filed under 35 U.S.C. 371 rather than 35 U.S.C. 111 (a). As such, the papers should properly have been processed as an application filed under 35 U.S.C. 111 (a).

It is unclear what the relationship of this application is to international applications PCT/JP00/06000 and PCT/JP00/08549. Applicant's attention is drawn to 37 CFR 1.55 and 1.78 as the regulations for making domestic and foreign priority claims.

CONCLUSION

Counsel's request is **GRANTED**.

The Notification of Acceptance (Form PCT/DO/EO/903) mailed on 16 July 2002 is hereby **VACATED**.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for the preparation and issuance of a new filing receipt indicating that this application was filed under 35 U.S.C. 111(a) with a filing date of 30 April 2002. The application will then be returned to Technology Center 2800 for appropriate further treatment.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
After 30 Sep. 2004: (571) 272-3283
Fax: (703) 308-6459
After 30 Sep. 2004: (571) 273-0459

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LAUBSCHER & LAUBSCHER PC
1160 SPA ROAD, SUITE 2B
ANNAPOLIS, MD 21403

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FEB 23 2007

OFFICE OF PETITIONS

In re Application of :
Masayoshi Sakai et al :
Application No. 10/129,016 : DECISION ON PETITION
Filed: April 30, 2002 :
Attorney Docket No. 23071 :

This is a decision on the petition under 37 CFR 1.181, filed December 13, 2006, requesting withdrawal of the holding of abandonment in the above-identified application.[1]

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue fee on or before June 6, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed March 6, 2006. The Notice required payment of a $1,400 issue fee and a $300 publication fee. The Notice of Allowability did not require the submission of drawings. A Notice of Abandonment was mailed on June 26, 2006 stating that the $391 fee submitted was insufficient and that a balance of $1,309 was due.

Petitioner states that the holding of abandonment was improper as the returned and completed Part B - Fee(s) Transmittal form requested that the previously paid $1,300 issue fee be applied towards the new Notice and the additional $100 fee balance due, plus the $300 publication fee, was authorized to be deducted from petitioner's credit card payment.[2]

---

[1] The originally filed petition has not to date been associated with this file. However, in view of the evidence submitted, the petition will be treated as having been received by facsimile transmission on June 29, 2006.

[2] The Office withdrew this application was withdrawn from issue on December 12, 2003.

In reviewing the record of this case, it was discovered that part of the $1,300 previously paid issue fee was applied towards the filing fee for this 35 U.S.C. § 111(a) application, which was not authorized by applicant. Accordingly, at the time of submission of the Part B - Fee(s) Transmittal form on May 19, 2006, there would have been sufficient funds to cover the required issue fee.

In view of the above, the holding of abandonment is hereby withdrawn and the Notice of Abandonment mailed on June 26, 2006 is hereby vacated. This application is restored to pending status.

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

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

Frances Hicks
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : September 14, 2005

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 6,881,204

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:

All changes approved. -MGB

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

Tzalukaeva
SPE

3761
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 8/6/09

Paper No.: —

TO SPE OF : ART UNIT _____

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/129029 Patent No.: 7524580 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 (C of C)
Randolph Square 9D62-B
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
703-756-1591

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: _____

_____

_____

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_____ 1795
SPE **Art Unit**

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10/20/04

In re Application of :
VICKTORIUS, WINFRIED, et. al. :
Serial No. 10/129,065 :
Filed: 22 July 2002 :
For: DEVICE FOR AFFIXING :
ADHESIVE LABELS TO GOODS :
PACKAGES :

WITHDRAWAL FROM ISSUE

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 therefor 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 be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a deposit account.

The application is being forwarded to the examiner for action.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Charles Guttman
Proskauer Rose
1585 Broadway
New York NY 10036

CC: Allowed Files

30 JUL 2002

#4

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WASHINGTON, D.C. 20231
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Jeffri A. Kaminiski
VENABLE
P.O. Box 34385
Washington, D.C. 20043-9998

In re Application of :
ATHERTON, Peter :
U.S. Application No.: 10/129,075 :
PCT No.: PCT/US01/08992 :
Int. Filing Date: 21 March 2001 :
Priority Date: 21 March 2000 :
Attorney Docket No.: 30795-179043 :
For: A TAMPER INDICATING RADIO FREQUENCY IDENTIFICATION LABEL :

DECISION ON PETITION FOR REVIVAL UNDER 37 CFR 1.137(b)

Applicant's "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed with the national stage papers on 02 May 2002 in the above-captioned application is hereby **GRANTED** as follows:

The appropriate basic national fee, surcharge fee and petition fee have been paid. Applicant states that "[t]he entire delay in filing the national stage application until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3). A terminal disclaimer is not required. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

A signed oath or declaration was not included with any of the papers submitted.

Accordingly, this application is being forwarded to the United States Designated/Elected Office for further processing including mailing a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) is required.

James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457

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JAN - 4 2005

OFFICE OF THE DIRECTOR
TC 3600

NICHOLAS A. PANDISCIO
PANDISCIO & PANDISCIO
470 TOTTEN POND ROAD
WALTHAM, MA 02451-1914

In re Application of :
Peter M. Nielsen :
Application No. 10/129,087 :
Filed: August 8, 2002 :
Attorney Docket No.: NIEL-5 :
For: AERODYNAMIC BICYCLE HANDLEBARS :

DECISION ON PETITION
UNDER 37 CFR §1.181

This is a decision on applicant's petition under 37 CFR 1.181 filed November 10, 2004 requesting that the amendment under 37 CFR 1.116 filed September 17, 2004 be entered.

The petition is **DENIED.**

The record reflects that on March 26, 2004 a non-final Office action was mailed rejecting claims 1-20 under 35 U.S.C. 103. On May 4, 2004 applicant filed an amendment amending claims 1, 4-6, 8, 9, 11, 12, 14, and 17-20, canceling claims 3, 7, 13, and 21, and adding new claims 22-30. On August 11, 2004 a final Office action was mailed rejecting claims 1, 2, 4, 6, 8-11, 16-20, 22, 24, and 28 under 35 U.S.C. 103, objecting to claims 12, 14, 15, 23, 27, 29, and 30 as being dependent upon on a rejected base claim but being allowable if written in independent form including the limitations of the base claim and any intervening claims, and indicating claims 5, 25, and 26 as being allowable. On September 17, 2004 applicant filed an amendment under 37 CFR 1.116 amending claims 1, 6, 8, 9, and 12. On October 12, 2004 an Advisory Action was mailed denying entry of the amendment filed September 17, 2004.

In the petition filed November 10, 2004 requesting entry of the amendment under 37 CFR 1.116 filed September 17, 2004, applicant argues that the refusal to enter the amendment is unfair because: (1) the examiner has failed to reply to applicant's assertion that Nakamura reference does not show what the examiner has alleged it shows; (2) the amendment of September 17, 2004 does not raise any new issues since the proposed claim changes are well within the context of the description of the

invention presented in the application and are consistent with allowed claims 5, 25, 26; and (3) the reasoning of "The amendment further defines the connection between the struts and the handlebar mount" is not ample justification for the refusal to enter the proposed amendment since the purpose of defining the connection of the struts was to further emphasize the differences between applicant's invention and the Nakamura reference.

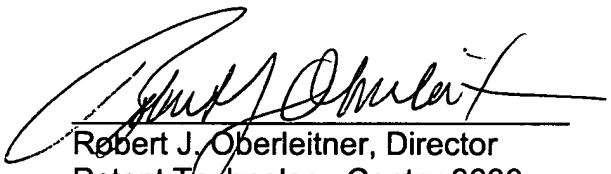
37 CFR 1.181(f) states: The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provide. This two-month period is not extendable.

MPEP 714.12 sets forth that once a final rejection that is not premature has been entered in an application, applicant or patent owner no longer has any right to unrestricted further prosecution. This does not mean that no further amendment or argument will be considered. Any amendment that will place the application either in condition for allowance or in better form for appeal may be entered. Also, amendments complying with objections or requirements as to form are to be permitted after final action in accordance with 37 CFR 1.116(b). Ordinarily, amendments filed after the final action are not entered unless approved by the examiner. See MPEP 706.07(f), 714.13 and 1207. MPEP 714.13 (III) sets forth that the refusal to enter the proposed amendment should not be arbitrary. The proposed amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or where the issues on appeal are simplified. Ordinarily, the specific deficiencies of the amendment need not be discussed. However, if the proposed amendment raises the issue of new matter, the examiner should identify the subject matter that would constitute new matter. If the proposed amendment presents a new issue requiring further consideration and/or search, the examiner should provide an explanation as to the reasons why the proposed amendment raises new issue that would require further reconsideration and/or search. The reasons for nonentry should be concisely expressed. For example: (A) the claims, if amended as proposed, would not avoid any of the rejections set forth in the last Office action, and thus the amendment would not place the case in condition for allowance or in better condition for appeal. (B) The claims, if amended as proposed, would raise the issue of new matter. (C) The claims as amended present new issues requiring further consideration or search.

With regard to applicant's argument that the refusal to enter the amendment is unfair because the examiner has failed to reply to applicant's assertion that Nakamura reference does not show what the examiner has alleged it shows, it is noted that the examiner has accurately pointed out, in the final Office action of August 11, 2004, what Nakamura shows and has appropriately responded to applicant's remarks in the Office action. Next, with respect to applicant's argument that the amendment of September 17, 2004 does not raise any new issues since the proposed claim changes are well within the context of the description of the invention presented in the application and are consistent with allowed claims 5, 25, 26, it is noted that (1) the examiner never stated

that the proposed amendment filed September 17, 2004 raised the issue of new matter; (2) the inclusion of means plus function language under 35 U.S.C. 112, sixth paragraph, in claim 1 is considered to raise new issues requiring further consideration or search as the examiner must determine whether or not 35 U.S.C. 112, sixth paragraph, has been invoked and whether or not the prior art applied during the final Office action reads on the claimed invention; and (3) that the proposed amendments are not consistent with allowed claims 5, 25, and 26 as the allowed claims require the first and second front struts be parallel to and spaced from the first and second rear struts respectively in both said first and second positions. Lastly, with respect to applicant's argument that the proposed amendments further defining the connection of the struts was to further emphasize the differences between applicant's invention and the Nakamura reference to merely place the application in better condition for appeal is not deemed persuasive because the claims, if amended as proposed, would not avoid any of the rejections set forth in the last Office action, and thus the amendment would not place the case in condition for allowance or in better condition for appeal. Accordingly, the non-entry of the amendment filed September 17, 2004 is considered appropriate as: (1) the examiner has appropriately and fairly treated applicant's remarks; (2) no issue of new matter was raised; (3) the amendment did raise new issues and (4) the proposed changes do not place the case in condition for allowance or in better condition for appeal.

The petition is **DENIED.**



Robert J. Oberleitner, Director
Patent Technology Center 3600
Telephone No.: (703) 308-1134

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#6

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Norman Oblon
Oblon Spivak McClelland Maier & Neustadt PC
Fourth Floor
1755 Jefferson Davis Highway
Arlington, VA 22202

In re Application of :
LAUFER et al. :
Application No.: 10/129,102 : DECISION ON PETITION
PCT No.: PCT/EP99/09057 : UNDER 37 CFR 1.182
Int. Filing Date: 23 November 1999 :
Priority Date: None :
Attorney Docket No.: 223255US0PCT :
For: ANTI-INFLAMMATORY OXO DERIVATIVES AND HYDROXY DERIVATIVES OF PYRROLIZINES, AND THEIR PHARMACEUTICAL USE

This decision is in response to applicants' "Response to Notice of Missing Requirements under 35 U.S.C. 371" filed on 09 September 2002, which is being treated as a Petition under 37 CFR 1.182. Applicants are requesting to change the name of the second named inventor from Karola Neher to Karola Tollmann due to marriage. The petition was accompanied by an affidavit signed by Karola Tollmann using both her former name and present name. The petition fee under 37 CFR 1.17(h) has been charged to Deposit Account No. 15-0300, as authorized in the transmittal letter filed 23 May 2002.

DISCUSSION

The Manual of Patent Examining Procedure at § 605.04(c) requires in instances where an inventor has changed his or her name after the application has been filed to submit a petition under 37 CFR 1.182. The petition must include the appropriate petition fee and an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or certified copy of the court order.

The declaration submitted on 09 September 2002 and executed by Stefan Laufer, Karola Tollmann, and Hans-Guenter Striegel is accepted.

CONCLUSION

The petition under 37 CFR 1.182 to change the inventor's name from Karola Neher to Karola Tollmann is **GRANTED**.

The application has an international filing date of 23 November 1999 under 35 U.S.C. 363 and a date of **09 September 2002** under 35 U.S.C. 371(c).

This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (703) 308-6314
Fax: (703) 308-6459

02 MAY 2006

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7055
GREENBLUM & BERNSTEIN, P.L.C.
1941 Roland Clarke Place
Reston, VA 20191

In re Application of :
KAKEHASHI *et al* :
U.S. Application No.: 10/129,105 :
PCT No.: PCT/JP01/08022 :
Int. Filing Date: 14 September 2001 :
Priority Date: 14 September 2000 :
Attorney Docket No.: P22234 : **DECISION**
For: ELECTROMAGNETIC DEVICE AND HIGH-VOLTAGE GENERATING DEVICE AND METHOD OF PRODUCING ELECTROMAGNETIC DEVICE :

Applicants' "Third Request for Correction of Official Filing Receipt" and "Third Request for Correction of Notice of Acceptance . . ." filed on 13 October 2004 are treated under 37 CFR 1.181 and hereby **GRANTED** as follows:

The Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) and filing receipt mailed 05 August 2002 recorded the completion of 371 requirements and filing date of 07 July 2002. A review of the application shows that a transmittal letter was submitted on 07 June 2002 indicating, *inter alia,* that an executed declaration was provided. However, the declaration was processed as received on 07 July 2002.

MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Applicants provided a copy of the date-stamped filing receipt for documents submitted 07 June 2002. The application number and docket are listed on the postcard receipt. The postcard receipt indicates that an executed declaration was received by the USPTO. The postcard receipt is stamped "90 Rec'd PCT/PTO 07 JUN 2002" across its face. Applicants have provided *prima facie* evidence that the declaration was received by the USPTO on 07 June 2002.

Accordingly, the Form PCT/DO/EO/903 and filing receipt mailed 05 August 2002 are

both **VACATED**.

This application is being forwarded to the DO/EO/US to mail a corrected Form PCT/DO/EO/903 and filing receipt indicating a date of completion of all 35 U.S.C. 371 requirements of 07 June 2002.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302

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P.O. Box 1450
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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA , VA
22314

In re application of Jean-Philippe Deslys et al.	:	
Serial No. : 10/129,111	:	DECISION ON PETITION
Filed : August 22, 2002	:	
Attorney Docket No.: 222559US0PCT	:	

This is in response to applicants' petition, filed March 10, 2005 under 37 CFR 1.84(a), to accept color photographs.

Applicant has fulfilled all the requirements of 37 CFR 1.84(a).

Applicant's petition is GRANTED.

Bruce Campell
Supervisory Patent Examiner
Art Unit 1654

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Alexandria, VA 22313-1450
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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

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OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,787,053 :
Issue Date: September 7, 2004 :
Application No. 10/129,115 :
Filed: May 13, 2002 :
Attorney Docket No. 223066US0XPCT :

This is a decision on the petition filed October 19, 2004, under 37 CFR 1.183, to waive the rules of 37 CFR 3.81(a) and accept the correction of the assignee on the front page of the above-identified patent. This decision is also rendered in response to the request for certificate of correction, pursuant to 37 CFR 1.323.

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

The request for a certificate of correction under 37 CFR 1.323 is **GRANTED**.

Assignment data printed on the patent is based solely on the information so supplied on the Issue Fee Transmittal Form (PTOL-85B). A review of the record indicates that the Issue Fee Transmittal Form (PTOL-85B), submitted March 3, 2004 failed to include one of the assignees.

In accordance with the request, and as the request agrees with Office assignment records, the assignee information will be corrected on the face of the patent to include the assignee omitted from the Issue fee transmittal, as follows:

Assignee: NATIONAL INSTITUTE OF ADVANCED INDUSTRIAL
SCIENCE AND TECHNOLOGY
TOKYO (JP)

The fees for the petition ($130.00) and for the certificate of correction ($100.00) have been applied.

This file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

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

18 DEC 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

#3

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OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22202

In re Application of	:	
TAKEDA et al.	:	
Application No.: 10/129,123	:	DECISION
PCT No.: PCT/JP01/11383	:	
Int. Filing Date: 25 December 2001	:	
Priority Date: 25 December 2000	:	
Attorney Docket No.: 221762US2PCT	:	
For: ELECTRICAL QUANTITY SENSOR	:	

This is a decision on applicants' "Response to Notification of Missing Requirements" filed in the United States Patent and Trademark Office (USPTO) in the above referenced application on 02 August 2002. No petition fee is required.

BACKGROUND

On 25 December 2001, applicant filed international application No. PCT/JP01/11383 which claimed a priority date of 25 December 2000, and which designated the United States.

No Demand was filed with an International Preliminary Examining Authority. Since the election was not made prior to the expiration of 19 months from the priority date, the deadline for entry into the national stage in the U.S. expired 20 months from the priority date, i.e. 25 August 2002.

On 15 May 2002, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*,: authorization to charge the basic national fee and the $130 surcharge for filing the oath or declaration after the twenty month period.

On 27 June 2002, before the expiration of the twenty month deadline, applicant filed the declaration executed by the inventors.

On 11 July 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required.

On 02 August 2002, applicant submitted the instant Response, requesting a refund of the declaration surcharge and acceptance of the declaration as filed on 27 June 2002. Applicant provided a copy of the declaration received in the USPTO on 27 June 2002 and an itemized post card receipt.

DISCUSSION

A review of the USPTO application file reveals that the executed declaration was filed in

the USPTO on 27 June 2002, before the expiration of the twenty month period or 25 August 2002. A review of the USPTO finance records for this application indicates that the $130 surcharge was paid on 15 May 2002. Since the twenty month period had not yet expired when the declaration was filed, the $130 surcharge will be refunded.

CONCLUSION

For the reasons indicated above, the request for refund is **GRANTED**.

The application will be forwarded to the U.S. Designated/Elected Office for further processing. The 35 U.S.C. 371 date is 27 June 2002.

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

CMK/cmk
Telephone: (703) 306-5467

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NEW YORK NY 10112-4498

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APR 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,115,503 :
Issued: October 3, 2006 :
Application No. 10/129,159 : NOTICE
Filed: August 27, 2002 :
Attorney Docket No. 070050.2021 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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ROPES & GRAY LLP
PATENT DOCKETING 39/41
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

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JUL 22 2009

OFFICE OF PETITIONS

In re Patent No. 7,479,539	:	LETTER REGARDING PATENT
Strauch, et al.	:	TERM ADJUSTMENT AND
Issue Date: January 20, 2009	:	NOTICE OF INTENT TO ISSUE
Application No. 10/129,162	:	CERTIFICATE OF CORRECTION
Filed: March 14, 2003	:	
Attorney Docket No. CIBT-P01-118	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)," filed February 27, 2009 and supplemented on March 19, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from nine hundred thirty-four(934) days to one thousand four hundred ninety-eight(1,498) days.

The request for reconsideration of patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one thousand one hundred twenty-two**(1,122)** days.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer,** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On January 20, 2009, the above-identified application matured into U.S. Patent No. 7,479,539 with a patent term adjustment of 934 days.

This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 1.705(d).

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

Patentees request recalculation of the patent term adjustment based on the decision in *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that pursuant to *Wyeth*, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." Patentees maintain that the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), is 1,043 days and that only 41 days of the 1,043 days overlap with the period of adjustment due to examination delay, pursuant to 37 CFR §1.702(a), of 605 days, because they occur on the same day.

Patentees argue that the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.702(b), is 1,043 days. Patentees calculate this 1,043 day period based on the application having been filed under 35 U.S.C. §371 on March 14, 2003, and the patent having not issued until January 20, 2009, three years and 1,043 days later.

Patentees are informed that the Three Year Delay period is triggered by the application's commencement date, not the 371 fulfillment date. The commencement date is 30 months from the priority date claimed in the international application, or earlier. The priority date claimed in the international application is November 5, 1999. Thirty months from that date is May 5, 2002, which is the beginning of the Three Year Delay period. Accordingly, the period of adjustment under § 1.702(b) is 1,356 days, counting the number of days beginning on May 6, 2005 and ending on January 20, 2009, when the patent issued.

Patentees assert that in addition to the three year delay period, they are entitled to a period of adjustment due to examination delay, pursuant to 37 CFR §1.702(a), totalling 605 days. This 605 day period is the sum of:

- a period of delay of 564 days for the failure by the Office to mail at least one of a notification under 35 U.S.C. 132 not later than fourteen months after the date the application fulfilled the requirements of 35 U.S.C. 371 in an international application, pursuant to § 1.702(a)(1);

- a period of delay of 8 days for the failure by the Office to respond to a reply under 35 U.S.C. 132 not later than four months after the date on which the reply was filed, pursuant to § 1.702(a)(2);
- a period of delay of 33 days for the Office's failure to issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied, pursuant to § 1.702(a)(4).

Under 37 CFR § 1.703(f), Patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR §1.702 reduced by the period of time equal to the period of time during which Patentees failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR §1.704. In other words, the period of Office delay reduced by the period of applicant delay.

Patentees do not dispute the period of reduction of 109 days for applicant delay. However a closer review of the patent term calculations for the instant application reveals further grounds for reduction. On August 9, 2002, the Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US). On December 16, 2002, applicants filed a reply. On March 14, 2003, applicant filed a supplemental reply. On April 24, 2003, the Office mailed a Notification of Defective Response that informed applicants, *inter alia*, that the Office had not received a complete reply to the August 9, 2002 Notice. The April 24, 2003 Notification did not acknowledge the complete reply filed March 14, 2003 and applicants' subsequently filed May 27, 2003 reply is a copy of the April 24, 2003 reply. The May 27, 2003 reply was necessitated by the improper April 24, 2003 Notification.

Thus, pursuant to 37 CFR 1.704(b), a reduction of 37 days, from November 10, 2002 to December 16, 2002, is in order because applicants took in excess of three months to reply to the August 9, 2002 Notice. Furthermore, pursuant to 37 CFR 1.704(c)(7), a reduction of 88 days is in order because applicants' December 16, 2002 reply had omissions. A complete reply to the August 9, 2002 Notice was filed on March 14, 2003. The period of reduction is measured from the day after the date the reply having an omission was filed, December 17, 2002, and ends on the date that the reply correcting the omission was filed, March 14, 2003.

Patentees assert that the total period of Office delay is the sum of the period of Three Years Delay (1,043 days per patentees' calculation) and the period of Examination Delay (605 days, not in dispute) **to the extent that these periods of delay are not overlapping.**

Patentees contend that the period of delay of 8 days for the failure by the Office to respond to a reply under 35 U.S.C. 132 not later than four months after the date on which the reply was filed, pursuant to § 1.702(a)(2), (from May 23, 2008 to May 30, 2008)overlaps with a portion of the Three Year Delay period.

Patentees contend that the period of delay of 33 days for the Office's failure to issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied, pursuant to § 1.702(a)(4)(from December 19, 2008 to January 20, 2009) overlaps with a portion of the Three Year Delay period.

Accordingly, patentees submit that the total period of Office Delay is 1,607 days, which is the sum of the period of Three Year Delay (1,043 days, per patentee's calculation) and the period of Examination Delay (605 days), reduced by the period of overlap (41 days).

As such, patentees assert entitlement to a patent term adjustment of 1,498 days (1,043 per patentees' calculation of Three Year Delay period +605 examination delay reduced by 41 overlap as cited by patentees -109 for applicant delay, as calculated by patentees). Considering that the three-year period is properly calculated based on the commencement date and is 1,356 days, not 1,043 days, and applying patentee's definition of overlap to the 1,356 period (from May 6, 2005 to January 20, 2009), patentees assertion of entitlement to a patent term adjustment is considered to be 1,603 days (1,356 + 605 reduced by 249 overlap - 109 for applicant delay). The 249 day period of overlap consists of the previously cited 8 day period and the previously cited 33 day period combined with a 208 day period from May 6, 2005 to November 29, 2005, which is the portion of the Three Year Delay period that overlaps with a portion of the 14 month delay period.

As discussed above, the Office states that the patent issued 3 years and 1,356 days after the application's commencement date. The Office agrees that the actions detailed above were not taken

within the specified time frames, and thus, the entry of period of adjustment of 605 days is correct. At issue is whether Patentees should accrue 1,107 (adjusted for overlap, per patentees' definition of overlap and Office's calculation of the Three Year Delay Period) days of patent term adjustment for the Office taking in excess of three years to issue the patent, as well as, 605 days for Office failure to take certain actions within a specified time frames (or examination delay).

The Office contends that 605 of the 1,356 days overlap. Patentees' interpretation of the period of overlap has been considered and found to be incorrect. Patentees' calculation of the period of overlap is inconsistent with the Office's interpretation of this provision. 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.

Likewise, 37 CFR 1.703(f) provides that:

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

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

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the

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

The current wording of § 1.703(f) was revised in response to the misinterpretation of this provision by a number of Patentees. The rule was slightly revised to more closely track the corresponding language of 35 U.S.C. 154(b)(2)(A). The relevant portion differs only to the extent that the statute refers back to provisions of the statute whereas the rule refers back to sections of the rule. This was not a substantive change to the rule nor did it reflect a change of the Office's interpretation of 35 U.S.C. 154(b)(2)(A). 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. The grounds specified in these sections cover the A) guarantee of prompt Patent and Trademark Office responses, B) guarantee of no more than 3 year application pendency, and C) guarantee or adjustments for delays due to interference, secrecy orders and appeals. A section by section analysis of 35 U.S.C. 154(b)(2)(A) specifically provides that:

> Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)-(C), total adjustments granted for restorations under [35 U.S.C. 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under [35 U.S.C.] 181 and administrative delay under [35 U.S.C.] 154(b)(1)(A)), the term should not be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed; See 145 Cong. Rec. S14,718[1]

As such, the period for over 3 year pendency does not overlap only to the extent that the actual dates in the period beginning three years after the commencement date overlap with the actual dates in the periods for failure of the Office to take action within specified time frames. In other words, consideration of the overlap does not begin three years after the commencement date of the application.

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 entire period from the application's commencement date through the date it matured into Patent No. 7,479,539, May 5, 2002 to January 20, 2009. (There were no periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)).

Therefore, 751 days, not 438 days, of patent term adjustment should have been entered for the Three Year Delay period, since the period of delay of 1,356 days attributable to the delay in the issuance of the patent overlaps with the adjustments of 564 days attributable to the ground specified in § 1.702(a)(1), 8

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[1] The AIPA is title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948), which was incorporated and enacted as law as part of Pub. L. 106-113. The Conference Report for H.R. 3194, 106th Cong. 1st Sess. (1999), which resulted in Pub. L. 106-113, does not contain any discussion (other than the incorporated language) of S. 1948. A section-by-section analysis of S. 1948, however, was printed in the Congressional Record at the request of Senator Lott, See 145 Cong. Rec. S14,708-26 (1999)(daily ed. Nov. 17, 1999).

days attributable to the ground specified in § 1.702(a)(2), and 33 days attributable to the ground specified in § 1.702(a)(4). Accordingly, considering the overlap, at issuance, 751 additional days should have been entered for the Office taking in excess of three years to issue the patent after the application commencement date. Pursuant to this decision, an additional 313 days for a total of 751 non-overlapping days of Office delay are now being entered.

In other words, patentees are entitled to a patent term adjustment of 1,122 days (605 days examination delay +1,356 days Three Year delay reduced by 605 overlap - 234 days for applicant delay).

Accordingly, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one thousand one hundred twenty-two(1,122) days.

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 adjusted by one thousand one hundred twenty-two(1,122) days.

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

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

Enclosure: copy of DRAFT certificate of correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,479,539 B1

DATED : **January 20, 2009** **DRAFT**

INVENTOR(S) : Dirk M. Anderson

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 (934) days

Delete the phrase "by 934 days" and insert – by 1,122 days--

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TECHNOLOGY CENTER 3600

DAVID LAURISTON WEST
96 Florence RD
Nedlands, 6009
AUSTRALIA

In re application of : **DECISION ON PETITION**
David Lauriston West : **TO MAKE SPECIAL**
Application No. 10/129,174 : **(APPLICANT'S AGE)**
Filed: May 03, 2002 :
For: GUTTER PROTECTOR AND GUTTERING INCORPORATING SAME

This is a decision on the petition submitted on May 03, 2002, under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a copy of a birth certificate for Mr. West indicating that he is at least 65 years of age.

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

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

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

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

SNM/pav: 12/22/04

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AUG 10 2005
TECHNOLOGY CENTER 3600

David Lauriston West
96 Florence Rd.
Nederlands, 6009
Australia

In re Application of :
David Lauriston West : DECISION ON PETITION
Application No. 10/129,174 : UNDER 37 CFR §1.181
Filed: May 3, 2002 :
For: GUTTERING PROTECTOR AND
GUTTERING INCORPORATING SAME

This is a decision on applicant's Petition to the Commissioner according to 37 CFR 1.181 which was filed June 5, 2005.

The petition is **GRANTED In Part** to the extent indicated below.

Applicant's petition addresses three issues:
1. That an advisory action was erroneously issued by the examiner due to the fact that the application was not under final rejection.
2. That although a petition to make special was granted the examiner was not handling the application in accordance with the decision granting special status.
3. That the examiner was not applying prior art in an appropriate manner.

A review of the record shows that a non-final Office action was mailed on January 4, 2005. An amendment was filed on January 31, 2005 and in response thereto the examiner mailed an advisory action on June 2, 2005. This advisory action was mailed in error since the application was not under final rejection. The advisory action of June 2, 2005 is thus hereby **VACATED**.

The record further suggests the examiner was not treating the application as special. The amendment was forwarded to the examiner on March, 31, 2005 and the advisory action was submitted for mailing on May 31, 2005, a two month hiatus. The examiner will handle this application from this point on in a manner appropriate to an application made special by petition.

Applicant's third issue deals with the rejections of record and is not petitionable subject matter. This issue is properly dealt with via the appeal process, MPEP 1201.

For the reasons presented above the petition is **GRANTED in Part,** to the extent indicated above.

The application is being forwarded to the examiner of record for proper consideration of the amendment filed in response to the non-final Office action on January 31, 2005.

John J. Love, Director
Patent Technology Center 3600
Telephone No.: (571) 272-5250

CF/SM 8/02/05
SM

LAURISTON ENTERPRISES Pty. Ltd.
ACN 068 668 388

96 Florence Road,
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Telephone: (08) 9386 2159
Facsimile: (08) 9386 2170

Our ref:

FACSIMILE 0011 1 571 273 6479

4/13/06
APPROVED

Mr John J Love
Director
Patent Technology Centre
Commissioner for Patents
PO Office Box 1450
ALEXANDRIA VA 22313-1450

April 6, 2006

Dear Mr Love

Re: Patent Application Number: 10/129,174 Art Unit: 3635
Patent Title: Gutter Protector and Guttering Incorporating Same
Inventor: David Lauriston WEST

Petition to the Commissioner under 37 CFR 1.181
Decision dated August 10, 2005

I refer to your letter of August 10, 2005 (copy attached) **Granting** my Petition and in which you have kindly provided your direct telephone number. Unfortunately I have not seen your letter until now as it was incorrectly addressed.

The letter was addressed to : "96 Florence Road
NEDERLANDS, 6009
AUSTRALIA" ,

change address ⇒

whereas the correct address is : "96 Florence Road
NEDLANDS
WESTERN AUSTRALIA 6009".

Clearly I had been very concerned that a response had not been received in respect to my Petition to the Commissioner filed on July 5, 2005 and the Response filed on the same day. ?

As a result of this, in December 2005 I commenced action to obtain a Digital Certificate to access the Private Pair, which I was able to do late in March 2006.

As a consequence of the use of the incorrect address, the letter was not delivered and returned to sender. I would have expected that at this time someone would have checked the address to make sure that it was correct, but obviously this was not done. I am also concerned that in the Transaction History tab in the Private Pair that on January 19, 2006 a notation was made of a "correspondence address change", although the Address tab gives the correct street name and number and city but not

the state as "WESTERN AUSTRALIA". All previous correspondence has been addressed correctly. The correct address is as shown on this letter head.

You will appreciate that it seems to me that my application with the USPTO has met a never ending series of obstacles, as during the course of the application I have now had to make 3 Petitions to the Commissioner for a restriction, an improper combination of patents for prior art and the current Petition (**all of which have been granted**), and now this instance where an incorrect address has been used.

I note that you stated in the Decision of August 10 2005 that "The application is being **forwarded to the examiner** of record **for proper consideration** of the amendment filed **in response to a non final office action on January 31, 2005.**" However, I **have not received any further advice some 8 months later** and there are no further transactions shown on the Private Pair.

Over the last few days I have tried to contact you on two occasions. On the first occasion I spoke to your secretary who was very helpful. Unfortunately you were in a meeting until 1 pm (1 am my time) and she suggested you would be happy to telephone me back, but I said I would telephone again. On the second occasion a different lady answered the telephone and said I should speak to the Examiner, which I did not think was appropriate. She then suggested that I should speak to the Supervisor of the Art Unit, Mr Carl Friedman, who did not answer his telephone. I rang the lady back again and fully explained the situation to her and she said she would email Mr Friedman and that he should respond within 24 hours.

As Mr Friedman has not contacted me, I am asking once again for your help. I would appreciate if you could kindly advise me by telephone at +61893862159 or by facsimile at +61 8 9386 2170 of the present status of the application. As Western Australia is 12 hours ahead of your local time it would be appreciated if you could kindly contact between 8.30 and 10.30 am your time.

Yours faithfully

David West

D L West

RECEIVED
CENTRAL FAX CENTER
JUN 02 2006

LAURISTON ENTERPRISES Pty. Ltd.
ACN 068 668 388

96 Florence Road,
Nedlands,
Western Australia 6009

Telephone: (08) 9386 2159
Facsimile: (08) 9386 2170

Our ref:

FAX 0011 1 571 273 8300

Mr Carl D Friedman
Examiner's Supervisor
Art Unit 3635
Commissioner of Patents
Alexandria, VIRGINIA 22313-1450

Ph +61 8 9386 2159
Fax +61 8 9386 2170

Re: Patent Application: **10/129,174** Art Unit: **3635**
Inventor: David Lauriston **WEST**
Title: GUTTER PROTECTOR AND GUTTERING INCORPORATING SAME

On May 11, 2006 we spoke at length on the telephone of the delays and other issues that had affected the proper and timely assessment of the above application, and in particular of the period from August 2, 2005 until the time of our discussion, during which time the examiner took no action whatsoever on the directions that were given to her from the Commissioner. During our discussion I asked you if the ensuing Office Action could be faxed to me considering the very large amount of time that had been lost since that decision, which you agreed to, but which was not done. The subsequent Office Action that was mailed on May 18, 2006 was received yesterday, and the situation has certainly not improved, as **it is evident that the examiner has not taken action according to the Commissioner's Decision dated August 2, 2005 to my Petition under 37 CFR s1.181** (copy attached).

As that **Decision** states, "The **Advisory action of June 2, 2005** is thus hereby **VACATED.** ", it follows that my response filed on July 5, 2005 **is not** applicable and should not be referred to or considered in the "Response to Arguments" on page 5 **and elsewhere** in the above Office Action. This is according to the final sentence in the Decision by the Commissioner that states, **"The application is being forwarded to the examiner of record for proper consideration of the amendment filed in response to the non final Office action on January 31, 2005."** Clearly the Office Action should refer in those terms to my response filed on January 31, 2005, which is now some 16 months after filing.

Therefore, the claims should stand according to the response filed on January 31, 2005 and the "Disposition of the Claims " should include claim 1.

I respectfully suggest that for compliance with the requirements of the **Commissioner's Decision an amended** Office Action will need to be to be provided with an accordingly revised statutory period for reply and whatever other changes are required to the Detailed Action. **I would also appreciate if the special status provided by the Decision to Make Special is afforded my application.**

As this matter concerns a granted Petition I have forwarded a copy of this facsimile to the Director, Patent Technology Centre.

Would you please advise me urgently on fax +61 8 9386 2159, to advise me how and when these matters will be remedied to enable me to prepare my response to the Office Action.

Yours faithfully

D L West
June 1, 2006

Copy to: Mr John J Love
Director
Patent Technology Centre 3600

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JUN 0 2 2006

3.
8-10-05

UNITED STATES PATENT AND TRADEMARK OFFICE

FAX : 0011 1 571 273 8300
TO : MR CARL D FRIEDMAN
ON : JUNE 1. 2006

ATTACHMENT

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

MAILED
FROM DIRECTORS OFFICE
AUG 1 0 2005
TECHNOLOGY CENTER 3600

David Lauriston West
96 Florence Rd.
Nederlands, 6009
Australia

In re Application of :
David Lauriston West :
Application No. 10/129,174 :
Filed: May 3, 2002 :
For: GUTTERING PROTECTOR AND
GUTTERING INCORPORATING SAME

DECISION ON PETITION
UNDER 37 CFR §1.181

This is a decision on applicant's Petition to the Commissioner according to 37 CFR 1.181 which was filed June 5, 2005.

The petition is **GRANTED In Part** to the extent indicated below.

Applicant's petition addresses three issues:
1. That an advisory action was erroneously issued by the examiner due to the fact that the application was not under final rejection.
2. That although a petition to make special was granted the examiner was not handling the application in accordance with the decision granting special status.
3. That the examiner was not applying prior art in an appropriate manner.

A review of the record shows that a non-final Office action was mailed on January 4, 2005. An amendment was filed on January 31, 2005 and in response thereto the examiner mailed an advisory action on June 2, 2005. This advisory action was mailed in error since the application was not under final rejection. The advisory action of June 2, 2005 is thus hereby **VACATED**.

8/10-05

The record further suggests the examiner was not treating the application as special. The amendment was forwarded to the examiner on March, 31, 2005 and the advisory action was submitted for mailing on May 31, 2005, a two month hiatus. The examiner will handle this application from this point on in a manner appropriate to an application made special by petition.

Applicant's third issue deals with the rejections of record and is not petitionable subject matter. This issue is properly dealt with via the appeal process, MPEP 1201.

For the reasons presented above the petition is **GRANTED in Part**, to the extent indicated above.

The application is being forwarded to the examiner of record for proper consideration of the amendment filed in response to the non-final Office action on January 31, 2005.

John J. Love, Director
Patent Technology Center 3600
Telephone No.: (571) 272-5250

CF/SM 8/02/05
SM

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LAURISTON ENTERPRISES PTY LTD.
96 FLORENCE ROAD
NEDLANDS 6009 AU AUSTRALIA

COPY MAILED

DEC 0 5 2006

OFFICE OF PETITIONS

In re Application of	:	
WEST, David Lauriston	:	
Application No. 10/129,174	:	DECISION ON PETITION
Filed: May 3, 2002	:	TO MAKE SPECIAL UNDER
Attorney Docket No. LAUR : GUTT	:	37 CFR 1.102(c)(1)
	:	

This is a decision on the renewed petition under 37 CFR 1.102(c)(1), filed November 21, 2006, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

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

The instant petition includes the birth certificate of inventor David L. West, attesting to his age. Accordingly, the above-identified application has been accorded "special" status.

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

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

The application is being forwarded to the Technology Center Art Unit 3635 for action on the merits commensurate with this decision.

Monica A. Graves
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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96 FLORENCE ROAD
NEDLANDS 6009 AU AUSTRALIA

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AUG 31 2007

OFFICE OF PETITIONS

In re Application of	:
West	:
Application No. 10/129,174	: Decision on Petition for
International Filing Date: March 29, 2000	: Patent Term Adjustment
Attorney Docket No. LAUR : GUTT	:
For: GUTTER PROTECTOR AND	:
GUTTERING INCORPORATING SAME	:

The above-identified application has been forwarded to the undersigned for consideration on a petition entitled "Request for Reconsideration of Patent Term Adjustment," received on July 11, 2007. In the alternative, the petition is being treated as a petition for corrected patent term extension under 37 CFR 1.701 and 37 CFR 1.181. See 35 U.S.C. § 154(b)[1] and 37 CFR § 1.701.

The petition under 37 CFR 1.705 is dismissed.

The petition under 37 CFR 1.181 is dismissed.

Petitioner notes that Notice of Allowance mailed on May 9, 2007, for the above-identified application did not contain an indication of paten term adjustment. Petitioner asserts that the Notice of Allowance improperly stated that the Patent Term Extension is 0 days. Petitioner asserts that from the heading in the Notice of Allowance, the United States Patent and Trademark Office improperly calculated patent term extension under 35 U.S.C. § 154(b), however this application was filed on May 3, 2002, which is after May 29, 2000, and is thus eligible for the patent term adjustment provisions under 35 U.S.C. § 154(b). Petitioner asserts that that the application is entitled to patent term adjustment of 2 years and 6 days under 35 U.S.C. § 154(b)(1)(B).

35 U.S.C. § 154(b)(as amended by the "Uruguay Round Agreements Act," enacted December 8, 1994, as part of Public Law 103-465) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000.

[1] 35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000). Since this amendment is effective May 29, 2000 and applies to applications filed on or after that date, the prior patent term adjustment provisions of 35 U.S.C. § 154 continue to apply to the above-identified application.

35 U.S.C. § 154(b) (as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113) provides for patent term adjustment for these administrative delays and others in applications filed on or after May 29, 2000.

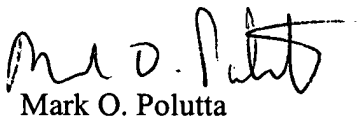
The above-identified application was filed on March 29, 2000, not May 3, 2002, as asserted by Petitioner. The international filing date (March 29, 2000) is the filing date of the application and May 3, 2002, is the date of national stage entry and completion of 35 U.S.C. 371(c)(1), (c)(2) an d(c)(4) requirements. See MPEP 1893.03(b) and Notice of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (copy enclosed). Accordingly the application is entitled to patent term extension based upon the conditions in 35 U.S.C. § 154(b), in effect on June 8, 1995. The provisions of 35 U.S.C. § 154(b) in effect on May 29, 2000 do not apply, because the amended version of 35 U.S.C. § 154(b) only applies to applications filed on or after May 29, 2000.

In the alternative, pursuant to 35 U.S.C. § 154(b), in effect on June 8, 1995, the application is not entitled to patent term extension under 37 CFR 1.701, as there was not a successful appeal, interference or a secrecy order. The Office has no authority to grant an extension of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). The required $200 fee for the request under 37 CFR 1.705(b) has been paid.

Regarding petitioner's request for a refund for filing an RCE, as the status of the application was changed to non-final and thus not needed, the status of the application was changed to a non-final status inresponse to the filing of the RCE.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



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

Enclosures: Corrected Filing Receipt
Copy of Notice of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495

UNITED STATES PATENT AND TRADEMARK OFFICE

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

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/129,174	David Lauriston West	LAUR : GUTT

INTERNATIONAL APPLICATION NO.	
PCT/AU00/00255	
I.A. FILING DATE	PRIORITY DATE
03/19/2000	11/03/1999

26790
LAW OFFICE OF KAREN DANA OSTER, LLC
PMB 1020
15450 SW BOONES FERRY ROAD #9
LAKE OSWEGO, OR 97035

CONFIRMATION NO. 6326

371 ACCEPTANCE LETTER

"OC000000008512107"

Date Mailed: 07/29/2002

NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C 371 AND 37 CFR 1.494 OR 1.495

The applicant is hereby advised that the United States Patent and Trademark Office in its capacity as a Designated Office (37 CFR 1.494) , has determined that the above identified international application has met the requirements of 35 U.S.C. 371, and is ACCEPTED for national patentability examination in the United States Patent and Trademark Office.

The United States Application Number assigned to the application is shown above and the relevant dates are:

05/03/2002	05/03/2002
DATE OF RECEIPT OF 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) REQUIREMENTS	DATE OF RECEIPT OF ALL 35 U.S.C. REQUIREMENTS

A Filing Receipt (PTO-103X) will be issued for the present application in due course. **THE DATE APPEARING ON THE FILING RECEIPT AS THE " FILING DATE" IS THE DATE ON WHICH THE LAST OF THE 35 U.S.C. 371 REQUIREMENTS HAS BEEN RECEIVED IN THE OFFICE. THIS DATE IS SHOWN ABOVE.** *The filing date of the above identified application is the international filing date of the international application (Article 11(3) and 35 U.S.C. 363).* Once the Filing Receipt has been received, send all correspondence to the Group Art Unit designated thereon.

The following items have been received:

- U.S. Basic National Fee
- Indication of Small Entity Status
- Assignee Statement
- Copy of IPE Report
- Copy of references cited in ISR
- Copy of the International Application
- Copy of the International Search Report
- Information Disclosure Statements
- Oath or Declaration

- Preliminary Amendments
- Request for Immediate Examination

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

LAMONT M HUNTER
Telephone: (703) 305-3686

PART 3 - OFFICE COPY

FORM PCT/DO/EO/903 (371 Acceptance Notice)

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
10/129,174	05/03/2002	3635	873	LAUR : GUTT	23	3

CONFIRMATION NO. 6326

CORRECTED FILING RECEIPT

OC000000025650063

59266
LAURISTON ENTERPRISES PTY LTD.
96 FLORENCE ROAD
NEDLANDS, 6009
AUSTRALIA

Date Mailed: 08/31/2007

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)

David Lauriston West, Nedlands, AUSTRALIA;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a 371 of PCT/AU00/00255 03/29/2000

Foreign Applications

AUSTRALIA PQ 3820 11/03/1999
AUSTRALIA PQ 5273 01/27/2000

If Required, Foreign Filing License Granted: 08/31/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/129,174

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

** SMALL ENTITY **

Title

GUTTER PROTECTOR AND GUTTERING INCORPORATING SAME

Preliminary Class

052

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted

under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

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Casimir Jones, S.C.
2275 DEMING WAY, SUITE 310
MIDDLETON, WI 53562

Mail Date: 04/21/2010

Applicant	: David James Craik	: DECISION ON REQUEST FOR
Patent Number	: 7592433	: RECALCULATION of PATENT
Issue Date	: 09/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/129,201	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/10/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **728** 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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BRINKS HOFER GILSON & LIONE
ONE INDIANA SQUARE, SUITE 1600
INDIANAPOLIS IN 46204-2033

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JUL 01 2008

In re Application of	:	
Liu, et al.	:	
Application No. 10/129,217	:	DECISION ON PETITION
Filed: April 30, 2002	:	
Attorney Docket No. 020510-US//13643/004	:	

This is a decision on the petition under the unavoidable standard of 37 CFR 1.137(a), filed May 15, 2008, to revive the above-identified application.

The petition is **DISMISSED.**

Any further petition to revive must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." 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 to a non-final Office action, mailed December 14, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 15, 2006. A Notice of Abandonment was mailed on January 17, 2007.

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 Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 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(d).

The instant petition lacks item (3).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 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).

As a preliminary matter, the exhibits to Margit Rudolph's declaration are in a foreign language. No translation has been provided. With any reconsideration petition, please submit an English translation of the exhibits.

Petitioners argue that 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. Petitioners appear to be uncertain as to whether or not applicants' then representative, Karl Hormann, filed a reply to the December 14, 2005 non-final Office action. Mr. Hormann has not responded to a request for his declaration concerning his actions with respect to filing a reply to the December 14, 2005 non-final Office action..

The December 14, 2005 non-final Office action was properly mailed to the correspondence address of record, which was Mr. Hormann's address. Unfortunately, it appears that applicants' then attorney did not respond to the Office action. The Office has no record of receiving a timely reply.

Because petitioners were represented by a registered practitioner, the Office must rely on the actions or inactions of the duly authorized and voluntarily chosen representative of the applicants, and the applicants are bound by the consequences of those actions or inactions. Link

v. Wabash, 370 U.S. 626, 633-34 (1962). If the attorney made any errors, petitioners are bound by such errors.[1]

An attorney must act reasonably and prudently.

If [the] attorney somehow breach[es] his duty of care to plaintiff, then plaintiff may have certain other remedies available to him against his attorney. He cannot, however, ask the court to overlook [the attorney's] action or inaction with regard to the patent application. He hired the [attorney] to represent him. [The attorney's] actions must be imputed to him.[2]

Petitioners are reminded that the U.S. Patent and Trademark Office is not the proper forum for resolving disputes between applicants and their representatives. *See* Ray v. Lehman, 55 F.3d 606, 34 USPQ2d 1786 (Fed. Cir. 1995).

Petitioners are advised that delay resulting from a failure in communication between a client and a registered practitioner is not unavoidable delay. In Re Kim, 12 U.S.P.Q.2d 1595 (Comm'r Pat. 1988).

In addition, there is a question as to the nature of the delay from November 28, 2006 through March 2008. Ms. Rudolph was on notice that Mr. Hormann was not responding to her reminder emails. What further actions did Ms. Rudolph or other individuals with interest in the application take to ensure that Mr. Hormann responded to the December 14, 2005 non-final Office action from November 28, 2006 through March 2008? The record, as it is now, shows no inquiry into the status of the reply/application for over a year.

The petition under 37 CFR 1.137(a) is dismissed.

The undersigned suggests that petitioners file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b).

---

[1] See California Med. Products v. Technol Med. Products, 921 F. Supp. 1219, 1259 (D. Del. 1995) (citing Smith v. Diamond, 209 U.S.P.Q. 1091, 1093 (D.D.C. 1981) (citing Link v. Walbash Railroad Co., 370 U.S. 626, 8 L. Ed. 2d 734, 82 S. Ct. 1386 (1962))).

[2] Haines v. Quigg, 673 F. Supp. 314, 317, 5 U.S.P.Q. 2d (BNA) 1130 (citing Link v. Walbash Railroad Co., 370 U.S. 626, 8 L. Ed. 2d 734, 82 S. Ct. 1386 (1962) ("Petitioner voluntarily chose his attorney as his representative in the action and he cannot now avoid the consequences of the acts or omissions of this freely selected agent ... Each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'" (emphasis added); Inryco, Inc. v. Metropolitan Engineering Co., Inc., 708 F.2d 1225, 1233 (7th Cir. 1983) ("Courts hesitate to punish a client for its lawyers gross negligence, especially when the lawyer affirmatively misled the client" but "if the client freely chooses counsel, it should be bound to counsel's actions."); see also Wei v. State of Hawaii, 763 F. 2d 370, 372 (9th Cir. 1985); LeBlanc v. I.N.S., 715 F.2d 685, 694 (1st Cir. 1983)). See also Smith v. Diamond, 209 U.S.P.Q. (BNA) 1091 (D. D.C. 1981).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the 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 petitioners intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

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

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

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

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

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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INDIANAPOLIS IN 46204-2033

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OFFICE OF PETITIONS

In re Application of :
Liu, et al. :
Application No. 10/129,217 : DECISION ON PETITION
Filed: April 30, 2002 :
Attorney Docket No. 020510-US//13643/004 :

This is a decision on the petition under the unintentional standard of 37 CFR 1.137(b), filed July 11, 2008, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to timely reply to a non-final Office action, mailed December 14, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 15, 2006. A Notice of Abandonment was mailed on January 17, 2007.

Applicants have submitted an amendment in reply to the December 14, 2005 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the December 14, 2005 non-final Office action, and the $1,540.00 petition fee.

All of the requirements under 37 CFR 1.137(b) being met, the petition is granted.

After the mailing of this decision, the application will be returned to Technology Center AU 2629 for consideration of the amendment filed on May 15, 2008.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

12 FEB 2004

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Ernest F. Chapman
Finnegan Henderson Farabow Garrett & Dunner
1300 I Street, NW
Washington, D.C. 20005-3315

In re Application of	:	
BESSODES et al.	:	
Application No.: 10/129,262	:	
PCT No.: PCT/FR01/02725	:	DECISION ON PETITION
Int. Filing Date: 03 September 2001	:	UNDER 37 CFR 1.181
Priority Date: 05 September 2000	:	
Atty. Docket No.: 03806.0550	:	
For: ACID-SENSITIVE COMPOUNDS, THEIR PREPARATION AND USES	:	

This is a decision on applicant's facsimile communication filed 09 January 2004 which is being treated as petition under 37 CFR 1.181. No petition fee is due.

BACKGROUND

On 03 September 2001, applicant filed international application PCT/FR01/02725 which claimed a priority date of 05 September 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 14 March 2002. A Demand for international preliminary examination was filed prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 05 March 2003.

On 03 May 2002, applicant filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and a preliminary amendment.

On 01 July 2002, the United States Designated/Elected Office mailed a Notification of Missing Requirements (PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge under 37 CFR 1.492(e) and that an English translation of the international application was needed. The notification set a time limit of two (2) months or 32 months (where 37 CFR 1.495 applies) from the priority date in which to respond.

On 31 October 2002, applicant filed a declaration/power of attorney; an English translation of the international application; and two-month extension of time.

On 27 January 2003, the United States Designated/Elected Office (DO/EO/US) mailed Notification of Defective Response (Form PCT/DO/EO/916) indicating that a Sequence Listing had not been filed as required by 37 CFR 1.821(c) and (e).

On 09 January 2004, applicants filed the present petition under 37 CFR 1.181.

DISCUSSION

A. National Stage Commencement

As stated above, a Demand for international preliminary examination was filed prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 05 March 2003. Applicant submitted the basic national fee; an English translation of the international application; and a copy of the international application stage papers on 03 May 2002 but did not request early examination pursuant to 35 U.S.C. 371(f). Because all the requirements under 35 U.S.C. 371(c) had not been met, national stage processing should not have commence until the expiration of 30 months from the priority date, 05 March 2003. Accordingly, the time period set to respond in the Notification of Missing Requirements expired on 05 May 2003. Therefore, the Notification of Defective Response (Form PCT/DO/EO/916) was mailed in error and is vacated.

The extension of time fee ($400) and the processing fee ($130) for furnishing an English translation later than 30 months from the earliest priority date will be refunded to applicants' Deposit Account. The surcharge ($130) for furnishing an oath or declaration than 30 months from the earliest priority date will not be refunded for the reason discussed below.

B. Sequence Listing

The Notification of Defective Response (Form PCT/DO/EO/916) mailed 27 January 2003 indicated that the nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements set forth in 37 CFR 1. 1.821- 825. Applicants state that the instant application does not contain any nucleotide or amino acid sequences and no sequence listing is required. Applicants' assertion is correct that there is no need to file a sequence listing for the present application.

C. Defective Declaration

The declaration submitted on 31 October 2002 is not in compliance with 37 CFR 1.497(a)(3) which requires that the oath or declaration identify the inventor and country of citizenship of the inventor. In this case, first inventor (Michel Bessodes) has listed his citizenship as "F" which is not a recognized abbreviation by the United States Designated/Elected Office. Since the declaration does not clearly identify the citizenship of

the inventor, it is considered defective under 37 CFR 1.497(a)(3) and 37 CFR 1.63(c)(1). Therefore, in that the declaration is not compliance with 37 CFR 1.63 and 1.497(a)(3), applicants have not met the requirements for entry into the national stage under 35 U.S.C. 371.

CONCLUSION

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

The Notification of Defective Response (Form PCT/DO/EO/916) is **VACATED**.

A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision and must include a declaration in compliance with 37 CFR 1.497(a)-(b) executed by all of the named inventors. No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: (703) 308-6314
Facsimile: (703) 308-6459

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P.O. BOX 10395
CHICAGO, IL 60610

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OFFICE OF PETITIONS

In re Application of :
David A. Wightman :
Application No. 10/129,339 : ON PETITION
Filed: May 2, 2002 :
Attorney Docket No. 9713/73 :

This is a decision on the petition, filed February 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 September 13, 2004, using a Certificate of Mailing or Transmission under 37 CFR 1.8 dated September 9, 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 3744 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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/129321

Paper No.: —

DATE : 2/21/05

TO SPE OF : ART UNIT 2831

SUBJECT : Request for Certificate of Correction on Patent No.: 6893169 B1

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

Please complete this form and return with file, within **7** days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Virginia Tolbert

Thank You For Your Assistance

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

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

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

Comments:

Dean A. Reichard — SPE

2831 — Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : May 24, 2006

TO SPE OF : ART UNIT 1626 (S.P.E. Joseph McKane)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/129404 Patent No.: 6962983

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 see the claims and their dependencies.

STACY POWELL

Certificates of Correction Branch

703-308-9390 ext. 120

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

Joseph K. McKane 7.19.06

JOSEPH K. McKANE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE **Art Unit**

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CHICAGO IL 60664-0807

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OFFICE OF PETITIONS

Applicant: Carpenter et al.
Appl. No.: 10/129,416
Filing Date: November 5, 2002
Title: RADIOPROTECTIVE MATERIALS AND UTILIZATION THEREOF
Attorney Docket No.: 030200-000005
Pub. No.: US 2003/0229638 A1
Pub. Date: December 11, 2003

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on February 26, 2004.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication contains two errors on the front page of the patent application publication because the priority information for two provisional applications are missing.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1]

The request for corrected publication received on February 26, 2004, was not timely filed under 37 CFR 1.221(b).

It is noted that applicant is attempting to claim the benefit of an earlier filed provisional application. Since the benefit claim was not filed within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application, the benefit of the earlier filed application is considered to have been waived. To make a late benefit claim to the earlier filed application, applicant must submit a petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of the earlier filed provisional application. The petition must include 1) the surcharge ($1330.00) set forth in 37 CFR 1.14(t) and 2) a statement that the entire delay between the date the claim was due under paragraph (a)(5) of this section and the date the claim was filed was unintentional. The petition must also include a proper reference (amendment) to the prior applications in order for the petition to be granted.[2]

---

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

[2]See Claiming the Benefit of a Prior-Filed Application under 35 U.S.C. §§ 119(e), 120, 121, and 365(c), 1268 Off. Gaz. Pat. Office Notices 89 (March 18, 2003).

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

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

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

By facsimile: 703-305-8568

The application will be examined in due course.

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

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

19 AUG 2003

#4

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Herbert Dubno
The Firm of Karl F. Ross P.C.
5676 Riverdale Ave. Box 900
Rieverdale (Bronx), New York 10471

In re Application of	:
PAULUS, Werner	: DECISION ON
US Application No.: 10/129,429	:
PCT Application No.: PCT/DE01/00724	: PETITION
Int. Filing Date: 27 February 2001	:
Priority Date: 29 February 2000	: UNDER
Attorney's File Reference: 22038	:
For: JAW ORTHOPEDIC DEVICE	: 37 CFR 1.47(b)

This decision is in response to applicant's 1) "PETITION FOR ACCEPTANCE OF APPLICATION AND GRANT OF FILING DATE OF 26 OCTOBER 2001", filed 03 May 2002, which is being treated as a petition under 37 CFR 1.181 requesting that the initial papers filed under 35 USC 371 be treated as having been filed 26 October 2001 and 2) "RESPONSE", filed 17 January 2003, which is being treated as a petition under 37 CFR 1.47(b) requesting acceptance of the application without the signature of the sole inventor Werner Paulus (Paulus) and as a request for a refund of the $130 petition fee paid on 03 May 2002. The $130.00 petition fee due in accordance with 37 CFR 1.17(h) has been paid.

BACKGROUND

On 27 February 2001, applicant filed international application number PCT/DE01/00724, which claimed a priority date of 29 February 2000. No demand for international preliminary examination was filed. Accordingly, the twenty-month period for paying the basic national fee in the United States of America expired at midnight on 29 October 2001.

On 26 October 2001, applicant filed a transmittal letter for entry into the national stage in the United States of America under 35 USC 371, which was accompanied by,

inter alia, an English translation of the international application and the basic national fee. No oath or declaration of the inventors was included.

On 03 May 2002, applicant filed, inter alia, the present "PETITION FOR ACCEPTANCE OF APPLICATION AND GRANT OF FILING DATE OF 26 OCTOBER 2001" which is being treated as a petition under 37 CFR 1.181 requesting that the initial papers filed under 35 USC 371 be treated as having been filed 26 October 2001. The petition included a deposit account authorization.

On 18 July 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements which indicated, inter alia, that an oath or declaration of inventorship and a surcharge under 37 CFR 1.492(e) for providing a late oath or declaration must be furnished by two months from the mailing date of the notification but that extensions of time were available under 37 CFR 1.136(a).

On 17 January 2003, the applicant filed, inter alia, the following papers:

1) the present "RESPONSE" indicating, inter alia, that 1) the Notification of Missing Requirements mailed 18 July 2002 was improper because "all requirements" were filed 26 October 2001, 2) a declaration was being submitted under 37 CFR 1.47(b), and 3) any necessary fees including any extension fees should be charged to applicant's deposit account;

2) a copy of a letter from agent Herbert Dubno (Dubno) to the USPTO Office of Finance requesting a refund in the amount of $130.00 for a petition fee improperly charged to applicant's deposit account in May of 2002; and

3) a "DECLARATION UNDER 37 CFR 1.497(a) and 37 CFR 1.97(b) and 37 CFR 1.47(b)" signed by Dubno.

DISCUSSION

Petition under 35 USC 1.181

The applicant requests that the initial papers filed under 35 USC 371 be treated as having been filed 26 October 2001. A review of the application file reveals that the initial papers filed under 35 USC 371 were received on 26 October 2001 and were date stamped 26 October 2001. Accordingly, the applicant's petition under 37 CFR 1.181 is moot.

Request for refund

The applicant requests the refund of a $130 petition fee paid on 03 May 2002. A review of the application file reveals that the applicant's deposit account was charged a petition fee of $130 that was recorded as having been received on 03 May 2002. However, there is no petition fee required for filing a petition under 35 USC 1.181. Accordingly, the $130 petition fee of 03 May 2002 was erroneously charged to the

applicant's deposit account. However, applicant's response of 17 January 2003 includes a petition under 37 CFR 1.47(b) to accept the declaration without the signature of the sole inventor Paulus. There is a requisite $130 petition fee under 37 CFR 1.17(h) due with regard to the petition under 37 CFR 1.47(b). Accordingly, overall no refund is due.

In addition, the applicant asserts that the Notification of Missing Requirements mailed 18 July 2002 was improper because "all requirements" were filed on 26 October 2001. Applicant further asserts that since "all requirements" were filed on 26 October 2001, the applicant should not be required to pay any additional fees. However, applicant did not submit all of the requirements under 35 USC 371 on 26 October 2001 since applicant failed to provide an oath or declaration of the inventors. Accordingly, the Notification of Missing Requirements mailed 18 July 2002 was proper. The notification set a two-month time period for response but stated that extensions of time were available under 37 CFR 1.136(a). Applicant did not file a response to the notification until 17 January 2003. Accordingly, a $725 fee for a four-month extension of time has been charged to applicant's deposit account. The applicant's deposit account has also been charged the requisite $65 fee under 37 CFR 1.492(e) for filing the oath/declaration latter than the twenty-month deadline for entry into the US national stage. Accordingly, applicant's deposit account has been charged an additional $790 overall.

Declaration under 37 CFR 1.497 and petition under 37 CFR 1.47(b)

37 CFR 1.497(a) and (b) state, in part:

> (a) When an applicant of an international application desires to enter the national stage under 35 U.S.C. 371 pursuant to § 1.495 . . . . . he or she must file an oath or declaration that:
>
> (1) Is executed in accordance with either §§ 1.66 or 1.68;
>
> (2) Identifies the specification to which it is directed;
>
> (3) Identifies each inventor and the country of citizenship of each inventor; and
>
> (4) States that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.
>
> (b)(1) The oath or declaration must be made by all of the actual inventors except as provided for in §§ 1.42, 1.43 or 1.47.
>
> (2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state.
>
> * * * * * * * * *

The declaration filed 17 January 2003 (the declaration) does not clearly identify the specification to which it is directed. The heading at the top of the first page of the declaration and page two of the declaration both reference international application number PCT/DE01/00724. However, the middle of the first page of the declaration references international application number PCT/DE01/00734. Further, the declaration indicates that the title of the invention is "ORTHOPEDIC JAW DEVICE" but the title of international application number PCT/DE01/00724 is "JAW ORTHOPEDIC DEVICE".

The applicant is required to submit an oath or declaration that clearly identifies the specification to which it is directed.

In addition, the declaration does not clearly identify the inventor and country of citizenship of the inventor. The first page of the declaration identifies the inventor as Werner Paulus. Further, the second page of the declaration indicates that Werner Paulus is the sole inventor. However, the declaration only identifies the country of citizenship of Wallace Paulus not Werner Paulus. Further, the international publication of the application lists Werner Paulus as the sole inventor. The applicant is required to submit an oath or declaration that clearly identifies each inventor and the country of citizenship of each inventor.

37 CFR 1.47(b) states:

> (b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(h), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

MPEP section 409.03(b) states, in part:

> In addition to other requirements of law (35 U.S.C. 111(a) and 115), an application deposited pursuant to 37 CFR 1.47(b) must meet the following requirements:
>
> (A) The 37 CFR 1.47(b) applicant must make the oath required by 37 CFR 1.63 and 1.64 or 1.175. Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary, Treasurer, or Chief Executive Officer) thereof should normally sign the necessary oath or declaration. A corporation may authorize any person, including an attorney or agent registered to practice before the U.S. Patent and Trademark Office, to sign the application oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney's or agent's authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, see MPEP § 324. . . . . Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).
>
> (B) The 37 CFR 1.47(b) applicant must state his or her relationship to the inventor as required by 37 CFR 1.64.
>
> (C) The application must be accompanied by proof that the inventor (1) cannot be found or reached after a diligent effort or (2) refuses to execute the application papers. See MPEP § 409.03(d).
>
> (D) The last known address of the inventor must be stated. See MPEP § 409.03(e).

(E) The 37 CFR 1.47(b) applicant must make out a *prima facie* case (1) that the invention has been assigned to him or her or (2) that the inventor has agreed in writing to assign the invention to him or her or (3) otherwise demonstrate a proprietary interest in the subject matter of the application. See MPEP § 409.03(f).

(F) The 37 CFR 1.47(b) applicant must prove that the filing of the application is necessary (1) to preserve the rights of the parties or (2) to prevent irreparable damage. See MPEP § 409.03(g).

MPEP section 409.03(d) under the heading "REFUSAL TO JOIN" states:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the 37 CFR 1.47 applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration. It is noted that the inventor may obtain a complete copy of the application, unless the inventor has assigned his or her interest in the application, and the assignee has requested that the inventor not be permitted access. See MPEP § 106. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956).

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

The declaration states that Paulus made a direct refusal to Dubno when asked to execute the declaration or any other documents related to the above-identified application until Dubno "negotiates further agreements with Mr. Paulus which are not required under German law or the employment relationship". However, it is not clear that any attempt

was ever made to present the sole inventor Paulus with the requisite copy of the application papers. Further, if Paulus did directly refuse to execute the application papers, the applicant must provide the requisite statement of facts, detailing the circumstances of the refusal, by the person who presented Paulus with the application papers and to whom the refusal was made.

In addition, the declaration fails to provide the requisite last known address of sole inventor Werner Paulus. The second page of the declaration instead provides the last known address of a Wallace Paulus.

MPEP section 409.03(f) states:

> When an application is deposited pursuant to 37CFR 1.47(b), the 37 CFR 1.47(b) applicant must prove that
>
> (A) the invention has been assigned to the applicant, or
>
> (B) the inventor has agreed in writing to assign the invention to the applicant, or
>
> (C) the applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application.
>
> If the application has been assigned, a copy of the assignment (in the English language) must be submitted. The assignment must clearly indicate that the invention described in the 37 CFR 1.47(b) application was assigned to the 37 CFR 1.47(b) applicant. A statement under 37 CFR 3.73(b) by the assignee must also be submitted (see MPEP § 324). . . . . An assignment to a 37 CFR 1.47(b) applicant for the sole purpose of obtaining a filing date for a 37 CFR 1.47(b) application is not considered an assignment within the meaning of 35 U.S.C. 118 and 37 CFR 1.47(b). When an inventor has agreed in writing to assign an invention described in an application deposited pursuant to 37 CFR 1.47(b), a copy of that agreement should be submitted. If an agreement to assign is dependent on certain specified conditions being met, it must be established by a statement of facts by someone with first hand knowledge of the circumstances in which those conditions have been met. A typical agreement to assign is an employment agreement where an employee (nonsigning inventor) agrees to assign to his or her employer (37 CFR 1.47(b) applicant) all inventions made during employment. When such an agreement is relied on, it must be established by a statement of a person having firsthand knowledge of the facts that the invention was made by the employee while employed by the 37 CFR 1.47(b) applicant. If the invention has not been assigned, or if there is no written agreement to assign, the 37 CFR 1.47(b) applicant must demonstrate that he or she otherwise has a sufficient proprietary interest in the matter. A proprietary interest obtained other than by assignment or agreement to assign may be demonstrated by an appropriate legal memorandum to the effect that a court of competent jurisdiction (federal, state, or foreign) would by the weight of authority in that jurisdiction award title of the invention to the 37 CFR 1.47(b) applicant. The facts in support of any conclusion that a court would award title to the 37 CFR 1.47(b) applicant should be made of record by way of an affidavit or declaration of the person having firsthand knowledge of same. The legal memorandum should be prepared and signed by an attorney at law familiar with the law of the jurisdiction involved. A copy (in the English language) of a statute (if other than the United States statute) or a court decision (if other than a reported decision of a federal court or a decision reported in the United States Patents Quarterly) relied on to demonstrate a proprietary interest should be made of record.

The declaration indicates that it is made by Bredent Dentalgerate Und Materialien Fach- und Organisationsberatung Peter Brehm (Bredent). However, Bredent has not made out a *prima facie* case (1) that the invention has been assigned to Bredent or (2) that

the inventor has agreed in writing to assign the invention to Bredent or (3) otherwise demonstrating a proprietary interest in the subject matter of the application as set out in MPEP 409.03(f).

In addition, the declaration is signed by agent Dubno. However, the applicant has not provided the requisite proof of Dubno's authority to sign on behalf of Bredent as set out in MPEP 409.03(b)(A).

MPEP section 409.03(g) states:

> Irreparable damage may be established by a showing (a statement) that a filing date is necessary to preserve the rights of the party or to prevent irreparable damage.

Page 4 of the "PETITION FOR ACCEPTANCE OF APPLICATION AND GRANT OF FILING DATE OF 26 OCTOBER 2001", filed 03 May 2002, states only that "the award of the 26 October 2001 may be vital to ensure that Applicants will benefit from priority." The applicant is required to provide a showing (statement) that a filing date is necessary to preserve the rights of the party or to prevent irreparable damage as set out in MPEP 409.03(g).

CONCLUSION

The petition under 37 CFR 1.181, requesting that the initial papers filed under 35 USC 371 be treated as having been filed 26 October 2001, is **DISMISSED** as moot.

For the reasons detailed above, the petition under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

Applicant's deposit account number 18-2025 has been charged $725 for a four-month extension of time in accordance with 37 CFR 1.17(a)(4) and $65 for filing the oath/declaration later than twenty-months from the priority date in accordance with 37 CFR 1.492(e).

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(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response to this decision will result in ABANDONMENT of the application.

Applicant is advised that, as of May 1, 2003, the Office changed its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Diana L. Oleksa
Special Programs Examiner
PCT Special Programs Office
Telephone Number: 703-308-0890
Facsimile: 703-305-2919

Richard Cole
PCT Legal Examiner
PCT Legal Office

24 FEB 2004

#6

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Herbert Dubno
The Firm of Karl F. Ross P.C.
5676 Riverdale Ave. Box 900
Rieverdale (Bronx), New York 10471

In re Application of	:
PAULUS, Werner	: DECISION ON
US Application No.: 10/129,429	:
PCT Application No.: PCT/DE01/00724	: PETITION
Int. Filing Date: 27 February 2001	:
Priority Date: 29 February 2000	: UNDER
Attorney's File Reference: 22038	:
For: JAW ORTHOPEDIC DEVICE	: 37 CFR 1.47(b)

This decision is in response to applicant's "RENEWED PETITION UNDER 37 CFR 1.47 (b) . . .", filed 19 December 2003, requesting acceptance of the application without the signature of the sole inventor Werner Paulus (Paulus).

BACKGROUND

On 19 August 2003, this Office mailed a decision dismissing applicant's petition under 37 CFR 1.47(b) to accept the application without the signature of Paulus. The decision stated, inter alia, that the applicant must provide a statement of facts, detailing the circumstances of the refusal of Paulus to sign the declaration, by the person who presented Paulus with the application papers and to whom the refusal was made. Further, the decision stated that the applicant, Bredent Dentalgerate Und Materialien Fach- und Organisationsberatung Peter Brehm (Bredent), is required to make out a *prima facie* case (1) that the invention has been assigned to Bredent or (2) that the inventor has agreed in writing to assign the invention to Bredent or (3) otherwise demonstrate a proprietary interest in the subject matter of the application as set out in MPEP 409.03(f). The decision also stated that the applicant was required to provide a declaration that clearly identifies 1) the specification to which it is directed, 2) the inventor, and 3) the country of citizenship of the inventor. In addition, the decision stated that the applicant was required to provide the last known address of the inventor and a showing (statement) that a filing date is necessary to preserve the rights of the parties or to prevent irreparable damage.

On 19 December 2003, the applicants filed the present "RENEWED PETITION UNDER 37 CFR 1.47(b) . . ." which is accompanied by, inter alia, a "Declaration Under 37 CFR 1.497 and 37 CFR 1.47(b)" (declaration) signed by Peter Brehm (Brehm), the owner of Bredent.

DISCUSSION

Page 4 of the declaration, filed 19 December 2003, states that a full and detailed description of the circumstances of the refusal of Paulus to sign a declaration of inventorship is

attached thereto. However, no such description is found among the papers filed on 19 December 2003. Page 4 of the declaration also states that "to his knowledge" Paulus was presented with copies of the US application and the international application. Accordingly, it is not clear that Brehm has first hand knowledge that Paulus was presented with a complete copy of the application papers including the specification, claims, and drawings as well as the oath or declaration of inventorship or whether he is relying on heresay. The applicant is required to provide a statement detailing the circumstances of the refusal of Paulus to sign the declaration of inventorship by the person who presented Paulus with the application papers (including the specification, claims, and drawings as well as the oath or declaration of inventorship) and to whom the refusal was made.

Page 3 of the declaration, filed 19 December 2003, states that Paulus was an employee of Bredent at the time the invention was made and that "there may be attached hereto evidence of" Paulus' employment with Bredent. However, no copy of an employment agreement is found among the papers filed 19 December 2003. The applicant is required to provide either 1) a copy of an assignment of the invention by Paulus to Bredent or 2) a copy of a written agreement to assign, such as a written employment agreement between Paulus and Bredent, if such an assignment or agreement exists.

Page 4 of the declaration, filed 19 December 2003, states that Bredent is "the owner of any invention of" Paulus "by operation of the German Inventor's Law". If Paulus has not assigned his invention to Bredent and there is no written agreement to assign, such as a written employment agreement between Paulus and Bredent, the applicant (Bredent) must demonstrate that it has a sufficient proprietary interest in the matter. A proprietary interest obtained other than by assignment or agreement to assign may be demonstrated by an appropriate legal memorandum to the effect that a court of competent jurisdiction (federal, state, or foreign) would by the weight of authority in that jurisdiction award title of the invention to the applicant. The facts in support of any conclusion that a court would award title to the applicant should be made of record by way of an affidavit or declaration of the person having firsthand knowledge of same. The legal memorandum should be prepared and signed by an attorney at law familiar with the law of the jurisdiction involved. A copy (in the English language) of a statute (if other than the United States statute) or a court decision (if other than a reported decision of a federal court or a decision reported in the United States Patents Quarterly) relied on to demonstrate a proprietary interest should be made of record.

The declaration, filed 19 December 2003, clearly identifies 1) the specification to which it is directed, 2) the inventor, and 3) the country of citizenship of the inventor as required under 37 CFR 1.497. In addition, the declaration 1) identifies the last known address of the inventor and 2) includes a showing (statement) that a filing date is necessary to preserve the rights of the parties or to prevent irreparable damage as required under 37 CFR 1.47(b).

The assertion, by Herbert Dubno (Dubno), in the "Renewed Petition Under 37 CFR 1.47(b)" filed 19 December 2003 (renewed petition), that he executed the declaration, filed 17 January 2003, on information and belief as to allegations that were to be made by Brehm, is noted.

On page 2 of the renewed petition, Dubno states:

Furthermore it is noted that the Rules do not prevent immediate grant of a Filing Certificate and assignment of an Examiner for examination. The issues involved here, if they require any further showing, are issues which can be dealt with in the course of prosecution and do not justify holding up examination of the case.

37 CFR 1.496 (a) states in part:

International applications which have complied with the requirements of 35 USC 371(c) will be taken up for action based on the date on which such requirements were met.

Thus, in accordance with the rules, examination on the merits will not begin until applicant fully complies with the requirements of 35 USC 371(c) including the requirement of an oath or declaration of the inventor in accordance with 35 USC 371(c)(4).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(b) 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(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response to this decision will result in ABANDONMENT of the application.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed 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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Richard Cole
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01 DEC 2004

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#4

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Jonathan Myers
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5676 Riverdale Ave. Box 900
Rieverdale (Bronx), New York 10471-0900

In re Application of	: LETTER ACKNOWLEDGING
PAULUS, Werner	:
US Application No.: 10/129,429	: RECEIPT OF DECLARATION
PCT Application No.: PCT/DE01/00724	:
Int. Filing Date: 27 February 2001	: IN ACCORDANCE WITH
Priority Date: 29 February 2000	:
Attorney's File Reference: 22038	: 37 CFR § 1.47(b)
For: JAW ORTHOPEDIC DEVICE	:

This letter acknowledges the receipt, in accordance with 37 CFR § 1.47(b), of a declaration of inventorship of the sole inventor Werner Paulus (Paulus) filed 26 July 2004.

BACKGROUND

On 24 February 2004, this Office mailed a decision dismissing applicant's petition under 37 CFR 1.47(b) to accept the application without the signature of Paulus.

On 26 July 2004, the applicants filed the present "RESPONSE" which is accompanied by a combined declaration and power of attorney as well as an assignment document.

DISCUSSION

The declaration, filed 26 July 2004, meets the requirements of 37 CFR § 1.497. Accordingly, the above-identified US national stage application is now in compliance with the requirements of 35 USC 371(c). Thus, the petition under 37 CFR § 1.47(b) is dismissed as moot.

CONCLUSION

For the above reasons, applicants' above-identified US national stage application is now compliant with 35 USC § 371(c).

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for continued national stage processing of this application, including according this application a 35 USC 371 (c)(1), (c)(2), and (c)(4) date of 26 July 2004.

Diana Oleksa
Special Programs Examiner
PCT Special Programs Office
Telephone: 571-272-3291

Leonard Smith
PCT Legal Examiner
PCT Legal Office

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Date Mailed : 03/23/06

Patent No. :6958434 B2
Patent Issued : 10/25/05
Docket No. : **82395**

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.

Title page, changing the title of the patent, is printed in accordance with the record. **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

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

Lamonte M. Newsome
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 #112 or (703) 308-8309

NATH & ASSOCIATES
112 South West Street
Alexandria VA 22314

LMN

Ex. A. Kubelik

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/31/06

TO SPE OF : ART UNIT 1638

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/129,458 Patent No.: 6958434

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: In the amendment filed 3/7/05, Applicant changed the title to "The OsCel promoter and Methods for transforming monocots plants using the same", which is the title under which the patent issued.

_____ 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
www.uspto.gov

Date Mailed : 06/29/06

Patent No. :6958434 B2
Patent Issued : 10/25/05
Docket No. : **82395**

Re: Request for Certificate of Correction

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

Respecting the alleged error(s), in Title Page, please see attachment. **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

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

Lamonte M. Newsome
For Cecelia Newman, Supervisor
Decisions & Certificates
Of Correction Branch
(703) 305-8309 or (703)-308-9390 #112

NATH & ASSOCIATES
112 South West Street
Alexandria VA 22314

LMN

Ex. A. Kubelik

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/31/06

TO SPE OF : ART UNIT 1638

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/129,458 Patent No.: 6958434

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: In the amendment filed 3/7/05, Applicant changed the title to "The OsCr1 promoter and Methods for transforming monocots plants using the same", which is the title under which the patent issued.

_____ 1638
SPE **Art Unit**

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)
6962151	2005-11-08	10129498	2002-09-19	10881.37USWO

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	/Gregory A. Sebald/	Date (YYYY-MM-DD)	2010-05-04
Name	Gregory A. Sebald	Registration Number	33280

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. 6962151
Issue Date: November 8,2005
Application No. 10129498
Filed: September 19,2002
Attorney Docket No. 10881.37USWO

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

This is a decision on the electronic petition, filed May 4,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of May 4,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

10 JUL 2003

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David L. King
The Goodyear Tire & Rubber Company
Department 823
1144 East Market Street
Akron, OH 44316-0001

In re Application of :
MONTCEAU et al :
Application No.: 10/129,514 :
PCT No.: PCT/EP00/10800 :
Int. Filing Date: 02 November 2000 : NOTIFICATION
Priority Date: 03 November 1999 :
Attorney Docket No.: DN2002-069 :
For: MOTORCYCLE RADIAL TYRE :

This application is before the Office of PCT Legal Affairs for consideration of matters arising under 35 U.S.C. 371.

BACKGROUND

On 02 November 2000, applicants filed international application PCT/EP00/10800 which claimed a priority date of 03 November 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 10 May 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 04 June 2001, prior to 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 03 May 2002.

On 03 May 2002, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the basic national fee.

On 01 July 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, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the earliest priority date were required.

On 12 August 2002, the DO/EO/US mailed a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 (Form PCT/DO/EO/903) indicating the 35 U.S.C. 371(c) date of the above-identified application as 14 June 2002. This Notice was sent to an incorrect address.

On 03 September 2002, applicants submitted a declaration of inventors and the surcharge under 37 CFR 1.492(e).

DISCUSSION

The NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 mailed 12 August 2002 was mailed in error. This Notice included an incorrect address, an incorrect first-named applicant, and an incorrect 35 U.S.C. 371(c) date. Accordingly, this Notice is hereby VACATED.

The declaration of inventors filed 03 September 2002 is in compliance with 37 CFR 1.497(a)-(b).

The Annexes accompanying the International Preliminary Examination Report (IPER) will be entered.

CONCLUSION

The NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 mailed 12 August 2002 is VACATED for the reasons set forth above.

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.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for processing in accordance with this decision, that is for: (1) correction of bibliographic information in PALM including the inventors and the correspondence address; (2) entry of the Annexes accompanying the IPER; and (3) mailing of a corrected NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 (Form PCT/DO/EO/903) according the application 35 U.S.C. a 371(c) date of **03 September 2002** and issuance of a corrected filing receipt.

Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (703) 308-2066
Facsimile: (703) 308-6459

01 JUN 2004

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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON VA 20191

In re Application of :
HAUBOLD, Stephan et al. :
Application No.: 10/129,530 : DECISION ON
PCT Application No.: PCT/DE01/03433 :
International Filing Date: 07 September 2001 : PETITION
Priority Date: 08 September 2000 :
Attorney Docket No.: P22269.A05 : UNDER 37 CFR 1.78(a)(3)
For: SYNTHESIS OF NANOPARTICLES :

This is in response to applicant's "Petition to Accept an Unintentionally Delayed Claim of Priority Under 37 C.F.R. 1.78" filed in the United States Patent and Trademark Office on 02 March 2004.

BACKGROUND

On 07 September 2001, applicant filed international application PCT/DE01/03433, which claimed priority date of 08 September 2000. A copy of the international application was communicated to the USPTO from the International Bureau on14 March 2002. The thirty-month period for paying the basic national fee in the United States expired on 10 March 2003 (08 March 2003 was a Saturday).

On 07 May 2002, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee.

On 02 March 2004, applicant filed the present petition under 37 CFR 1.78(a)(3).

DISCUSSION

37 CFR 1.78(a)(2) applies to nonprovisional applications which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 on or after November 29, 2000. A petition under 37 CFR 1.78(a)(3) is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In the present case, the later filed international application designating the United States was filed on 07 September 2001 and the petition was filed after the time period specified in 37 CFR 1.78(a)(2)(ii).

37 CFR 1.78(a)(3) states:

> 3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121 or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international

> filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:
>
> (i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;
>
> (ii) The surcharge set forth in §§ 1.17(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.

Items (1), (2) and (3) have been satisfied. The petition is accompanied by the required reference to the prior filed application. The fee has been paid. The required statement has been made.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.78(a)(3) is **GRANTED**.

Applicant is advised that the granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the inclusion of the prior-filed application on any future Filing Receipt should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. The examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Richard Cole
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

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In re Application of :
HIRSCH, LUCIAN :
Application No. 10/129,540 : DECISION ON PETITION
Filed: 07/16/2002 :
Attorney Docket No. 1454.1244 :

This is a decision on the petition under 37 CFR 1.181 (no fee), filed June 16, 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 July 24, 2007, which set a three (3) month shortened statutory period for reply. In the absence of a timely filed reply, the application became abandoned on October 25, 2007. On May 14, 2008, the Office mailed a Notice of Abandonment.

Petitioner asserts that the nonfinal Office action dated mailed July 24, 2007, was not received.

A review of the written record indicates no irregularity in the mailing of the Office action and in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the 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 master docket for the firm where the nonfinal Office action would have been entered had it been received and docketed. The practitioner attested to the fact that a search of the records indicated that the nonfinal Office action was not received at the correspondence address of record. Furthermore, petitioner submitted the Declaration of Joseph Berry, Manager

of the Docketing Department, who set forth the procedures for docketing Office communications. Accordingly, petitioner presented the required showing under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**. The holding of abandonment is hereby withdrawn. No petition fee is required.

Technology Center Art Unit 2145 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 related to this decision may be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Adrian M. Kaplan
c/o Dimock Stratton Clarizio LLP
20 Queen Street West
Suite 3202, Box 102
Toronto, Ontario M5H 3R3 CA CANADA

In re application of Terry Chow et al.	:
Serial No. : 10/129,546	: DECISION ON PETITION
Filed : May 8, 2002	:
Attorney Docket No.: 0333352-014	:

This is in response to applicant's petition, filed November 26, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(d) because the invention relates to treatment of cancer.

Applicant has satisfied the requirements set forth in M.P.E.P. 708.02, X.

The petition is **GRANTED.**

The application will be forwarded to the examiner for action on the merits in accordance with this decision.

Should there be any questions with regard to this letter please contact Bruce Campell by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA, 22313-1450, or by telephone at (571) 272-0974 or by facsimile transmission at (571) 273-0974.

Bruce Campell

Bruce Campell
Supervisory Patent Examiner / Special Program Examiner
Technology Center 1600

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HODGSON RUSS, LLP
SUITE 2000
ONE M&T PLAZA
BUFFALO, NY 14203

In re Application of	:
Desmond Purdy et al.	:
Serial No.: 10/129,558	: PETITION DECISION
Filed: November 12, 2003	:
Attorney Docket No.: 18872.0122	:

This is in response to the petition under 37 CFR 1.144, filed September 26, 2006, requesting the Director to vacate the withdrawal of claims 4, 16 and 21-22 from examination. The delay in acting upon this petition is regretted.

BACKGROUND

This application is a national stage filing under 35 USC 371 of PCT/GB00/04329 and, as such, is eligible for PCT unity of invention practice.

On June 16, 2005, the examiner mailed a lack of unity determination in which the original 22 claims were divided in 64 groups, which lacked unity in view of Bressi et al. (US Patent No. 5,801,191). The examiner reasoned that Bressi et al. taught the shared technical feature of targeting moieties for treatment of cellular proliferative diseases.

On July 20, 2005, applicants responded by electing Group 4 (claims 1, 4, 6-7 and 10) and amending their claim set such that the second component of the claimed agent is a DNase. Applicants did not specify whether they intended to elect with or without traverse Applicants provided information for newly amended claims 2, 3, 8-9, 16 and 21-23—"as each of these claims now refers to the agent of claim 1 or 10, wherein the second component is a DNase or a method of making such an agent." Applicants made a request that the newly amended claims be rejoined to the elected invention, but this request was made in absence of a traversal of the lack of unity determination.

On September 23, 2005, the examiner mailed to applicants a first non-final Office action. The examiner stated that applicants did not distinctly and specifically point out the supposed errors in the restriction requirement and that the election had been treated as an election without traverse (MPEP 818.03(a)). The examiner maintained that DNases are distinct from CDTs.

The examiner then rejoined claim 2, 3 and 8-9 but withdrew claims 4, 11-16 and 18-22 from consideration as being directed to non-elected inventions because the examiner reasoned DNases are distinct from CDTs. Claims 1-3, 6, 8-10 and 23 were rejected under 35 USC 112, first paragraph, for lack of adequate written description. Claims 1-3, 6-10 and 23 were rejected under 35 USC 102(b) as being anticipated by Epenetos.

On February 28, 2006, applicants responded with amendments, a declaration filed under 37 CFR 1.132 and arguments. Applicants again did not traverse the restriction requirement.

On May 22, 2006, the examiner mailed to applicants a second non-final Office action wherein the examiner considered applicants' response. The examiner again stated that applicants did not distinctly and specifically point out the supposed errors in the restriction requirement and that the election had been treated as an election without traverse (MPEP 818.03(a)). Claims 4, 11-16 and 18-22 remained withdrawn from consideration. Claims 1-2, 6-10 and 23 were rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement.

On September 26, 2006, applicants responded with amendments and arguments along with this petition to request that the Office vacate the withdrawal from examination of claims 4, 16 and 21-22.

DISCUSSION

The petition and file history have been carefully considered.

As set forth by the first sentence of 37 CFR 1.143, the traverse to a requirement must be complete as required by 37 CFR 1.111(b) which reads in part: "In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action....The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action...." Under this rule, the applicant is required to specifically point out the reasons on which he or she bases his or her conclusions that a requirement to restrict is in error. A mere broad allegation that the requirement is in error does not comply with the requirement of 37 CFR § 1.111. Thus the required provisional election (see MPEP § 818.03(b)) becomes an election without traverse.

As set forth by 37 CFR 1.144, after a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Director to review the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

Applicants' elected without traversal of the restriction requirement, which presents no argument for traversal, was correctly pointed out by the examiner to be an election **without traverse** in the next Office action. Applicants failed to correct the examiner's determination and failed to offer

any proper traversal of the requirement in rebuttal thereto until the filing of this petition. Applicants' failure to offer a proper traverse now denies them the right to petition the restriction requirement. Because applicants' election was made **without traverse**, the right to petition has been lost.

DECISION

The petition is **DISMISSED** for the reasons set forth above.

Should there be any questions about this decision, please contact Quality Assurance Specialist/Program Manager Julie Burke, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-1600 or by facsimile sent to the general Office facsimile number, 571-273-8300.

John LeGuyader
Director, Technology Center 1600
jb/pl

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JUN 19 2009

OFFICE OF PETITIONS

In re Patent No. 7,422,740	:	DECISION ON REQUEST FOR
Purdy et al.	:	RECONSIDERATION OF
Issue Date: September 9, 2008	:	PATENT TERM ADJUSTMENT
Application No. 10/129,558	:	AND NOTICE OF INTENT TO ISSUE
Filed: November 12, 2003	:	CERTIFICATE OF CORRECTION
Attorney Docket No. 7422740	:	

This is a decision on the "LETTER REGARDING PATENT TERM ADJUSTMENT PERIOD," filed September 9, 2008, which is being treated as a request for reconsideration of the patent term adjustment under 37 CFR 1.705(d).

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED** to the extent indicated herein.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **858 days**.

On September 9, 2008, the above-identified application matured into U.S. Patent No. 7,422,740. The patent issued with a revised Patent Term Adjustment of 310 days. The present request for reconsideration was timely filed on September 9, 2008, within two (2) months of the date the patent issued. See 37 CFR 1.705(d).

Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy. Patentees disclose:

> The above identified Patent is issued on September 9, 2008, indicating a Patent Term Adjustment of +310 days. Applicants believe that this adjustment period is longer than appropriate. Specifically, Applicants filed a Request for Continued Examination on February 7, 2008. Pursuant to 37 C.F.R. 1.702(b), the "PTA 36 Months" indicated in PAIR is incorrect.

Letter dated 09/09/08, p. 1.

The adjustment of 221 days for the Office taking in excess of three years to issue the patent is incorrect. A review of the record indicates that the Office did not use the correct 35 U.S.C. 371(b) national stage commencement date of Monday, May 13, 2002,[1] in calculating the period of adjustment under 37 CFR 1.702(b). However, as acknowledged by patentees, a Request for Continued Examination (RCE) was filed on February 7, 2008. The RCE cuts-off the ability to accumulate additional patent term adjustment against the three-year pendency provision, but does not otherwise effect patent term adjustment. See 37 CFR 1.702(b)(1).

---

[1] Pursuant to PCT Rule 80.5:

If the expiration of any period during which any document or fee must reach a national Office or intergovernmental organization falls on a day:

(i) on which such Office or organization is not open to the public for the purposes of the transaction of official business;

(ii) on which ordinary mail is not delivered in the locality in which such Office or organization is situated;

(iii) which, where such Office or organization is situated in more than one locality, is an official holiday in at least one of the localities in which such Office or organization is situated, and in circumstances where the national law applicable by that Office or organization provides, in respect of national applications, that, in such a case, such period shall expire on a subsequent day; or

(iv) which, where such Office is the government authority of a Contracting State entrusted with the granting of patents, is an official holiday in part of that Contracting State, and in circumstances where the national law applicable by that Office provides, in respect of national applications, that, in such a case, such period shall expire on a subsequent day; the period shall expire on the next subsequent day on which none of the said four circumstances exists.

As May 12, 2002, is a Sunday, PCT Rule 80.5 specifies that the next working day is the actual expiration of the period, i.e. May 13, 2002.

37 CFR 1.703(b) provides, in pertinent part:

> The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:
>
> (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued[.]

Pursuant to 37 CFR 1.703(b)(1), the period of adjustment under § 1.702(b) should be 1,000 days, counting the number of days beginning on the day after the date that is three years after the date on which the national stage commenced under 35 U.S.C. 371(b), May 14, 2005, and ending on the date the RCE was filed, February 7, 2008.

However, it is noted 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 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 three 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 155 days accorded pursuant to § 1.702(a)(1), the 76 days accorded pursuant to § 1.702(a)(2) for Office delay during the pendency of the application overlap with the 1,000 days pursuant to § 1.702(b). Thus, at issuance, the patent was entitled to an additional period of adjustment of 769 days for Office failure to issue the patent within three years.

The additional period of adjustment of 221 days entered by the Office for failure to issue the patent within three years is being removed and the correct period of 769 days is being entered.

In view thereof, the patent term adjustment indicated on the patent should be 858 days.

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

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 858 days.

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

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

Draft

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,422,740 B1

DATED : Sep. 9, 2008

INVENTOR(S) : Purdy 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 (310) days

Delete the phrase "by 310 days" and insert – by 858 days--

25 SEP 2002

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Aaron R. ETTELMAN
Cognis Corporation, Patent Dept.
2500 Renaissance Blvd., Suite 200
Gulph Mills, PA 19406

In re Application of	:	
Achim Ansmann et al	:	
Application No.: 10/129,581	:	DECISION ON
PCT No.: PCT/EP00/11938	:	
Int. Filing Date: 20 November 2000	:	PETITION UNDER
Priority Date: 11 December 1999	:	
Attorney's Docket No.: C 2126 PCT/US	:	37 CFR 1.137(b)
For: USE OF HYDROXYETHERS IN COSMETIC	:	
AND PHARMACEUTICAL PREPARATION	:	

This is in response to the "Petition Under 37 C.F.R. § 1.137(b) to Revive Unintentionally Abandoned International Application Designating the U.S." filed on 02 May 2002.

BACKGROUND

On 20 November 2000, this international application was filed, claiming an earliest priority date of 11 December 1999. A copy of the intentional application was transmitted on 14 June 2001 to the USPTO from the International Bureau

No Demand electing the United States was filed in this international application Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.494 was 11 August 2001. This international application became abandoned with respect to the United States at midnight on 11 August 2001 for failure pay the basic national fee.

On 02 May 2002, applicant filed in the United States Patent and Trademark Office (PTO) the instant petition. and a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, the U.S. basic national fee. No executed declaration or oath was submitted at such time.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition

information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3) and, (4) under 37 CFR 1.137(b).

DECISION

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

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6312
Fax: (703) 308-6459

03 JUN 2004

#5

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Bradley B. Geist
Baker Botts L.L.P.
30 Rockefeller Plaza
New York, NY 10112-4498

In re Application of KLEIN :
U.S. Application No.: 10/129,588 :
PCT Application No.: PCT/DE01/03339 : DECISION
Int. Filing Date: 31 August 2001 :
Priority Date Claimed: 07 September 2000 :
Attorney Docket No.: A35187-PCT-USA :
(071308.0301) :
For: METHOD FOR SIGNALLING A TIME OF DEPARTURE AND A MOBILE DATA PROCESSING DEVICE

This is in response to applicant's "Response to Notice of Abandonment" filed 29 October 2003.

BACKGROUND

On 31 August 2001, applicant filed international application PCT/DE01/03339, which claimed priority of an earlier Germany application filed 07 September 2000. A copy of the international application was communicated to the USPTO from the International Bureau on 14 March 2002. The thirty-month period for paying the basic national fee in the United States expired on 07 March 2003.

On 07 May 2002, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 01 August 2002, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 13 August 2002, applicant filed an executed declaration.

On 16 October 2003, the DO/EO/US mailed a Notice of Abandonment, which indicated that the application is abandoned for failure to timely respond to the Notification of Missing Requirements mailed 01 August 2002.

On 29 October 2003, applicant filed the present response including a copy of a return postcard receipt.

DISCUSSION

A review of the application file reveals that the declaration filed 13 August 2002 has been located and matched with the application file.

CONCLUSION

For the reasons above, the Notice of Abandonment mailed 16 October 2003 is hereby VACATED.

The application has an International Filing Date under 35 U.S.C. 363 of 31 August 2001, and a date under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) of 13 August 2002.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

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.

Bryan Tung
PCT Legal Examiner
Office of PCT Legal Administration

Telephone: 703-308-6614
Facsimile: 703-308-6459

0 8 APR 2003

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Barnes & Thornburg
11 South Meridian Street
Indianapolis, IN 46204

In re Application of	:
HENLEY et al.	:
Application No.: 10/129,677	: DECISION ON
PCT Application No.: PCT/US00/42333	: REQUEST FOR REFUND
Filing Date: 29 November 2000	:
Priority Date: 29 November 1999	:
Attorney's Docket No.: 7175-70601	:
For: WOUND TREATMENT APPARATUS	:

This decision is in response to applicant's Request for a Refund in the above referenced application filed on 16 December 2002 in the United States Patent and Trademark Office (USPTO). This is also in response to applicant's Request for Correct Filing Receipt received on 28 August 2002 accompanied by a marked up copy of the original filing receipt.

Request for a Refund

A review of the application file reveals that the International Preliminary Examination Report was performed by the IPEA/US. On 06 May 2002, applicant paid the basic national stage application fees of $710 along with their request for entry into the national stage for this application. However, applicant was incorrectly charged the basic national stage application fee in the amount of $890. Applicant requests a refund of $180 on the grounds that the basic national stage application fees were overpaid. A review of the USPTO finance records indicates that applicant paid the basic fees in excess and is entitled to the refund of $180, which will be refunded to applicant's deposit account.

Corrected Filing Receipt

On 06 August 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 (Form PCT/DO/EO/903) which indicated a date under 35 U.S.C. 371 of 06 May 2002. The USPTO mailed an official filing receipt which indicated an "filing date" of 06 May 2002. However, the filing receipt indicated an incorrect priority claim to the provisional application 60/167,752. The correct priority claim is to provisional application 60/167,753.

On 28 August 2002, applicant filed the present request including a marked-up copy of the official filing receipt. Applicant is requesting that the filing receipt be corrected to indicate the priority of U.S. provisional application no. 60/167,753. The declaration submitted by applicant indicates that the priority application is 60/167,753. Since the official filing receipt does not include the priority application 60/167,753, it is incorrect and is vacated. A new filing receipt will be issued indicating a priority claim to application no. 60/167,753.

CONCLUSION

The Request for Refund of $180 is **GRANTED**. A refund of $180 will be credited to applicant's deposit account for this attorney docket number.

The Request for Corrected Filing Receipt is **GRANTED**. This application is being returned to the United States Designated/Elected Office (DO/EO/US) for the preparation and mailing of a corrected Filing Receipt in accordance with this decision, which identifies the priority application 60/167,753.

This application will then be returned to Art Unit 3761 for examination in due course.

Applicant is advised that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone 703-306-5467

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Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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CORPORATE INTELLECTUCAL PROPERTY
580 WHITE PLAINS ROAD
TARRYTOWN, NY 10591

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Debra J. Skene et al.
Application No. 10/129,696
Filed: September 16, 2002
Attorney Docket No. PHNL000507

This is a decision on the petition filed April 27, 2005 under 37 CFR 1.181(b), in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned for failure to pay the issue fee on or before January 4, 2005 as was required by the Notice of Allowance mailed October 4, 2004. This application therefore became abandoned on January 5, 2004. Accordingly, a Notice of Abandonment was mailed February 23, 2005.

The file record discloses that the Notice of Allowance and the Notice of Abandonment were both to the address of record, however, petitioner contends that neither was received. In support, petitioner indicates that a search of the file jacket revealed that the Notices were not received and submits copies of pages from the docketing system, wherein receipt of the Notices would have been entered, had they been received, to substantiate the claim. The statement and attachments corroborate non-receipt of the Notice of Allowance and the Notice of Abandonment.

In view of the facts set forth in the petition, it is concluded that the Notice of Allowance was never received. Accordingly, the holding of abandonment is withdrawn. No petition fee is due and none will be charged.

This application is being forwarded to the Technology Center 3739 for a remailing of the Notice of Allowance and Notice of Allowability.

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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APR 07 2009

OFFICE OF PETITIONS

In re Application of :
Debra J. Skene, et al. :
Application No. 10/129,696 : DECISION ON PETITION
Filed: May 8, 2002 :
Attorney Docket No. PHNL000507 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 16, 2009 and supplemented on April 1, 2009, to revive the above-identified application.

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 1.134(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.

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), the statement is accepted as 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 intentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

This application became abandoned for failure to timely pay the issue and publication fees on or before November 8, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed August 8, 2007. Accordingly, the date of abandonment of this application is November 9, 2007. On February 16, 2009 the present petition was filed along with a Request for Continued Examination and submission under 37 CFR 1.114. However, in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply under 37 CFR 1.137(b) must be the payment of the issue fee or any outstanding balance thereof.

Accordingly, the issue fee payment of $1510 and publication fee of $300 is being charged to counsel's deposit account as authorized[1] on April 1, 2009.

The petitions 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.

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

Petitioner is advised that the issue fee paid on April 1, 2009 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

The person signing the petition requests a change of correspondence address to the address given in the petition. There is, however, 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.

It is also noted that all previous Office actions mailed to petitioner has been returned to the Office as undeliverable. Please check the update the correspondence address of record.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquires concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3769 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the information disclosure statement submitted in accordance with 37 CFR 1.114.

April M. Wise
Petitions Examiner
Office of Petitions

cc: ERIC M. BRAM
345 SCARSBOROUGH ROAD
PO BOX 3001
BRIARCLIFF MANOR, NY 10510

[1] Effective September 30, 2008, the issue fee was increased to $1510. Any fee amount paid on or after September 30, 2008 must be paid at the new amount.

MAY 17 2002

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#13

John F. McNulty
PAUL & PAUL
2900 Two Thousand Market Street
Philadelphia, PA 19103

In re Application of	:	
GRIESER, Udo, et al.	:	
U.S. Application No.: 10/129,705	:	DECISION ON PETITION TO
PCT No.: PCT/DE99/00244	:	REINSTATE SERIAL NUMBER
International Filing Date: 25 January 1999	:	AND SEPARATE APPLICATION
Priority Date: 03 February 1998	:	
Attorney's Docket No.: 345-00	:	
For: PROCESS TO PRETREAT COPPER SURFACES	:	

This decision is issued in response to applicants' "Petition To Reinstate Serial Number And Separate Application" filed on 02 November 2001 in U.S. application number 09/601,548. Applicants have paid the required petition fee.

BACKGROUND

On 25 January 1999, applicants filed international applications PCT/DE99/00243 and PCT/DE99/00244, both of which claimed a priority date of 03 February 1998 and which designated the United States. On 12 August 1999, copies of these international applications were communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 07 July 1999, prior to the expiration of nineteen months from the priority date, Demands were filed with the International Preliminary Examining Authority electing the United States. As a result, the deadline for payment of the basic national fees was thirty months from the priority date, i.e., 03 August 2000.

On 01 August 2000, applicants filed two sets of application papers for entry into the national stage. These papers were assigned U.S. application numbers 09/601,494 and 09/601,548.

The papers assigned application number 09/601,494 were identified by attorney docket number 346-00 and included, among other materials, a translation into English of international application PCT/DE99/00243, an unexecuted declaration referencing PCT/DE99/00243, a check in the amount of $1,424 ($840 for the basic national fee, $324 for inclusion of 38 total claims, and $260 for the inclusion of a multiple dependent claim), and a Form PTO-1390 Transmittal Letter. This Form PTO-1390 identifies the attorney docket number as 346-00, the inventors as Udo Grieser and Heinrich Meyer, and the title as "SOLUTION AND PROCESS FOR

PRETREATING COPPER SURFACES," all of which are consistent with PCT/DE99/00243. However, the Form PTO-1390 incorrectly identifies the international application as PCT/DE99/00244.

The papers assigned application number 09/601,548 were identified by attorney docket number 345-00 and included, among other materials, a translation into English of international application PCT/DE99/00244, an unexecuted declaration referencing PCT/DE99/00244, a check in the amount of $1,388 ($840 for the basic national fee, $288 for inclusion of 36 total claims, and $260 for the inclusion of a multiple dependent claim), and a Form PTO-1390 Transmittal Letter. This Form PTO-1390 identifies the attorney docket number as 345-00, the inventors as Udo Grieser, Heinrich Meyer, and Uwe Hauf, the title as "PROCESS TO PRETREAT COPPER SURFACES." This information is all consistent with the referenced international application, PCT/DE99/00244.

On 15 August 2000, the DO/EO/US issued a Notification Of Missing Requirements (Form PCT/DO/EO/905) in application number 09/601,494 requiring submission of an executed declaration and the $130 surcharge for filing the declaration after the thirty month deadline. Based on the Form PTO-1390 Transmittal Letters filed by applicants, the Form PCT/DO/EO/905 identified the international application as PCT/DE99/00244 and the attorney docket number as 346-00.

On 22 August 2000, applicants filed a declaration in compliance with 37 CFR 1.497 executing international application PCT/DE99/00243, with the required $130 surcharge. The submission, including the declaration itself, referred to attorney docket number 346-00.

On 05 September 2000, applicants filed a declaration in compliance with 37 CFR 1.497 executing international application PCT/DE99/00244, with the required $130 surcharge. The submission, including the declaration itself, referred to attorney docket number 345-00.

Because the Form PTO-1390 Transmittal Letters included with both of applicants' submissions listed the same international application number (PCT/DE99/00244), on 12 September 2000, the DO/EO/US mailed a "Notification Of Cancellation Of Assigned Serial Number" (Form PCT/DO/EO/908) indicating that the papers originally assigned application number 09/601,548 had been placed in application 09/601,494, and that application number 09/601,548 had been canceled. The $1,388 in fees paid in 09/601,548 were subsequently refunded to applicants.

On 04 October 2000, the DO/EO/US mailed a Notification Of Acceptance (Form PCT/DO/EO/903) in application number 09/601,494. The Form PCT/DO/EO/903 indicated 05 September 2000 as the 35 U.S.C. 102(e) date, and it listed the international application as PCT/DE99/00244 and the attorney docket number as 346-00.

On 13 October 2000, applicants filed a "Request To Reinstate Serial Number," with accompanying materials including a $130 payment.

On 02 November 2001, applicants filed the "Petition To Reinstate Serial Number And Separate Application" considered herein. Attached to the petition is a copy of the "Request To Reinstate Serial Number" filed 13 October 2000 and a copy of the Form PCT/DO/EO/908 mailed 12 September 2000. The Petition acknowledges the typographical error in the Form PTO-1390 that incorrectly listed international application number PCT/DE99/00243 as PCT/DE99/00244. The Petition seeks reinstatement of application number 09/601,548, with the separate applications to be processed as originally intended, that is, with application number 09/601,494 being a national stage of PCT/DE99/00243 (attorney docket number 346-00) and reinstated application number 09/601,548 being a national stage of PCT/DE99/00244 (attorney docket number 345-00). The $130 fee submitted with the "Request To Reinstate Serial Number" on 13 October 2000 has been treated as the required petition fee.

Finally, on 10 January 2002, applicants filed a request for a corrected filing receipt in application number 09/601,494.

DISCUSSION

The present Petition is sufficient to allow the materials submitted on 01 August 2000 under attorney docket number 346-00 to be treated as the national stage entry for PCT/DE99/00243, despite the unintentional reference to PCT/DE99/00244 contained in the Form PTO-1390 Transmittal Letter accompanying these materials. Based on the above, the materials filed on 01 August 2000 represent two separate national stage applications. This fact justifies the requested reinstatement of the application originally assigned application number 09/601,548 and the continued processing of the two separate applications.

Accordingly, as requested in the present Petition and the previously filed "Request To Reinstate Serial Number," and as supported by the original 01 August 2000 submissions (ignoring the Form PTO-1390 typographical error), the national stage for PCT/DE99/00244 will be reinstated and assigned a new U.S. application number (10/129,705), and the two related applications will be treated as follows:

Application Number 09/601,494 is a national stage of PCT/DE99/00243:

Inventors:	Udo Grieser and Heinrich Meyer.
Title:	SOLUTION AND PROCESS TO PRETREAT COPPER SURFACES.
35 U.S.C. 371 Date:	22 August 2000
Attorney Dkt No.:	346-00

Application Number 10/129,705 is a national stage of PCT/DE99/00244:
Inventors: Udo Grieser, Heinrich Meyer, and Uwe Hauf
Title: PROCESS TO PRETREAT COPPER SURFACES.
35 U.S.C. 371 Date: 05 September 2000
Attorney Dkt No.: 345-00

CONCLUSION

The "Petition To Reinstate Serial Number And Separate Application is **GRANTED**.

Application number 10/129,705 is hereby assigned as a national stage of PCT/DE99/00244 (attorney docket number 345-00). The papers placed in application number 09/601,494 when application number 09/601,548 was canceled have been placed in application number 10/129,705.

Related application number 09/601,494 will be treated as a national stage of PCT/DE99/00243 (attorney docket number 346-00).

In order to effectuate this decision, the Notification of Acceptance (Form PCT/DO/EO/903) mailed 04 October 2000 in application number 09/601,494, and the subsequent Filing Receipt, are hereby **VACATED**.

A new Notification Of Acceptance (Form PCT/DO/EO/903) and Filing Receipt will be mailed in application number 09/601,494 indicating the **proper** international application, attorney docket number, 35 U.S.C. 371 date, and title, as set forth above.

A Notification Of Acceptance (Form PCT/DO/EO/903) and Filing Receipt will be mailed in the present application, 10/129,705, indicating the proper international application, attorney docket number, 35 U.S.C. 371 date, and title, as set forth above.

Deposit Account No. 16-0750 will be charged $1,388 for the present application, the amount of fees originally submitted with application number 09/601,548 on 01 August 2000 and subsequently refunded to applicants when the application number was canceled.

A copy of this decision will be placed in application number 09/601,494.

Application files 10/129,705 and 09/601,494 have been forwarded to the national Stage Processing Branch of the PCT Operations Division for further processing in accord with this decision.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

RMR/LS:rmr

Richard M. Ross
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JJGJR.: 03-05

Paper No: __

AKZO NOBEL PHARMA
PATENT DEPARTMENT
P.O. BOX 318
MILLSBORO, DE 19966

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OFFICE OF PETITIONS

In re Application of
Vlak :
Application No. 10/129,806 :
Filing Date: 16 September, 2002
Attorney Docket No. 12000.558US :

This is a decision on the petition filed on 21 February, 2005, to revive the instant application under 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) **GRANTED**, and the petition fee ($1,500.00), the Issue Fee ($1,400.00) and the Publication Fee ($300.00) are charged to Deposit Account 02-2334.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Notice of Allowance and Fees Due mailed on 16 November, 2004, with reply due under a non-extendable deadline on or before 16 February, 2005;
- the Application went abandoned after midnight 16 February, 2005;
- it does not appear that the Office mailed a Notice of Abandonment before the instant petition was filed;

- the instant petition was filed with fee, and statement of unintentional delay and authorization for fees due on 21 February, 2005.

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

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

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

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

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

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

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

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 regulatory requirements.

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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THELEN REID & PRIEST
PO BOX 640640
SAN JOSE, CA 95164-0640

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OFFICE OF PETITIONS

In re Application of :
Vacherand et al. :
Application No. 10/129,832 : ON PETITION
Filed: September 16, 2002 :
Attorney Docket No. 025219-399 US :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 26, 2007, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to Technology Center 2600 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

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

Liana Walsh
Petitions Examiner
Office of Petitions

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Robert H. Kelly
Docket Clerk
PO Box 802432
Dallas, TX 75380

In re Application of :
DARVISH-Zadeh, Mahmoud et al. :
Application No.: 10/129,860 : DECISION
PCT No.: PCT/EP00/10952 :
Int. Filing Date: 07 November 2000 : ON PETITION UNDER
Priority Date: 12 November 1999 :
Docket No.: NO114-00030 : 37 CFR 1.137(b)
For: LINEARISATION OF AMPLIFIER :

Applicant's "Petition Pursuant to 37 CFR 1.137(b) to Revive Abandoned Application," filed in the above-captioned application on 14 October 2003 is **GRANTED**. On 22 June 2004, applicant submitted a postcard receipt, a declaration and an additional copy of the 14 October 2003 petition. The postcard indicated that the declaration and petition were submitted on 14 October 2003 and applicant states that the declaration is a copy of the 14 October 2003 submission. The declaration is accepted as having been received on 14 October 2003.

Applicant's statement that the delay in response was unintentional is construed to mean "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 understanding is not correct, applicant must notify the office immediately. Applicant has submitted the proper response, a declaration in compliance with 37 CFR 1.497(a)-(b) and the petition fee. 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.

As indicated, the declaration complies with 37 CFR 1.497(a)-(b).

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for continued processing in accordance with this decision. The application has a date of 14 October 2003 under 35 U.S.C. §§371(c)(1), (c)(2) and (c)(4).

Erin M. Pender

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: (703) 305-0455
Facsimile: (703) 308-6459

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OFFICE OF PETITIONS

In re Application of	:	
Rosenberg et al.	:	DECISION ON APPLICATION
Application No. 10/129,882	:	FOR
Filed: May 10, 2002	:	PATENT TERM ADJUSTMENT
Atty Docket No. 02-214	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," filed November 19, 2007. Applicants request that the initial determination of patent term adjustment be corrected from six hundred fifty-one (651) days to eight hundred (800) days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED to the extent indicated herein**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is SEVEN HUNDRED FORTY-EIGHT (748) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 27, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 651 days. On November 19, 2007, applicants timely[1] submitted an application for patent term adjustment (with required fee). Applicants request correction of the PTA to 165 days. Applicants request reinstatement of 97 days subtracted for the filing of a non-responsive amendment. Applicants maintain that the Notice of Non-Responsive Amendment mailed July 26, 2006 was improper.

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[1] The Issue Fee payment was also received on November 19, 2007.

Applicants' arguments have been considered and found persuasive to an extent. The record supports a conclusion that the amendment filed May 10, 2006 was compliant. The amendment filed August 15, 2006 in response to the Notice of Non-Response Amendment is the same as the amendment filed May 10, 2006. Further, on filing of the amendment filed August 15, 2006, applicants pointed out that the amendment was compliant. No objection was made to the amendment filed August 15, 2006. There was no omission in the amendment filed May 10, 2006. Accordingly, the reduction of 97 days pursuant to 37 CFR 1.704(c)(8) has been removed.

However, entry of a period of adjustment for Office delay in mailing a final Office action in response to the amendment filed May 10, 2006 is not warranted. The Office took action in response within four months with the mailing of the Notice of Non-Compliant Amendment on July 26, 2006.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is SEVEN HUNDRED FORTY-EIGHT (748) days.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

PTA Calculations for Application: 10/129882			
Application Filing Date:	05/10/2002	PTO Delay (PTO):	775
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	124
Post-Issue Petitions:	0	Total PTA (days):	748
PTO Delay Adjustment:	97		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
56	06/23/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	97		
44	09/27/2007	MAIL NOTICE OF ALLOWANCE			
43	09/26/2007	ISSUE REVISION COMPLETED			
42	09/26/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
41	09/26/2007	DOCUMENT VERIFICATION			
40	09/24/2007	NOTICE OF ALLOWABILITY			
37	07/16/2007	DATE FORWARDED TO EXAMINER			
36	07/12/2007	RESPONSE AFTER NON-FINAL ACTION			
35	04/17/2007	MAIL NON-FINAL REJECTION			
34	04/13/2007	NON-FINAL REJECTION			
33	03/07/2007	DATE FORWARDED TO EXAMINER			
32	02/28/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
31	03/07/2007	DATE FORWARDED TO EXAMINER			
30	02/28/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		27	26
29	03/07/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
28	02/28/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
27	02/28/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
26	11/01/2006	MAIL FINAL REJECTION (PTOL - 326)			
25	10/30/2006	FINAL REJECTION			
24	08/17/2006	DATE FORWARDED TO EXAMINER			
23	08/15/2006	RESPONSE AFTER NON-FINAL ACTION		97	20
22	07/26/2006	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			

21	05/11/2006	DATE FORWARDED TO EXAMINER			
20.1	05/10/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
20	05/10/2006	RESPONSE AFTER NON-FINAL ACTION			
19	02/10/2006	MAIL NON-FINAL REJECTION			
18	02/06/2006	NON-FINAL REJECTION			
17	05/10/2002	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
16	12/01/2005	DATE FORWARDED TO EXAMINER			
15	11/21/2005	RESPONSE AFTER NON-FINAL ACTION			
14	08/23/2005	MAIL NON-FINAL REJECTION	775		-1
13	08/22/2005	NON-FINAL REJECTION			
12	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
11	03/29/2005	CORRESPONDENCE ADDRESS CHANGE			
10	03/03/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	03/03/2004	CASE DOCKETED TO EXAMINER IN GAU			
8	05/10/2002	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
7.7	05/10/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	05/10/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	05/10/2002	PRELIMINARY AMENDMENT			
5	08/01/2002	APPLICATION DISPATCHED FROM OIPE			
4	07/29/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	07/17/2002	NOTICE OF DO/EO ACCEPTANCE MAILED			
2	07/16/2002	CORRESPONDENCE ADDRESS CHANGE			
1	05/10/2002	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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12 JUL 2002

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Proskauer Rose LLP
Patent Department
1585 Broadway
New York, NY 10036

In re Application of THIERSCH	:	
U.S. Application No.: 10/129,898	:	DECISION ON PETITION
Int. Application No.: PCT/EP00/09571	:	
Int. Filing Date: 29 September 2000	:	UNDER 37 CFR 1.137(b)
Priority Date: 30 September 1999	:	
Attorney Docket No.: 20496-330	:	
For: STACKABLE FOLDING CONTAINERS WITH POURING DEVICES	:	

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 09 May 2002.

BACKGROUND

On 29 September 2000, applicant filed international application PCT/EP00/09571, which claimed priority of an earlier Germany application filed 30 September 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 05 April 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 02 April 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 01 April 2002 (30 March 2002 was a Saturday).

International application PCT/EP00/09571 became abandoned as to the United States at midnight on 01 April 2002 for failure to pay the basic national fee.

On 09 May 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 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), 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 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 submitted.

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459

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SAN DIEGO CA 92138-0278

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OFFICE OF PETITIONS

In re Application	:	
Mori, et al.	:	
Application No. 10/129,906	:	DECISION ON APPLICATION
Filed: October 28, 2002	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. 028297-0201	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705", filed February 1, 2007. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be increased from the currently accorded one hundred nineteen (119) days to three hundred thirty-one (331) 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.

Applicants are given two months from the issue date of the patent to request reconsideration of the patent term adjustment indicated on the patent application. Applicants may seek such reconsideration without payment of the fee. A copy of this decision should accompany applicant's written request for reconsideration.

On November 2, 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 one hundred nineteen (119) days. On February 1, 2007, Applicants timely[1] submitted the instant application for patent term adjustment.

[1] Applicants filed the application for patent term adjustment together with the payment of the issue fee.

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

The Office initially determined a patent term adjustment of one hundred nineteen (119) days based on an adjustment of three hundred fifty-two (352) days of PTO delay 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 seventy-eight (78) and ninety-one (91) days, pursuant to 37 C.F.R. § 1.704(b), and sixty-four (64) 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 **one hundred nineteen (119) days** (352 days of PTO delay, reduced by 233 (78+64+91) 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.

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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[2] Applicants 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).

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Date Mailed: September 17, 2008
Patent No. 7,276,594 B1
Ser. No. :10/129906
Inventor(s) :Hidezo Mori, et al.
Title :NUCLEIC ACID-CONTAINING COMPLEX

Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

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

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

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

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

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

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

Foley & Lardner LLP
P.O. Box 80278
San Diego, CA 92138-0278

MD/mt

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SEATTLE, WA 98104-7092

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OFFICE OF PETITIONS

In re Application of :
Xu, et al. : LETTER
Application No. 10/129,909 :
Filed: October 17, 2002 :
Attorney Docket No. 210121.42720USPC :

Reference is made to the petition under 37 CFR 1.78 filed February 24, 2005.

A review of the petition and accompanying Application Data Sheet (ADS) revealed that applications 09/439,313 and 09/443,686 are listed as foreign applications. Absent evidence to the contrary, these applications appear to be domestic applications and are required to be cited as such on the Application Data Sheet in order for the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) to be proper.

The petition under 37 CFR 1.78 will not be considered until applicant submits an Application Data Sheet that cites correctly the priority information or provides an explanation of why application 09/439,313 and 09/443,686 should be recognized in the priority data as foreign applications.

Further correspondence regarding this matter may be addressed to the following:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

Questions regarding this communication may be directed to the undersigned at (571)272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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SUITE 6300
SEATTLE, WA 98104-7092

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OFFICE OF PETITIONS

In re Application of :
Xu, et al. :
Application No. 10/129,909 : ON PETITION
Filed: October 17, 2002 :
Attorney Docket No. **210121.42720USPC** :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 16, 2005, to accept an unintentionally delayed claim under 35 U.S.C §120 for the benefit of priority to the prior –filed non-provisional applications set forth in the Application Data Sheet (ADS) filed concurrently with the instant petition.

The petition under 37 CFR 1.78(a)(3) 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 October 17, 2002, and was pending at the time of the filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an ADS as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior filed applications was submitted during the

pendency of the instant nonprovisional application for which the claim for benefit of priority is sought. See 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for benefit of priority under 35 U.S.C. § 120 to the prior-filed non-provisional 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 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 application 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 review of the prior-filed applications cited on the ADS, applications 09/439,313, and 09/443,686, revealed that there are other applications that preceded both the subject prior-filed applications. Petitioner is advised that this decision only acknowledges the Office's acceptance of the unintentionally delayed claim under 35 U.S.C §120 for the benefit of priority to those applications cited on the ADS, applications 09/439,313 and 09/443,686. Petitioner should contact the Office immediately if other applications were intended to be included in the benefit claim.

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

Any inquiries concerning this decision may be directed to Kenya A. McLaughlin, Petitions Attorney, at (571)272-3222.

This matter is being referred to Technology Center 1600, Art Unit 1631 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed non-provisional applications.

Frances Hicks
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6-17-08

TO SPE OF : ART UNIT 1638

SUBJECT : Request for Certificate of Correction on Patent No.: 7056732 / 10/129912

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.

Should these sequences be entered as requested?

Eva James

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-305-8309

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

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

Comments:

Anne Marie Grunberg

Digitally signed by Anne Marie Grunberg
DN: cn=Anne Marie Grunberg, c=US, o=Supervisory Patent Examiner, ou=1638 and 1661, email=Anne.Grunberg@uspto.gov
Date: 2008.10.25 19:20:49 -04'00'

SPE

1638

Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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JUN - 1 2006

ALLAN RATNER
RATNER & PRESTIA
ONE WESTLAKES BERWYN SUITE 301
P. O., BOX 980
VALLEY FORGE, PA 19482-0980

In re Application of	:
Toshikazu Tomioka et al	:
Serial No.: 10/129,943	: PETITION DECISION
Filed: September 6, 2002	:
Attorney Docket No.: MTS-3333	:

This is in response to the petition under 37 CFR 1.181, filed September 13, 2005, to consider a previously filed IDS.

The examiner has considered the IDS as noted in the supplemental Notice of Allowability mailed February 2, 2002. Therefor, the petition is considered moot.

The petition is **DISMISSED as moot**.

The application will be forwarded to the examiner to Publications Division for publication as a patent.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Bruce M. Kisliuk
Director, Technology Center 1600

0 9 JUN 2003
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46

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Daniel A. Monaco
DRINKER, BIDDLE & REATH, LLP.
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

In re Application of ROBERT W. CALAMINE ET AL :
U.S. Application No.: 10/129946 : DECISION ON PETITION
International Application No.: PCT/US00/30975 :
Int. Filing Date: 10 November 2000 : UNDER 37 CFR 1.182
Priority Date: 11 November 1999 :
Attorney Docket No.: 6056-264 :
For: INHIBITION OF ANGIOGENESIS BY :
ANTIBODIES AGAINST HIGH MOLECULAR :
WEIGHT KININOGEN DOMAIN 5 :

This is in response to applicant's "Response To Notification of Missing Requirements Under 35 U.S.C. 371."

BACKGROUND

On 10 November 2000, applicant filed international application PCT/US00/30975, which claimed priority of an earlier US application filed 10 November 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 05 June 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 11 May 2002.

On May 10 2002, applicant filed transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia,: the requisite basic national fee as required by 35 U.S.C. 371(c) (1) and a declaration as required by 35 U.S.C. 371(c) (4). Additionally applicant filed a request to transfer the Computer Readable Form (CRF) from the above identified international application to the instant national stage application.

On 15 August 2002 the office of the United States Designated/Elected Office (D0/E0/US) by way of PCT/DO/EO/905 informed the applicant that the nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 CFR 1.821-1.825, and given two months from the date of this notice or by 32 months from the priority date for the application, whichever is later.

On 23 August 2002 applicant notified the Designated/Elected Office (DO/EO) that the PCT/DO/EO/905 has been erroneously sent to them, and that the requirements under 37 C.F.R. 1.821(e) have been satisfied. Specially applicant noted that they had filed a request for transfer of the computer readable form CRF from PCT/US00/30975.

On 27 March 2003 the Designated/Elected Office (DO/EO) acknowledged, applicant's response but indicated PCT/US00/30975 does not have a valid CRF.

On 09 April 2003 applicant filed a "Petition Under CFR 1.182 requesting that the filing date of 10 May 2002 be given to the National Phase of Application No.: 10/129,946, since all of the requirements of 35 U.S.C. 371 were fulfilled.

Discussions

A review of PCT/US00/30975 indicates that a good CRF was entered into the USPTO'S database on 25 January 2001. Accordingly applicant has satisfied the requirements of 37 CFR 1.182 (e) and the Notice of Missing Requirements and the Notification of Defective Response are hereby **VACATED**.

CONCLUSIONS

Since the request to enter the national phase were fulfilled at the time of national phase entry, the date of 10 May 2002 will be recorded as that date. The "Petition Under 37 C.F.R. 1.182 is **GRANTED**

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for preparation and mailing of the Notification of Acceptance of Application under 35 C.F.R 371 and 37 C.F.R. 1.821(e) (Form PCT/DO/EO/ 905) indicating a date of 10 May 20 2002.

Leonard Smith
Legal Examiner
PCT Legal Office
Telepnone: 703-308-6461

Eunice I. Price
Paralegal Specialist
Telephone: 703-308-0323
Fax: 703-305-2919

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Daniel A. Monaco
Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103

In re Application of	:
COLMAN, Robert W. et al	: DECISION ON
US Application No.: 10/129,946	:
PCT Application No.: PCT/US00/30975	: PETITION UNDER
Int. Filing Date: 10 November 2000	:
Priority Date: 12 November 1999	: 37 CFR § 1.181 AND
Attorney's File Reference: 6056-264	:
For: INHIBITION OF ANGIOGENESIS BY ANTIBODIES AGAINST HIGH MOLECULAR WEIGHT KININOGEN DOMAIN 5	: REQUEST UNDER : : 37 CFR § 1.821(e) :

This decision is in response to applicants' "Response to Notification of Requirement to Provide CRF" filed 12 October 2004, which is being treated 1) as a petition under 37 CFR § 1.181 to accept the computer readable form of the sequence listing (CRF) filed therewith as having been filed in the above-identified international application PCT/US00/30975 on 29 December 2000 and 2) as a request under 37 CFR § 1.821(e) to use said CRF in the processing of the above-identified US national stage application number 10/129,946.

BACKGROUND

On 14 September 2004, this Office mailed a notification indicating that 1) the Office had no CRF associated with the above-identified international application and that as such 2) the applicants were required to provide a CRF as well as the requisite statement in accordance with a 37 CFR 1.821(e) and (f) for the above-identified US national stage application.

On 12 October 2004, applicants filed the present "Response to Notification of Requirement to Provide CRF" (response) along with, inter alia, a CRF, a statement indicating that the CRF submitted therewith is identical to the CRF filed in PCT/US00/30975, and a copy of post card receipt for international application number PCT/US00/30975 bearing a PCT/PTO date stamp of 29 December 2000. The request is being treated 1) as a petition under 37 CFR § 1.181 to accept the CRF filed therewith as having been filed in the above-identified international application PCT/US00/30975 on 29 December 2000 and 2) as a request under 37 CFR § 1.821(e) to use said CRF in the processing of the above-identified US national stage application number 10/129,946.

DISCUSSION

The post card receipt for international application number PCT/US00/30975, which includes a sequence listing floppy disk in its itemized contents and bears a PCT/PTO date stamp of 29 December 2000, is *prima facie* evidence that the applicants filed the CRF on 29 December 2000. Accordingly, the CRF accompanying the present response will be treated as having been received by the Office on 29 December 2000 in international application number PCT/US00/30975. Further, the CRF will be used in the processing of the above-identified US national stage application number 10/129,946 in accordance with 37 CFR § 1.821(e) as requested by the applicants in their request filed 10 May 2002.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR § 1.181 requesting that the CRF be treated as having been filed on 29 December 2000 in international application number PCT/US00/30975 is **GRANTED**. Further, applicants' request under 37 CFR § 1.821(e) to use the CRF in the processing of the above-identified US national stage application number 10/129,946 is **GRANTED**.

This application is being forwarded to the national stage processing division of the Office of PCT Operations for continued processing of this application, including according the application a 35 USC § 371(c)(1), (c)(2), and (c)(4) date of 10 May 2002.

Diana Oleksa
Special Programs Examiner
PCT Special Programs Office
Telephone: 571-272-3291

Leonard Smith
PCT Legal Examiner
PCT Legal Office

#4

22 MAY 2003

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OBLON, SPIVAK, MCCLELLAND, MAIER
& NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of	:	DECISION ON
EDA et al	:	
Application No.: 10/129,951	:	
PCT No.: PCT/JP01/02658	:	PETITION UNDER
Int. Filing Date: 29 March 2001	:	
Priority Date: 14 September 2000	:	37 CFR 1.181
Attorney's Docket No.: 223125US2XPCT	:	
For: FACTORING COMMISSION SYSTEM	:	

This Decision is in response to applicant's "PETITION UNDER 37 C.F.R. 1.181 TO WITHDRAW HOLDING OF ABANDONMENT" filed on 03 September 2002 that the above-identified application was improperly held abandoned because the international application was filed timely by the International Bureau. The petition requests the withdrawal of the abandonment mailed on 02 July 2002. No petition fee is required.

BACKGROUND

On 29 March 2001, this international application was filed, claiming an earliest priority date of 14 September 2000.

On 17 May 2002, 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); an English transaction of the international application as required by 35 U.S.C. 371(c)(2); and a declaration as required by 35 U.S.C. 371(c)(4). The transmittal letter indicated that a copy of the International Application has been communicated by the IB.

On 02 July 2002, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that applicant had failed to provide the Copy of the International Application by 20 months; accordingly the application was abandoned.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 02 July 2002, petitioner has submitted the instant petition requesting withdrawal of the Notice of Abandonment. In support of the request, petitioner has provided a copy of NOTICE INFORMING THE APPLICANT OF THE COMMUNICATION OF THE INTERNATIONAL APPLICATION TO THE DESIGNATED OFFICES (PCT/IB/308).

DISCUSSION

A review of the file shows that the IB timely communicated the international application to the US designated Office on 21 March 2002 as evidenced by NOTICE INFORMING THE APPLICANT OF THE COMMUNICATION OF THE INTERNATIONAL APPLICATION TO THE DESIGNATED OFFICES (PCT/IB/308).

In view of the above, the applicant's international application was timely communicated to the US designated Office. Accordingly, the instant application has been improperly abandoned. The petition fee of $130.00 has been refunded back to the Deposit Account No. 15-0030.

DECISION

Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is GRANTED. The NOTIFICATION OF ABANDONMENT, mailed 02 July 2002 has been VACATED.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C.§ 371 date of **17 May 2002**.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

Leonard Smith
PCT Legal Examiner
PCT Legal Office

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Mailed: 11/17/05

WK
Paper Number __

In re application of
Geoffrey J. Davies et. al.
Serial No. 10/129,959
Filed: October 17, 2002
For: CUBIC BORON-NITRIDE CLUSTERS

DECISION ON
PETITION

This is a decision on PETITION TO EXPUNGE UNDER 37 C.F.R. 1.59(b), filed July 5, 2005, 2003, which has been accepted as a timely petition under 1.59(b) and MPEP 724.02 and is before the Group Director of Technology Center for consideration.

DECISION

Petitioner requests that the Applicant Data Sheet (ADS) filed May 20, 2003 be expunged and that the documents be appropriately disposed of in accordance with 37 CFR 1.59. Each of the criteria for granting the request has been satisfied, see the MPEP 724.05.

The petition is **GRANTED.**

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

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

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

10/129,959

The image of the document will be removed from the Official file.

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

Corwin P. Umbach, PhD.
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

13 FEB 2003

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WASHINGTON, D.C. 20231
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#6

Robert B. Murray
Arent Fox Kintner Plotkin & Kahn
Suite 400
1050 Connecticut Avenue N W
Washington, DC 20036-5339

In re Application of	:	DECISION ON
STAEHLER et al.	:	
Application No.: 10/129,973	:	PETITION UNDER
PCT No.: PCT/EP00/11968	:	
Int. Filing Date: 29 November 2000	:	37 CFR 1.182
Priority Date: 29 November 1999	:	
For: DYNAMIC DETERMINATION OF ANALYTES	:	

This is a decision on applicants' "Petition [under 37 CFR 1.182] and Response to Notification of Missing Requirements", filed with the United States Patent and Trademark Office (USPTO) on 01 October 2002. Applicants request that the application reflect joint inventor Andrea Kausch's family name change from Andrea Kausch to Andrea Schlauersbach. The $130 petition fee was paid.

On 22 May 2002, within 30 months from the priority date of the international application, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*,: the requisite basic national fee and an executed declaration. The international application indicated that the inventors/applicants for the United States of America included Andrea Kausch as a named joint inventor.

On 01 August 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that the declaration was not in compliance with 37 CFR 1.497(a) and (b), not executed in accord with either 37 CFR 1.66 or 1.68, and the $130 surcharge for filing the oath or declaration after the thirty month period was required. The Notification advised that Inventor #3 name is not the same as that on the published international application, Andrea Kausch.

On 01 October 2002, applicants filed the instant communication in response to Notification of Missing Requirements including the petition under 1.182. The petition indicated that Andrea Kausch married and changed her family name to Andrea Schlauersbach subsequent to the filing of the international application. Applicants also submitted an affidavit signed by Andrea Schlauersbach indicating the reason for the name change.

DISCUSSION

As explained in MPEP 605.04(c), applicants must provide "an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or a certified copy of the court order." Here, applicant submitted a signed affidavit identifying both names, Andrea Kausch and Andrea Schlauersbach. Ms. Schlauersbach states that her marriage resulted in a change of name from Kausch to Schlauersbach. The evidence is sufficient to conclude that Andrea Kausch changed her name by marriage to Andrea Schlauersbach.

The declaration submitted on 22 May 2002 identifies each inventor and country of citizenship of each inventor. Thus, the requirements of 37 CFR 1.497 have been met and the declaration is acceptable.

CONCLUSION

The petition under 37 CFR 1.182 to change the inventor's name from Andrea Kausch to Andrea Schlauersbach is **GRANTED**.

The declaration submitted on 22 May 2002 is acceptable as filed. The application will be forwarded to the United States Designated/Elected Office for further processing. The 35 U.S.C. 371 date is **22 May 2002**.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: 703-306-5467

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AUG 0 2 2005

M Robert Kestenbaum
11011 Bermuda Dunes NE
Albuquerque, NM 87111

In re Application of	:	DECISION ON PETITION
Martin Strasser	:	TO WITHDRAW
Serial No. : 10/130,001	:	HOLDING OF
Filed : September 23, 2002	:	ABANDONMENT
For : Adhering Anchor and Device for Deforming Areas of a Vehicle Body	:	

This is a decision on petitioner's request filed April 6, 2005, to review the holding of abandonment mailed February 25, 2005, for failure to pay the issue fee as required in the Notice of Allowability and the Notice of Allowance and Fee(s) Due mailed October 4, 2004. The basis for the request is that applicant did not receive the communication mailed October 4, 2004. There is no fee required for this petition.

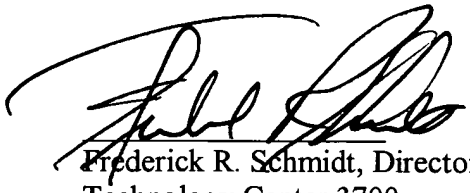
In order to overcome the presumption of delivery of an Office action, a practitioner must submit the following: (1) a statement from the practitioner stating that the Office action was not received by practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. See 1156 OG 53.

The requests include all the above elements. The request is therefore GRANTED and the holding of abandonment is hereby withdrawn. However, as applicant has received a copy of the communication of October 4, 2004, courtesy of the examiner in charge of the application, and for the reasons provided below, the Notice of Allowability and Notice of Allowance and Fee(s) Due originally mailed October 4, 2004 will not be remailed.

As stated in the paper filed April 6, 2005, applicant received a copy of the communication of October 4, 2004 courtesy of the Examiner to enable petitioner to respond. With the paper filed April 6, 2005 petitioner submitted the issue fee. It is noted that the Revenue Accounting and Management records of the Office show that the issue fee was indeed received April 6, 2005.

As all of the requirements set forth in the communication of October 4, 2004 have been satisfied, upon the mailing of this decision the application will be forwarded to the Office of Publications.

Summary: Holding of Abandonment Withdrawn.



Frederick R. Schmidt, Director
Technology Center 3700

ak/07/15/05

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JOSEPH S. TRIPOLI
THOMSON MULTIMEDIA LICENSING, INC.
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PRINCETON, NJ 08543-5312

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JUL 0 2 2008

OFFICE OF PETITIONS

In re Application of :
WILLIS, et al. :
Application No. 10/130,016 :
Filed: September 13, 2002 :
Attorney Docket No. **PU000093** :

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed July 27, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, January 5, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 6, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1500; and (3) an adequate statement of unintentional delay.

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. Jorge T. Villabon appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent that particular party on whose behalf he acts.

The application is being referred to Technology Center Art Unit 2621 for consideration of the amendment filed July 27, 2007.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

Brian W. Brown
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.: 6,667,333 B2

DATED: December 23, 2003

INVENTOR(S): KUDIS et al.

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

Col. 37, claim 1:

line 12, after "1,3-oxathiolan-2-yl," insert --1,3-oxathian-2-yl--;

omit the material on lines 20-24 as a duplicate of that on lines 16-19.

Col. 38, claim 1, line 22, after "selected" insert --from--.

OK

Examiner

JOSEPH K. McKANE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

TAOFIQ SOLOLA
PRIMARY EXAMINER

MAILING ADDRESS OF SENDER:

Patent No. 6,667,333

Keil & Weinkauf
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036

Form PTO 1050 (Rev. 2-93)

MAR 2 6 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.: 6,667,333 B2

DATED: December 23, 2003

INVENTOR(S): KUDIS et al.

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

Col. 37, claim 1:

line 12, after "1,3-oxathiolan-2-yl," insert --1,3-oxathian-2-yl--;

omit the material on lines 20-24 as a duplicate of that on lines 16-19.

Col. 38, claim 1, line 22, after "selected" insert --from--.

OK

Examiner

TAOFIQ SOLOLA
PRIMARY EXAMINER

MAILING ADDRESS OF SENDER:

Patent No. 6,667,333

Keil & Weinkauf
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036

Form PTO 1050 (Rev. 2-93)

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BELL, BOYD, & LLOYD LLC
P. O. BOX 1135
CHICAGO IL 60690-1135

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OFFICE OF PETITIONS

In re Application of	:	
Hills et al.	:	
Application No. 10/130,033	:	ON PETITION
Filed: October 15, 2002	:	
Attorney Docket No. 116666-2	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 11, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Request for Continued Examination and fee (submission under 37 CFR 1.114 was previously submitted on December 7, 2005); (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 non-final Office action was mailed August 10, 2006.

This matter is being referred to Technology Center 1700 to await a reply to the outstanding Office action.

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

Liana Walsh
Petitions Examiner
Office of Petitions

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CAROL L. FRANCIS
BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE, SUITE 200
EAST PALO ALTO, CA 94303

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JUN 29 2006

OFFICE OF PETITIONS

In re Application of :
Shinji Sakamoto, et al. :
Application No. 10/130,034 : DECISION ON REQUEST
Filed: August 23, 2002 : TO WITHDRAW
Attorney Docket No. SHIM-016 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §1.36(b), filed March 31, 2006.

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

A review of the file record indicates that the power of attorney to Carol L. Francis and all the other attorneys/agents of record was revoked by the applicant of the patent application on September 10, 2003. Accordingly, the request to withdraw under 37 CFR § 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.

There is an outstanding Office action mailed April 11, 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: RDR

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

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IRVINE CA 92614

MAILED

JUL 17 2009

OFFICE OF PETITIONS

In re Application :
Sakamoto, et al. :
Application No. 10/130,034 : PATENT TERM ADJUSTMENT
Filed: August 23, 2002 :
Dkt. No.: ABGENIX.177NP :

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT 37 C.F.R. § 1.705(d) filed February 24, 2009. This matter is being properly treated as an application for patent term adjustment pursuant to 37 CFR 1.705(b), the application having been submitted prior to issuance of a patent. Applicants submit that the correct patent term adjustment to be indicated on the patent is 413 days, not zero days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests 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, § 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, applicant is

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, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

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 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 specific to this decision should be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
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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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Mail Date: 04/20/2010

Applicant	: Shinji Sakamoto	: DECISION ON REQUEST FOR
Patent Number	: 7579186	: RECALCULATION of PATENT
Issue Date	: 08/25/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/130,034	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/23/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **302** 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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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Mail Date: 05/17/2010

Applicant : Shinji Sakamoto
Patent Number : 7579186
Issue Date : 08/25/2009
Application No: 10/130,034
Filed : 08/23/2002

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

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

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

The patent term adjustment has been determined to be **414** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (PTA) days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days** from the mail date of this notice, whichever is longer, to file a request for reconsideration of this PTA calculation. See 35 U.S.C. § 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4).

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

Patentee should be aware that in order to preserve the right of review of the USPTO's PTA determination in the United States District Court for the District of Columbia, patentee must ensure that the steps required under 35 U.S.C. § 154 (b)(4) are taken in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. § 154(b)(4).

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CIBA SPECIALTY CHEMICALS CORPORATION
PATENT DEPARTMENT
540 WHITE PLAINS RD
P O BOX 2005
TARRYTOWN NY 10591-9005

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NOV 29 2004

OFFICE OF PETITIONS

In re Application of
Van Der Schaaf et al.
Application No. 10/130,043
International Filing Date: May 13, 2002
For: CRYSTALLINE FORMS OF FLUVASTATIN SODIUM
Pub. No.: US 2003/0125569 A1
Pub. Date: July 3, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on July 15, 2004, for the above-identified application.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication contains an error on the front page of the publication as the title of the invention "Crystalline Forms of Fluvastatin Sodium" is misprinted as "Use of Packing Strip as a Holographic Data Carrier".

Petitioner states that on April 3, 2004, the Office was advised of an error in the title, however the publication still published with the incorrect title 4 months later. Petitioner argues that the title of the invention is significant because people conduct searches by title of the invention and the title is irrelevant to the invention.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1]

The request for corrected publication received on July 15, 2004, was not timely filed under

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

37 CFR 1.221(b).

If the corrected publication request had been timely filed, the error in the title would not have been considered a material error under 37 CFR 1.221(b). The error in the title does not affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent because the specification, claims and abstract were correctly printed.

On April 9, 2003, a request for a corrected filing receipt was received by the Office, however the request was too late to change the title in the pre-grant publication. To avoid this type of problem in the future, applicants' representative should make a request for a corrected filing receipt using the facsimile number (703-746-9195) on the Filing Receipt.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). While the fee has not been paid, the petition has been treated as a request for a corrected patent publication under 37 CFR 1.221(b).

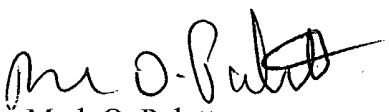
The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the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

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

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

By facsimile: (703) 872-9306

Inquires concerning this communication should be directed to Mark Polutta at (571) 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

20 FEB 2004

#7

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Mr. Kevin R. Spivak
Morrison & Foerster, LLP
1650 Tysons Boulevard – Suite 300
McLean, VA 22102

In re Application of:
HORN, et al.
Application No. : 10/130,057
PCT No.: PCT/DE00/04060
Int. Filing Date: 16 November 2000
Priority Date: 16 November 1999
Atty Docket No.: 449122028400
For: METHOD FOR AUTHENTICATING A RADIO COMMUNICATION NETWORK VIS-À-VIS A MOBILE STATION AND RADIO COMMUNICATION NETWORK AND MOBILE STATION

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's "Petition to Withdraw The Holding of Abandonment" filed 18 December 2003 in the United States Patent and Trademark Office (USPTO). The petition is being treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 16 November 2000, applicant filed international application PCT/DE00/04060, which claimed priority of an earlier application filed 16 November 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 May 2001. The deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 25 May 2002.

On 15 May 2002, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a First Preliminary amendment and an Information Disclosure Statement.

On 24 July 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. In addition, applicant was advised of the need to pay the surcharge for providing an oath or declaration of the inventor later than thirty months from the priority date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 21 November 2003, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that applicant had failed to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 24 July 2002 within the time period set therein and that above-identified application was abandoned as to the United States.

On 18 December 2003, applicant filed the present petition to withdraw the holding of abandonment.

DISCUSSION

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of the date-stamped postcard receipt. The postcard identifies the application by inventors, title and docket number. The receipt identifies the application number as "10/130,057." Among the items listed on the receipt is "3. Executed Declaration (3 pages)" The receipt is stamped "OIPE JC174 Patent and Trademark Office AUG 05 2002" across its face. Thus, it is clear that applicant filed an executed declaration on 05 August 2002. In addition, the transmittal letter, which applicant has avowed is a copy of the transmittal letter filed 05 August 2002, authorizes the deduction of the appropriate surcharge from Deposit Account No.: 03-1952. For the reasons stated above, it is proper to grant applicant's petition at this time and accept the copy of the declaration filed 18 December 2003 as a substitute for the declaration originally filed 05 August 2002.

Applicant is advised that it is not possible to accept the filed combined declaration and power of attorney at this time as there exists a discrepancy between the filed declaration and the published international application. The first named inventor is identified in the declaration as Guenter HORN whereas the published international application lists the inventor as Gunter HORN. This raises the question as to whether the discrepancy is the result of a name change or a typographical error. Before national stage processing can continue applicant is required to explain the discrepancy. If the discrepancy is the result of a name change, applicant must provide either a declaration executed with the name which appears on the published application, "Gunter HORN " or in the alternative, a petition under 37 CFR 1.182 requesting that the inventor's name be changed to "Guenter HORN." (See MPEP 605.04 C) Applicant is also directed to Section 201.03 of the MPEP which provides the procedures for where a typographical or transliteration error in the spelling of the inventor's name is discovered. As discussed in that section, in such an instance a petition is not required.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

The "NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909)" mailed on 21 November 2003 is hereby **VACATED**.

Applicant is hereby afforded **TWO (2) MONTHS** to file a proper reply as discussed above. 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.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

06 AUG 2004

#9

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Kevin R. Spivak
Morrison & Foerster, LLP
1650 Tysons Blvd., Suite 300
McLean, VA 22102

In re Application of	:	
HORN, et al.	:	
U.S. Application No.: 10/130,057	:	DECISION ON RENEWED
PCT No.: PCT/DE00/04060	:	
Int. Filing Date: 16 November 2000	:	PETITION UNDER
Priority Date: 16 November 1999	:	
Attorney Docket No.: 449122028400	:	37 CFR 1.181
For: METHOD FOR AUTHENTICATING A RADIO COMMUNICATION NETWORK VIS-A-VIS A MOBILE STATION AND RADIO COMMUNICATION NETWORK AND MOBILE STATION	:	

This decision is in response to applicant's "Response to Decision on Petition Under 37 CFR 1.181" filed 20 April 2004 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 20 February 2004, applicant was mailed a decision granting applicant's petition under 37 CFR 1.181. Applicant was afforded two months to file a response as to an apparent discrepancy as to the execute declaration.

On 20 April 2004, applicant filed the present renewed petition under 37 CFR 1.182.

DISCUSSION

Processing of applicant's previously filed declaration was upheld as questions existed regarding the correct name of inventor Horn. Applicant has presently submitted a statement from counsel addressing this concern.

Section 201.03 of the Manual of Patent Examining Procedure (MPEP) provides the procedures where a typographical or transliteration error in the spelling of an inventor's name is discovered. As discussed in that section, in such an instance a petition is not required: "Where a typographical or transliteration error in the spelling of an inventor 's name is discovered, the Office should simply be notified of the error. A new oath or declaration is not required. Reference to the notification will be made on the previously filed oath or declaration." Applicant's present filing contains such a statement regarding the correct name of inventor: Gunter HORN. As such,

the declaration filed 05 August 2002 is acceptable. (See decision of 20 February 2004 as the granting of petition under 37 CFR 1.181 accepting copy of declaration filed 18 December 2003 for original declaration filed 05 August 2002.)

CONCLUSION

For the reasons stated above, applicant's renewed petition under 37 CFR 1.181 is **GRANTED**.

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing consistent with this decision.

The application has an international filing date of 16 November 2000 under 35 U.S.C. 363 and will be given a date of **05 August 2002** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

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OFFICE OF PETITIONS

MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

In re Application of :
Guenther HORN, et al :
Application No. 10/130,057 : DECISION ON PETITION
Filed: August 5, 2002 : TO WITHDRAW
Attorney Docket No. 449122028400 : 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 31, 2007.

The request is **APPROVED**.

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

The request was signed by Deborah S. Gladstein on behalf of all attorneys of record associated with Customer Number 25227.

All attorneys/agents of record associated with Customer Number 25227 have been withdrawn.

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

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

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).

There is an outstanding Office action mailed August 24, 2007 that requires a reply by the applicant.

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at 571-272-6735.

April Wise
Petitions Examiner
Office of Petitions

cc: GUENTHER HORN
EDUARD-SCHMID-STR.16
81541 MUENCHEN
GERMANY

cc: BELL, BOYD & LLOYD, LLP
P.O. BOX 1135
CHICAGO, IL 60690

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/130,057	08/05/2002	Guenther Horn	449122028400

CONFIRMATION NO. 8094

OC000000026065218

25227
MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

Date Mailed: 09/28/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/31/2007.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

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

12 AUG 2002

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WASHINGTON, D.C. 20231
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Benoit Castel
Young & Thompson
745 South 23rd street
Arlington, VA 22202

In re Application of	:	
BRAMBILLA et al	:	
Application No.: 10/130,061	:	DECISION ON
PCT No.: PCT/EP00/00268	:	
Int. Filing Date: 14 January 2000	:	
Priority Date: 15 January 1999	:	PETITION UNDER
Attorney's Docket No.: 2503-1009	:	
For: PRODUCTION OF HETEROLOGOUS	:	
PROTEINS FROM ZYGOSACCHAROMYCES	:	37 CFR 1.137(b)

This is in response to "Petition to Revive Unintentionally Abandoned Application Under 37 C.F.R. §1.137(b)" filed on 31 October 2000.

BACKGROUND

On 14 January 2000, this international application was filed, which claimed an earliest priority date of 15 January 1999.

A Demand was filed on 31 July 2000 for the above international application. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 16 July 2001 (the 15th being a Sunday). This international application became abandoned with respect to the United States at midnight on 16 July 2001 for failure pay the basic national fee.

On 15 May 2002, applicant filed in the United States Patent and Trademark Office (PTO) the instant petition, and a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, the U.S. basic national fee, and an executed declaration.

DISCUSSION

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

Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

DECISION

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

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing. The 35 USC 371 date of this application is **15 May 2002**.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6312
Fax: (703) 308-6459

11 DEC 2003

#7

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Hale And Dorr LLP
60 State Street
Boston MA 02109

In re Application of	:	
Miyajima et al.	:	
Application No. 10/130,076	:	DECISION ON
PCT No.: PCT/JP00/07817	:	
Int. Filing Date: 07 November 2000	:	PETITION UNDER
Priority Date: 10 November 1999	:	
Atty. Docket No.: SMI-010 (113507.120)	:	37 CFR 1.137(b)
For: Method For Preparing Cell Fraction	:	
Containing Hemangioblasts	:	

This is in response to the petition under 37 CFR 1.137(b) filed on 25 August 2003.

BACKGROUND

This international application was filed on 07 November 2000, claimed an earliest priority date of 10 November 1999, and designated the U.S. The International Bureau transmitted a copy of the published international application to the USPTO on 17 May 2001. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 10 May 2002.

On 10 May 2002, applicants filed *inter alia* the basic national fee.

On 06 August 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to counsel, requiring the submission of an acceptable English translation of the international application, an executed oath or declaration of the inventors, a surcharge under 37 CFR 1.492(e), a processing fee under 37 CFR 1.492(f),. An initial or substitute computer readable form (CRF) of the sequence listing, an initial or substitute paper copy or compact disc of the sequence listing, as well as an amendment directing its entry into the specification.

On 29 July 2003, a Notice of Abandonment was mailed to counsel, indicating that the application had become abandoned for failure to timely reply to the Notification of Missing Requirements.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (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 (c) of this section.

Regarding requirement (1), the review of the application file reveals that petitioner has not filed a proper English translation of the international application, at least in that the translated claims differ from the claims in the published Japanese language international application. Moreover, petitioner has not filed a readable CRF. As such, requirement (1) has not been satisfied.

Regarding requirement (2), the petition was accompanied by the petition fee.

Regarding requirement (3), the petition includes a statement that "the application was abandoned unintentionally and erroneously and by no fault of the Applicants." This statement is being construed 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 pursuant to 37 CFR 1.137(b) was unintentional." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

DECISION

The petition under 37 CFR 1.137(b) 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 1.137(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

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

Leonard Smith
PCT Legal Examiner
PCT Legal Office

George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
Fax: (703) 308-6459

29 APR 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Hale And Dorr LLP
60 State Street
Boston MA 02109

In re Application of	:	
Miyajima et al.	:	
Application No. 10/130,076	:	DECISION ON
PCT No.: PCT/JP00/07817	:	
Int. Filing Date: 07 November 2000	:	PETITION UNDER
Priority Date: 10 November 1999	:	
Atty. Docket No.: SMI-010 (113507.120)	:	37 CFR 1.137(b)
For: Method For Preparing Cell Fraction	:	
Containing Hemangioblasts	:	

This is in response to the renewed petition under 37 CFR 1.137(b) filed on 04 February 2004.

DISCUSSION

On 11 December 2003, a decision on petition was mailed to applicant, treating a petition under 37 CFR 1.137(b) filed on 25 August 2003. That petition was dismissed without prejudice because applicant had not provided the required reply in that neither a proper English translation of the international application nor a readable computer readable form (CRF) had been filed. The instant renewed petition was accompanied by an acceptable CRF and by an English translation of the international application. As such, all of the requirements of 37 CFR 1.137(b) have now been satisfied.

DECISION

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

This application is being forwarded to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **04 February 2004**.

Richard Cole
PCT Legal Examiner
PCT Legal Office

George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
Fax: (703) 308-6459

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.

Brinks Hofer Gilson & Lione
PO Box 10395
Chicago IL 60610

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MAR 1 9 2004

OFFICE OF PETITIONS

In re Application of
Romuald Pawluczyk
Application No. 10/130,078
Filed: September 23, 2002
Attorney Docket No. 11298/5

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 28, 2003, to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application.

The petition is **DISMISSED**.

Any reconsideration request should include a cover letter entitled Renewed Petition under 37 CFR 1.78.

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 U.S.C. 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 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 U.S.C. 119(e). Receipt

of the fee required by 37 CFR 1.78(a)(6) is acknowledged. Moreover, accompanying the instant petition is an amendment amending the specification to include a reference to the prior provisional application in the first sentence of the specification following the title.

However, the claim for priority sought does not appear to be proper. 35 U.S.C. § 119(e) provides, in pertinent part, that;

> (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. ...
>
> (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.

The instant application is the U.S. national stage application of International Application No. PCT/CA00/01318, which was filed November 14, 2000. The prior provisional application for which priority is claimed, Application No. 60/165,309, was filed on November 12, 1999. It is noted that November 12, 2000 was a Sunday; however, Monday, November 13, 2000 (not Tuesday, November 14, 2000) was the next succeeding business day[1]. Thus, the application under § 371 was not filed within twelve months of the filing date of the prior provisional application.

In view thereof, the claim for priority is not accepted and the petition is dismissed.

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

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

By hand:
CUSTOMER SERVICE WINDOW
2011 South Clark Place
Crystal Plaza Two Lobby
Arlington, VA 22202

The application file is being forwarded to Technology Center 2800 for examination in due course.

---

[1] The federal holiday was Friday, November 10, 2000.

Telephone inquiries regarding this decision should be directed to Senior Petitions Attorney Nancy Johnson at (703) 305-0309.

Charles A. Pearson
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

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JAN 11 2006

OFFICE OF PETITIONS

In re Patent No. 6,788,849 :
Issue Date: September 7, 2004 :
Application No. 10/130,078 : ON PETITION
Filed: September 23, 2002 :
Attorney Docket No. 059536-0101 :

This is a decision on the petition, filed July 29, 2005, requesting correction of the assignment data on the front page of the above-identified patent by way of Certificate of Correction. The Office is properly treating this petition as a petition under 37 CFR 1.182.

In the present petition, petitioner states:

> When submitting the Form PTOL-85b at the time of payment of the issue fee in the present application, the previous law firm mistakenly indicated that the patent was assigned, when a review of the file history indicates that no assignment was tiled and the sole inventor has informed the undersigned that he did not assign his rights to any company.
>
> Patentee respectfully request that this petition be granted and that a Certificate of Correction be issued. We have enclosed a Certificate of Correction Form PTO 1050 (in duplicate) indicating the correction to be made.

Petition of July 29, 2005, p. 1. Specifically, petitioner requests that the USPTO correct line 76 on the front page of the patent to read "Romuald Pawluczyk, 280 Golf Course Road, Conestogo, Ontario N0B 1N0 CANADA."

A review of the records indicates that an assignment from CME Telemetrix Inc. to NIR Diagnostics Inc. was recorded in the USPTO on July 25, 2005 at Reel/Frame 016570/0397. Therefore, it appears that the present petition seeks a review and nullification of the Office's recordation of the assignment from CME Telemetrix Inc. to NIR Diagnostics Inc.

The recordation of an assignment by the USPTO is "merely a ministerial act; it is not an Office determination of the validity of the assignment document nor the effect of the assignment document on the ownership of the patent property." MPEP 301(V)(A). Accordingly, the Office will not give effect

to any challenge to the validity of an assignment and to requests that the assignment be voided and nullified. The petition under 37 CFR 1.182 is **dismissed.**

Any request for reconsideration must be submitted within two (2) months of the mail date of this decision. The request should be entitled, "Renewed Petition Under 37 CFR 1.182." Extensions of time under 37 CFR 1.136(a) are available.

Petitioner may request a refund of the $100.00 certificate of correction fee by writing to the following address:

Mail Stop 16
Director of the US Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450

Petitioner should include a copy of this decision with any request for a refund.

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

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

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 may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Notice Regarding Change of Power of Attorney (2 pages)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

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APR 1 8 2006
OFFICE OF PETITIONS

In re Patent No. 6,788,849 :
Issue Date: September 7, 2004 :
Application No. 10/130,078 : ON PETITION
Filed: September 23, 2002 :
Attorney Docket No. 059536-0101 :

This is a decision on the renewed petition filed March 17, 2006, requesting deletion of the assignee on the front page of the above-identified patent by way of Certificate of Correction.

Petitioner asserts that no assignment in accordance with 37 CFR 3.11 has been recorded in this patent. Petitioner states that the recordation from CME Telemetrix Inc. to NIR Diagnostics Inc. recorded on July 25, 2005 at Reel/Frame 016570/0397 was for a name change only.

Upon further review, the request is **granted**.

The matter is being referred to the Certificate of Correction Branch to issue the Certificate of Correction.

The Office charged the Deposit Account a $120.00 fee for an extension of time for response within the first month, as authorized.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE
19 SEP 2002
COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Blakely, Sokoloff, Taylor & Zafman
12400 Wilshire Blvd., Suite 700
Los Angeles, CA 90025

In re Application of :
Ang :
Application No. 10/130086 :
PCT No.: PCT/SG99/00065 :
Int. Filing Date: 05 July 1999 :
Priority Date: 05 July 1999 :
For: Artillery Firing Mechanism :

DECISION ON

PETITION UNDER

37 CFR 1.137(b)

This is in response to the petition under 37 CFR 1.137(b) filed on 13 May 2002.

BACKGROUND

This international application was filed on 05 July 1999, claiming no earlier priority date. The International Bureau transmitted a copy of the published international application to the USPTO on 11 January 2001. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 05 January 2002. This international application became abandoned with respect to the United States for failure to timely pay the required basic national fee.

On 13 May 2002, applicants filed the instant petition.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (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 (c) of this section.

Regarding requirement (1), applicants have filed the required reply in the form of the basic national fee.

Regarding requirement (2), the petition fee accompanied the petition.

Regarding requirement (3), the petition includes an appropriate statement.

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

DECISION

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

This application is being forwarded to the National Stage Processing Branch for further processing, including the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring the submission of an oath or declaration and a surcharge under 37 CFR 1.492(e).

Boris Milef
PCT Legal Examiner
PCT Legal Office

George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
Fax: (703) 308-6459

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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APR 24 2006

OFFICE OF PETITIONS

THE DOW CHEMICAL COMPANY
INTELLECTUAL PROPERTY SECTION
P.O. BOX 1967
MIDLAND, MI 48641-1967

In re Patent No. 6,933,417
Issued: August 23, 2005
Application No. 10/130,102
Filed: May 14, 2002
Attorney Docket No: **60020 ORIG 2**

: DECISION ON REQUEST
: FOR RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT ADJUSTMENT DETERMINATION UNDER 37 CFR §1.705(d)," filed September 6, 2005. Patentee requests that the patent term adjustment indicated in the patent be corrected from two hundred thirteen (213) days to three hundred thirty-three (333) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of three hundred thirty-three (333) days.

On August 23, 2005, the above-identified application matured into U.S. Patent No. 6,933,417. The instant request for reconsideration filed September 6, 2005 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 213 days. Patentee disputes the reduction of 120 days due to "Workflow-Drawings finished" as there were no drawings in the case.

A review of the PALM calculations for this application reveals that the initial determination of PTA of 333 days was reduced by 120 days for applicant's submission of drawings after the mailing of the notice of allowance. See 37 CFR 1.704(c)(10). However, a review of the application record supports a conclusion that no drawings (or any other paper, aside from the instant petition) were filed in this application after the mailing of the notice of allowance. As stated in the Notice of Allowability, the drawings filed May 14, 2002 (with the original application disclosure) were accepted by the examiner.

In view thereof, the patent term adjustment indicated in the patent should have been three hundred thirty three **(333)** days.

The $200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 04-1512, as authorized. No additional fees are required.

The fee under § 1.18(e) is required on petition under § 1.705(d) and will not be refunded. Nor will the fee 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 THREE HUNDRED THIRTY-THREE (333) days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 6,933,417 B1

DATED : February 17, 2004

INVENTOR(S) : Alexander Huang

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 (213) days

Delete the phrase "by 213 days" and insert – by 333 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 6,933,417 B1

DATED : February 17, 2004

INVENTOR(S) : Alexander Huang

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 (213) days

Delete the phrase "by 213 days" and insert – by 333 days--

OIPE
AUG 05 2002
PATENT & TRADEMARK OFFICE

DT Rec'd PCT/PTO 05 AUG 2002

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Bernhard RUPP Et Al

Serial No. 10/130,113

Based on PCT /DE 01/03257

Attention:
Lamont M. Hunter
PCT INTERNATIONAL DIVISION

For: STATOR

RESPONSE TO MISSING REQUIREMENTS UNDER 35 U.S.C. 371

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

Sir:

In response to the Notice of Missing Requirements Under 35 U.S.C. 371 dated July 16, 2002, please find the enclosed:

1) Copy of PCT / DO / EO / 905 dated July 16, 2002
2) Executed Declaration

The Commissioner is hereby authorized to charge payment of any fees associated with this communication to Deposit Account 07-2100. Please note that the Commissioner has previously been authorized to charge the surcharge in the amount of $130.00 to our Deposit Account 07-2100.

Please note that the name of the First Named Applicant is incorrectly listed on the PCT/DO/EO/905 Form. The name of the First Named Applicant is ***Bernhard RUPP.***

Respectfully submitted,

Ronald E. Greigg
Registration No. 31,517
Attorney for Applicants

GREIGG & GREIGG P.L.L.C.
1423 Powhatan Street, Unit One
Alexandria, VA 22314
Telephone: (703) 838-5500
Facsimile: (703) 838-5554
Customer No. 02119
05 August 2002
REG/kg

UNITED STATES PATENT AND TRADEMARK OFFICE

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

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/130,113	Bernhard Paweletz Anton Rupp	R.39043

INTERNATIONAL APPLICATION NO.	
PCT/DE01/03257	
I.A. FILING DATE	PRIORITY DATE
08/25/2001	09/15/2000

02119
RONALD E. GREIGG
GREIGG & GREIGG P.L.L.C.
1423 POWHATAN STREET, UNIT ONE
ALEXANDRIA, VA 22314

RECEIVED
JUL 19 2002

CONFIRMATION NO. 1982
371 FORMALITIES LETTER

OC000000008447911

Date Mailed: 07/16/2002

NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as an Elected Office (37 CFR 1.495):

- U.S. Basic National Fees
- Priority Document
- Copy of references cited in ISR
- Copy of the International Application
- Copy of the International Search Report
- Preliminary Amendments

DOCKETED
BY _____ ON _____
BY OC ON 7/19/02
DUE DATE September 16, 2002
CALL UP _____

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.

ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTH FROM THE DATE OF THIS NOTICE OR BY 22 or 32 MONTHS (where 37 CFR 1.495 applies) FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

*A copy of this notice **MUST** be returned with the response.*

LAMONT M HUNTER

Telephone: (703) 305-3686

PART 1 - ATTORNEY/APPLICANT COPY

U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
10/130,113	PCT/DE01/03257	R.39043

FORM PCT/DO/EO/905 (371 Formalities Notice)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

COPY MAILED

SEP 02 2008

In re Patent No. 6,869,626 :
Issued: March 22, 2005 :
Application No. 10/130,123 : NOTICE
Filed: August 27, 2002 :
Atty Docket No. KOD76B.001APC :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

02 DEC 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Steven L. Highlander
Fulbright & Jaworski, L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701

In re Application of :
WAGNER, et al. :
Application No.: 10/130,157 : DECISION ON PETITION
PCT No.: PCT/DE00/04073 :
Int. Filing Date: 16 November 2000 : UNDER 37 CFR 1.181
Priority Date: 16 November 1999 :
For: THE GENOME OF THE HIV-1 INTER-SUBTYPE: (C/B') AND USE THEREOF :

This decision is in response to applicant's correspondence filed 29 September 2004 in the United States Patent and Trademark Office (USPTO). The submission is being treated as a petition under 37 CFR 1.181. No petition fee is required

BACKGROUND

On 16 November 2000, applicants filed the international application, which claimed a priority date of 16 November 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 May 2001. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 16 May 2002.

On 14 May 2002, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by the requisite basic national fee, an English translation of the international application and a preliminary amendment.

On 22 July 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 file an executed oath or declaration of the inventors. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 29 September 2004, applicant filed the petition considered herein.

DISCUSSION

Applicant has provided a legible copy of the receipt postcard which shows a USPTO date

stamp, "DT05 Rec'd PCT/PTO 13 AUG 2002" and clearly identifies in part: "Response to Missing Req; Decl; 2 POA" as well as listing the applicant, serial number, title and attorney docket number. The evidence is sufficient to establish that the combined declaration and power of attorney was received in the USPTO on 13 August 2002. Applicant has certified that the presently filed copy of the declaration is a true and complete copy of the papers originally filed on 13 August 2002. An examination 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 were satisfied on 13 August 2002. As such, it is proper to **GRANT** applicant's renewed petition at this time.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

The application will be given an international filing date of 16 November 2000 under 35 U.S.C. 363 and a date of **13 August 2002** 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 (US/DO/EO) for further processing in accordance with this decision, namely the issuance of a "Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495" (Form PCT/DO/EO/903) indicating a 371 date as detailed above.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3294
Fax: (571) 273-0459

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CORPORATE INTELLECTUAL PROPERTY
ONE HEALTH PLAZA 104/3
EAST HANOVER NJ 07936-1080

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APR 08 2008

OFFICE OF PETITIONS

In re	:
Paingankar, et al.	: DECISION REGARDING
Application No. 10/130,196	: PATENT TERM ADJUSTMENT
Filed: October 15, 2002	:
Patent No. 7,141,697	:
Issued: November 28, 2006	:

This decision is in response to the "PETITION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(d)", filed January 22, 2007, requesting correction of the patent term adjustment (PTA) indicated on the patent from three hundred sixty-five (365) days to four hundred twenty-nine (429) days.

The request is **DISMISSED**.

The above application issued into Patent No. 7,141,697 on November 28, 2006. The instant application for patent term adjustment was timely filed within two months. Receipt of the $200 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

The Office determined a patent term adjustment of three hundred sixty-five (365) days based on an adjustment for PTO delay of four hundred ninety-nine (499) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by fifty (50) days of applicant delay pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b) and eighty-four (84) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. 1.704(c)(8).

The above application was deposited as a filing under 35 U.S.C. 371 on May 14, 2002. On August 9, 2002, the Office mailed a Notification of Missing Requirements under 35 U.S.C. 371. Applicants filed a response on October 15, 2002. The Office mailed a Notification of Acceptance of Application Under 35 U.S.C. 371 on February 13, 2003, informing Applicants that the application had fulfilled the requirements of 35 U.S.C. 371 on October 15, 2002.

Patentees argue that the delay for the Office's failure to issue the application within three years should have commenced from May 14, 2002. Accordingly, patentees assert that such delay (563 days) would not fully overlap with the 499 days of Office delay already accorded, and therefore the 365 days patent term adjustment should be increased by the difference (64 days), for a total patent term adjustment of 429 days.

Regarding the phrase "actual filing date" as set forth in 35 U.S.C. 154(b)(1)(B), the Office is interpreting the phrase "to mean the date the national stage commenced under 35 U.S.C. 371(b) or (f) in the case of an international application.[1] Accordingly, the Office had three years from October 15, 2002, to issue the application. The application issued on November 28, 2006 - a delay of 409 days. However, as these 409 days overlap with the 499 days of PTO delay already accorded, this delay does not result in an additional 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).

In view thereof, the correct determination of patent term adjustment is three hundred sixty-five (365) days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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[1] Comment 31 in Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14, 65 Fed. Reg. 54366 (Oct. 3 2000).

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,674,056	2004-01-06	10/130,203	2002-05-14	J&K-03-RE

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	/Yun H. Choe/	Date (YYYY-MM-DD)	2009-12-15
Name	Yun H. Choe	Registration Number	61798

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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United States Patent and Trademark Office
P.O. Box 1450
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In re Patent No. 6674056
Issue Date: January 6,2004
Application No. 10130203
Filed: May 14,2002
Attorney Docket No. 587-27

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

This is a decision on the electronic petition, filed December 15,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of December 15,2009 . 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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MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE WI 53202

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MAR 0 5 2007

OFFICE OF PETITIONS

In re Application of :
Mazin Nicola :
Application No. 10/130,204 : ON PETITION
Filed: May 15, 2002 :
Attorney Docket No. PB61488 :

This is a decision on the petition to revive under 37 CFR 1.137(b), filed October 19, 2006.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file an Appeal Brief after the filing of a Notice of Appeal. Applicants filed a Notice of Appeal on August 24, 2005. Accordingly, applicants had two months to file an Appeal Brief, or until March 24, 2006 with the maximum obtainable five month extension of time. No extensions of time were obtained; as such, the application became abandoned on October 25, 2005. A Notice of Abandonment was mailed on April 5, 2006.

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

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

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

The matter is being forwarded to Group Art Unit 1754 for consideration of the RCE, filed October 19, 2006.

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

Cliff Congo
Petitions Attorney
Office of Petitions

cc: GlaxoSmithKline
PO Box 1539
King of Prussia, PA 19406-0939

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07 JUL 2003

Pendorf & Cutliff
P O Box 20445
Tampa FL 33622-0445

In re Application of	:	DECISION ON
OSTERMEYER, Martin et al	:	
PCT No.: PCT/DE00/03486	:	
Application No: 10/130,231	:	PETITION UNDER
Int. Filing Date: 04 October 2000	:	
Priority Date: 17 November 1999	:	
Attorney's Docket No.: 3968.011	:	37 CFR 1.47(a)
For: APPLIANCE AND A METHOD FOR	:	
FOR EXAMINING BIOLOGICAL TISSUE	:	

This is in response to the "DECLARATION IN SUPPORT OF FILING ON BEHALF OF OMITTED INVENTOR (37 C.F.R. 1.47(A))" filed on 29 November 2002. The $130.00 petition fee has been charged Deposit Account No: 16-0877 as stipulated in the communication on 29 November 2002.

07/09/2003 MKAYPAGH 00000001 160877 10130231
01 FC:1460 130.00 DA

BACKGROUND

On 15 May 2002, applicants filed international application PCT/DE00/03486, which claimed priority to an earlier application filed 17 November 1999. A copy of the international application was communicated by the International Bureau to the United States Patent and Trademark Office on 25 May 2001. A DEMAND was filed on 08 June 2001 prior to the expiration of 19 months from the priority date electing the United States. Accordingly, the thirty-month (30) time period for paying the basic national fee in the United States of America expired at midnight on 17 May 2002.

On 15 May 2002, applicants filed for entry into the national stage in the United States of America. Filed with the application was, inter alia, the requisite basic national fee. No executed oath or declaration from the inventors accompanied the application at such time.

On 29 July 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date" must be submitted within two months from its 29 July 2002 date of

mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 29 November 2002, petitioner filed the present petition, a declaration in support of filing on behalf of omitted inventors Eckhard LUDWIG, and Stefan ZANDER accompanied, inter alia, an executed Declaration without the signatures of Eckhard LUDWIG, and Stefan ZANDER.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Furthermore, section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

> **REFUSAL TO JOIN:**
>
> A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the **37 CFR 1.47** applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration. It is noted that the inventor may obtain a complete copy of the application, unless the inventor has assigned his or her interest in the application, and the assignee has requested that the inventor not be permitted access. See **MPEP § 106**. It is reasonable to require that the inventor be presented with the application papers before a petition under **37 CFR 1.47** is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956).

> Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.
>
> Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.
>
> When it is concluded by the **37 CFR 1.47** applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

Petitioner has satisfied requirements (1) and (4) of 37 CFR 1.47(a). However, requirements (2), and (3) have not been satisfied.

In this case, it has not been sufficiently demonstrated that a copy of the application papers were presented to the nonsigning inventors, Eckhard LUWIG and Stefan ZANDER. Petitioner asserts that the documents were sent to Stefan ZANDER on October 16, 2002 and received on October 17, 2002, and to Eckhard LUDWIG on October 7, 2002 and received on October 9, 2002. The documents forwarded to them, however, did not appear to include a copy of the application papers (specification, including claims, drawings, and oath or declaration) as required under MPEP 409.03(d) since only the declaration was mentioned as being sent to their last known addresses.

Moreover, although documentary evidence to support this assertion has been provided such as the postal receipt and what appears to be a cover letter, the documents are in German and no English translation has been provided. Consequently, it is unclear what is said in those documents.

In addition, it is unclear if Mr. Stilkenboehmer has first hand knowledge of the mailings to the nonsigning inventors, if he doesn't then petitioner needs to submit statements, with

specific facts on the actions referred to the mailing of the documents to the nonsigning inventors by persons who have first-hand knowledge of such facts.

Regarding requirement 3, petitioner has not provided a statement of the last known address of the missing inventors.

Consequently, the current record does not sufficiently establish that Eckhard LUDWIG and Stefan ZANFER refusal to join in the application because no evidentiary documents have been submitted to show that a *bona fide* attempt was made to deliver the complete application to them and that they refused to sign the required papers.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time are available under 37 CFR 1.136(a). Failure to timely file the proper response will result in ABANDONMENT.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office

Boris Milef
PCT Legal Examiner
PCT Legal Office

Telephone: (703) 308-6312
Facsimile: (703) 308-6459

Rec'd PCT/PTO 08 OCT 2003

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07 JUL 2003

Pendorf & Cutliff
P O Box 20445
Tampa FL 33622-0445

In re Application of	:	DECISION ON
OSTERMEYER, Martin et al	:	
PCT No.: PCT/DE00/03486	:	
Application No: 10/130,231	:	PETITION UNDER
Int. Filing Date: 04 October 2000	:	
Priority Date: 17 November 1999	:	
Attorney's Docket No.: 3968.011	:	37 CFR 1.47(a)
For: APPLIANCE AND A METHOD FOR	:	
FOR EXAMINING BIOLOGICAL TISSUE	:	

This is in response to the "DECLARATION IN SUPPORT OF FILING ON BEHALF OF OMITTED INVENTOR (37 C.F.R. 1.47(A))" filed on 29 November 2002. The $130.00 petition fee has been charged Deposit Account No: 16-0877 as stipulated in the communication on 29 November 2002.

BACKGROUND

On 15 May 2002, applicants filed international application PCT/DE00/03486, which claimed priority to an earlier application filed 17 November 1999. A copy of the international application was communicated by the International Bureau to the United States Patent and Trademark Office on 25 May 2001. A DEMAND was filed on 08 June 2001 prior to the expiration of 19 months from the priority date electing the United States. Accordingly, the thirty-month (30) time period for paying the basic national fee in the United States of America expired at midnight on 17 May 2002.

On 15 May 2002, applicants filed for entry into the national stage in the United States of America. Filed with the application was, inter alia, the requisite basic national fee. No executed oath or declaration from the inventors accompanied the application at such time.

On 29 July 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date" must be submitted within two months from its 29 July 2002 date of

mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 29 November 2002, petitioner filed the present petition, a declaration in support of filing on behalf of omitted inventors Eckhard LUDWIG, and Stefan ZANDER accompanied, inter alia, an executed Declaration without the signatures of Eckhard LUDWIG, and Stefan ZANDER.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Furthermore, section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

> **REFUSAL TO JOIN:**
>
> A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the **37 CFR 1.47** applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration. It is noted that the inventor may obtain a complete copy of the application, unless the inventor has assigned his or her interest in the application, and the assignee has requested that the inventor not be permitted access. See **MPEP § 106**. It is reasonable to require that the inventor be presented with the application papers before a petition under **37 CFR 1.47** is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956).

> Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.
>
> Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.
>
> When it is concluded by the **37 CFR 1.47** applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

Petitioner has satisfied requirements (1) and (4) of 37 CFR 1.47(a). However, requirements (2), and (3) have not been satisfied.

In this case, it has not been sufficiently demonstrated that a copy of the application papers were presented to the nonsigning inventors, Eckhard LUWIG and Stefan ZANDER. Petitioner asserts that the documents were sent to Stefan ZANDER on October 16, 2002 and received on October 17, 2002, and to Eckhard LUDWIG on October 7, 2002 and received on October 9, 2002. The documents forwarded to them, however, did not appear to include a copy of the application papers (specification, including claims, drawings, and oath or declaration) as required under MPEP 409.03(d) since only the declaration was mentioned as being sent to their last known addresses.

Moreover, although documentary evidence to support this assertion has been provided such as the postal receipt and what appears to be a cover letter, the documents are in German and no English translation has been provided. Consequently, it is unclear what is said in those documents.

In addition, it is unclear if Mr. Stilkenboehmer has first hand knowledge of the mailings to the nonsigning inventors, if he doesn't then petitioner needs to submit statements, with

specific facts on the actions referred to the mailing of the documents to the nonsigning inventors by persons who have first-hand knowledge of such facts.

Regarding requirement 3, petitioner has not provided a statement of the last known address of the missing inventors.

Consequently, the current record does not sufficiently establish that Eckhard LUDWIG and Stefan ZANFER refusal to join in the application because no evidentiary documents have been submitted to show that a *bona fide* attempt was made to deliver the complete application to them and that they refused to sign the required papers.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time are available under 37 CFR 1.136(a). Failure to timely file the proper response will result in ABANDONMENT.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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07 JUL 2003

Pendorf & Cutliff
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In re Application of	:	DECISION ON
OSTERMEYER, Martin et al	:	
PCT No.: PCT/DE00/03486	:	
Application No: 10/130,231	:	PETITION UNDER
Int. Filing Date: 04 October 2000	:	
Priority Date: 17 November 1999	:	
Attorney's Docket No.: 3968.011	:	37 CFR 1.47(a)
For: APPLIANCE AND A METHOD FOR	:	
FOR EXAMINING BIOLOGICAL TISSUE	:	

This is in response to the "DECLARATION IN SUPPORT OF FILING ON BEHALF OF OMITTED INVENTOR (37 C.F.R. 1.47(A))" filed on 29 November 2002. The $130.00 petition fee has been charged Deposit Account No: 16-0877 as stipulated in the communication on 29 November 2002.

BACKGROUND

On 15 May 2002, applicants filed international application PCT/DE00/03486, which claimed priority to an earlier application filed 17 November 1999. A copy of the international application was communicated by the International Bureau to the United States Patent and Trademark Office on 25 May 2001. A DEMAND was filed on 08 June 2001 prior to the expiration of 19 months from the priority date electing the United States. Accordingly, the thirty-month (30) time period for paying the basic national fee in the United States of America expired at midnight on 17 May 2002.

On 15 May 2002, applicants filed for entry into the national stage in the United States of America. Filed with the application was, inter alia, the requisite basic national fee. No executed oath or declaration from the inventors accompanied the application at such time.

On 29 July 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date" must be submitted within two months from its 29 July 2002 date of

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mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 29 November 2002, petitioner filed the present petition, a declaration in support of filing on behalf of omitted inventors Eckhard LUDWIG, and Stefan ZANDER accompanied, inter alia, an executed Declaration without the signatures of Eckhard LUDWIG, and Stefan ZANDER.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Furthermore, section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

REFUSAL TO JOIN:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the 37 CFR 1.47 applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration. It is noted that the inventor may obtain a complete copy of the application, unless the inventor has assigned his or her interest in the application, and the assignee has requested that the inventor not be permitted access. See **MPEP § 106.** It is reasonable to require that the inventor be presented with the application papers before a petition under **37 CFR 1.47** is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956).

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Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

When it is concluded by the **37 CFR 1.47** applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

Petitioner has satisfied requirements (1) and (4) of 37 CFR 1.47(a). However, requirements (2), and (3) have not been satisfied.

In this case, it has not been sufficiently demonstrated that a copy of the application papers were presented to the nonsigning inventors, Eckhard LUWIG and Stefan ZANDER. Petitioner asserts that the documents were sent to Stefan ZANDER on October 16, 2002 and received on October 17, 2002, and to Eckhard LUDWIG on October 7, 2002 and received on October 9, 2002. The documents forwarded to them, however, did not appear to include a copy of the application papers (specification, including claims, drawings, and oath or declaration) as required under MPEP 409.03(d) since only the declaration was mentioned as being sent to their last known addresses.

Moreover, although documentary evidence to support this assertion has been provided such as the postal receipt and what appears to be a cover letter, the documents are in German and no English translation has been provided. Consequently, it is unclear what is said in those documents.

In addition, it is unclear if Mr. Stilkenboehmer has first hand knowledge of the mailings to the nonsigning inventors, if he doesn't then petitioner needs to submit statements, with

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specific facts on the actions referred to the mailing of the documents to the nonsigning inventors by persons who have first-hand knowledge of such facts.

Regarding requirement 3, petitioner has not provided a statement of the last known address of the missing inventors.

Consequently, the current record does not sufficiently establish that Eckhard LUDWIG and Stefan ZANFER refusal to join in the application because no evidentiary documents have been submitted to show that a *bona fide* attempt was made to deliver the complete application to them and that they refused to sign the required papers.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time are available under 37 CFR 1.136(a). Failure to timely file the proper response will result in ABANDONMENT.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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16 JUL 2004

#13

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In re Application of	:	DECISION ON RENEWED
OSTERMEYER, Martin et al	:	
PCT No.: PCT/DE00/03486	:	
Application No: 10/130,231	:	PETITION UNDER
Int. Filing Date: 04 October 2000	:	
Priority Date: 17 November 1999	:	
Attorney's Docket No.: 3968.011	:	37 CFR 1.47(a)
For: APPLIANCE AND A METHOD FOR	:	
FOR EXAMINING BIOLOGICAL TISSUE	:	

This is in response to the "RENEWED PETITION UNDER 37 C.F.R. §1.47(a)" filed on 08 October 2003.

BACKGROUND

In a decision from this Office on 07 July 2003, the petition filed under 37 CFR 1.47(a) was dismissed. The decision stated that it had not been sufficiently demonstrated that a copy of the application papers were presented to the nonsigning inventors, Eckhard LUDWIG and Stefan ZANDER and that the petition failed to state the last known address of the nonsigning inventors.

On 08 October 2003, applicant submitted a "Renewed Petition Under 37 CFR 1.47(a)" requesting reconsideration of the Office's decision of 07 July 2003 with respect to accepting the above application without the signature of nonsigning inventor Mr. Ludwig. Filed with the renewed petition, *inter alia*, is an executed Declaration and Power of Attorney by inventor Zander and a further declaration by Dr. Uwe Stilkenboehmer in support of filing on behalf of the omitted inventor Mr. Ludwig.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

The renewed petition of 08 October 2003 has satisfied requirements (2) and (3) under 37 CFR 1.47(a). Thus satisfying all the requirements under 37 CFR 1.47(a).

Mr. Stilkenboehmer averments do sufficiently demonstrate that a *bona fide* attempt was made to obtain the signature of Mr. Ludwig that he refuses to sign the required papers. A package including the application was mailed to him on August 14, 2003 and he signed for the package on August 19, 2003, but has not returned the required papers. Accordingly, the steps enumerated by Mr. Stilkenboehmer are sufficient to establish that the Mr. Ludwig has refused to sign the declaration.

Petitioner has now satisfied items (1), (2), (3), and (4) under 37 CFR 1.47(a), thus completing the requirements under 37 CFR 1.47(a).

CONCLUSION

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

The Application Division and the International Division are authorized to accept the application as a 37 CFR 1.47(a) application and to mail a filing receipt. The application will be given a 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) date of **08 October 2003.**

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing under 35 U.S.C. 371.

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Boris Milef
PCT Legal Examiner
PCT Legal Office

16 JUL 2004

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Eckhard LUDWIG
Edenstrasse 16
30161 Hanover
Germany

In re Application of
OSTERMEYER, Martin et al
PCT No.: PCT/DE00/03486
Application No: 10/130,231
Int. Filing Date: 04 October 2000
Priority Date: 17 November 1999
Attorney's Docket No.: 3968.011
For: APPLIANCE AND A METHOD FOR
FOR EXAMINING BIOLOGICAL TISSUE

Dear Mr. Ludwig:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

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

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16 MAR 2004

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In re Application of	:	DECISION ON
OSTERMEYER, Martin et al	:	
PCT No.: PCT/DE00/03486	:	
Application No: 10/130,231	:	
Int. Filing Date: 04 October 2000	:	REQUEST FOR REFUND
Priority Date: 17 November 1999	:	
Attorney's Docket No.: 3968.011	:	
For: APPLIANCE AND A METHOD FOR	:	
FOR EXAMINING BIOLOGICAL TISSUE	:	UNDER 37 CFR 1.26

This Decision is in response to applicants' "REQUEST FOR REFUND PURSUANT TO 37 C.F.R. 1.28" faxed on 08 August 2003, which is being treated as a request under 37 CF 1.26 requesting a refund of the $130.00 fee charged to undersigned's deposit account on July 9, 2003.

BACKGROUND

On 29 November 2002, petitioner filed a petition under 37 C.F.R. 1.47(a), a declaration in support of filing on behalf of omitted inventors Eckhard LUDWIG, and Stefan ZANDER accompanied, inter alia, an executed Declaration without the signatures of Eckhard LUDWIG, and Stefan ZANDER.

The decision was dismissed on 07 July 2003 because requirements (2), and (3) were not satisfied under 37 CFR 1.47(a). On 09 July 2003 the office charged the deposit account $130.00 the petition fee under 37 CFR 1.17(h), which is requirement (1) of 37 CFR 1.47(a).

On 08 August 2003, applicants filed a "Request For Refund" requesting that the $130.00 charged to undersigned's deposit account be refunded on July 09, 2003.

DISCUSSION

Applicants argue that $130.00 that was taken out of the undersigned's deposit account on July 9, 2003 was previous paid at the time of filing on May 15, 2002 for the the "Late filing fee-Declaration."

A review of the file indicates that the $130.00 charge to undersigned's Deposit Account on July 9, 2003 was for the required petition fee filed under 37 CFR 1.47(a) and not for the "Late filing fee- Declaration," which was properly charged on May 22, 2002.

Accordingly, applicants were properly charged on July 09, 2003 for the petition filed on 29 November 2002. Consequently, 37 CFR 1.26 does not entitle applicants to a refund under this circumstance.

CONCLUSION

For reasons above, the request is **REFUSED**.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the office of PCT Legal Administration.

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#8

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Paper No. 8

Richard A. Neifeld
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In re Application of:)
Linder)
Application No. 10/130,273) **DECISION ON REQUEST FOR**
Filed: May 28, 2002) **WITHDRAWAL AS ATTORNEY**
For: BACKUP AND ARCHIVING SYSTEM BY MEANS OF TAPE VOLUME CASSETTES FOR DATA-PROCESSING UNITS)

This is a decision on the Request To Withdraw from Representation filed November 13, 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 November 13, 2003 meets all the requirements. Accordingly the request is **GRANTED**.

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

for James R. Matthews

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

cc: COHEN, PONTANI, LIEBERMAN & PAVANE
551 Fifth Avenue
New York, NY 10176

15 AUG 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

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Arent Fox Kintner Plotkin & Kahn
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Washington, DC 20036-5339

In re Application of KAUSCH et al
U.S. Application No.: 10/130,288
Int. Application No.: PCT/EP00/11978
Int. Filing Date: 29 November 2000
Priority Date: 29 November 1999
Attorney Docket No.: 100564-00122
For: DYNAMIC SEQUENCING BY HYBRIDIZATION

DECISION

This is in response to the papers filed 29 May 2002.

BACKGROUND

On 29 November 2000, applicant filed international application PCT/EP00/11978, which claimed priority of an earlier Germany application filed 29 November 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 07 June 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 31 May 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 29 May 2002.

On 29 May 2002, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and an executed declaration.

DISCUSSION

The first inventor's name in international application PCT/EP00/11978 is listed as "Andrea Kausch", whereas the first inventor's name on the declaration is listed as "Andrea Schlaueksbach".

MPEP 605.04(c) states in relevant part,

> 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 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.

Applicant has not filed a petition under 37 CFR 1.182 along with the required fee and an affidavit signed with both names and setting forth the procedure whereby the change of name was effected.

CONCLUSION

A proper response must be filed within TWO (2) MONTHS from the mail date of this decision. A proper response would include a petition under 37 CFR 1.182 along with the required fee and a properly executed affidavit. Extensions of time are available under 37 CFR 1.136(a).

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

Bryan Tung
PCT Legal Examiner
PCT Legal Office

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2 3 FEB 2003

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Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
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Washington, DC 20036-5339

In re Application of KAUSCH et al :
U.S. Application No.: 10/130,288 :
Int. Application No.: PCT/EP00/11978 : DECISION
Int. Filing Date: 29 November 2000 :
Priority Date: 29 November 1999 :
Attorney Docket No.: 100564-00122 :
For: DYNAMIC SEQUENCING BY HYBRIDIZATION :

This is in response to the papers filed 29 May 2002.

BACKGROUND

On 29 November 2000, applicant filed international application PCT/EP00/11978, which claimed priority of an earlier Germany application filed 29 November 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 07 June 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 31 May 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 29 May 2002.

On 29 May 2002, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and an executed declaration.

On 15 August 2002, this Office mailed a decision which stated that a petition under 37 CFR 1.182 was necessary to resolve a discrepancy in the declaration.

On 15 October 2002, applicant filed the present petition under 37 CFR 1.182 along with the requisite petition fee.

DISCUSSION

The first inventor's name in international application PCT EP00 11978 is listed as "Andrea Kausch", whereas the first inventor's name on the declaration is listed as "Andrea Schlaueksbach".

MPEP 605.04(c) states in relevant part,

> 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 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.

In the present case, applicants have submitted an affidavit signed with the names Andrea Kausch and Andrea Schlaueksbach, setting forth that Andrea Kausch has changed her name to Andrea Schlaueksbach due to marriage.

The papers have been reviewed, and the declaration filed 29 May 2002 and executed by Andrea Schlaueksbach is accepted.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.182 is GRANTED.

The application has an international filing date of 29 November 2000 under 35 U.S.C. 363 and a date of 29 May 2002 under 35 U.S.C. 371(c).

The application will be forwarded to the DO/EO/US for processing in accordance with this decision.

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WASHINGTON, DC 20036

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OFFICE OF PETITIONS

In re Application of	:	
Yoshihiro Hori et al	:	
Application No. 10/130,294	:	DECISION GRANTING PETITION
Filed: May 30, 2002	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 020709	:	

This is a decision on the petition, filed March 28, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 27, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2135 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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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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DEC 0 2 2009

In re Patent No. HALL, LARS
Issue Date: **10/03/2006**
Appl. No.: 10/130,310
Filed: May 16, 2002
For: **DEVICE AND METHOD FOR A SPACECRAFT**

DECISION DISMISSING PETITION
37 CFR 1.324

This is a decision on the petition filed July 08, 2008 to correct inventorship under 37 CFR 1.324.

The petition is dismissed.

A petition to correct inventorship as provided by 37 CFR 1.324 requires (1) a statement from each person who is being added as an inventor that the inventorship error occurred without any deceptive intention on their part, (2) a statement from the current named inventors (including any "inventor" being deleted) who have not submitted a statement as per "(1)" either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change, (3) a statement from all assignees of the parties submitting a statement under "(1)" and "(2)" agreeing to the change of inventorship in the patent; such statement must comply with the requirements of 37 CFR 3.73(b); and (4) the fee set forth in 37 CFR 1.20(b). This petition lacks item(s) (3) and (4). With respect to (3) a statement from all assignees, the provided statement does not comply with 37 CFR 3.73(b) and only identifies one assignee of the current application. Further, applicant does not establish ownership from all three inventors, since the assignment of Lars Hall is to "SAAB ERICSSON SPACE AB" and the assignment of Johan Ohlin and Nils G. Gustafsson are to SAAB SPACE AB in accordance with the United States Patent and Trademark Office records. Ownership must be corrected or a separate statement under 37 CFR 3.73(b) must be filed. With respect to (4), the fee set forth in 37 CFR 1.20(b) has not been submitted.

Michael R. Mansen
Supervisory Patent Examiner
Art Unit 3644
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18 NOV 2003

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In re Application of NEUHAUS et al	:	
U.S. Application No.: 10/130,318	:	
PCT Application No.: PCT/EP02/00892	:	
Int. Filing Date: 29 January 2002	:	DECISION
Priority Date Claimed: 30 January 2001	:	
Attorney Docket No.: 306-038	:	
For: METHOD FOR DETERMINING AND REPRESENTING AN OPTIMAL ARRANGEMENT AND INSTALLATION OF A RADIOMETRIC MEASURING SYSTEM	:	

This is in response to applicant's "Petition Under 37 CFR 1.137(b)" filed 08 August 2003.

BACKGROUND

On 29 January 2002, applicant filed international application PCT/EP02/00892, which claimed priority of an earlier Germany application filed 30 January 2001. A copy of the international application was communicated to the USPTO from the International Bureau on 08 August 2002. The thirty-month period for paying the basic national fee in the United States expired on 30 July 2003.

International application PCT/EP02/00892 became abandoned as to the United States for failure to timely pay the basic national fee.

On 08 August 2003, 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 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 failure to file the U.S. national phase application and the delay in filing this Petition 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 and a proper translation of the international application into English must be filed. Applicant is advised that the purported translation filed on 08 August 2003 is improper because figures 6 and 7 contain words not in the English language. It is not sufficient to provide translated words on separate sheets.

Bryan Tung
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10 JUN 2002

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In re Application of
LEE, Jin Po
Application No.: 10/130,320
PCT Application No.: PCT/US98/17483
International Filing Date: 06 August 1998
Priority Date: 06 August 1998
Attorney Docket No.: 086748-2011
For: URIC ACID ASSAY DEVICE WITH STABILIZED URICASE REAGENT COMPOSITION

DECISION ON

PETITION

UNDER 37 CFR 1.137(b)

Applicant's "Petition For Revival of an International Application Designating the U.S. Abandoned Unintentionally Under 37 C.F.R. §1.137(b)," filed in the United States Patent and Trademark Office on 08 November 2001 is **GRANTED**.

BACKGROUND

On 06 August 1998, applicant filed international application PCT/US98/17483. The twenty month period for entering the national stage in the United States expired at midnight on 06 April 2000.

On 08 November 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, a petition to revive, a declaration, the petition fee 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 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," satisfies 37 CFR 1.137(b)(3). The appropriate basic national fee and petition fee have been submitted. A terminal disclaimer is not required as application was filed on or after 08 June 1995. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

The fee for supplying the oath or declaration later than twenty months from the priority date will be charged to deposit account no. 50-0872, as authorized by the transmittal letter.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED** as to the National Stage in the United States of America.

The application has an international filing date of 06 August 1998 under 35 U.S.C. §363 and a date of 08 November 2001 under 35 U.S.C. §371. This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.

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OFFICE OF PETITIONS

In re Application of :
Marc RUTTERS et al. :
Application No. 10/130,321 : ON PETITION
Filed: September 23, 2002 :
Attorney Docket No. 25102.002 :

This is a decision on the petition under 37 CFR 1.181, filed January 26, 2005, requesting withdrawal of the Notice of Abandonment mailed December 17, 2004.

The petition is **GRANTED**.

Petitioner requests the Notice of Abandonment mailed December 17, 2004 for failure to respond to the Office action mailed April 7, 2004 be withdrawn as petitioner timely filed a response. As evidenced by the attached amendment with a certificate of mailing date of July 7, 2004 a response was timely filed, and as shown by the itemized copy of the post card receipt date stamped July 12, 2004 was received by the USPTO, and thereafter misplaced.

Telephone inquiries concerning this decision should be directed to David A. Bucci at (571) 272-7099 or in his absence, the undersigned at (571) 272-3217.

The application file is being referred to Technology Center AU 3724 for appropriate action on the concurrently filed amendment.

Brian Hearn
Petitions Examiner
Office of Petitions

16 APR 2003

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In re Application of:
JACOB, Mathew, et al.
U.S. Application No.: 10/130,324
PCT No.: PCT/US00/32882
International Filing Date: 04 December 2000
Priority Date: 06 December 1999
Attorney's Docket No.: 1109 WO/US
For: NEW METHODS FOR THE SYNTHESIS OF ALFENTANIL, SUFENTANIL, AND REMIFENTANIL

DECISION ON PETITION UNDER 37 CFR 1.47(a)

This decision is issued in response to the "Petition Regarding Nonsigning Inventor (37 CFR 1.47)" filed on 13 November 2002, treated herein under 37 CFR 1.47(a). Applicants' Deposit Account will be charged the required petition fee.

04/17/2003 SHAJARRO 00000010 131160 10130324
01 FC:1460 130.00 CH

BACKGROUND

On 04 December 2000, applicants filed international application PCT/US00/32882 which claimed a priority date of 06 December 1999 and which designated the United States. The published international application identified the inventors and U.S. applicants as Mathew JACOB and J. Kendall KILLGORE.

On 02 July 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., 06 June 2002.

On 14 May 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 and a declaration executed by co-inventor J. Kendall KILLGORE, but not by co-inventor Jacob MATHEW (the nonsigning inventor identified in the declaration as Jacob MATHEW is identified as Mathew JACOB in the published international application).

On 16 September 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 a fully executed oath or declaration in compliance with 37 CFR 1.497 and additional fees were required.

On 12 November 2002, applicants filed a response that included the petition considered herein. The petition seeks acceptance of the application without the signature of Jacob MATHEW, whom applicants assert cannot be located.

DISCUSSION

A. Petition Under 37 CFR 1.47(a)

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 have submitted an authorization to charge Deposit Account No.13-1160 for required fees. Item (1) is therefore satisfied.

The petition specifically sets forth the last known address of the nonsigning inventor, Dr. Jacob Mathew. 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 a declaration executed by co-inventor J. Kendall KILLGORE and containing an unsigned signature block for the remaining co-inventor, identified in the declaration as Jacob MATHEW. If the name for the nonsigning inventor had been consistent with this inventor's name in the international application, then this declaration would be acceptable in satisfaction of item (3). However, because the declaration does not properly identify the inventor/applicants in the international application, it cannot be accepted at the present time (see below, re: requirements to correct inventor's name). Item (3) is therefore not satisfied.

Regarding item (4), applicants assert that Dr. Mathew is a former employee of the assignee who cannot now be located. 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 the petition, and the attachments thereto. The petition refers to a returned letter to the nonsigning inventor's last known address (mailed by a person other than the person executing the petition), and to an attempt made by an employee of counsel to obtain a new address for the inventor from the assignee's human resources department. These limited efforts, and the secondhand evidence of such efforts, do not constitute the firsthand evidence of "diligent effort" required to satisfy item (4) above. Applicant must provide a statement(s) from a person(s) with firsthand knowledge of all diligent efforts made to locate the inventor (i.e., internet searches, attempts to identify a more recent address, etc.). Until such information is provided, item (4) is not satisfied.

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 can not be granted at this time.

B. Correction To The Name Of The Inventor

As noted above, there is an inconsistency between the name of the nonsignning inventor on the declaration (Jacob MATHEW) and in the published international application (Mathew JACOB). It appears that this is likely the result of a typographical error. If this is the case, all that is required to make the correction in the national stage is a statement that the correct name is Jacob MATHEW, as listed on the declaration, and that the error in the published international was the result of a typographical error (either on the part of the International Bureau or by applicants when initiating the international application). If the inventor's name has actually been changed since the filing of the international application, then a petition under 37 CFR 1.182 is required (see MPEP section 605.04(c)).

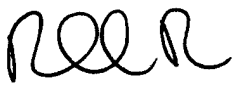
CONCLUSION

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 the required firsthand evidence of adequate efforts made to contact the nonsigning inventor, and the statement required to correct the name of the nonsigning inventor (to eliminate the inconsistency between the declaration and the international application).

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 (applicants are advised that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration).



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In re Application of:	:	
MATHEW, Jacob, et al.	:	
U.S. Application No.: 10/130,324	:	DECISION ON RENEWED
PCT No.: PCT/US00/32882	:	PETITION UNDER
International Filing Date: 04 December 2000	:	37 CFR 1.47(a)
Priority Date: 06 December 1999	:	
Attorney's Docket No.: 1109 WO/US	:	
For: NEW METHODS FOR THE SYNTHESIS OF ALFENTANIL, SUFENTANIL, AND REMIFENTANIL	:	

This decision is issued in response to the "Renewed Petition Regarding Non-Signing Inventor (37 CFR 1.47)" filed 19 May 2003. No petition fee is required.

BACKGROUND

The procedural background for this application is set forth in the decision mailed by this Office on 16 April 2003. In that decision, applicants' petition under 37 CFR 1.47(a) was dismissed without prejudice for failure to satisfy all the requirements of a grantable petition. Specifically, the decision found that : (1) the filed declaration was unacceptable pending a resolution of the discrepancy between the names listed therein and those set forth in the published international application; and (2) applicants had not provided sufficient firsthand evidence of a diligent effort to locate the nonsigning inventor.

On 19 May 2003, applicants filed the renewed petition considered herein.

DISCUSSION

Section 605.04(b) of the Manual of Patent Examining Procedure states that, where a typographical or transliteration error in the spelling of an inventor's name is discovered, a petition is not required, nor is a new oath or declaration under 37 CFR 1.63 needed. Pursuant to applicants' explanation in the present submission, the name of the first inventor is accepted as Jacob MATHEW without the need of a petition. The declaration filed by applicants on 12 November 2002 can therefore now be accepted in satisfaction of the third requirement for a grantable petition under 37 CFR 1.47(a).

With respect to the fourth requirement for a grantable petition, applicants have submitted an "Affidavit Of Tammy A. Torres" providing firsthand support for the actions referred to in the original petition, i.e., a mailing to the inventor's last known address and a failed attempt to obtain a more current address for the inventor from the assignee's human resources department. While this affidavit provides the required firsthand evince of these efforts, the actions set forth are not sufficient to constitute the "diligent effort" required to satisfy 37 CFR 1.47(a). Applicants must provide proper firsthand evidence of some further efforts made to locate the nonsigning inventor (i.e., internet searches, searches of telephone listings, etc.) before it can be concluded that a diligent effort has been made to locate the nonsigning inventor Jacob MATHEW.

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 can not be granted at this time.

CONCLUSION

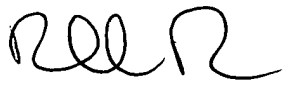
The renewed petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

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 "Second Renewed Petition Under 37 CFR 1.47(a)" and should include the required firsthand evidence of further efforts made to contact the nonsigning inventor, as discussed above.

Failure to file a timely response will result in abandonment of the application.

Applicants' statement regarding the correction of the inventor's name is accepted. The nonsigning inventor's name is corrected to Jacob MATHEW.

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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07 JAN 2004

#9

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In re Application of:	:	
MATHEW, Jacob, et al.	:	
U.S. Application No.: 10/130,324	:	DECISION ON SECOND
PCT No.: PCT/US00/32882	:	RENEWED PETITION
International Filing Date: 04 December 2000	:	UNDER 37 CFR 1.47(a)
Priority Date: 06 December 1999	:	
Attorney's Docket No.: 1109 WO/US	:	
For: NEW METHODS FOR THE SYNTHESIS OF ALFENTANIL, SUFENTANIL, AND REMIFENTANIL	:	

In a decision mailed by this Office on 23 September 2003, applicant's renewed petition under 37 CFR 1.47(a) was dismissed for failure to satisfy all the requirements of a grantable petition. Specifically, while the renewed petition corrected the name of the nonsigning applicant to Jacob MATHEW (as listed in the filed declaration), the renewed petition failed to provide an adequate showing that the nonsigning inventor could not be located after diligent effort.

On 28 November 2003, applicants filed the second renewed petition considered herein. The present submission includes a statement by counsel that the nonsigning applicant has now been contacted, but that he has refused to sign the declaration.

Based on the present submission, the petition must now be considered as alleging a refusal to sign, rather than a failure to locate, the nonsigning inventor. Before a refusal to execute the application can be claimed under 37 CFR 1.47(a), the MPEP § 409.03(d) requires that the nonsigning inventor be provided with a copy of the complete application, including specification, drawings, and claims. 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 evidence submitted by applicants to demonstrate Mr. MATHEWS' purported refusal to execute the application is contained in the petition itself. This petition does not provide a first hand statement that the nonsigning inventor has been presented with the full application papers, as required before a refusal to sign can be asserted (instead, it refers only to the declaration), nor is any supporting evidence of such provided. The petition refers to email communications with the nonsigning inventor, but it does not include copies of these communications. In addition, it is not clear that the person signing the petition has firsthand knowledge of the facts therein, as it is not made clear who was involved in the email correspondence with the inventor. Based on the above, the evidence submitted with respect to

applicant's refusal to execute the application does not satisfy the requirements set forth in MPEP § 409.03(d). Accordingly, item (4) of a grantable petition under 37 CFR 1.47(a) remains unsatisfied.

In addition, as applicants have now located the nonsigning inventor, it is presumed that they have a more current "last known address" for the inventor. Applicants must provide such address in order to satisfy item (2) of a grantable petition.

CONCLUSION

The second renewed 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 "Third Renewed Petition Under 37 CFR 1.47(a)" and should include the required firsthand evidence that the nonsigning inventor has been presented with a copy of the complete application papers and has refused to sign the application papers, as discussed above, as well as a statement of the inventor's updated last known address.

Failure to file a timely response will result in abandonment of the application.

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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19 FEB 2004

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In re Application of: MATHEW, Jacob, et al.
U.S. Application No.: 10/130,324
PCT No.: PCT/US00/32882
International Filing Date: 04 December 2000
Priority Date: 06 December 1999
Attorney's Docket No.: 1109 WO/US
For: NEW METHODS FOR THE SYNTHESIS OF ALFENTANIL, SUFENTANIL, AND REMIFENTANIL

DECISION ON THIRD RENEWED PETITION UNDER 37 CFR 1.47(a)

In the most recent decision herein, on 07 January 2004, this Office dismissed without prejudice applicants' second renewed petition under 37 CFR 1.47(a). Specifically, the decision stated that the second renewed petition failed to provide the required firsthand evidence that the nonsigning inventor had been provided with a copy of the complete application and had refused to execute such application.

On 09 February 2004, applicants filed the third renewed petition considered herein, with accompanying materials including an Affidavit Of Tammy A Torres, the person who forwarded the application materials to the inventor and communicated with the inventor via email. These materials, in combination with the previously submitted petition materials, satisfies the final requirement of a grantable petition under 37 CFR 1.47(a). The third renewed petition under 37 CFR 1.47(a) is therefore appropriately **GRANTED**.

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 set forth in the petition, and notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the PCT Operations Division for further processing in accord with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2) and (c4) is 14 May 2002.

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19 FEB 2004

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Jacob V. Mathew
3444 S. Briarwood Court
Springfield, Missouri 65807

In re Application of: MATHEW, Jacob, et al.
U.S. Application No.: 10/130,324
PCT No.: PCT/US00/32882
International Filing Date: 04 December 2000
Priority Date: 06 December 1999
Attorney's Docket No.: 1109 WO/US
For: NEW METHODS FOR THE SYNTHESIS OF ALFENTANIL, SUFENTANIL, AND REMIFENTANIL

Dear Mr. Mathew:

You are identified as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

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

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Counsel of Record:
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JUN 14 2005

EITAN, PEARL, LATZER & COHEN ZEDEK LLP
10 ROCKEFELLER PLAZA, SUITE 1001
NEW YORK NY 10020

In re Application of	:	
Gavriel Meron et al	:	
Serial No.: 10/130,326	:	DECISION ON PETITION
Filed: May 15, 2002	:	
For: Method for Activating An Image Collecting Process	:	

This is in response to the petition applicant filed on January 10, 2005 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, thus 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, P.O. Box 1450 Alexandria, VA 22313-1450, or by telephone at (571) 272-2975 or by facsimile transmission at (751) 273-0275.

Frederick R. Schmidt, Director
Technology Center 3700

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20090315

DATE : March 19, 2009

TO SPE OF : ART UNIT 1793

SUBJECT : Request for Certificate of Correction on Patent No.: 7,196,034

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: /Jerry Lorengo/ **Art Unit** 1793

26 JUL 2002
UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Ray L. WEBER
First National Tower, Fourth Floor
Akron, Ohio 44308-1456

In re Application of: MOSELEY, Douglas, et al.	
U.S. Application No.: 10/130,394	DECISION ON PETITION TO REVIVE ABANDONED APPLICATION UNDER 37 CFR 1.137(b)
PCT No.: PCT/US01/19263	
International Filing Date: 14 June 2001	
Priority Date: 14 June 2000	
Attorney's Docket No.: ABR.B9705A	
For: METHOD OF CONTAINING A PHASE CHANGE MATERIAL IN A POROUS CARBON MATERIAL AND ARTICLES PRODUCED THEREBY	

The petition to revive under 37 CFR 1.137(b) filed 13 May 2002 in the above-captioned application is hereby **GRANTED** as follows:

Applicants' statements in the petition and in the accompanying verified statement are construed as being the statement required by 37 CFR 1.137(b)(3), that is, 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." Applicant **must** notify this Office if this is **not** a correct interpretation of these statements. Based on this interpretation of the statements contained in the Petition to Revive and accompanying verified statement, item (3) under 37 CFR 1.137(b) is satisfied.

Applicants have now submitted the basic national fee and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application is granted as to the national stage in the United States of America.

This application is being returned to the National Stage Processing Division of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of Missing Requirements requiring submission of an executed declaration in compliance with 37 CFR 1.497 and the surcharge for filing the declaration later than twenty months after the priority date.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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FOLEY & LARDNER LLP
P.O. BOX 80278
SAN DIEGO, CA 92138-0278

Mail Date: 04/21/2010

Applicant	: Hannu Honkala	: DECISION ON REQUEST FOR
Patent Number	: 7590407	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/130,406	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/19/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **707** 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. 10

MAIL

MAY 25 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Kevin S Lemack
Nields & Lemack
176 E Main Street
Westboro MA 01581

In re Application of :
Josef Dirr :
Application No. 10/130,450 : DECISION ON PETITION
Filed: July 16, 2002 : TO MAKE SPECIAL
For: **DIGITAL TRANSMISSION METHOD FOR BANDWIDTH AND BIT RATE FLEXIBILITY** :

This is a decision on the petition under 37 C.F.R. §1.102 to make special filed February 13, 2004 (paper No. 7) which is considered as pursuant to MPEP §708.02 (IV), applicant's age.

A petition to make special under MPEP §708.02, IV, must show that petitioner is 65 years of age, or more. Acceptable evidence includes a birth certificate, copy of a driver's license, or simply a statement by the applicant. No fee is required.

The petition includes a statement by Mr. Josef Dirr attesting that he is over 65 years of age.

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.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4778

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20 SEP 2002
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Jeffrey S. Whittle
Bracewell & Patterson
P.O. Box 61389
Houston, TX 77208-1389

In re Application of	:	
Lesesky et al.	:	DECISION ON
Application No. 10/130456	:	
PCT No.: PCT/US99/27226	:	PETITION UNDER
Int. Filing Date: 17 November 1999	:	
Priority Date: 17 November 1999	:	37 CFR 1.137(b)
For: Method For Data Communication	:	
Between A Vehicle And A	:	
Remote Terminal	:	

This is in response to the petition under 37 CFR 1.137(b) filed on 06 August 2002.

BACKGROUND

This international application was filed on 17 November 1999, and did not claim an earlier priority date. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 17 May 2002. This international application became abandoned with respect to the United States for failure to timely pay the required basic national fee.

On 29 July 2002, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant, indicating that this application had become abandoned.

On 06 August 2002, applicants filed the instant petition.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (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 (c) of this section.

Regarding requirement (1), applicants have filed the required reply in the form of the basic national fee.

Regarding requirement (2), the petition fee accompanied the petition.

Regarding requirement (3), the petition includes an appropriate statement.

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

Petitioner is advised that the declaration filed on 06 August 2002 is defective in that the name of the second inventor (Bobby Ray Weant) differs from that listed in the published international application (Robert Weant). In that this is clearly more than a mere typographic error or phonetic misspelling of applicant's name, a proper petition under 37 CFR 1.182 is required to resolve this matter. Such a petition must be accompanied by the $130.00 petition fee and by verified statements by the inventor and any other individuals having first-hand knowledge of the error. These statements must set forth in detail the specific circumstances as to how and when the error was made and discovered, and must also state (if appropriate) that the mistake was an inadvertent error made without deceptive intent.

DECISION

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

This application is being forwarded to the National Stage Processing Branch for further processing, including the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring the submission of an oath or declaration.

Boris Milef
PCT Legal Examiner
PCT Legal Office

George M. Dombroske
PCT Legal Examiner
PCT Legal Office
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In re Application of	:	
Lesesky et al.	:	DECISION ON
Application No. 10/130456	:	
PCT No.: PCT/US99/27226	:	PETITION UNDER
Int. Filing Date: 17 November 1999	:	
Priority Date: 17 November 1999	:	37 CFR 1.182
For: Method For Data Communication	:	
Between A Vehicle And A	:	
Remote Terminal	:	

This is in response to the petition under 37 CFR 1.182 filed on 07 October 2002.

BACKGROUND

In a Decision on Petition mailed on 20 September 2002, petitioner was advised that the declaration filed on 06 August 2002 is defective in that the name of the second inventor (Bobby Ray Weant) differs from that listed in the published international application (Robert Weant). In that this is clearly more than a mere typographic error or phonetic misspelling of applicant's name, a proper petition under 37 CFR 1.182 was required to resolve the matter.

DISCUSSION

Counsel argues that the discrepancy between the name (Bobby Ray Weant) appearing in the declaration and the name (Robert Weant) appearing in the published international application arose because "applicant's attorney made a transliteration or typographical error..." However, it is not clear whether the person signing the petition does so on the basis of first-hand knowledge of the alleged error. Moreover, it is not clear how a "transliteration" error could have occurred, since the international application was filed in English in the United States receiving Office (RO/US), the applicant/ inventor in question was a U.S. resident or national, and was represented by the same counsel who filed the instant petition. Counsel also indicates that "Applicant's attorney attempted to correct this mistake during the PCT phase (copy attached), but no action was taken by the International Bureau because a Power of Attorney had not been filed on behalf of Robert Weant." However, the evidence of record is insufficient to establish that the RO/US and/or the IB erred by not recording a change in the applicant/inventor's name.

Counsel is required to submit further evidence establishing the correct spelling of Mr. Weant's name, including a signed statement by Mr. Weant attesting to the correct spelling of

his name and stating that the discrepancy arose without deceptive intent on his part, as well as a signed statement by any party having first-hand knowledge of the circumstances surrounding the occurrence of the discrepancy.

CONCLUSION

The petition to accept the declaration as filed on 06 August 2002 is DISMISSED, without prejudice.

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). A proper response should include a cover letter entitled "Renewed Petition Under 37 CFR 1.182" and be accompanied by an acceptable explanation of the facts as discussed above. Failure to timely file a proper response will result in ABANDONMENT of the application.

Please direct any 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.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
Fax: (703) 308-6459

13 SEP 2004

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In re Application of	:	
Lesesky et al.	:	DECISION ON
Application No. 10/130456	:	
PCT No.: PCT/US99/27226	:	PETITION UNDER
Int. Filing Date: 17 November 1999	:	
Priority Date: 17 November 1999	:	37 CFR 1.182
For: Method For Data Communication	:	
Between A Vehicle And A	:	
Remote Terminal	:	

This is in response to the renewed petition under 37 CFR 1.182 filed on 13 January 2004.

DISCUSSION

In a Decision on Petition mailed on 04 September 2003, the petition under 37 CFR 1.182 filed on 07 October 2002 was dismissed without prejudice because

> Counsel argues that the discrepancy between the name (Bobby Ray Weant) appearing in the declaration and the name (Robert Weant) appearing in the published international application arose because "applicant's attorney made a transliteration or typographical error..." However, it is not clear whether the person signing the petition does so on the basis of first-hand knowledge of the alleged error. Moreover, it is not clear how a "transliteration" error could have occurred, since the international application was filed in English in the United States receiving Office (RO/US), the applicant/ inventor in question was a U.S. resident or national, and was represented by the same counsel who filed the instant petition. Counsel also indicates that "Applicant's attorney attempted to correct this mistake during the PCT phase (copy attached), but no action was taken by the International Bureau because a Power of Attorney had not been filed on behalf of Robert Weant." However, the evidence of record is insufficient to establish that the RO/US and/or the IB erred by not recording a change in the applicant/inventor's name.

The renewed petition is accompanied by a "Declaration Of Bobby Ray Weant" which explains the discrepancy in his name, and which explains that "this minor error was unintentional and arose without any deceptive intent." The renewed petition is also accompanied by a "Declaration of Jeffrey S. Whittle." Based on the totality of the evidence now of record, it would now be appropriate to grant the requested relief.

CONCLUSION

The petition to accept the declaration as filed on 06 August 2002 is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **06 August 2002**.

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21 MAR 2005

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21 MAR 2005

Jeffrey S. Whittle
BRACEWELL & PATTERSON
PO Box 61389
Houston, Texas 77208-1389

In re Application of: LESESKY, Alan, et al.	:	
U.S. Application No.: 10/130,456 (and 10/130,664)	:	
PCT No.: PCT/US99/27226	:	
International Filing Date: 17 November 1999	:	DECISION
Priority Date: None	:	
For: METHOD FOR DATA COMMUNICATION BETWEEN A VEHICLE AND A REMOTE TERMINAL	:	

This application is before the PCT Legal Office for consideration of issues arising under 37 U.S.C. 371.

BACKGROUND

On 17 November 1999, applicants filed international application PCT/US99/27226, which designated the United States. A Demand for international preliminary examination electing the United States was filed prior to the elapse of 19 months from the international filing date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 17 May 2002.

On 16 May 2002 a "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371" was filed for international application PCT/US99/27226 by above-named counsel. This submission was assigned application number 10/130,456. Counsel in application 10/130,456 subsequently filed a declaration executed by the inventors and appointing such attorneys to prosecute this application.

On 17 May 2002, counsel from the law firm of Moore & Van Allen filed a "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371," which also indicated that the filing was intended as a national stage filing of PCT/US99/27226. This submission, assigned application number 10/130,664, included filing fees.

On 08 December 2004, in application number 10/130,664, the United States Designated/Elected Office mailed to Moore & Allen a "Notification Of Missing Requirements " (Form PCT/DO/EO/905) indicating that an executed declaration and the surcharge for filing the declaration later than thirty months after the priority date were required (it is noted that this form listed an incorrect international application number, international filing date, and priority date).

DISCUSSION

As is evident from the above recited facts, two sets of papers to enter the national stage have been submitted for international application number PCT/US99/27226 (United States application numbers 10/130,456 and 10/130,664). The end result for an international application designating the United States of America is a single U.S. national stage application. Therefore, the submission of two sets of national stage papers to enter the United States was improper.

As noted above, the documents filed in application number 10/130,456 include a declaration executed by the inventors. This declaration includes an appointment of counsel. The documents filed in application number 10/130,664 do not include a declaration or a power of attorney. Accordingly, application number 10/130,456 will be treated as the United States national stage application file for international application PCT/US99/27226.

CONCLUSION

The papers filed on 17 May 2002 in application number 10/130,664 have been placed in the file of application number 10/130,456.

The Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed on 08 December 2004 in application number 10/130,664 is hereby **VACATED**.

Application number 10/130,664 will be inactivated, and the filing fees filed therein on 17 May 2002 will be refunded. No further communications with respect to application number 10/130,664 will be mailed.

Richard M. Ross
PCT Petitions Attorney
Office of PCT Legal Administration
Telephone: (571) 272-3296
Facsimile: (571) 273-0459

cc: Michael G. Johnston
MOORE & VAN ALLEN PLLC
Suite 800
2200 West Main Street
Durham, NC 27705

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Paper No. ____

FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER
1300 I STREET NW
WASHINGTON, DC 20005

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SEP 2 1 2004

OFFICE OF PETITIONS

In re Application of :
Jakob Hattenland :
Application No. 10/130,531 : DECISION GRANTING PETITION
Filed: May 17, 2002 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 03438.0088 :

This is a decision on the petition, filed September 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 July 27, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 3641 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).*

18 MAR 2003

#9

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Banner & Witcoff, Ltd.
Eleventh Floor
1001 G Street, N.W.
Washington, DC 20001-4597

In re Application of FOX et al :
U.S. Application No.: 10/130,538 :
Int. Application No.: PCT/AU00/01402 : COMMUNICATION
Int. Filing Date: 17 November 2000 :
Priority Date: 19 November 1999 :
Attorney Docket No.: 006020.00019 :
For: DEPTH MAP COMPRESSION TECHNIQUE :

This is in response to applicant's "Letter" filed 04 February 2003.

BACKGROUND

On 17 November 2000, applicant filed international application PCT/AU00/01402, which claimed priority of an earlier Australia application filed 19 November 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 31 May 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 26 April 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 20 May 2002 (19 May 2002 was a Sunday).

On 10 October 2001, the International Bureau (IB) mailed a Notification of the Recording of a Change (Form PCT/IB/306), which indicated that Phil Harman and Andrew Millin have been added as applicants/inventors.

On 17 May 2002, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and an executed declaration.

On 22 July 2002, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that a properly executed oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 05 August 2002, applicant filed a petition under 37 CFR 1.497(d).

On 05 December 2002, this Office mailed a decision dismissing the 05 August 2002 petition.

On 04 February 2003, applicant filed the present response.

DISCUSSION

The present response includes a copy of a Request for the Recording of a Change (Form PCT/RO/113), in which the Australia Receiving Office (RO/AU) requests the IB to remove Simon Fox as an inventor. However, the DO/EO/US has not received a Notification of the Recording of a Change (Form PCT/IB/306) from the IB which indicates that the requested change has been approved and recorded. Thus, Simon Fox, Phil Harman, and Andrew Millin remain the inventors of record.

CONCLUSION

Although applicant's 04 February 2003 letter is deemed a bona fide attempt to respond to the decision mailed 05 December 2002, the requirements of 37 CFR 1.497(d) have not been met. A proper reply 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). A proper reply would include a request to change inventorship under 37 CFR 1.497(d) or a copy of a Notification of the Recording of a Change (Form PCT/IB/306).

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

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459

15 OCT 2003

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Banner & Witcoff, Ltd.
Eleventh Floor
1001 G Street, N.W.
Washington, DC 20001-4597

In re Application of FOX et al :
U.S. Application No.: 10/130,538 :
Int. Application No.: PCT/AU00/01402 : COMMUNICATION
Int. Filing Date: 17 November 2000 :
Priority Date: 19 November 1999 :
Attorney Docket No.: 006020.00019 :
For: DEPTH MAP COMPRESSION TECHNIQUE :

This is in response to applicant's "Response to Communication" filed 24 April 2003.

BACKGROUND

On 17 November 2000, applicant filed international application PCT/AU00/01402, which claimed priority of an earlier Australia application filed 19 November 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 31 May 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 26 April 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 20 May 2002 (19 May 2002 was a Sunday).

On 10 October 2001, the International Bureau (IB) mailed a Notification of the Recording of a Change (Form PCT/IB/306), which indicated that Phil Harman and Andrew Millin have been added as applicants/inventors.

On 17 May 2002, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and an executed declaration.

On 22 July 2002, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that a properly executed oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 05 August 2002, applicant filed a petition under 37 CFR 1.497(d).

On 05 December 2002, this Office mailed a decision dismissing the 05 August 2002 petition.

On 04 February 2003, applicant filed a response to the 05 December 2002 decision.

On 18 March 2003, this Office mailed a communication which stated that the 04 February 2003 response was insufficient.

On 24 April 2003, applicant filed the present response.

DISCUSSION

The DO/EO/US has received a Notification of the Recording of a Change (Form PCT/IB/306) from the IB which indicates that Simon Fox has been removed as an inventor.

CONCLUSION

The application has an International Filing Date of 17 November 2000 and a date under 35 U.S.C. 371(c) of 17 May 2002.

The application is being forwarded to the DO/EO/US for processing in accordance with this decision.

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459

05 DEC 2002

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#7

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In re Application of FOX et al
U.S. Application No.: 10/130,538
Int. Application No.: PCT/AU00/01402
Int. Filing Date: 17 November 2000
Priority Date: 19 November 1999
Attorney Docket No.: 006020.00019
For: DEPTH MAP COMPRESSION TECHNIQUE

COMMUNICATION

This is in response to applicant's "Response to Notification of Missing Requirements" filed 05 August 2002, which is being treated as a petition to correct inventorship under 37 CFR 1.497(d).

BACKGROUND

On 17 November 2000, applicant filed international application PCT/AU00/01402, which claimed priority of an earlier Australia application filed 19 November 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 31 May 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 26 April 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 20 May 2002 (19 May 2002 was a Sunday).

On 10 October 2001, the International Bureau (IB) mailed a Notification of the Recording of a Change (Form PCT/IB/306), which indicated that Phil Harman and Andrew Millin have been added as applicants/inventors.

On 17 May 2002, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and an executed declaration.

On 22 July 2002, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that a properly executed oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 05 August 2002, applicant filed the present petition under 37 CFR 1.497(d).

DISCUSSION

In the present case, Simon Fox, Phil Harman, and Andrew Millin are the inventors of record. Note that the DO/EO/US has not received a Notification of the Recording of a Change (Form PCT/IB/306) from the IB which indicates that Simon Fox has been removed as an inventor.

37 CFR 1.497(d) (effective 07 November 2000) states,

> If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by: (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (2) the processing fee set forth in § 1.17(i); and (3) 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).

With regard to item (1) above, applicant has not provided the requisite statement from Simon Fox.

With regard to item (2) above, the requisite processing fee will be charged to Deposit Account No. 19-0733 as authorized in the present petition.

With regard to item (3) above, in situations where an assignee consents to a correction of inventorship, ownership of the application must be established. See MPEP 324. Under 37 CFR 3.73(b), ownership is established by documentary evidence of a chain of title from the original owner to the assignee. In the present case, the petition does not state whether the application has been assigned.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.497(d) 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 1.497(d)". No additional petition fee is required.

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

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459

APR 30 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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James S. Keddie
BOZICEVIC, FIELD & FRANCES LLP
1900 University Avenue, Suite 200
East Palo Alto, CA 94303

In re Application of	:	
LUO et al	:	
Serial No.: 10/130,555	:	Decision on Petition
Filed : December 16, 2002	:	
Attorney Docket No.: RIGL-008CIP2	:	

This letter is in response to the Petition under 37 C.F.R. 1.181 filed on 15 March 2007 requesting reconsideration of the lack of unity determination.

BACKGROUND

A review of the file shows that this application was filed under 35 USC 371 as the national stage of PCT/US00/31698 filed 17 November 2000 and as such, is eligible for PCT unity of invention rules.

On December 14, 2005, the examiner mailed a lack of unity determination in which claims 26-51 were divided in 8 groups and each of those groups was then further divided into five groups, based upon the sequences shown in Figures 2, 4, 6, 8 or 10, which correspond to SEQ ID Nos 2, 4, 6, 8 and 10 and correspond to ING2B, ING2C, ING2D, ING2A and ING2E, respectively.

On 13 February 2005, Applicants elected Group 2, claims 26-37, drawn to polynucleotides that encode ING2B (Figure 4; SEQ ID No 4) with traverse.

On 5 May 2006, in the first Office action on the merits, the examiner considered the traversal and made the restriction requirement FINAL. Claims 26-37 and 52 were examined to the extent that they read upon a polynucleotide encoding SEQ ID No 4.

On 15 November 2006, the examiner mailed a second non final action on the merits which also maintained the lack of unity determination.

On 15 March 2007, applicants filed this petition to request that the Office reconsider lack of unity determination.

DISCUSSION

The petition and file history have been carefully considered. Relevant rules and examples are set forth below.

PCT International Search and Examination Guidelines sets forth PCT Rule 13.2 as follows:

> With respect to a group of inventions claimed in an international application, unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" is defined in Rule 13.2 as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art.

Rule 13.2 also governs the situation involving a single claim that defines alternatives (chemical or non-chemical), the so-called "Markush practice." In this special situation, the requirement of a technical interrelationship and the same or corresponding special technical features as defined in Rule 13.2, is considered met when the alternatives are of a similar nature.

(a) When the Markush grouping is for alternatives of chemical compounds, they are regarded as being of a similar nature where the following criteria are fulfilled:

> (A) all alternatives have a common property or activity, and
>
> (B)(1) a common structure is present, that is, a significant structural element is shared by all of the alternatives, or
>
> (B)(2) in cases where the common structure cannot be the unifying criteria, all alternatives belong to a recognized class of chemical compounds in the art to which the invention pertains.

The claims under consideration are most similar to Example 12 of the PCT International Search and Examination Guidelines.

> 10.32 Example 12
>
> Claim 1: A display with features A + B.
>
> Claim 2: A display according to claim 1 with additional feature C.
>
> Claim 3: A display with features A + B with additional feature D.
>
> Unity exists between claims 1, 2, and 3. The special technical feature common to all the claims is features A + B.

Claim 28 and 31, representative of the claims under examination, were amended on 15 March 2007 to recite:

28. (Currently amended) A recombinant nucleic acid encoding an ING2 protein, wherein said recombinant nucleic acid comprises ~~The recombinant nucleic acid according to Claim 26, comprising~~ the nucleic acid sequence set forth in Figure 1 (SEQ ID NO:1), 3 (SEQ ID NO:3), 5 (SEQ ID NO:5), 7 (SEQ ID NO:7), or 9 (SEQ ID NO:9).

31. (Currently amended) A ~~The~~ recombinant nucleic acid encoding an ING2 protein ~~according to Claim 30~~, wherein said ING2 protein comprises the amino acid sequence set forth in Figure 2 (SEQ ID NO:2), 4 (SEQ ID NO:4), 6 (SEQ ID NO:6), 8 (SEQ ID NO:8), or 10 (SEQ ID NO:10).

To facilitate comparison between the claimed invention and that shown in Example 12, the regions shown above are labeled as follows:

Residues 30-299 of SEQ ID Nos 4/6/8 and residues 1-200 of SEQ ID Nos 2/10 are considered feature A.
Residues 1-30 of SEQ ID No 4/6/8 are considered feature B.
Residues 200-242 of SEQ ID No 2/8 are considered feature C.

Thus, SEQ ID No 10 is A.
SEQ ID No 4/6 are A plus B.
SEQ ID No 2 is A plus C.
SEQ ID No 8 is A plus B plus C.

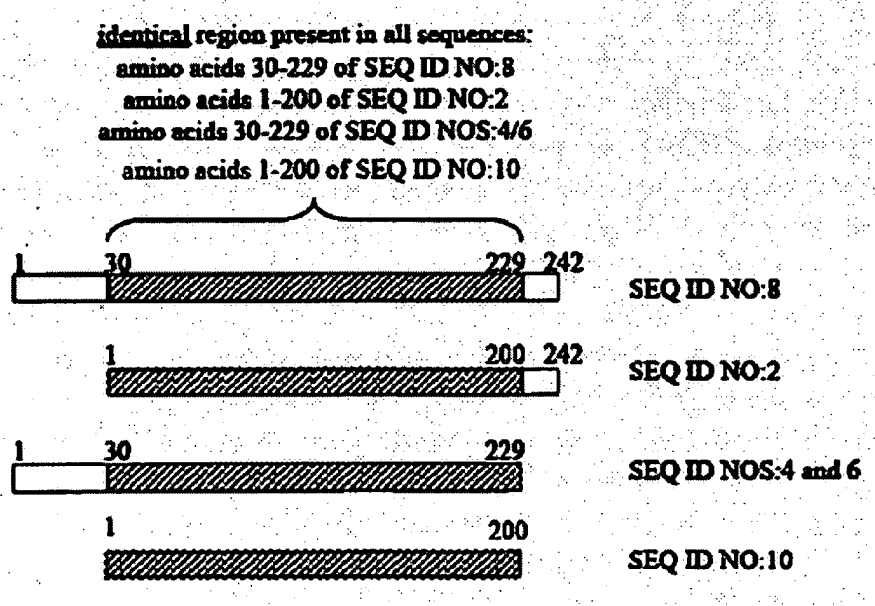
Feature "A" is present in all of SEQ ID No 2, 4, 6, 8 and 10.

A review of Figure 11A and B show a large stretch of amino acid sequence identify between ING2A, B and C which is now required by as being encoded by all of the claimed ING2 polynucleotides. The polynucleotides that correspond to the open reading is a significant structural feature that imparts a common property or activity of encoding ING2 protein.

Because the sequences, as currently claimed, all require residues 30-299 of SEQ ID Nos 4/6/8 (which is the same as residues 1-200 of SEQ ID Nos 2/10) unity of invention is present among the polynucleotides which encode SEQ ID Nos 2, 4, 6, 8 and 10.

The petition provides a schematic diagram reproduced below which clearly illustrates the shared technical feature and common structural feature for each of the groups, which is consistent with this analysis.

A schematic showing the similarity between ING2A, B, C, D and E is set forth below.



DECISION

The petition is **GRANTED** for the reasons set forth above. The lack of unity determination made among polynucleotides which encode SEQ ID Nos 2, 4, 6 8 and 10 has been withdrawn. Polynucleotides which encode SEQ ID Nos 2, 4, 6 8 and 10 are rejoined and will be examined together.

The application will be forwarded to the examiner for further action consistent with this decision and for the preparation of a new action which addresses polynucleotides which encode SEQ ID Nos 2, 4, 6 8 and 10.

Should there be any questions about this decision, please contact Quality Assurance Specialist/Program Manager Julie Burke, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-1600 or by facsimile sent to the general Office facsimile number, 571-273-8300.

John LeGuyader
Director, Technology Center 1600

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OFFICE OF PETITIONS

In re Application	:	
Billich et al.	:	
Application No. 10/130,567	:	DECISION ON APPLICATION
Filed: May 17, 2002	:	FOR PATENT TERM ADJUSTMENT
Patent No. 6,716,865	:	
Issued: April 6, 2004	:	

This is a decision on the "PETITION UNDER 37 CFR 1.705(d) FOR PATENT TERM ADJUSTMENT", filed April 8, 2004. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to fifty-seven (57) days.

The application for patent term adjustment 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-six (56) days**.

On April 6, 2004, the above-identified patent issued. The patent stated that the patent term adjustment (PTA) is zero (0) days. On April 8, 2004, patentees timely[1] submitted an application for patent term adjustment, asserting that the correct number of days of PTA is fifty-seven (57) days.

[1] The instant application for patent term adjustment was filed within 30 days of issuance of the patent.

Patentees assert entitlement to a patent term adjustment of fifty-seven (57) days under 37 C.F.R. §1.703(a)(6), on the basis that the patent issued more than four months after payment of the issue fee.

A review of the application file reveals that the issue fee was paid on October 10, 2003. The instant patent did not issue until April 6, 2004. Accordingly, PTO delay of **fifty-six (56) days** should be assessed under 37 C.F.R. §1.703(a)(6), 56 days being the number of days "in the period beginning on the day after the date that is four months after the date the issue fee was paid [February 11, 2004]...and ending on the date a patent was issued [April 6, 2004]."

In view thereof, the correct determination of patent term adjustment at the time of issuance of the patent is **fifty-six (56) days** (56 days of PTO delay and 0 days of applicant delay).

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 the Certificate of Corrections Branch for issuance of a certificate of correction, indicating a Patent Term Adjustment of **fifty-six (56) days.**

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

Karin A Ferriter

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

27 JUL 2004

#6

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Surinder Sachar
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1940 DUKE STREET
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In re Application of	:	
Yasunori MIYAMOTO et al	:	
Application No.: 10/130,605	:	
PCT Application No.: PCT/JP01/08174	:	DECISION ON
International Filing Date: 20 September 2001	:	
Priority Date: 22 September 2000	:	PETITION UNDER
Attorney Docket No. 222713US3PCT	:	
For: METHOD OF PRODUCING CONSTANT WEIGHT PRODUCT	:	37 CFR 1.181

This is in response to applicants' papers filed on 07 January 2004, which has been treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

BACKGROUND

On 20 September 2001, applicant filed international application number PCT/JP01/08174 which claimed priority to an earlier filed Japan application 2000-289623 filed on 22 September 2000.

On 12 July 2002, a Notification Of Missing Requirements under 35 USC 371 was mailed, requesting applicant to submit an oath or declaration of the inventors, in compliance with 37 CFR 1.497 (a) and (b), identifying the application number and international filing date.

On 24 November 2003, the United States Patent and Trademark Office issued a notice of abandonment, due to failure of applicant to respond to the notice of missing requirements within the time period set therein.

On 07 January 2004, applicants submitted a response to withdraw the holding of abandonment.

DISCUSSION

A review of the application file reveals a declaration of the inventors was filed on 27 June 2002. Accordingly, the Notification of Missing Requirements was mailed in error and is herby vacated.

Applicants further request a refund of $130 for the surcharge paid on 21 May 2002 for furnishing the oath or declaration later than 30 months from the earliest claimed priority (37 CFR 1.492(e)). A review of the application reveals that the declaration was filed timely on 27 June 2002, with respect to the 30 month deadline for filing the declaration in accordance with 37 CFR 1.492(e). The request for refund is hereby granted, counsel's deposit account will be credited $130.

CONCLUSION

The petition under 37 CFR 1.181 is GRANTED.

The abandonment is hereby withdrawn and the Notification of Missing Requirements mailed 12 July 2002 and the Notification of Abandonment mailed 24 November 2003 are VACATED.

The application has met all of the 35 USC 371 requirements and has an international filing date under 35 U.S.C. 363 of 20 September 2001, and a date under 35 U.S.C. (c)(1), (c)(2) and (c)(4) of 27 June 2002.

The application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing in accordance with this decision.

Michael Lebentritt
Detailee
Office of PCT Legal Administration
Telephone (703) 308-6162
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Boris Milef
PCT Legal Examiner
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June E. Rickey
CALFEE, HALTER & GRISWOLD LLP
800 Superior Ave., Suite 1400
Cleveland, OH 44114

In re Application of
SHUTIC, Jeffrey R. *et al*
U.S. Application No.: 10/130,615
PCT No.: PCT/US00/25383
Int. Filing Date: 15 September 2000
Priority Date: 17 September 1999
Docket No.: 11694-04203
For: QUICK COLOR CHANGE POWDER COATING

DECISION ON PETITION FOR REVIVAL UNDER 37 CFR 1.137(b)

This decision is in response to applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed on 28 February 2003.

A review of the subject application reveals it has not been abandoned. Accordingly, applicants' petition to revive is **DISMISSED** as **MOOT**.

The 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) was mailed 13 August 2002 giving applicants two months to provide an executed declaration in compliance with 37 CFR 1.497(a) and (b). Extensions of time were available pursuant to 37 CFR 1.136(a) which authorizes up to five months. Therefore, applicants had until 13 March 2003 to provide an acceptable declaration.

Applicants filed an executed declaration in compliance with 37 CFR 1.497(a) and (b) with the instant petition on 28 February 2003 which included authorization to charge any required fees to Deposit Account No. 03-0172. This is treated as a request for a five-month extension of time request which has been granted. The fee of $1,970.00 has been charged to Deposit Account No. 03-0172 as authorized.

Applicants have completed the requirements for acceptance under 35 U.S.C. § 371. The application has an international filing date of 15 September 2000, under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 28 February 2003. This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457

06 AUG 2002
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June E. Rickey
CALFEE, HALTER & GRISWOLD LLP
800 Superior Avenue, Suite 1400
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In re Application of :
SHUTIC, Jeffrey R. *et al* :
U.S. Application No.: 10/130,615 :
PCT No.: PCT/US00/25383 :
Int. Filing Date: 15 September 2000 :
Priority Date: 17 September 1999 :
Attorney Docket No.: 11694-04203 :
For: QUICK COLOR CHANGE POWDER COATING SYSTEM :

DECISION ON PETITION FOR REVIVAL UNDER 37 CFR 1.137(b)

Applicants' "Petition for Revival of an International Application for Patent Designating the US Abandoned Unintentionally Under 37 CFR 1.137(b)" filed with the national stage papers on 17 May 2002 in the above-captioned application is hereby **GRANTED** as follows:

The appropriate basic national fee, petition fee and surcharge fee have been paid. Applicants state that "[t]he 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). A terminal disclaimer is not required. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

An executed declaration was not provided. Accordingly, this application is being forwarded to the United States Designated/Elected Office for further processing including mailing a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that the declaration in compliance with 37 CFR 1.497(a) and (b) is required.

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OFFICE OF PETITIONS

In re Application of	
Shutic et al.	
Application No. 10/130,615	ON PETITION
Filed: February 28, 2003	
Attorney Docket No. 11694/04203	
For: QUICK COLOR CHANGE POWDER COATING SYSTEM	

This is a decision on **(1)** the petition under 37 CFR 1.137(a), filed October 25, 2004 (certificate of mailing date October 20, 2004) and supplemented on November 10, 2004, which will be treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment and **(2)** the petition under 37 CFR 1.59(b), filed November 10, 2004, requesting that a portion of the petition under 37 CFR 1.137(a), filed October 25, 2004 (certificate of mailing date October 20, 2004), be expunged from this file.

The petition under 37 CFR 1.59(b) is **GRANTED**.

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

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

PETITION UNDER 37 CFR 1.59(b)

Petitioners request expungement (or redaction) of the names of clients other than the owner of the above-identified application from copies of docket reports submitted in support of the petition under 37 CFR 1.137(a), filed October 25, 2004. Petitioners have submitted replacement docket sheets with appropriate information redacted.

It is found that the references to clients other than the owner of the above-identified application are not important to the deciding official in determining whether or not the petition under 37 CFR 1.137(a)/1.181 is grantable.

Accordingly, the petition under 37 CFR 1.59 is **granted**. The $130.00 petition fee will be charged to Deposit Account No. 03-0172, as authorized.

The Office will replace the original docket sheets in the application file in their entirety with the redacted docket sheets and electronic access to the original docket sheets will be blocked.

PETITION UNDER 37 CFR 1.137(a)/181

The above-identified application became abandoned for failure to respond to the Restriction Requirement mailed December 19, 2003, which set an extendable one (1) month period for reply. No reply being received, the above-identified application became abandoned on January 20, 2004.A Notice of Abandonment was mailed on September 2, 2004.

An allegation that an Office action was never received may be considered as a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment.

Petitioners have provided adequate evidence to show petitioners did not receive the December 19, 2003 Restriction Requirement. Practitioner states that he searched the records of his office, including his firm's docket, his firm's docketing department, and the file jacket. Practitioner has provided a copy of the electronic docketing records where the December 19, 2003 Office action would have been entered had it been received. The docketing system is explained in a declaration of Tammy Bunch, docket clerk for Calfee, Halter & Griswold, LLP. There is no mention of the December 19, 2003 Office action.

Therefore, the petition under 37 CFR 1.181 to withdraw the holding of abandonment is **granted**.

The petition under 37 CFR 1.137(a) is **dismissed as moot**. Regarding finances, the $110.00 petition fee will be credited to deposit account no. 03-0172.

After the mailing of this decision, the application file will be forwarded to Technology Center 1700 for the remailing of the December 19, 2003 Restriction Requirement with a new period set for reply. The response to the Restriction Requirement that is referenced in the October 25, 2004 (certificate of mailing date October 20, 2004) petition is not present in the application file.

Telephone inquiries related to this decision should be directed to Petitions Attorney E. Shirene Willis at (571) 272-3230.

Brian Hearn
Special Projects Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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)
6681440	2004-01-27	10130654	2002-08-07	325070USMF

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

SMALL ENTITY

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

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

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

NOT Small Entity

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

Small Entity

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

SURCHARGE

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

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

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/C. Irvin McClleland/	Date (YYYY-MM-DD)	2008-04-09
Name	C. Irvin McClelland	Registration Number	21124

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. 6681440
Issue Date: January 27,2004
Application No. 10130654
Filed: August 7,2002
Attorney Docket No. 10191/2333

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

This is a decision on the electronic petition, filed April 9,2008 ,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 April 9,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DEC 23 2009

OFFICE OF PETITIONS

Beattie Ingrid A Beattie
Mintz Levin Cohn Ferris
Glovsky & Popeo
One Financial Center
Boston MA 02111

In re Application of :
Tei, et al. :
Application No. 10/130,659 : ON APPLICATION FOR
Filed: March 5, 2003 : PATENT TERM ADJUSTMENT
Atty Docket No. 25371-999NATL :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed September 24, 2009. Applicants submit that the patent term adjustment to be indicated on the patent is two hundred ninety-two (292) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction on the basis that the Office will take in excess of three years to issue this patent.

In addition, applicants disclose two additional periods of reduction that should be entered in patent term calculations for this application. First, applicants disclose that the Office failed to consider the delay associated with the filing of a response to the August 5, 2002 Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Election Office (DO/EO/US). Second applicants disclose that the Office failed to consider that applicants filed a reply on September 26, 2007 to a non-final Office action and that applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on October 26, 2007.

To the extent that applicants request 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 patentees are entitled to for Office failure to issue the patent within 3 years. See § 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 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 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].

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[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

To the extent that applicants otherwise request correction of the initial determination of patent term adjustment (PTA), the application for patent term adjustment is **GRANTED**.

The Office has updated the PALM screen by entering the two additional periods of delay. It is noted that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance remains zero (0) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On June 24, 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 is 0 days. On September 24, 2009, applicants submitted the instant request for reconsideration of patent term. Applicants disclose that the Office failed to recognize two additional periods of delay.

First, applicants disclose the Office failed to consider the delay associated with the filing of a response to the August 5, 2002 Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Election Office (DO/EO/US). Pursuant to 37 CFR 1.704(b), a period of reduction of 120 days should have been entered. 37 CFR 1.704(b) provides that:

> With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or

---

reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

> other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

In this instance, applicants failed to engage in reasonable efforts to conclude processing of the application by failing to reply to the August 5, 2002 Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Election Office (DO/EO/US) within the three-month period provided for in 37 CFR 1.704(b). Applicants did not file a complete and proper response until March 5, 2003. Accordingly, a period of reduction of 120 days is being entered for the period beginning on November 6, 2002, the day after the date that is three months after the date of mailing of the Notice, and ending on March 5, 2003, the date applicants' reply was filed.

Second, applicants disclose that after applicants filed a reply on September 26, 2007 to a non-final Office action, that applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on October 26, 2007. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed October 26, 2007, reveals that applicants did not include a statement under 37 CFR 1.704(d).[2] Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 30 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, September 27, 2007, and ending on the date that the IDS was filed, October 26, 2007. Accordingly, a period of reduction of 30 days will be entered.

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[2] Pursuant to 37 CFR § 1.704(d):

> 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.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **zero days** (415 days of Office delay - 721 (120+60+91+93+88+56+30+92+91) days of applicant delay).

The Office thanks applicants for their good faith and candor in bringing the additional periods of delay to the attention of the Office.

The $200.00 fee set forth in 37 CFR 1.18(e) will be charged to deposit account no. 50-0311. 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 decision should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Day : Wednesday

Date: 12/16/2009

PALM INTRANET

Time: 14:13:28

PTA Calculations for Application: 10/130659			
Application Filing Date:	03/05/2003	PTO Delay (PTO):	415
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	571
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-150		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
93	12/16/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		30	
92	12/16/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		120	
76	06/24/2009	MAIL NOTICE OF ALLOWANCE			
75	06/22/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
74	06/22/2009	CASE DOCKETED TO EXAMINER IN GAU			
73	06/22/2009	ISSUE REVISION COMPLETED			
72	06/22/2009	DOCUMENT VERIFICATION			
71	06/16/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
70	06/22/2009	EXAMINER'S AMENDMENT COMMUNICATION			
69	06/22/2009	NOTICE OF ALLOWABILITY			
68	04/16/2009	DATE FORWARDED TO EXAMINER			
67	03/30/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
66	04/16/2009	DATE FORWARDED TO EXAMINER			
65	03/30/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)		91	58
64	04/16/2009	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
63	03/30/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
62	03/30/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
61	11/28/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
60	11/12/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			

58	09/29/2008	MAIL FINAL REJECTION (PTOL - 326)			
57	09/26/2008	FINAL REJECTION			
56	01/31/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
55	09/16/2008	CASE DOCKETED TO EXAMINER IN GAU			
54	08/18/2008	CASE DOCKETED TO EXAMINER IN GAU			
53	06/13/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
52	07/10/2008	DATE FORWARDED TO EXAMINER			
51	06/13/2008	RESPONSE AFTER NON-FINAL ACTION		92	47
50	06/13/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
49	01/31/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
48	01/31/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
47	12/13/2007	MAIL NON-FINAL REJECTION			
46	12/10/2007	NON-FINAL REJECTION			
45	10/26/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
44	10/26/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
43	10/03/2007	DATE FORWARDED TO EXAMINER			
42	09/26/2007	RESPONSE AFTER NON-FINAL ACTION		56	40
41	09/26/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
40	05/01/2007	MAIL NON-FINAL REJECTION			
39	04/28/2007	NON-FINAL REJECTION			
38	02/20/2007	DATE FORWARDED TO EXAMINER			
37	02/13/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
36	02/20/2007	DATE FORWARDED TO EXAMINER			
35	02/13/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		88	26
34	02/20/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
33	02/13/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
32	02/13/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
31	01/18/2007	MAIL ADVISORY ACTION (PTOL - 303)			

30	01/11/2007	ADVISORY ACTION (PTOL-303)			
29	01/03/2007	DATE FORWARDED TO EXAMINER			
28	12/18/2006	AMENDMENT AFTER FINAL REJECTION			
27	12/18/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
26	08/17/2006	MAIL FINAL REJECTION (PTOL - 326)			
25	08/07/2006	FINAL REJECTION			
24	06/05/2006	DATE FORWARDED TO EXAMINER			
23	05/26/2006	RESPONSE AFTER NON-FINAL ACTION		93	20
22	05/15/2006	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
21	03/04/2006	DATE FORWARDED TO EXAMINER			
20.1	02/22/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
20	02/22/2006	RESPONSE AFTER NON-FINAL ACTION		91	17
19	02/13/2006	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
18	12/05/2005	DATE FORWARDED TO EXAMINER			
17.1	11/23/2005	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
17	11/23/2005	RESPONSE AFTER NON-FINAL ACTION		60	14
16	11/23/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
15	11/23/2005	RULE 47 / 48 CORRECTION OF INVENTORSHIP PAPERS FILED			
14	06/24/2005	MAIL NON-FINAL REJECTION	415		-1
13	06/23/2005	NON-FINAL REJECTION			
12	04/20/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
11	04/20/2004	CASE DOCKETED TO EXAMINER IN GAU			
10.7	06/13/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	06/13/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	05/30/2003	APPLICATION DISPATCHED FROM OIPE			
8	05/20/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
7	05/15/2003	NOTICE OF DO/EO ACCEPTANCE MAILED			
6	03/05/2003	ADDITIONAL APPLICATION FILING FEES			
5	03/05/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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

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DEC 28 2005

OFFICE OF PETITIONS

In re Application of :
James Michael O'Dwyer :
Application No. 10/130,673 : DECISION ON PETITION
Filed: September 30, 2002 :
Attorney Docket No. 08676.0009 :

This is a decision on the petition under 37 CFR 1.181, filed on June 18, 2004, to withdraw the holding of abandonment. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience caused to petitioner.

On March 5, 2004, the Office mailed a Notice to File Corrected Application Papers, which set a period of thirty days to reply. In the apparent absence of a timely and proper response, the Office mailed a Notice of Abandonment on June 4, 2004.[1]

Petitioner asserts that a proper response was filed timely. In support of the petition, petitioner submits a copy of a returned, date-stamped postcard receipt, acknowledging receipt of (1) Response to Notice to File Corrected Application Papers (1 page) and (2) Copy of Notice to File Corrected Application Papers (1 page) in the USPTO on March 17, 2004. A copy of the response is included with this petition.

The Office has not located the original correspondence. However, Section 503 of the MPEP 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 was filed timely in the USPTO on March 17, 2004, but was not matched with the application.

For the reasons stated above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **granted.**

[1] Petitioner correctly pointed out that the Notice of Abandonment erroneously stated that the application became abandoned for failure to respond to the Office letter of "3/15/04," instead of 3/5/04.

This matter is being referred to the Office of Patent Publication.

Telephone inquiries concerning the issuance of the application into a patent should be directed to the Office of Patent Publication, Customer Service at (703) 305-8497. Telephone inquiries specifically concerning this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

11 DEC 2003

#5

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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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Anne Wang
Christie, Hale & Parker, LLP
P.O. Box 7068
Pasadena, CA 91009-7068

In re Application of	:	
Bianco, et al.	:	
Serial No.: 10/130,679	:	DECISION ON
PCT No.: PCT/US00/42224	:	PETITION
Int. Filing Date: 17 November 2000	:	UNDER 37 CFR 1.78
Priority Date: 17 November 1999	:	
Attorney's Docket No.: 44239/AW	:	
For: NOTEBOOK WITH TWO-WAY POCKET	:	

This decision is responsive to the "PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY UNDER 35 U.S.C. 119(e) FOR THE BENEFIT OF A PRIOR FILED PROVISIONAL APPLICATION AND DECLARATION OF ANNE WANG" filed 01 November 2002. Applicant has included the $1280 petition fee.

BACKGROUND

On 17 November 2000 applicants filed international application PCT/US00/42224, which claimed priority of an earlier United States provisional application which was filed 17 November 1999. A copy of the international application was received by the United States Patent and Trademark Office from the International Bureau on 25 May 2001. A demand for International Preliminary Examination was timely filed on 04 June 2001. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 17 May 2002.

On 16 May 2002, applicants filed a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by a copy of the international application, an IDS, and a check for the basic national fee. These papers were assigned Application No. 10/130,679.

On 24 July 2002, the United States Patent and Trademark Office in its capacity as an Elected Office mailed the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration. The notification set a two-month time period in which to respond.

On 01 November 2002, applicant filed the current petition requesting that the benefit claim be accepted since the delay in filing the benefit claim to provisional application 60/166,067 was unintentional. This petition was accompanied by a preliminary amendment which would add the benefit claim to the first line of the specification.

DISCUSSION

The petition procedure under 37 CFR 1.78(a)(6) to accept a delayed benefit claim to a provisional application is not applicable where the international application was filed prior to 29 November 2000. See 37 CFR 1.78(a)(5)(iii)(B). The amendment filed on 01 November 2002 adding the benefit claim is timely.

CONCLUSION

The petition to accept the priority claim to the provisional application is **DISMISSED AS MOOT**.

The **$1280** petition fee has been **CREDITED** to **deposit account # 03-1728**.

This application is being forwarded to the National Stage Division for further processing in accordance with this decision.

Debra Brittingham
PCT Legal Office
DSB/BM:dsb

Tel: (703) 305-3401
Fax: (703) 308-6459

Conferee: Boris Milef
PCT Legal Examiner
PCT Legal Office

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JUL 14 2005

OFFICE OF PETITIONS

In re Application of :
Ronald M. Bianco, et al. :
Application No. 10/130,679 : ON PETITION
Filed: October 24, 2002 :
Attorney Docket No. 44239/AW :

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

The petition is **GRANTED**.

A non-final was mailed to applicant on April 7, 2004, 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 July 8, 2004.

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

09 JAN 2003

#5

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Jody L. Factor
Factor & Partners, LLC.
1327 W. Washington Blvd. Suite 5G/H
Chicago, Illinois 60607

In re Application of :
FROST et al. :
Application No.: 10/130,682 :
PCT No.: PCT/NZ00/00234 : DECISION ON PETITION
Int. Filing Date: 20 November 2000 :
Priority Date: 18 November 1999 :
Attorney Docket No.: AJP-021059 :
For: PROCESS FOR PRODUCTION OF BIOPOLYMERS FROM NITROGEN DEFICIENT WASTEWATER

This is a decision on applicants' "Petition under 37 CFR 1.182" filed in the Patent and Trademark Office (PTO) on 07 November 2002. Applicants are requesting to change the name of the first named inventor from Nicola Maree Frost to Nicola Maree Reid due to marriage. The petition was accompanied by an affidavit signed by Nicola Maree Reid using both her former name and present name. The petition fee has been submitted.

DISCUSSION

The Manual of Patent Examining Procedure at §605.04(c) requires in instances where an inventor has changed his or her name after the application has been filed to submit a petition under 37 CFR 1.182. The petition must include the appropriate petition fee and an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or certified copy of the court order. As noted above, the $130 petition fee has been submitted.

The petition has been reviewed and is approved. The declaration submitted on 17 May 2002 is accepted.

CONCLUSION

The petition under 37 CFR 1.182 to change the inventor's name from Nicola Maree Frost to Nicola Maree Reid is **GRANTED**.

The application has an international filing date of 20 November 2000 under 35 U.S.C. 363 and a date of **17 May 2002** under 35 U.S.C. 371(c).

This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel.: (703) 308-6314
Fax: (703) 308-6459

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DEC 19 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

WENDEROTH, LIND & PONACK, L.L.P.
2033 K STREET N. W.
SUITE 800
WASHINGTON DC 20006-1021

In re Application of
Hidekazu Suzuki
Application No. 10/130,694
Filed: August13, 2002
For: **SIGNAL TRANSMISSION SYSTEM, SIGNAL TRANSMITTER, AND SIGNAL RECEIVER**

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition filed November 21, 2005, 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.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Ronald E. Greigg
Greigg & Greigg, PLLC
1423 Powhatan Street, Suite One
Alexandria, VA 22314

In re Application of	:	
HUBER, et al.	:	DECISION ON PETITIONS
Application No.: 10/130,697	:	
PCT No.: PCT/DE01/03663	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 24 September 2001	:	
Priority Date: 22 September 2000	:	37 CFR 1.42 AND 1.47(a)
Atty. Docket No.: R.39496	:	
For: APPARATUS FOR METERING A REDUCING AGENT	:	

This decision is in response to applicant's petition to revive the present application pursuant to 37 CFR 1.137(b) filed in the United States Patent and Trademark Office (USPTO) on 18 August 2004.

BACKGROUND

On 21 November 2003, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/09) indicating that the present application was abandoned as to the United States of America for failure to respond to the "Notification of Missing Requirements" (Form PCT/DO/EO/905) mailed 06 August 2002.

On 18 August 2004, applicant filed the present petition to revive under 37 CFR 1.137(b). As discussed below, the filing of the combined declaration and power of attorney identifying Helmut and Brigitte Moell as heirs to the estate of deceased joint inventor Alexander Moell is being treated as a request for status pursuant to 37 CFR1.42. The fact that the document was not executed by the heirs and statements of facts to that effect is being treated as a petition under 37 CFR 1.47(a).

DISCUSSION

I. Petition Under 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 11 February 2004 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was

unintentional" and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

As discussed in detail below, a review of the application file reveals that applicant has now provided a proper response to the Form PCT/DO/EO/905 mailed 06 August 2002. 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.

II. Petition Under 37 CFR 1.42

37 CFR 1.42 states:

> "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

Applicant's filed declaration identifies Helmut and Brigitte Moell as heirs to the estate of deceased joint inventor Alexander Moell. The declaration provides the residence, citizenship and post office address for both the heirs and the deceased inventor. As such, the document complies with 37 CFR 1.497(a)-(b). Further, applicant has provided an English translation of the German certificate of heirship identifying the heirs listed on the declaration. The declaration executed by all of the heirs to the deceased inventors is being interpreted to mean that no legal representative to the estate will be appointed or is statutorily required to be so. If this interpretation is incorrect, applicant should contact the Office of PCT Legal Administration immediately. A review of the declaration and accompanying papers shows that it is proper to grant applicant's request for status under 37 CFR 1.42.

III. Petition under 37 CFR 1.47(a)

While the declaration identifies Helmut and Brigitte Moell as heirs to the estate of deceased joint inventor Alexander Moell, the heirs have not executed the declaration. Therefore, it is necessary to consider the declaration pursuant to 37 CFR 1.47(a).

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. Applicant has satisfied all four items.

As to item (1), applicant has authorized the deduction of any necessary fees to Deposit Account No.: 07-2100. Therefore, the $130.00 petition fee will be so charged.

Regarding item (2), applicant has provided a firsthand statement from Georg Mueller

detailing his conversations with the Moells and their explicit refusal to execute the declaration.

As to item (3), applicant's have included a statement of the last known address of the missing inventor.

Last, the declaration has been executed by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Therefore, it is proper to grant applicant's petition under 37 CFR 1.47(a) at this time.

CONCLUSION

For the reasons above, applicant's petitions under 37 CFR 1.137(b), 37 CFR 1.42 and 37 CFR 1.47(a) are **GRANTED**.

Applicant is advised that as the applicant went abandoned and was presently revived with payment of the 37 CFR 1.137(b) petition fee, payment of a five-month extension of time fee was unnecessary. Therefore, the $1,480.00 payment will be refunded to Deposit Account No.: 07-2100. As discussed above, the $130.00 petition fee for the 37 CFR 1.47(a) petition will be charged.

The application has an international filing date of 24 September 2001 under 35 U.S.C. 363, and will be given a date of **18 August 2004** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record. A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the DO/EO/US for processing in accordance with this decision. Specifically, the mailing of a Notification of Acceptance (Form PCT/DO/EO/903).

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

09 SEP 2004

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ALEXANDRIA, VA 22313-1450
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Mr. and Mrs. Helmut Moell
Beim Heiligental 1
78532 Tuttlingen
GERMANY

In re Application of
HUBER, et al.
PCT No.: PCT/DE01/03663
Application No.: 10/130,697
Int. Filing Date: 24 September 2001
Priority Date: 22 September 2000
Atty. Docket No.: R.39496
For: APPARATUS FOR METERING A REDUCING AGENT

Dear Mr. and Mrs. Moell:

You are named as heirs to an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor. As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternately, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, the law firm of record (see below) would presumably assist you. Joining in the application would entail the filing of the appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

Ronald E. Greigg
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1423 Powhatan Street, Suite One
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Paper No. None
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MAY 27 2005
OFFICE OF PETITIONS

LOWE HAUPTMAN GILMAN AND BERNER, LLP
1700 DIAGONAL ROAD
SUITE 300 /310
ALEXANDRIA VA 22314

In re Application of :
Yaakov Barak et al. :
Application No. 10/130,710 : DECISION ON PETITION UNDER
Filed: July 29, 2002 : 37 C.F.R. §3.81(B)
Attorney Docket Number: 1268-164 :
Title: METHOD FOR REMOVAL OF SOLID DEPOSITS FROM ELECTRODE SURFACES IN WATER DISINFECTING SYSTEMS USING ELECTROLYTIC CELLS, AND A DEVICE FOR USE THEREOF :

This is a decision on the petition filed January 27, 2005, which is treated as a petition pursuant to 37 C.F.R. §3.81(b)[1], to correct the Assignee's information on the Issue Fee Transmittal Form PTOL-85(b).

Petitioner states that a typographical error appears on form PTOL-85(b). It appears that the form lists the assignee's city as Kfar-Sara, which should read Kfar-Saba.

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

(b) 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

1 See Official Gazette, June 22, 2004.

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

Hence, the petition is **DISMISSED**.

A review of Office database assignment records reflects that an assignment to B.H. Technologies (1998) Ltd. of Kfar-Saba, Israel 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 B.H. Technologies (1998) Ltd. of Kfar-Saba, Israel was the assignee of record at the time of issuance of the instant application into a patent[2].

In view of the above and **after issuance of the instant application into a patent, the Certificates of Correction Branch is instructed to issue a certificate of correction upon submission by petitioner of a request for a certificate of correction (and fee) which sets forth Kfar-Saba as the assignee's city**. *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.

Alternatively, if Petitioner desires to have the correct assignee data appear on the front page of the Letters Patent, petitioner may wish to consider filing a petition to withdraw the subject application from issue under 37 C.F.R. §1.313(c)(2). The petition to withdraw from issue under 37 C.F.R. §1.313(c)(2) must be accompanied by a request for continued examination (RCE) and submission (which may be a request under 37 C.F.R. §3.81(b)).

---

2 See also 35 U.S.C. § 152.

Inquiries concerning this decision should be directed to at (571) 272-3225. 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.

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

16 DEC 2002
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WASHINGTON, D.C. 20231
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Donald R. Studebaker
Nixon & Peabody LLP
8180 Greensboro Drive
Suite 800
McLean, VA 22202

In re Application of :
TANAKA et al. :
Application No.: 10/130,712 : DECISION ON PETITION
PCT No.: PCT/JP01/08269 :
Int. Filing Date: 21 September 2001 :
Priority Date: 21 September 2000 :
Attorney Docket No.: 740819-792 :
For: METHOD OF MANUFACTURING
PHOTONIC CRYSTAL

This decision is in response to applicants' "Petition under 37 CFR 1.181 Requesting Withdrawal of the Holding of Abandonment" filed on 31 July 2002 and unsigned communications filed 14 August 2002 and 10 October 2002 requesting the correction of the Official Filing Receipt. No petition fee is required.

BACKGROUND

On 21 September 2001, applicants filed international application no. PCT/JP01/08269 which claimed a priority date of 21 September 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 March 2002. The deadline for entry into the national stage in the United States expired 30 months from the priority date, on 21 March 2003.

On 22 May 2002, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia: the basic national fee; an English translation of the international application; and an executed declaration.

On 26 July 2002, the United States Elected Office mailed a NOTIFICATION OF ABANDONMENT UNDER 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for "failure to provide the copy of the international application by 20 months (37 CFR 1.494(b)(2)."

On 31 July 2002, applicants filed "Petition under 37 CFR 1.181 Requesting Withdrawal of the Holding of Abandonment."

On 07 August 2002, the United States Patent and Trademark mailed WITHDRAWAL OF PREVIOUSLY SENT NOTICE indicating that "the Notice mailed on 7/26/02 was sent in error. Please disregard that Notice."

On 07 August 2002, a Notification of Acceptance was issued identifying the 35 U.S.C. 371(c) date as 22 May 2002. Subsequently, an Official Filing Receipt was issued indicating a "FILING DATE" of 22 May 2002.

On 14 August 2002 and 10 October 2002, applicant filed a request to correct the Official Filing Receipt.

DISCUSSION

A. Petition under 37 CFR 1.181

As stated above, the Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) mailed 26 July 2002 was sent in error and the holding of abandonment has been withdrawn.

B. Request to Correct Official Filing Receipt

The priority data in the filing receipt will be corrected to read as follows:

Foreign Applications:
2000-287528 JP 09/21/2000
2001-006394 JP 01/15/2001.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** as moot and the Notification of Abandonment mailed 26 July 2002 is hereby **VACATED**. The holding of Abandonment is withdrawn.

A corrected filing receipt will be issued indicating the priority information in the manner set forth above.

This application is being returned to the United States/Designated Elected Office for processing in accordance with this decision. Thereafter, the application will then be returned to Group Art Unit 1731.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone 703-308-6314
Fax: 703-308-6459

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.
10/130,751	05/23/2002	Bernhard Bauer	32860-000319/US	9199

30596 7590 05/16/2005

HARNESS, DICKEY & PIERCE, P.L.C.
P.O.BOX 8910
RESTON, VA 20195

EXAMINER	
NGUYEN, DANNY	

ART UNIT	PAPER NUMBER
2836	

DATE MAILED: 05/16/2005

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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Paper No. 31605

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 8910
Reston, VA 20195

APR 25 2005

In re Application of:
Bernhard Bauer
Serial No.: 10/130,751
Filed: May 23, 2002
Attorney Docket No.: **32860-000319/US**

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed November 02, 2004, to withdraw the holding of abandonment in the above-identified application under 37 C.F.R. § 1.181. No fee is required.

The petition is **GRANTED.**

The application was held abandoned for failure to timely file a response to the Office action mailed on October 20, 2003. Although no Notice of Abandonment has been mailed, the application would have gone abandoned by operation of law at midnight on January 20, 2004.

Petitioner asserts that the Office action mailed on October 20, 2003, was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Office action was not received. A copy of the file docket where the Office action would have been entered was also included with the petition.

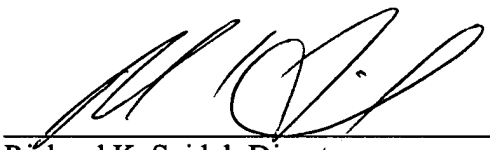
A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition, and the attachment, is sufficient to establish a showing of non-receipt of the Office action mailed October 20, 2003.

For the above stated reason, the petition is granted. Accordingly, there was no Abandonment in fact. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for re-mailing the Office action. The shortened statutory period for response set therein will be reset to run from the date the Office action is re-mailed. Extensions of time are available under 37 C.F.R. § 1.136.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.



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

Office Action Summary	Application No.	Applicant(s)	
	10/130,751	BAUER, BERNHARD	
	Examiner	Art Unit	
	Danny Nguyen	2836	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 May 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 May 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Information Disclosure Statement

1. The PTO-1449 is missing; the applicant is requested to submit the 1449 form.

Drawings

2. Figures 4-5 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 10-13 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Pettit (USPN 3,978,400).

Regarding to claims 1, 3, 18, Pettit discloses a fault current circuit (see fig. 1) comprises a core transformer (differential transformer 18), a control winding (20) wound around the core transformer (18), and a main voltage independent test circuit

(comprises test winding 22, resistor 122, and test push button 118) including a floating test winding (22) wound around the transformer (18).

Regarding to claims 2, 11, Pettit discloses the test circuit includes a device (118 and 94) adapted to short-circuit the test winding.

Regarding to claim 17, Pettit discloses the device is at least one of a test switch (118) and a push button (94).

Regarding to claim 10, Pettit discloses the test winding (22) is wound around symmetrically around the transformer (18) (see fig. 1).

Regarding to claim 12, Pettit discloses a winding (20) wound around the transformer (18) for remote stripping.

Regarding to claim 13, Pettit discloses a method for checking fault current includes core transformer (18) and a control winding (20) wound around the transformer (18) (shown in fig. 1) comprising simulating an occurrence of a fault by a main voltage independent test circuit (including 122, 118, 94) with a floating test winding (22) wound around the transformer (18).

Regarding to claim 16, Pettit disclose the circuit breaker is a different current circuit breaker (fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 4-9, 14, 15, 19-29, are rejected under 35 U.S.C. 103(a) as being unpatentable over Pettit in view of Pearse et al (USPN 5,652,511).

Regarding to claims 4, 5, 19, Pettit discloses the test circuit including a burden which is a resistor (122) connected in series with the test switch (118), the control winding (20). Pettit does not disclose the permeability measured by the control winding. Pearse et al disclose the control winding (such as 84 shown in fig. 17) to measure the core permeability (see col. 11 and col. 12, lines 50-22). It would have been obvious to one having skill in the art to modify the control winding of Pettit with a control winding for measuring core permeability in order to improve ground fault protection.

Regarding to claim 20, Pettit discloses the burden includes a resistor (122) connected in series with the test switch (118).

Regarding to claims 6, 21, 22, Pettit discloses the burden (resistor 122) is at least satisfied by amount (see col. 6, lines 10-16).

Regarding to claim 25, the test winding (22) is wound around symmetrically around the transformer (18) (see fig. 1).

Regarding to claim 26, Pettit discloses the test circuit including a switch (such as 70 and 76) for remote stripping.

Regarding to claim 27, Pettit discloses a winding (20) wound around the transformer (18) for remote stripping.

Regarding to claims 7-9, 15, 23, 24, 29 Pettit discloses the test circuit including burden, which is a resistor (122), but does not disclose continuously acting burden,

which is variable resistor. Pearse et al disclose a variable resistor (3, shown in fig. 4). It would have been obvious to one having skill in the art to modify resistor in the test circuit of Pettit with a variable resistor in order to provide various ground fault magnitudes.

Regarding to claim 14, Pettit discloses short-circuiting (via switch 118) the test winding (22) via connectable burden (122). Pettit does not disclose the permeability measured by the control winding. Pearse et al disclose the control winding (such as 84 shown in fig. 17) to measure the core permeability (see col. 11 and col. 12, lines 50-22). It would have been obvious to one having skill in the art to modify the control winding of Pettit with a control winding for measuring core permeability in order to improve ground fault protection.

Regarding to claim 28, Pettit disclose the circuit breaker is a different current circuit breaker (fig. 1).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danny Nguyen whose telephone number is (703)-305-5988. The examiner can normally be reached on Mon to Fri 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on (703)-308-3119. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9306 for regular communications and (703)-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0956.

DN
October 8, 2003

GREGORY J. TOATLEY, JR.
PRIMARY EXAMINER

26 SEP 200

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ALEXANDRIA, VA 22313-1450
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Albin H. Gess
SNELL & WILMER
1920 Main Street, Suite 1200
Irvine, California 922614-7230

In re Application of
KING, Charles, Edmund, et al..
U.S. Application No.: 10/130,764
PCT No.: PCT/GB00/04467
International Filing Date: 23 November 2000
Priority Date: 23 November 1999
Attorney's Docket No.: GIL4-BR75
For: GAS SENSORS

DECISION ON PETITION

This decision is issued in response to applicants' "Petition To Revive Abandoned Application" filed by facsimile on 05 August 2002 and treated herein as a petition under 37 CFR 1.182 (see discussion below). Applicant will be charged the required petition fee.

BACKGROUND

On 23 November 2000, applicants filed international application PCT/GB00/04467 which claimed a priority date of 23 November 1999 and which designated the United States. On 31 May 2001, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 13 June 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., 23 May 2002.

On 21 May 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.

On 02 August 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date was required.

On 20 August 2002, applicants filed a "Transmittal Of Missing Parts Of Application" accompanied by an executed declaration and the $130 surcharge payment. However, the caption of the "Transmittal Of Missing Parts Of Application" incorrectly identified the application to which the response was directed (listing application number 10/130,774 instead of 10/130,764). Because of this error, the 20 August 2002 filing was directed to application number 10/130,774.

On 08 May 2003, the DO/EO/US mailed a Notification Of Abandonment, indicating that the application was abandoned for failure to respond to the Notification Of Missing Requirements.

On 05 August 2003, applicants filed by facsimile a copy of the Petition To Revive Abandoned Application considered herein, with accompanying materials (based on applicant's statements and the copy of the stamped return postcard accompanying this submission, it is concluded that this petition was originally filed on 23 May 2003). The petition is accompanied by copies of the materials filed 20 August 2002 (but erroneously directed to application number 10/130,774).

DISCUSSION

Based on applicants' statements in the present petition and a review of their contents, it is concluded that the materials filed on 20 August 2002 were intended for the present application file, not application number 10/130,774, to which they were mistakenly directed. Applicants will be charged the $130 petition fee for a petition under 37 CFR 1.182 to correct the error in the application number listed on the 20 August 2002 transmittal letter. Based on this correction, the materials attached to the present petition (including the executed declaration and the $130 surcharge payment) will be treated as having been filed in the present application on 20 August 2002 as a timely and complete response to the Notification Of Missing Requirements mailed 02 August 2002.

The Notification Of Abandonment mailed 08 May 2003, based as it was on applicants' purported failure to file a response to the Notification Of Missing Requirements, is appropriately vacated.

CONCLUSION

Applicants' petition under 37 CFR 1.182 is **GRANTED**. The materials attached to the present petition (including the executed declaration and surcharge payment) will be treated as having been filed in the present application on 20 August 2002.

The Notification Of Abandonment mailed 08 May 2003 is hereby **VACATED**.

Deposit Account No. 19-2814 will be charged the $130 petition fee.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accord with this decision. The 35 U.S.C. 371(c) date is 20 August 2002.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

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5670 WILSHIRE BLVD.
STE. 2100
LOS ANGELES, CA 90036-5679

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APR 2 2 2004

OFFICE OF PETITIONS

In re Application of :
Subhash Pandurang Mali et al :
Application No. 10/130,780 : NOTICE
Filed: May 21, 2002 :
Attorney Docket No. B-4581PCT 619752-0

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.1615.

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

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PATTON BOGGS LLP
8484 WESTPARK DRIVE
SUITE 900
MCLEAN, VA 22102

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SEP 0 5 2006

OFFICE OF PETITIONS

In re Application of

Touraud, et al. :

Application No. 10/130,783 : DECISION ON PETITION

Filed: August 5, 2002 :

Attorney Docket No. 022290.0111PTUS

This is a decision on the petition under 37 CFR 1.137(b), filed July 28, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to file a proper reply in a timely manner to the final Office action mailed January 27, 2006, which set a shortened statutory period for reply of three (3) months from its mailing date. A proper response was not received within the allowable period. The application became abandoned on April 28, 2006.

The Request for Continued Examination filed July 28, 2006, is noted and made of record.

The request for an extension of time within the third month, filed July 28, 2006, is noted but cannot be granted as the request was made outside the maximum statutory period set for reply to the final Office action. It is further noted that the extension of time is not necessary because the application was already in an abandoned status at the time the request was made. The amount of $1,050.00 will be refunded, in due course.

The application is being forwarded to Technology Center 1600, GAU 1615 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

10 NOV 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Striker, Striker & Stenby
103 East Neck Road
Huntington, NY 11743

In re Application of	:	
Braun et al.	:	
Application No. 10/130,806	:	DECISION
PCT No.: PCT/DE01/03629	:	
Int. Filing Date: 21 September 2001	:	ON
Priority Date: 21 September 2000	:	
Atty. Docket No.: 2138	:	PETITION
For: Starting Device	:	

This is in response to the "Petition To Withdraw Holding Of Abandonment" filed on 09 June 2004.

BACKGROUND

This international application was filed on 21 September 2001, claimed an earliest priority date of 21 September 2000, and designated the U.S. The International Bureau transmitted a copy of the published international application to the USPTO on 28 March 2002. The 30 month time period for paying the basic national fee in the United States expired at midnight on 21 March 2003. On 21 May 2002, applicant filed *inter alia* the basic national fee.

On 29 July 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an executed oath or declaration of the inventors and a surcharge under 37 CFR 1.492(e).

On 14 May 2004, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Form PCT/DO/EO/905 mailed on 29 July 2002.

DISCUSSION

Counsel requests withdrawal of the holding of abandonment because "counsel for the applicant never received the Notification of Missing Requirements mailed on July 29, 2002." As explained in MPEP 711.03(c), and following *Delgar v. Schuyler, 172 USPQ 513 (D.D.C. 1971),* an adequate showing of non-receipt of papers mailed to applicant by the Office must include (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where

the non-received Office action would have been entered had it been received (the docket records must also be referenced in petitioner's statement). A review of the totality of evidence now of record establishes that, within the practice under MPEP 711.03(c), petitioner has satisfied requirements (1) and (2).

With respect to requirement (3), counsel has provided a "copy of the office docket page for" September 28, 2002. Counsel argues that "If counsel for the applicant had received the Notification of Missing Requirements, it would have been noted in the office docket book for the day before, namely, Saturday, September 28, 2002." Counsel has provided a copy of a docket record corresponding to this day. As such, requirement (3) has been satisfied.

DECISION

The petition is **GRANTED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed on 14 May 2004 is hereby **VACATED**.

This application is being forwarded to the National Stage Processing Branch for further processing, including the preparation and mailing of a new Notification of Missing Requirements (Form PCT/DO/EO/905).

Leonard Smith
PCT Legal Examiner
PCT Legal Office

George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (571) 272-3283
Fax: (571) 273-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

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PFIZER INC.
PATENT DEPARTMENT
10777 SCIENCE CENTER DRIVE
SAN DIEGO CA 92121

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JUN 28 2005

OFFICE OF PETITIONS

In re Application of	:	
Barvian et al	:	
Application No. 10/130,843	:	DECISION GRANTING PETITION
Filed: May 21, 2002	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. A0000018-01-RG	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 4, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an 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 August 19, 2004, is accepted as having been unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $1,020 extension of time submitted with the petition on April 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.

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

This matter is being referred to Technology Center AU 1624.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

#13

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MAILED
FROM DIRECTORS OFFICE

AUG 17 2004

TECHNOLOGY CENTER 3600

Fulbright & Jaworski, LLP
666 Fifth Ave
New York, NY 10103-3198

In re Application of :
Klaus Redecker et al. :
Application No. 10/130,885 :
Filed: August 26, 2002 :
For: IGNITION MEANS FOR PROPELLANT POWDERS :

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicants' petition to withdrawal the holding of abandonment filed on July 23, 2004.

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

☒ Postcard receipt being dated March 3, 2004.

☐ USPTO return facsimile receipt dated _____, which references the application by serial number and the amendment that was filed on that date.

☐ Certificate of Mailing/Transmission signed on _____. and supported by a statement under 37 C.F.R. 1.8(b)(3).

☐ Hand Delivery Receipt of the specific documents submitted dated _____.

☐ Certificate of Transmission of CPA under 37 C.F.R. 1.6 filed on _____.

☐ Express Mail Receipt under 37 C.F.R. 1.10 dated _____.

This application is being forwarded to the Supervisory Legal Instruments Examiner for entry of the response filed with the petition, then to the examiner for prompt action on the response.

SNM/vdb: 8/11/04

STEVEN N. MEYERS
SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 3600

F 3 JAN 2005

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United States Patent and Trademark Office
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Robert J. Kapalka
Tyco Technology Resources
4550 New Linden Hill Road, Suite 450
Wilmington, Delaware 19808

In re Application of	:	
KRAH, et al.	:	
U.S. Application No.: 10/130,887	:	DECISION ON PETITION
PCT No.: PCT/IB00/00521	:	
Int. Filing Date: 26 April 2000	:	UNDER 37 CFR 1.10
Priority Date: 28 April 1999	:	
Attorney Docket No.: 991739	:	
For: PROCESS FOR FIXING A FERRULE TO AN OPTICAL WAVEGUIDE	:	

This decision is in response to applicant's "Petition Under 37 C.F.R. 1.10(e)" filed 17 June 2002 in the United States Patent and Trademark Office (USPTO).

On 26 April 2000, applicant filed international application PCT/IB00/00521. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 October 2001. The thirty-month period for paying the basic national fee in the United States expired at midnight on 28 October 2001.

On 24 October 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 17 June 2002, applicant filed the present petition under 37 CFR 1.10(e).

A review of USPTO records finds that the filing of 24 October 2001 was received and assigned serial number 10/130,887. In addition, an executed oath or declaration of the inventors was received on 03 September 2002. As such, the present petition is **DISMISSED as moot**.

This application is being returned to the United States Designated/Elected Office (US/DO/EO) for continued processing.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: 571-272-3294
Fax: 571-273-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

Mail Date: 04/21/2010

Applicant	: Panu Suontausta	: DECISION ON REQUEST FOR
Patent Number	: 7583680	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/130,894	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 07/16/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1645** 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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HEDMAN & COSTIGAN
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

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AUG 23 2006

OFFICE OF PETITIONS

In re Application of :
Christophe Thurieau et al :
Application No. 10/130,924 : ON PETITION
Filed: May 23, 2002 :
Attorney Docket No. 427.063 :

This is a decision on the petition, filed January 5, 2006, under 37 CFR 1.313(c) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED**.

37 CFR 1.313(c) provides that:

Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:
(1) Unpatentability of one of more claims, which petition must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(2) Consideration of a submission pursuant to 37 CFR 1.114; or
(3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

See Changes to Application Examination and Provisional Application Practice, Interim Rule, 65 Fed. Reg. 14865, 14873 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office 47, 54 (Apr. 11, 2000).

The petition is not accompanied by any of the above.

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

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop PETITION
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

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

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of :
Kensaku Kagechi, et al. :
Application No. 10/130,925 : ON PETITION
Filed: May 23, 2002 :
Attorney Docket No.: 70551-57669 :
:

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 7, 2005, in the above-identified application, cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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

The application is being referred to Technology Center AU 2625 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).

31 DEC 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

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BASF CORPORATION
ANNE GERRY SABOURIN
26701 TELEGRAPH ROAD
SOUTHFIELD, MI 48034-2442

In re Application of :
BAUMGART, Hubert, et al. :
U.S. Application No.: 10/130,934 : DECISION
PCT No.: PCT/EP00/11959 :
International Filing Date: 29 November 2000 :
Priority Date: 22 December 1999 :
Attorney's Docket No.: IN-5589 :
For: SUBSTANCE MIXTURE WHICH CAN BE CURED THERMALLY AND BY USING ACTINIC RADIATIONS AND THE USE THEREOF :

This decision is issued in response to the "Completion Of Filing Requirements Under 35 U.S.C. 371" filed 19 June 2002 (treated herein as a request under 37 CFR 1.497(d) for correction of inventorship) and the "Communication Regarding Notice To File Missing Parts Of Application" filed 30 September 2002 (treated herein as a petition under 37 CFR 1.181 to confirm the previous filing of the declaration). Applicants have been charged the required processing fee for the request under 37 CFR 1.497(d). No petition fee is required for the petition under 37 CFR 1.181.

BACKGROUND

On 29 November 2000, applicants filed international application PCT/EP00/11959 which claimed a priority date of 22 December 1999 and which designated the United States. On 28 June 2001, a copy of the international application was communicated to the United States Patent and Trademark Office ("USPTO") by the International Bureau ("IB").

On 29 June 2001, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of the basic national fee was extended to expire thirty months from the priority date, i.e., 22 June 2002.

On 23 May 2002, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 19 June 2002, applicants filed the "Completion Of Filing Requirements Under 35 U.S.C. 371" treated herein as a request under 37 CFR 1.497(d) for correction of inventorship. The submission included: (1) a declaration executed by the four inventors identified on the published international application and by a fifth inventor, Reinhold Schwalm; (2) a "Statement Under 37 CFR 3.73(b)," with accompanying assignment, establishing the right of the assignee BASF to take action herein; (3) an "Amendment, Petition And Fee To Delete And/or Add To Original, Erroneously Named Or Not Named Inventor(s) In - Nonprovisional Application - Declaration" [hereinafter "Petition"] requesting the addition of Dr. Schwalm as an inventor; and (4) a "Statement Under 37 CFR 1.497(d)(1)" executed by Dr. Schwalm.

On 09 August 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements indicating that an oath or declaration in compliance with 37 CFR 1.497 was required.

On 02 July 2002, applicants filed the "Communication Regarding Notice To File Missing Parts Of Application" treated herein as a petition under 37 CFR 1.181 to confirm the previous filing of the declaration. The submission was accompanied by a copy of the declaration filed on 19 June 2002.

DISCUSSION

A. Request To Correct Inventorship

In addition to the four inventors identified on this international application, the declaration filed by applicants on 19 June 2002 identifies an additional inventor, Reinhold Schwalm.

Where, as here, the inventorship in the national stage declaration is not consistent with the inventorship in the international application, applicants must correct the inventorship pursuant to 37 CFR 1.497(d).

37 CFR 1.497(d) states:

> (d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by:
>
> > (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;
> >
> > (2) The processing fee set forth in § 1.17(i); and
> >
> > (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignees (see § 3.73(b) of this chapter).

Applicants' 19 June 2002 submission satisfies the requirements of 37 CFR 1.497(d). Accordingly, applicants request is appropriately granted, and Reinhold Schwalm is added as an inventor on this application. Based on this addition, the declaration filed on 19 June 2002 is now acceptable under 37 CFR 1.497.

B. Petition Under 37 CFR 1.181

On 30 September 2002, applicants filed the "Communication Regarding Notice To File Missing Parts Of Application," which is here treated as a petition under 37 CFR 1.181 to confirm the 19 June 2002 filing of the inventor's declaration. The declaration originally filed on 19 June 2002 is present in the application file and bears a 19 June 2002 receipt stamp. Accordingly, the declaration is treated as having been filed on 19 June 2002, and the petition is moot.[1]

---

[1] It is noted that the "Communication Regarding Notice To File Missing Parts Of Application" refers to submission of the declaration on "July 1, 1998." Since the international application was not filed until 29 November 2000, it is presumed that the 1998 date listed is a typographical error and that the 19 June 2002 receipt date is correct. If this is not the case, applicant should submit a response indicating the file date for the declaration and evidence of such filing date (i.e., stamped return postcard).

Because the declaration herein was filed on 19 June 2002, the Notification Of Missing Requirements mailed 09 August 2002, based as it was on applicants' purported failure to file a declaration, is hereby appropriately vacated.

CONCLUSION

The request under 37 CFR 1.497(d) to add Reinhold Schwalm as an inventor herein is **GRANTED**. Dr. Reinhold Schwalm is added as an inventor. Based on this addition, the declaration filed on 19 June 2002 (which includes Dr. Schwalm) is accepted under 37 CFR 1.497.

Applicants petition under 37 CFR 1.181 to confirm the previous filing of the declaration is **MOOT**.

The Notification Of Missing Requirements mailed 09 August 2002 is hereby **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision. The 35 U.S.C. 371 date is 19 June 2002.

Boris Milef
PCT Legal Examiner
PCT Legal Office

RMR/BM:rmr

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

SPE: M. Woodward

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/14/07

TO SPE OF : ART UNIT 1615

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/130,940 Patent No.: 6958157

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: THIS DID NOT REQUIRE AN EXAMINER. IT IS AN ADDRESS CORRECTION.

M. Woodward — SPE

1615 — Art Unit

24 SEP 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Thomas E. Ciotti
Morrison & Foerster
755 Page Mill Road
Palo Alto, California 94304-1018

In re Application of	:	
Tsutomu SADA et al	:	
Application No.: 10/130,961	:	DECISION ON
PCT No.: PCT/JP00/08142	:	
Int. Filing Date: 17 November 2000	:	
Priority Date: 19 November 1999	:	PETITION UNDER
Attorney's Docket No.: 259052003000	:	
For: POLYMER BATTERY	:	37 CFR 1.137(b)

This is in response to "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. §1.137(b)" filed on 21 May 2002.

BACKGROUND

On 17 November 2000, this international application was filed, which claimed an earliest priority date of 19 November 1999.

A Demand was filed on 23 May 2001 for the above international application. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 19 May 2002. This international application became abandoned with respect to the United States at midnight on 19 May 2002 for failure pay the basic national fee.

On 19 May 2002, applicant filed in the United States Patent and Trademark Office (PTO) the instant petition, and a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, the U.S. basic national fee. No executed oath or declaration accompanied the above papers.

DISCUSSION

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

Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

DECISION

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

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office

Tel: (703) 308-6312
Fax: (703) 308-6459

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Paper No.

K&L Gates LLP
STATE STREET FINANCIAL CENTER
One Lincoln Street
BOSTON MA 02111-2950

MAILED

JUN 15 2009

OFFICE OF PETITIONS

In re Application of	:	
Klinken et al.	:	
Application No. 10/130,971	:	ON APPLICATION FOR
Filed: September 26, 2002	:	PATENT TERM ADJUSTMENT
Atty Docket No. GFH-004	:	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) AND 37 C.F.R. § 1.705(b)," filed January 16, 2009. Applicants submit that the correct patent term adjustment as of the mailing of the notice of allowance is ninety-seven (97) days, not seventy-five (75) days.

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

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is ELEVEN (11) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On October 17, 2008, 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 75 days. Applicants dispute the reduction of 54 days, pursuant to § 1.704(b), entered for applicants taking until April 10, 2006 to file a response to the final Office action mailed November 15, 2005. Applicants state that the applicant delay should have been calculated based on the

date the final Office action was re-mailed and the period for reply restarted, December 9, 2005. Accordingly, applicants contend that this period of reduction should be 32 days, not 54 days.

37 CFR 1.704(b) provides that:

> With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

In this instance, applicants are correct that any delay should be calculated based on the date of the Restarted Response Period and not based on the date of the mailing of the original Office action. As their response was received outside of three months of the Letter Restarting Period for Response (the re-mailed Office action) by 32 days, the applicant delay within the meaning of §1.704(b) has been corrected from 54 to 32 days.

However, a review of the record also reveals a further basis for entry of a period of reduction. 37 CFR 1.704(c) provides, in pertinent part, that:

> Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction

of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

> (8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

In this instance, after the filing of a response on June 30, 2008, on September 24, 2008, applicants filed an Information Disclosure Statement (IDS). The record supports a conclusion that the IDS was not expressly requested by the examiner. Further, the IDS did not include a § 1.704(d) statement. Accordingly, the PTA should have been reduced by 86 days, the number of days beginning on the day after the date the initial reply was filed, July 1, 2008, and ending on the date that the supplemental reply or other such paper was filed, September 24, 2008, the date the IDS was filed.

In view thereof, the determination of PTA at the time of the mailing of the notice of allowance is ELEVEN (11) days (350 of Office delay reduced by 339 (54 + 32 + 95 + 17 + 55 + 86) days of applicant delay).

The Office acknowledges submission of the $200.00 fee 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 of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PALM calculation

PTA Calculations for Application: 10/130971			
Application Filing Date:	09/26/2002	PTO Delay (PTO):	350
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	275
Post-Issue Petitions:	0	Total PTA (days):	11
PTO Delay Adjustment:	-64		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
96	06/10/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		86	
95	06/10/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		32	
94	06/10/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	54		
84	10/17/2008	MAIL NOTICE OF ALLOWANCE			
83	10/14/2008	ISSUE REVISION COMPLETED			
82	10/14/2008	DOCUMENT VERIFICATION			
81	10/14/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
80	10/14/2008	EXAMINER'S AMENDMENT COMMUNICATION			
79	10/14/2008	NOTICE OF ALLOWABILITY			
76	09/24/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
75	09/24/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
74	06/30/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
73	07/14/2008	DATE FORWARDED TO EXAMINER			
72	06/30/2008	RESPONSE AFTER NON-FINAL ACTION		55	70
71	06/30/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
70	02/06/2008	MAIL NON-FINAL REJECTION			
69	02/04/2008	NON-FINAL REJECTION			
67	01/23/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
66	12/27/2007	CORRESPONDENCE ADDRESS CHANGE			
65	12/03/2007	DATE FORWARDED TO EXAMINER			
64	10/30/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			

63	12/03/2007	DATE FORWARDED TO EXAMINER			
62	10/30/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		17	57
61	12/03/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
60	12/03/2007	CASE DOCKETED TO EXAMINER IN GAU			
59	10/30/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
58	10/30/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
57	07/13/2007	MAIL FINAL REJECTION (PTOL - 326)			
56	07/09/2007	FINAL REJECTION			
55	11/20/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
54	04/29/2007	DATE FORWARDED TO EXAMINER			
53	04/09/2007	RESPONSE AFTER NON-FINAL ACTION		95	48
52	04/09/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
50	02/13/2007	CASE DOCKETED TO EXAMINER IN GAU			
49.7	11/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	11/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
48	10/04/2006	MAIL NON-FINAL REJECTION			
47	10/02/2006	NON-FINAL REJECTION			
46	07/26/2006	DATE FORWARDED TO EXAMINER			
45	07/17/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
44	07/17/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
43	07/25/2006	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
42	06/01/2006	MAIL RESTRICTION REQUIREMENT			
41	05/30/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
40	04/25/2006	DATE FORWARDED TO EXAMINER			
39	04/10/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		54	28
38	04/25/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
37	04/10/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
35	04/10/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			

34	03/21/2006	MAIL ADVISORY ACTION (PTOL - 303)			
33	03/17/2006	ADVISORY ACTION (PTOL-303)			
32	03/14/2006	DATE FORWARDED TO EXAMINER			
31	03/09/2006	AMENDMENT AFTER FINAL REJECTION			
30	12/09/2005	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
29	12/08/2005	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
28	11/15/2005	MAIL FINAL REJECTION (PTOL - 326)			
27	11/10/2005	FINAL REJECTION			
26	10/01/2005	DATE FORWARDED TO EXAMINER			
25	09/19/2005	RESPONSE AFTER NON-FINAL ACTION		54	23
24	09/19/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	04/27/2005	MAIL NON-FINAL REJECTION			
22	04/18/2005	NON-FINAL REJECTION			
21	03/03/2005	DATE FORWARDED TO EXAMINER			
20	02/10/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
19	02/10/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
18	02/10/2005	WORKFLOW INCOMING AMENDMENT IFW			
17	11/10/2004	MAIL RESTRICTION REQUIREMENT	350		-1
16	11/09/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
15	10/07/2004	CASE DOCKETED TO EXAMINER IN GAU			
14	03/06/2003	MISCELLANEOUS INCOMING LETTER			
13	08/29/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
11	06/27/2003	CASE DOCKETED TO EXAMINER IN GAU			
10	12/12/2002	APPLICATION DISPATCHED FROM OIPE			
9	12/06/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
8	12/03/2002	NOTICE OF DO/EO ACCEPTANCE MAILED			
7	09/26/2002	ADDITIONAL APPLICATION FILING FEES			
5	09/26/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re application of :
Martin Herman Weik, III et al. :
Application No. 10/131,029 :
Filed: April 25, 2002 :
For: PARKING BARRIER WITH ACCIDENT EVENT LOGGING AND SELF-DIAGNOSTIC CONTROL SYSTEM :

DECISION ON PETITION TO VACATE FINAL RESTRICTION REQUIREMENT

This is a decision on the petition, filed December 20, 2005, under 37 CFR §1.181, seeking review of the decision of the primary examiner. Petitioner requests vacating the restriction/election requirement dated February 3, 2004 and to examine of all claims.

The petition is **DENIED**.

A review of the file record reveals in an Office Action dated February 3, 2004, an election/restriction requirement was made between claims 1-30 and claims 51-52. The Examiner indicated that amended claims 1-30 were directed to an invention that is independent or distinct from the invention originally claimed. On June 10, 2004, Applicants filed an Amendment that traversed the election/restriction requirement on its merits. On July 13, 2004, an Advisory Action was mailed which stated that the Amendment filed on June 10, 2005 would not be entered. On August 3, 2005, Applicants filed a Request for Continued Examination, with respect to which the Amendment filed on June 10, 2004 was the submission under 37 CFR §1.114(c). On August 3, 2004, An Office Action was mailed which included an election/restriction requirement indicating that amended claims 1-30 and 53-55 were directed to an invention that is independent or distinct from the invention originally claimed. On December 23, 2004, Applicants filed an Amendment under 37 CFR §1.111, traversing the election/restriction requirement. On March 21, 2005, after a personal interview with the Examiner, Applicants filed a Supplemental Amendment that supplemented the Amendment filed on December 23, 2004. On June 25, 2005, an Office Action was mailed, which made the election/restriction requirement final and withdrew claims 1-30, 53-55, 60 and 62 from consideration.

Petitioners state the outstanding Office Action does not repeat the election/restriction requirement or state that the previous election/restriction requirement is made final. Accordingly, the election/restriction requirement is not proper and the withdrawn claims, i.e., claims 1-30, 53-55, 60 and 62, should be examined on their merits. Is support of Petitioners'

position, reference is made to MPEP §707.07(e), which that a previously made restriction requirement in an Office Action is considered waived or withdrawn unless it is presented in the outstanding Office Action.

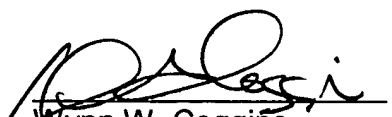
A careful review of the record indicates the Examiner clearly repeated the restriction requirement by original presentation. As noted on pages 4 and 5 of the Office action dated June 22, 2005. It is also clear from the record the restriction requirement was made final.

Petitioners also state the outstanding Office Action does not respond to the substance of all of Applicants' arguments, as required by MPEP §707.07(f). In particular, the outstanding Office Action completely fails to address Applicants' arguments directed to the fact that claims 53-55 are linking claims, linking claim 51 and/or claim 52 with the subject matter of independent claims 1, 12 and 13.

Considering MPEP §809, which addresses linking claims, there are a number of situations which arise in which an application has claims to two or more properly divisible inventions, so that a requirement to restrict the claims of the application to one would be proper, but presented in the same case are one or more claims (generally called "linking" claims) inseparable therefrom and thus linking together the otherwise divisible inventions. Moreover, §809 states, "Linking claims and the inventions they link together are usually either all directed to products or all directed to processes (i.e., a product claim linking properly divisible product inventions, or a process claim linking properly divisible process inventions). The most common types of linking claims which, if allowable, act to prevent restriction between inventions that can otherwise be shown to be divisible, are (A) genus claims linking species claims; and (B) subcombination claims linking plural combinations." Clearly from reviewing the record, no linking claims are present. In particular, there is no genus claims present, which "link" the species of a potential contact sensor and a contact sensor.

It is clear from the Office action dated June 22, 2005, the Examiner fully considered and addressed the arguments submitted by the applicants. It is also determined the election by original presentation requirement is proper because the claims a directed to mutually exclusive sensors.

SUMMARY: The Petition to Vacate the Restriction Requirement and examine all the claims present is **DENIED**.



Wynn W. Coggins
Director
Patent Technology Center 3600
(571) 272-5250

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/131,047	04/25/2002	Shigeo Kittaka	02410286AA	7394

30743 7590 03/24/2004

WHITHAM, CURTIS & CHRISTOFFERSON, P.C.
11491 SUNSET HILLS ROAD
SUITE 340
RESTON, VA 20190

EXAMINER	
PAK, SUNG H	

ART UNIT	PAPER NUMBER
2874	

DATE MAILED: 03/24/2004

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

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10/131047

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER
	0304

DATE MAILED:

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

Commissioner for Patents

DECISION ON PETITION UNDER 37 CFR §1.97 FOR CONSIDERATION OF INFORMATION DISCLOSURE STATEMENT

The petition filed under 37 CFR §1.97(d) for consideration of an information disclosure statement filed after allowance has been:

[ ] GRANTED.

[X] DENIED.

[ ] It was filed after payment of the issue fee. See 37 CFR §1.97(d)(2).

[ ] It was filed after the patent grant.

The petition lacks:

[ ] The required fee under 37 CFR §§1.97(d) and 1.17(i)(1).

[X] A proper certification as specified in 37 CFR §§1.97(d) and 1.97(e).

[X]The information disclosure statement has been placed in the file and made of record but will not be considered by the examiner.

[ ] IDS CONSIDERED.

The examiner has considered the IDS. See accompanying copy of PTO 1449, or Paper No._____.

Rodney Bovernick
Supervisory Patent Examiner
Technology Center 2800

Sung Pak
Patent Examiner
AU 2874

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Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 11

MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MS-LC340
MINNEAPOLIS, MN 55432-5604

COPY MAILED

APR 0 7 2003

OFFICE OF PETITIONS

In re Application of
Stolz et al.
Application No. 10/131,106
Filed: April 22, 2002
Attorney Docket No.
P-10748.00

DECISION ON PETITION

This is a decision on the Petition under 37 CFR 1.182, filed August 5, 2002, to change the order of the names of the inventors. The delay in treating this petition is regretted.

The Petition is **granted**.

The order of the names of the inventors will be changed as follows:

1. Brian T. Stolz

2. Xavier E. Pardo

3. Mary Lee Cole

This application is being returned 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

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HANLEY, FLIGHT & ZIMMERMAN, LLC
20 N. WACKER DRIVE
SUITE 4220
CHICAGO, IL 60606

COPY MAILED

MAR 15 2006

OFFICE OF PETITIONS

In re Application of:	:	
Albert C. Wang	:	
Application No. 10/131,114	:	DECISION ON
Filed: Aptil 24, 2002	:	PETITION
For: PORTABLE COMPUTER HAVING	:	
HIERARCHICAL OPERATING SYSTEM	:	

This is a decision on the petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b), filed January 9, 2006, to revive the above-identified application.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the Office communication, mailed July 28, 2005. The Notice set a shortened statutory period for reply of one (1) months from the mail date of the Notice, and also provided for extensions of time under 37 CFR 1.136(a). No reply having been received, the application became abandoned August 29, 2005. A Notice of Abandonment was mailed December 13, 2005.

With the instant petition, Applicant has filed an Amendment in response to the Office communication.

Having found that all of the requirements for a grantable petition under 37 CFR 1.137(b) have been met, **this petition is hereby granted.**

This application is being returned to Technology Center 2115 for processing of the Amendment, filed January 9, 2006, in due course.

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

Derek L. Woods
Attorney
Office of Petitions

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ZILKA-KOTAB, PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

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MAR 23 2006
OFFICE OF PETITIONS

In re Application of :
Minami et al. :
Application No. 10/131,118 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. NVIDP328/P001317 :

This is a decision on the petition under 37 CFR §1.102(d), filed February 16, 2006, to make the above-identified application special. The petition requests that the above-identified application be made special under the accelerated examination procedure set forth in M.P.E.P. § 708.02, Section II: Infringement.

The petition is **GRANTED.**

A grantable petition to make an application special under 37 CFR §1.102(d) and MPEP §708.02, Section II: Infringement, must be accompanied by the required fee pursuant to 37 CFR 1.17(h) and a statement by the applicant, assignee, or 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.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petition complies with all the above stated requirements. Accordingly, the above-identified application has been accorded "special" status.

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.

This matter is being referred to the Technology Center Art Unit 2616 for expedited prosecution.

David Bucci
Petitions Examiner
Office of Petitions

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

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MAY 23 2008

OFFICE OF PETITIONS

In re Application of
Minami, et al.
Application No. 10/131,118
Filed: April 23, 2002
Attorney Docket No. PU030027
For: GIGABIT ETHERNET ADAPTER

ON PETITION

This is a decision on the petition filed, January 23, 2008, captioned under 37 CFR 1.47(a). The petition will be treated as a petition under CFR 1.183, requesting waiver of 37 CFR 1.63 and 1.67, which requires all of the joint inventors to execute a supplemental declaration.[1]

The petition under 37 CFR 1.183 to waive 37 CFR 1.63 and 1.67 is **DISMISSED**.

The petition under 37 CFR 1.47(a) is **DISMISSED AS MOOT**.

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 1.183 to waive 37 CFR 1.63 and 1.67" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

While this waiver petition is not a petition under 37 CFR 1.47, it is evaluated in much the same way a Rule 47 petition is. Therefore, a grantable petition 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),

[1] Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal or unavailability to sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

(3) a petition fee, and
(4) the last known address of the omitted inventor(s).

This petition lacks item (1).

As to item (1), the applicable statute (35 U.S.C.§ 116) requires that a "diligent effort" have been expended in attempting to find or reach the non-signing inventor. *See* MPEP 409.03(a). Applicants have failed to establish that the non-signing inventor, John Shigeto Minami, has refused to sign the supplemental declaration or cannot be located. The petition states that one package containing the application papers and a supplemental declaration was mailed to Mr. Minami. It is unclear if the package was received by the inventor.

The showing currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate non-signing inventor Minami, such that the declaration can be accepted. Where inability to find or locate a named inventor(s) is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor.

Petitioners have not demonstrated that all efforts were expended in trying to locate inventor non-signing Minami. In this regard, petitioners should conduct an Internet search for the inventor. The results of such search should be made in any future petition for reconsideration. *See* MPEP 409.03(d). Additionally, petitioners should state whether they have access to inventor Minami's personnel records and, if so, what does inspection of the records reveal as to a current address, forwarding address, or an address of the nearest living relative? What does inspection of the phone directories for those address locations reveal?

Petitioners should mail correspondence to the inventor's last known address, **return receipt** and/or forwarding address requested. If a forwarding address is provided, petitioner should then mail a complete copy of the application papers (specification, claims, drawings, oath, etc.) to Mr. Minami's address, return receipt requested, along with a cover letter of instructions which includes a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. If the papers are returned and all other attempts to locate or reach the inventor, e.g., through personnel records, co-workers, E-mail, the Internet or the telephone, etc., continue to fail, then applicant will have established that the inventor cannot be reached after diligent effort or has refused to join in the application. **The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein and should be accompanied by documentary evidence in support of the statement of facts.** It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

If it is concluded by petitioners that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

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

Regarding fees, petitioners submitted $200.00. The current Rule 183 petition fee is $400.00. Accordingly, deposit account no. 50-1351 will be charged the $200.00 balance due.

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

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

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

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

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED

MAY 11 2010

OFFICE OF PETITIONS

In re Application of :
Minami, et al. :
Application No. 10/131,118 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. PU030027 :
For: GIGABIT ETHERNET ADAPTER

This is a decision on (1) the renewed petition, filed December 2, 2009, under CFR 1.183, requesting waiver of 37 CFR 1.63 and 1.67, which requires all of the joint inventors to execute a supplemental declaration and (2) the petition under 37 CFR 1.137(b) to revive the present application.

The petition under 37 CFR 1.183 to waive 37 CFR 1.63 and 1.67 is **GRANTED**.

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

Applicants have established that the non-signing inventor, John Shigeto Minami, cannot be located to execute the supplemental declaration. The supplemental declaration executed by Inventors Uyeshiro, Johnson, and Su which was filed on January 23, 2008 has been accepted on petition. The petition under 37 CFR 1.183 to waive 37 CFR 1.63 and 1.67 is granted.

The above-identified application became abandoned for failure to timely submit a reply within two (2) months of the mailing of the May 23, 2008 decision on petition. No response being received and no extensions of time being obtained, this application became abandoned on July 24, 2008. A Notice of Abandonment was mailed on December 2, 2008.

Applicants have submitted an grantable petition in response to the May 23, 2008 decision on petition, an acceptable statement of the unintentional nature of the delay in responding to the May 23, 2008 decision on petition, and the $,1620.00 petition fee. Therefore, the petition under 37 CFR 1.137(b) is granted.

The above-identified application will be referred to Technology Center AU 2465 for consideration of the supplemental declaration filed on January 23, 2008.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/131,151	04/23/2002	Satoshi Kitamura	SIC-02-011	7091

29863 7590 02/04/2003

DELAND LAW OFFICE
P.O. BOX 69
KLAMATH RIVER, CA 96050-0069

EXAMINER	
WU, DANIEL J	

ART UNIT	PAPER NUMBER
2632	

DATE MAILED: 02/04/2003

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 03

James A. Deland
DELAND LAW OFFICE
P.O. BOX 69
Klamath River, CA 96050

In re Application of:	)	
KITAMURA, SATOSHI	)	
Application No.: 10/131,151	)	DECISION ON PETITIONS UNDER 37
Filing Date: April 23, 2002	)	C.F.R. 1.48(a)
For: ELECTRICAL COMMUNICATION	)	
SYSTEM FOR A BICYCLE	)	

This is a decision on petition to correct inventorship under 37 C.F.R. 1.48(a) by adding one additional inventor, Kouji Oohara, mailed April 06, 2002.

As to the petition under 37 C.F.R. 1.48(a), the applicants provided 1) a petition including a statement from Mr. Oohara that the error in inventorship occurred without deceptive intention on his part; 2) a declaration by the actual inventors; 3) the required fee and 4) the written consent of the assignee. Therefore, the petition under 37 C.F.R. 1.48(a) is **GRANTED**.

The application is forwarded to the Office of Initial Patent Examination for officially recording the corrected inventorship.

AMELIA M. AU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Jeffrey A. Hofsass, SPE
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SAMUEL A. KASSATLY LAW OFFICE
20690 VIEW OAKS WAY
SAN JOSE, CA 95120

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DEC 16 2005

OFFICE OF PETITIONS

In re Application of	:	
Fang-Yi Wang et al	:	
Application No. 10/131,167	:	DECISION GRANTING
Filed: April 23, 2002	:	PETITION
Attorney Docket No. SVL920020021US1	:	

This is a decision on the paper styled "Request To Correct Filing Date" filed September 9, 2002, and resubmitted on November 27, 2005, requesting that the above-identified application be accorded a filing date of April 23, 2002, rather than the presently accorded filing date of April 24, 2002. The petition is properly treated as a petition under 37 CFR 1.10.

The petition is **GRANTED**.

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 April 23, 2002. In support, applicants provided, inter alia, a copy of the Express Mail label, receipt no. ET705671126US. It is noted that the copy of the Express Mail label receipt reveals that the "date-in" entry is not clear; however, it includes a "USPS Coyote STA CA" receipt stamp dated April 23, 2002. The same Express Mail receipt number is found on the utility patent application transmittal accompanying the original application papers located in the official file.

In view of the official notation, in the form of an official USPS stamp, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on April 23, 2002. Accordingly, the instant application is entitled to a filing date of April 23, 2002, and has been so accorded.

The petition is granted.

This matter is being referred to Publishing Division Publishing Division to await a reply to the Notice of Allowance and Fee(s) Due mailed November 7, 2005.

Telephone inquires specific to this matter should be directed to Wan Laymon at (571) 272-3220.

Frances Hicks
Lead 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

HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON DC 20006-1109

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MAR 29 2006

OFFICE OF PETITIONS

In re Application of :
Daniel Dupret et al. :
Application No. 10/131,175 : DECISION ON PETITION
Filed: April 25, 2002 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 58763.000021 :

This is a decision on the petition filed February 8, 2006, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 365(c) for the benefit of prior-filed international PCT applications (Application No. PCT/FR02/01435 and PCT/FR99/01973).

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

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

All requirements having been satisfied, the late claim for priority under 35 U.S.C. §§120 and 365(c) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications 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 applications. In order

for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 1639 for appropriate action on the amendment filed February 8, 2006, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§120 and 365(c) to the prior-filed applications.

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
10/131,175	04/25/2002	1639	1721	58763.000021	15	90	14

CONFIRMATION NO. 7733
CORRECTED FILING RECEIPT
OC000000018396997
OC000000018396997

21967
HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

Date Mailed: 03/28/2006

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Daniel Dupret, Calvisson, FRANCE;
Jean Michel Masson, Toulouse, FRANCE;
Fabrice Lefevre, Nimes, FRANCE;

Assignment For Published Patent Application

Proteus S.A., Nimes, FRANCE

Power of Attorney:

Thomas Scott--27836
Stanislaus Aksman--28562
John Pinkerton--28746
Robert Schulman--31196
Jennifer Albert--32012
Patrrick Doody--35022
Thomas Anderson--37063
J Martinez De Andino--37178
Christopher Campbell--37291
Carl Benson--38378

Domestic Priority data as claimed by applicant

This application is a CON of PCT/IB02/02778 04/25/2002
and is a CIP of 09/840,861 04/25/2001 PAT 6,991,922
and is a CIP of 09/723,316 11/28/2000 PAT 6,951,719
which is a CON of PCT/FR99/01973 08/11/1999
This application 10/131,175
claims benefit of 60/285,998 04/25/2001

Foreign Applications

FRANCE 98/10338 08/12/1998

If Required, Foreign Filing License Granted: 06/17/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/131,175

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Template-mediated, ligation-oriented method of nonrandomly shuffling polynucleotides

Preliminary Class

435

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/131,178	04/25/2002	Seiji Izutani	072312	7578

38834 7590 11/02/2007

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

EXAMINER	
OSELE, MARK A	

ART UNIT	PAPER NUMBER
1734	

MAIL DATE	DELIVERY MODE
11/02/2007	PAPER

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

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

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10131178	4/25/02	IZUTANI ET AL.	072312

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

EXAMINER
Philip C. Tucker

ART UNIT	PAPER
1734	20071029a

DATE MAILED:

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

Commissioner for Patents

PETITION DECISION

Philip C Tucker
SPE
Art Unit: 1734

UNITED STATES 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:

In re application of :
Seiji Izutani et al. : DECISION ON
Serial No. 10/131,178 : PETITION
Filed: April 25, 2002 :
For: METHOD FOR THERMALLY RELEASING ADHEREND AND APPARATUS FOR THERMALLY RELEASING ADHEREND :

This is a response to the PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW HOLDING OF ABANDONMENT filed October 1, 2007. The petition requests that the abandonment, as set forth in the Notice of Abandonment of August 6, 2007, for failure to timely file a proper reply to the decision of the Board of Patent Appeals and Interferences of July 31, 2007, be withdrawn since the period for response as set forth in 37 C.F.R 1.304(a), had not expired

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 record reveals that the application was improperly abandoned, prior to the end of two (2) month period in which applicant has a right to file a response, to the Board of Patent Appeals and Interferences decision.

The application shall be forwarded for processing and consideration of the papers filed October 1, 2007.

The Petition is **GRANTED**.

Philip Tucker
Supervisory Patent Examiner
Technology Center 1700

Sughrue Mion, PLLC.
2100 Pennsylvania Ave, NW.
Washington, DC 20037-3213

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/131,178	04/25/2002	Seiji Izutani	072312	7578

38834 7590 11/07/2007

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

EXAMINER	
OSELE, MARK A	

ART UNIT	PAPER NUMBER
1791	

MAIL DATE	DELIVERY MODE
11/07/2007	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Mailed: 11-7-07

caf

In re application of:	Seiji IZUTANI et al.	:	
Serial No. :	10/131,178	:	DECISION ON
Filed:	April 25, 2002	:	PETITION
For:	METHOD FOR THERMALLY RELEASING ADHEREND AND APPARATUS FOR THERMALLY RELEASING ADHEREND	:	

This is a response to the PETITION UNDER 37 C.F.R. §1.181 FOR WITHDRAWAL OF HOLDING OF ABANDONMENT, filed October 1, 2007. The petition asks that the abandonment, as set forth in the Notice of Abandonment mailed August 6, 2007, be withdrawn since it was premature.

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 record reveals that a Decision by the Board of Patent Appeals and Interferences was rendered on July 31, 2007 affirming the examiner. The notice of abandonment was mailed August 6, 2007 which is before applicants' two month time period for response elapsed.

Accordingly, any holding of abandonment is hereby vacated, and the application has been returned to pending status.

The application shall be forwarded to the examiner for consideration of the RCE and Request for Suspension of Action filed concurrently with the petition.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
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

BC

Mailed: MAY 11 2004

Paper Number:

In re application of :
Hidekazu Okamoto :
Serial No. 10/131,187 : DECISION ON
Filed: April 25, 2002 : PETITION
For: SOLVENT COMPOSITION AND COATING FLUID :
FOR AN OPTICAL RECORDING MEDIUM :

This is a decision on the PETITION UNDER 37 CFR 1.181 TO CONSIDER THE COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE AND TO INDICATE CONSIDERATION OF THE INFORMATION DISCLOSURE STATEMENT OF APRIL 25, 2002. The instant petition under 37 CFR 1.181 was timely filed to formally request the consideration of the enclosed Comments on Statement of Reasons for Allowance. Additionally, it is requested that the office indicate consideration of the information disclosure statement of April 25, 2002 that was previously filed.

DECISION

MPEP 1302.14 infers that "Comments on the Statement of Reasons for Allowance" are considered to be comments from the applicant concerning the agreement or disagreement of the examiner's reasons for allowance statement. The Petition on the grounds to consider Comments on the Statement of Reasons for Allowance cannot be granted, since the Petition does not contain any comments regarding the reasons for allowance. This issue of the present Petition is **DISMISSED**.

As to the Information Disclosure Statement, which was timely filed on April 25, 2002, it has been forwarded to the examiner for prompt consideration and mailed under a separate cover in due course. Accordingly, this issue of the Petition is **GRANTED**.

This Petition is **GRANTED-IN-PART**.

The application is being forwarded to Group Art Unit 1712 for consideration of the IDS of April 25, 2002.

JM Stone

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

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JUL 22 2004

In re Application of	:	
Okamoto, Hidekazu	:	NOTICE OF WITHDRAWAL
Serial No. 10/131,187	:	FROM ISSUE
Filed: April 25, 2002	:	UNDER 37 CFR 1.313(b)
For: SOLVENT COMPOSITION AND COATING FLUID FOR AN OPTICAL RECORDING MEDIUM	:	

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 Vasu Jagannathan (571) 272-1119.

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

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

cc: Allowed Files—Pk3-910

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ALEXANDRIA, VA 22313-1450
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AUG 18 2004

In re Application of	:	
Okamoto, Hidekazu	:	NOTICE OF WITHDRAWAL
Serial No. 10/131,187	:	FROM ISSUE
Filed: April 25, 2002	:	UNDER 37 CFR 1.313(b)
For: SOLVENT COMPOSITION AND COAT-	:	
ING FLUID FOR AN OPTICAL RECORDING	:	
MEDIUM	:	

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 Vasu Jagannathan (571) 272-1119.

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

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

cc: Allowed Files—Pk3-910

UNITED STATES PATENT AND TRADEMARK OFFICE

10,131,187

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

AUG 18 2004

In re Application of Okamoto, Hidekazu Serial No. 10/131,187 Filed: April 25, 2002 For: SOLVENT COMPOSITION AND COATING FLUID FOR AN OPTICAL RECORDING MEDIUM	:	NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(b)

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

The above-identified application is hereby withdrawn from issue.

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

Telephone inquiries should be directed to Vasu Jagannathan (571) 272-1119.

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

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

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cc: Allowed Files—Pk3-910

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1940 DUKE STREET
ALEXANDRIA, VA 22314

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SEP 22 2005

OFFICE OF PETITIONS

In re Application of :
Keiichi Yamaguchi. :
Application No. 10/131,189 : ON PETITION
Filed: April 25, 2002 :
Attorney Docket No.: 222552US2SRD :
:

This is a decision on the petition, filed September 21, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on September 8, 2005, in the above-identified application, cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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

The application is being referred to Technology Center AU 2685 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

AUG 1 8 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

MANELLI DENISON & SELTER PLLC
7th Floor
2000 M Street, N.W.
Washington DC 20036-3307

In re Application of
LUO, WENZHE, et al.
Application No. 10/131,213
Filed: April 25, 2002
For: **ACCURATE GAIN DIRECT MODULATION (KMOD) USING A DUAL-LOOP PLL**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed July 29, 2005 to withdraw holding of abandonment pursuant to 37 C.F.R.§ 1.181(a). No fee is required.

The petition is **GRANTED.**

The application was abandoned for failure to respond in a timely and effective manner to the non-final Office action mailed September 10, 2004. A Notice of Abandonment was mailed on June 17, 2005.

Petitioner asserts that a proper response was timely filed on November 23, 2004. In support of the petition, Petitioner has submitted, a copy of Applicant's reply and a date-stamped receipt evidencing receipt of the response within the United States Patent & Trademark Office on November 23, 2004.

The original correspondence filed was not matched with 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 U.S.PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely filed in the Patent and Trademark Office but not matched with the application file.

In view of the above stated reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The application file will be forwarded to the Technology Center's technical support staff for entering the copy of the response submitted with the petition. From there, the file will be forwarded to the examiner for further examination in due course.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

Thomas F. Woods
Medtronic, Inc., MS LC 340
710 Medtronic Parkway
Minneapolis, MN 55432-5604

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DEC 3 0 2002

OFFICE OF PETITIONS

In re Application of
Ferek-Petric
Application No. 10/131,256
Filed: April 25, 2002
Attorney Docket No. P-9897.00

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 18, 2002, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed May 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 July 31, 2002.

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

Mail Date: 04/20/2010

Applicant	: James D. Muchow	: DECISION ON REQUEST FOR
Patent Number	: 7587465	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/131,275	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/22/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **927** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

Mail Date: 05/17/2010

Applicant : James D. Muchow
Patent Number : 7587465
Issue Date : 09/08/2009
Application No: 10/131,275
Filed : 04/22/2002

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

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

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

The patent term adjustment has been determined to be **962** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (PTA) days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days** from the mail date of this notice, whichever is longer, to file a request for reconsideration of this PTA calculation. See 35 U.S.C. § 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4).

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

Patentee should be aware that in order to preserve the right of review of the USPTO's PTA determination in the United States District Court for the District of Columbia, patentee must ensure that the steps required under 35 U.S.C. § 154 (b)(4) are taken in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. § 154(b)(4).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 3

THE LAW OFFICES OF MIKIO ISHIMARU
1110 SUNNYVALE-SARATOGA ROAD
SUITE A1
SUNNYVALE, CA 94087

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OCT 3 1 2002

OFFICE OF PETITIONS

In re Application of :
Lowell :
Application No. 10/131,336 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No.1016-015 :
Title of Invention: 3-D SPIRAL :
STACKED INDUCTOR ON SEMICONDUCTOR
MATERIAL

This is a decision on the petition filed October 2, 2002, requesting, the specification of "3-D SPIRAL STACKED INDUCTOR ON SEMICONDUCTOR MATERIAL" be entered in the above application and the filing date of April 23, 2002 be maintained for the above-identified application.

The application was filed on April 23, 2002. However, on September 3, 2002, petitioner received a phone call from Examiner Junghwa M. Im and through the course of conversation it was discovered that the incorrect specification had been filed in the above-identified application. Instead of the specification of "3-D SPIRAL STACKED INDUCTOR ON SEMICONDUCTOR MATERIAL" the above identified application had the specification of "Parallel Spiral Stacked Inductor On Semiconductor Material" (application 10/131,334).

The filing date of a nonprovisional application for patent is the date upon which the specification and any required drawings are received in the Patent and Trademark Office. *See*, 35 U.S.C. 111(a)(2)(A). The Patent and Trademark Office file is the official record of the papers originally filed in this application. A review of the file confirms the specification for "3-D SPIRAL STACKED INDUCTOR ON SEMICONDUCTOR MATERIAL" was not present on April 23, 2002.

Petitioner cites In re Wofensperger, 302 F.2d 950, 133 USPQ 537 (CCPA 1962) to stand for the premise that drawings alone may provide the basis for subsequent amendments to the specification without producing prohibitory new matter. However, the facts presented in this case can be distinguished because petitioner is not seeking to amend the specification. Petitioner is seeking to enter a specification and claims that were not present upon the filing of the above-identified application.

Accordingly, the specification and claims for "3-D SPIRAL STACKED INDUCTOR ON SEMICONDUCTOR MATERIAL" will not be entered in the above-identified application with the filing date of April 23, 2002. If petitioner desires to have the specification and claims submitted on October 2, 2002 entered for the above-identified application which would change the filing date of this application to October 2, 2002, petitioner will need to notify the Office.

As it currently stands this application retains the filing date of April 23, 2002 which includes the specification and claims of Parallel Spiral Stacked Inductor On Semiconductor Material.

Any request for reconsideration of this decision must be filed within TWO MONTHS from the mailing date of this decision in order to be considered timely. Extensions of time are governed by 37 CFR 1.136(a).

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

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

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

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this matter should 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

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

THE LAW OFFICES OF MIKIO ISHIMARU
1110 SUNNYVALE-SARATOGA ROAD
SUITE A1
SUNNYVALE, CA 94087

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MAR 1 4 2003

OFFICE OF PETITIONS

In re Application of
Lowell
Application No. 10/131,336
Filed: April 23, 2002
Attorney Docket No.1016-015
Title of Invention: 3-D SPIRAL STACKED INDUCTOR ON SEMICONDUCTOR MATERIAL

ON PETITION

This is a decision on the renewed petition filed February 25, 2003, requesting, the specification of "3-D SPIRAL STACKED INDUCTOR ON SEMICONDUCTOR MATERIAL" be entered in the above application and have accorded the later filing date of September 4, 2002 as opposed to the current filing date of April 23, 2002.

The application was filed on April 23, 2002. However, on September 3, 2002, petitioner received a phone call from Examiner Junghwa M. Im and through the course of conversation it was discovered that the incorrect specification had been filed in the above-identified application. Instead of the specification of "3-D SPIRAL STACKED INDUCTOR ON SEMICONDUCTOR MATERIAL" the above identified application had the specification of "Parallel Spiral Stacked Inductor On Semiconductor Material" (application 10/131,334). A petition filed under 37 CFR 1.53 requesting entry of the specification while maintaining the April 23, 2002 filing date was dismissed on October 31, 2002.

The filing date of a nonprovisional application for patent is the date upon which the specification and any required drawings are received in the Patent and Trademark Office. *See*, 35 U.S.C. 111(a)(2)(A). The Patent and Trademark Office file is the official record of the papers originally filed in this application. A review of the file indicates a copy of the specification was faxed to the Patent and Trademark Office on September 4, 2002.

The petition is **granted**.

Pursuant to petitioner's request deposit account 50-0374 has been charged a two month extension of time fee of $410.00.

The application will be returned to the Office of Initial Patent Examination for further processing with a **filing date of September 4, 2002**, using the specification supplied on September 4, 2002.

Telephone inquiries concerning this matter should 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
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HOWARD J. GREENWALD P.C.
349 W. COMMERCIAL STREET
SUITE 2490
EAST ROCHESTER, NY 14445-2408

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MAR 14 2006

OFFICE OF PETITIONS

In re Application of	:	
Patrick R. Connelly et al	:	DECISION ON PETITION
Application No. 10/131,361	:	TO WITHDRAW
Filed: April 24, 2002	:	FROM RECORD
Attorney Docket No. 034405-008	:	

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 5, 2005.

The request 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 of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.136(b) is moot.

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

This matter is being referred to Technology Center AU 1651.

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

Amelia Au
Petitions Examiner
Office of Petitions

cc: BUCHANAN INGERSOLL PC
(INCLUDING BURNS DOANE SWECKER & MATHIS)
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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R. ALAN BURNETT
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
SEVENTH FLOOR
12400 WILSHIRE BOOULEVARD
LOS ANGELES, CA 90025-1026

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AUG 2 1 2006

OFFICE OF PETITIONS

In re Application of :
Harb, et al. :
Application No. 10/131,369 : DECISION ON PETITION
Filed: April 23, 2002 : TO WITHDRAW
Attorney Docket No. 005306.P079 : FROM RECORD
:

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

The request is **NOT APPROVED**.

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

The request cannot be approved because no reasons for withdrawal have been provided. The Office cannot, at this time, determine whether practitioner's request is one of the mandatory or permissive reasons enumerated in 37 CFR 10.40. Any subsequent requests must include reasons for withdrawal. Please note that there is a space provided for on PTO/SB/83 (Request to Withdraw as Attorney or Agent) to supply practitioner's reasons.

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

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

Amelia Au
Petitions Examiner
Office of Petitions

cc: SAM CAMPBELL
CAMPBELL, STEPHENSON ASOCOLESE, LLP
4807 SPICEWOOD SPRING 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
Alexandria, VA 22313-1450
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SHERIDAN ROSS, PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

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JUL 0 5 2006

OFFICE OF PETITIONS

In re Application of :
William E. Lynn :
Application No. 10/131,387 : ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. 4121-7 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 14, 2005, to revive the above-identified application.

The application became abandoned for failure to timely submit the issue fee and publication fee.

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

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $1,400 for payment of the issue fee and $300 for payment of the Publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

Since finance records show that petitioner previously submitted $1,400 for payment of the issue fee and $300 for payment of the publication fee on November 25, 2005, the duplicate payment of the issue fee and publication fee submitted on March 14, 2006 will be refunded to petitioner's deposit account.

The application file is being referred to the Publishing Division to be processed into a patent.

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

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

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JUL 0 5 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Sumiyo Yoneoka et al :
Application No. 10/131,397 :
Filed: April 25, 2002 :
Attorney Docket No. 0051-0179P-SP :

This is a decision on the petition under 37 CFR 1.313 (c)(1-3), filed July 1, 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 March 16, 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 3727 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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 1, 2008

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No 10/131401patent no714705

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: _____

Mark Bell
SPE

2624
Art Unit

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

NOV 22 2004

Levisohn, Berger & Langsam, L.L.P.
805 Third Avenue
19th Floor
New York, NY 10022

Paper No.

In re Application of	:	DECISION ON PETITION
Thomas C. Page	:	TO WITHDRAW
Serial No. : 10/131,407	:	HOLDING OF
Filed : April 22, 2002	:	ABANDONMENT
For : Device and Method for Monitoring Respiration	:	

This is a decision on petitioner's request filed July 15, 2004, to review the holding of abandonment mailed June 24, 2004, for failure to pay the issue fee as required in the Notice of Allowability and the Notice of Allowance and Fee(s) Due mailed February 4, 2004. The basis for the request is that applicant did not receive the communication mailed February 4, 2004. There is no fee required for this petition.

In order to overcome the presumption of delivery of an Office action, a practitioner must submit the following: (1) a statement from the practitioner stating that the Office action was not received by practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. See 1156 OG 53.

The request filed July 15, 2004 includes all the above elements. The request is therefore GRANTED. Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner for the mailing of a new Notice of Allowance and Fee(s) Due with a copy of the Notice of Allowability that was mailed February 4, 2004.

Summary: Holding of Abandonment Withdrawn.

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

ak/10/27/04

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gm

Mailed: 1-16-07

In re Application of
Richard B. Cass et al.
Serial No. 10/131,423
Filed: April 24, 2002
For: METHOD FOR PRODUCING REFRACTORY FILAMENTS

DECISION
GRANTING
PETITION

This is a decision on the July 31, 2006, "Petition for Withdraw of Notice of Abandonment and for Supervisory Review of the File History" requesting withdrawal of the abandonment issued on May 24, 2006.

The petition is before the Director of Technology Center 1700 for consideration.

The petition is **GRANTED** for the reasons below.

BACKGROUND

A non-final Office action was mailed January 28, 2005. An interview was conducted March 24, 2005, and was followed by applicant's response on April 1, 2005. A supplemental response was filed on April 5, 2005.

On April 19, 2005, the examiner issued a miscellaneous communication which held the April 1, 2005 reply to be non-responsive, and which set a new period for response. The examiner indicated the claims as amended were drawn to a non-elected invention, specifically that they were directed to a viscose process and not a lyocell process.

Applicant responded in a May 19, 2005 reply which argued that the claims presented April 1, 2005 were in fact directed to the elected invention.

On June 2, 2005, the examiner again held the claims to be directed to a non-elected invention in a miscellaneous communication which did NOT set a new period for response.

On June 24, 2005 applicant submitted another amendment. While not agreeing with the examiner's characterization of the claims submitted April 1, 2005 as being directed to a viscose process, applicant nevertheless submitted an amendment to the claims "to make it abundantly clear that the claims cover the lyocell process and not the viscose process."

The June 24, 2005 response was held to be non-compliant under 35 USC 1.121 for technical grounds related to the form of the amendment. A Notice of Non-Compliant Amendment was mailed on August 3, 2005 informing applicant of these technical deficiencies. The Notice set a new period for response.

Applicant responded to the Notice on September 1, 2005, with a corrected amendment addressing the items noted therein.

On October 21, 2005, the examiner held the responses of September 1, 2005 and June 24, 2005 to be non-responsive, this time because they allegedly did not specifically point out how the language of the claims patentably distinguished over the references as required under 37 CFR 1.111(b), and allegedly did not point out the patentable novelty of the claims or show how the amendments avoided the references as required by 37 CFR 1.111(c). The October 21, 2005 communication was the first in which the examiner held any of the response(s) to be insufficient under 37 CFR 1.111.

According to petitioner, the examiner's supervisor was contacted on February 24, 2006, and applicant requested that he review the file. Rather to applicant's surprise, a Notice of Abandonment was mailed on May 24, 2006.

The instant petition was received on July 31, 2006, with a certificate of mailing dated July 24, 2006, making the petition timely as being filed within two months of the action complained of, that being the abandonment of the application.

DECISION

Since the most recent action on the merits of January 28, 2005, applicant has filed five separate responses (April 1, April 5, May 19, June 24, and September 1). The responses of April 1 and April 5 contained specific arguments as to how the language of the claims as then written allegedly defined over the references. Specifically, applicant argued, *inter alia*, that the cellulose acetate in the applied reference was not within the meaning of the claim term 'regenerated cellulose.' Applicant also discussed the meaning of "lyocell process" and pointed out that a fiber produced from a lyocell process is also a regenerated cellulose fiber. Without treating the merits of applicant's arguments, it is clear that the responses of Apri11, 2005 and April 5, 2005 are complete responses under 35 USC 1.111(b) and 1.111(c).

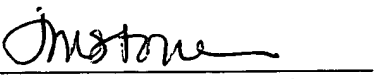
At that point in prosecution however, discussion between the examiner and applicant turned away from the merits of the invention relative to the art, and became focused on whether the claims were within the scope of the elected species. (Applicant did not request review of the examiner's decisions on that topic.) In an attempt to draft claims which the examiner would deem to be within the elected species, applicant amended the claims in the responses June 24, 2005 and September 1, 2005, the June 24, 2005 response being non-compliant for technical reasons. Included with the June 24, 2005 response were remarks which argued that the claims as amended were within the scope of the elected species. However, the June 24 and September 1 responses did not specifically argue the patentability of the claims as amended.

The examiner's October 21, 2005 communication indicated that the June 24 and September 1 replies were non-responsive as lacking appropriate arguments under 37 CR 1.111(b) and (c). However, the examiner apparently failed to consider the remarks filed April 1, 2005. The totality of applicant's responses must be considered in determining whether the requirements of 37 CFR 1.111 have been met. While the claims were somewhat amended in the interval between April 1, 2005 and September 1, 2005, the April 1 remarks are still germane to the instant claims, particularly as concerns the meaning of 'lyocell process' and whether or not the cellulose acetate fiber of the applied references would be considered to meet the claim term 'filament of lyocell.'

Therefore, any reasonable review of the record leads to the conclusion that applicant has adequately complied with the requirements of 37 CFR 1.111(b) and (c), and that the examiner's communication of October 21, 2005 holding the replies non-responsive was in error. To abandon the application under these circumstances would be manifestly unjust. Applicant is, however, encouraged to conduct all future business with the Office in writing within such time periods as may be set, to avoid situations such as the present one.

Applicant also requests that the examiner's supervisor review the file history of the application. However, no specific remedy is sought for any particular action or requirement on the part of the examiner, and therefore supervisory authority has been exercised with respect to the action discussed above.

Accordingly, the petition for withdrawal of abandonment is **GRANTED**. The application is hereby returned to pending status. The file is being forward to the examiner for prompt consideration of the applicant's response.



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

SYNNESTVEDT & LECHNER LLP
1101 Market Street
2600 Aramark Tower
Philadelphia PA 19107-2950

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CUMMINGS & MEHLER,LTD.
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CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of :
Junya Maruyama et al :
Application No. 10/131,435 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. (SEL) 0553-0313 :

This is a decision on the petition, filed May 17, 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).

P titioner is advised that the issue fee paid on February 12, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

After receipt of the file in the Office of Petitions, the application will be forwarded to Technology Center AU 2829 for processing of the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

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JUN 16 2004

Medtronic, Inc.
710 Medtronic Parkway NE
MS-LC340
Minneapolis, MN 55432-5604

Paper No.

In re Application of
Stanten C. Spear et al
Serial No. : 10/131,436
Filed : April 25, 2002
For : System and Method for Positioning Implantable Medical Devices Within Coronary Veins

: DECISION ON PETITION
: TO WITHDRAW
: HOLDING OF
: ABANDONMENT
:

This is a decision on petitioner's request filed via facsimile transmission on June 1, 2004, to review the holding of abandonment mailed May 18, 2004 for failure to respond to the Office action mailed October 1, 2003. There is no fee required for this petition.

In support of the request, petitioner has submitted a copy of a response to a restriction requirement that was submitted via facsimile transmission on October 31, 2003. The response included a certificate of facsimile transmission dated October 31, 2003. Petitioner has also included a copy of a facsimile transmission report confirming transmission of the papers in question on October 31, 2003.

In view of the above, the Notice of Abandonment mailed May 18, 2004 is in error and is hereby vacated. The holding of abandonment is withdrawn. Upon the mailing of this decision, the application will be forwarded to the Examiner via the Legal Instruments Examiner for entry and consideration of the response filed October 31, 2003.

Summary: Holding of Abandonment Withdrawn.

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

ak/06/10/04

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OFFICE OF PETITIONS

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

In re Application of :
Robert B. Staszewski, et al. :
Application No. 10/131,523 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. TI-33172 :

This is a decision in response to the petition, filed July 21, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed January 11, 2006. This decision precedes the mailing of a Notice of Abandonment. On July 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 an amendment; (2) the petition fee of $1.500.00; and (3) an adequate statement of unintentional delay[1].

The application is being referred to Technology Center AU 2611 for consideration of the amendment filed July 21, 2006.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[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.

UNITED STATES PATENT AND TRADEMARK OFFICE

#3

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

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MAR 27 2003

Office of the Director
Group 3600

Terry M. Gernstein
1015 Salt Meadow Lane
McLean, VA 22101

Paper No. 3

In re application of
Werner Heierli
Application No. 10/131,526
Filed: April 25, 2002
For: COMPOSITE OVERFILLED ARCH SYSTEM

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on February 20, 2003, under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a passport from the applicant showing that he is at least 65 years of age.

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

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

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

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866
(703) 605-0586 (facsimile)

KJD/tpl: 3/18/03

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THOMPSON HINE LLP
ATTN: MICHAEL J. NIEBERDING
2000 COURTHOUSE PLAZA, N.E.
10 WEST SECOND STREET
DAYTON, OH 45402-1758

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NOV 2 0 2006

OFFICE OF PETITIONS

In re Application of :
Heierli :
Application No. 10/131,526 : DECISION ON PETITION
Filed: April 25, 2002 :
Docket No.: COMPOSITE :
OVERFILLED ARCH SYSTEM :

This is a decision on the petition under 37 CFR 1.181, filed March 20, 2006, to withdraw the holding of abandonment.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit a properly reply to the non-final Office action mailed June 30, 2005. The Notice set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed January 26, 2006.

Petitioner asserts that a response to the non-final Office action was timely submitted September 6, 2005.

The original response submitted September 6, 2005 has not been located. However, the copy of the response submitted herewith bears a certificate of mailing date of September 6, 2005 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 Technology Center 3600 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at 571-272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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ONE AT&T WAY
BEDMINSTER NJ 07921

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OFFICE OF PETITIONS

In re Application of
Clifford et al.
Application No. 10/131,552
Filed: April 24, 2002
Attorney Docket Number: 2001-0336

ON PETITION

This is a decision on the petition filed February 5, 2007, under 37 CFR 1.137(a) to revive the above-identified application.

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

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

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due which was mailed September 12, 2006. The Notice of Allowance and Fee (s) Due set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on December 13, 2006. A Notice of Abandonment was mailed on January 9, 2007.

Petitioner contends a reply to the Notice of Allowance and Issue Fee Due was submitted December 7, 2006.

PETITION TO REVIVE UNDER 37 CFR § 1.137(a)

A grantable petition under 37 CFR § 1.137(a) must be accompanied by:

(1) the required reply,[1]

(2) the petition fee,

(3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, and

(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition lacks item (3).

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

The Office may revive an abandoned application if the delay in responding to the relevant outstanding office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable." See, 37 CFR § 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" is applicable to ordinary human affairs, and requires no more greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business."); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case by case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2D 1130 (N.D. Ind. 1987).

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).[2] Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[3]

Petitioner contends the issue fee transmittal form with authorization to charge deposit account 50-1313 was received in the Office on December 7, 2006. The deposit account contained a balance of $1,292.50 when the issue fee transmittal was processed. Thus, there were insufficient funds to charge the $1400 issue fee.

Pursuant to 37 CFR 1.25 (b) an authorization to charge a fee to a deposit account will

---

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

[2] See MPEP 711(c)(III)(c)(2) for a discussion of the requirements for a showing of unavoidable delay.

[3] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee. Accordingly, the failure to maintain sufficient funds to cover the issue fee was avoidable.

Alternative Venue

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by the required reply, the required petition fee ($750.00 for small entity, $1500 for other than small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.

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

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

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

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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ONE AT&T WAY
BEDMINSTER NJ 07921

In re Application of
Clifford et al.
Application No.10/131,552
Filed: April 24, 2002
Attorney Docket Number: 2001-0336
Title of Invention: Method for Providing Reliable Soft Goods License Authorization

ON PETITION

This is a decision on the petition filed April 19, 2007, under 37 CFR 1.137(b) to revive the above-identified application.

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due which was mailed September 12, 2006. The Notice of Allowance and Fee (s) Due set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on December 13, 2006. A Notice of Abandonment was mailed on January 9, 2007. A petition under 37 CFR 1.137(a) was dismissed on March 28, 2007

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

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 forwarded to the Office of Patent Publication for processing into a patent.

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: Wendy Buskop
1776 Yorktown Street, Suite 550
Houston, Texas 77056

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WITHROW & TERRANOVA, P.L.L.C.
P.O. BOX 1287
CARY NC 27512

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OFFICE OF PETITIONS

In re Application of :
Patrick F. King et al :
Application No. 10/131,575 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. 4579-090 :

This is a decision on the petition, filed September 10, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on July 30, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

The examiner of Technology Center AU 2821 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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AUG 16 2005

OFFICE OF PETITIONS

WITHROW & TERRANOVA
P.O. BOX 1287
CARY NC 27512

In re Application of :
Patrick F. King et al :
Application No. 10/131,575 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. 4579-090 :

This is a decision on the petition, filed August 5, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 3, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

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

---

[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 examiner of Technology Center AU 2821 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

cc:
CHRISTENSEN O'CONNOR JOHNSON KINDNESS
1420 FIFTH AVENUE, SUITE 2800
SEATTLE, WA 98101

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. 5

RAMON L. PIZARRO
SUITE 200
3515 SOUTH TAMARAC DRIVE
DENVER, CO 80237

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APR 1 5 2004

OFFICE OF PETITIONS

In re Application of
Gary E. Choate
Application No. 10/131,582
Filed: March 23, 2002
Attorney Docket No.

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed March 24, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

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

This application became abandoned for failure to timely submit a reply to the Notice to File Missing Parts of Nonprovisional Application (Notice) on or before August 4, 2002.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(l); (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) for an application filed prior to June 8, 1995. This petition lacks items (1) and (3).

As to item (1), petitioner has not paid the required basic filing and surcharge fees. Any request for reconsideration must be accompanied by these fees. The basic filing fee amount for a small entity is currently $385.00 and the surcharge amount is $65.00. A copy of the Notice is enclosed.

The showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). See MPEP 711.03(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

In this regard, as to item (3), petitioner asserts that the delay was caused by nonreceipt of the Notice dated June 4, 2002. A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to the applicant at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of a statement from petitioner stating that the Office action was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in petitioner's statement. See 1156 Official Gazette 53 (November 16, 1993) and MPEP Section 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Notice."

If petitioner cannot provide evidence of the nature required above or simply does not wish to, petitioner may wish to consider filing a petition filing a petition under the unintentional provisions of 37 CFR 1.137(b). Public Law 97-247, which revised patent and trademark fees, provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." See 37 CFR 1.137(b) in effect as of December 1, 1997. *Note Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131 (October 10, 1997), 1203 Off. Gaz. Patent Office 63 (October 21, 1997).* An "unintentional" petition must be accompanied by the $650.00 petition fee.

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

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

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

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

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

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

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

Enclosure: Notice

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

RAMON L. PIZARRO
SUITE 200
3515 SOUTH TAMARAC DRIVE
DENVER, CO 80237

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SEP 2 2 2004

OFFICE OF PETITIONS

In re Application of :
Gary E. Choate :
Application No. 10/131,582 : ON PETITION
Filed: March 23, 2002 :
For: TWIN RETRACTABLE FOR FALL ARREST :

This is a decision on the renewed petition under 37 CFR 1.137(a), filed July 19, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

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

This application became abandoned for failure to timely submit a reply to the Notice to File Missing Parts of Nonprovisional Application (Notice) on or before August 4, 2002.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(l); (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) for an application filed prior to June 8, 1995. This petition lacks item (3).

The unavoidable standard requires that petitioner establish that the entire delay in responding to

the Office action was unavoidable. This requires that petitioner: 1) provide a statement that the Notice was not received; 2) attest that a search of the file jacket and docket records indicates that the Office communication was not received, and 3) provide a copy of the docket records where the Notice would have been entered had it been received and docketed. See MPEP 711.03(c).

On renewed petition, petitioner has provided a copy of a docket calendar denoted as "From 2003 Planner Docket Calendar" and opines that the Office action may not have been received due to to the notice or action not being properly inserted into the mailing envelope prior to mailing, preventing the mailing address from showing through the window. Petitioner additionally states that he has been informed by "an examiner" (no name given) that a communication from the USPTO to petitioner herein was returned with the correct address with no reason being given for its return.

The showing of record is insufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). In this regard, the Notice which petitioner indicates was not received was mailed on June 4, 2002. Therefore, the docket records must show nonreceipt of the Office action for June 4, 2002, and not "June 4, 2003," as indicated on the docket calendar submitted with the renewed petition. In reviewing the copy of the "Planner Docket Calendar" presented with the renewed petition, it is noted that the docketing is such that it encompasses the whole block for that month just for one case. If there were other cases received on the same day, how would petitioner's calendar denote this? Additionally, petitioner must state what other, if any, docket records are maintained by him and/or his office. Petitioner is reminded that a copy of all docket records maintained by his office is required in support of nonreceipt of the Notice of June 4, 2002.

Further, the fact that petitioner may have received other Office actions where the address was not clearly shown through the window of the envelope is not germane to the facts of this application. Each case is taken on a case-by-case basis. Additionally, while petitioner indicates that "an examiner" called and informed him of the returned notice, there is no evidence that the returned notice was ever associated with the instant file. Accordingly, the showing herein must establish that failure to timely reply was due to nonreceipt of the Notice of June 4, 2002.

If petitioner cannot provide evidence of the nature required above or simply does not wish to, petitioner may wish to consider filing a petition filing a petition under the unintentional provisions of 37 CFR 1.137(b). Public Law 97-247, which revised patent and trademark fees, provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." See 37 CFR 1.137(b) in effect as of December 1, 1997. *Note Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131 (October 10, 1997), 1203 Off. Gaz. Patent Office 63 (October 21, 1997).* An "unintentional" petition must be accompanied by the $665.00 petition fee, if filed prior to October 1, 2004. If filed after October 1, 2004, the fee will be $685.00.

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

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

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

By hand: Customer Window located at:

U.S. Patent and Trademark Office
220 20th Street S
Customer Window, Mail Stop Petitions
Crystal Plaza Two Lobby, Room 1B03
Arlington, VA 22202

By fax: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.[1]

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

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

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Paper No. 12

RAMON L. PIZARRO
SUITE 200
3515 SOUTH TAMARAC DRIVE
DENVER, CO 80237

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DEC 0 6 2004

OFFICE OF PETITIONS

In re Application of :
Gary E. Choate :
Application No. 10/131,582 : ON PETITION
Filed: March 23, 2002 :
For: TWIN RETRACTABLE FOR FALL ARREST :

This is a decision on the petition under 37 CFR 1.137(b), filed November 23, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely submit a reply to the Notice to File Missing Parts of Nonprovisional Application (Notice) on or before August 4, 2002.

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

Petitioner requests a refund of $55 petition fee (1.137(a)) submitted on March 24, 2004.

Petitioner's attention is directed to MPEP § 711.03 which states:

> 35 U.S.C. § 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

In this case, the petition fee ($55) is required by law at the time of the filing of the 1.137(a) petition. Therefore, the ($55) petition fee was not made by mistake or in excess of that required nor was there a mistake in payment as contemplated by CFR 1.26.

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

The application file is being forwarded to the Office of Initial patent Examination.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OFFICE OF PETITIONS

In re Application of	:	
Kumar et al.	:	DECISION ON PETITION
Application No. 10/131,601	:	TO WITHDRAW
Filed: April 24, 2002	:	FROM RECORD
Attorney Docket No. SUW-005.03	:	

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 27, 2006.

The request is **APPROVED**.

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

The request was signed by Scott E. Kamholz on behalf of all attorneys of record who are associated with Customer Number 25181. All attorneys/agents associated with Customer Number 25181 have been withdrawn. Applicants are reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named inventor; or (2) the assignee of the entire interest who has intervened in the instant application. Since the Post Office address of the first inventor is not listed in the Oath/Declaration, all future communications from the Office will continue to be directed to the *second* named inventor at the first below-listed address until otherwise properly notified by the applicants.

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:

ERGIN ATALAR
5206 WOODSTOVE LANE
COLUMBIA, MD 21045

BRYANT GOLD
ADVANCED BIONICS CORPORATION
25129 RYE CANYON ROAD
VALENCIA, CA 91355

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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RICHARD M. GOLDMAN
IBM CORPORATION
INTELLECTUAL PROPERTY LAW
555 BAILEY AVENUE (J46/G4)
SAN JOSE, CA 95141

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OFFICE OF PETITIONS

In re Application of	:	
Chen et al.	:	
Application No. 10/131,634	:	ON PETITION
Filed: April 23, 2002	:	
Attorney Docket No. SVL920020025US1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 29, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the Issue Fee Transmittal with payment of the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

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

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

Liana Walsh
Petitions Examiner
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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APR 19 2007

OFFICE OF PETITIONS

In re Application of
Yin **SHIH**
Application No. 10/131,646
Filed: April 23, 2002
Attorney Docket No. Q00-1096-US1

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 20, 2006.

The request is **APPROVED**.

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

The request was signed by Tejpal S. Hansra on behalf of all attorneys of record. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **YIN SHIH**
12985 TEN OAK WAY
SARATOGA CA 95070

cc: **SEAGATE TECHNOLOGY LLC**
INTELLECTUAL PROPERTY -- SHK2LG
1280 DISC DRIVE
SHAKOPEE, MN 55379

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OFFICE OF PETITIONS

Pietragallo Gordon Alfano Bosick & Raspanti, LLP
One Oxford Centre, 38th Floor
301 Grant Street
Pittsburgh, PA 15219-6404

In re Application of :
Yin Shih :
Application No. 10/131,646 : DECISION ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. Q00-1096-US1 (SEAG 79581) :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 16, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before October 1, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed June 29, 2007. Accordingly, the date of abandonment of this application is October 2, 2007. A Notice of Abandonment was mailed on October 22, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

Applicant should note that the issue fee payment applied on December 22, 2008 included an increase due to our fee changes that were effective as of October 2, 2008.

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.

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

This application is being referred to the Office of Data Management for further processing into a patent.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Richard M. Goldman
IBM Corporation
Intellectual Property Law
555 Bailey Avenue (J46/G4)
San Jose CA 95141

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AUG 30 2007

OFFICE OF PETITIONS

In re Application of :
David Mun-Hien Choy et al :
Application No. 10/131,659 : DECISION ON PETITION
Filed: April 23, 2002 :
Attorney Docket No. :
SVL920020026US1

This is a decision on the petition under 37 CFR 1.137(b), filed May 29, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before April 25, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed January 25, 2007. Accordingly, the date of abandonment of this application is April 26, 2007. A Notice of Abandonment was mailed on May 24, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,400 and the publication fee of $300, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

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

This application is being referred to Publishing Division for appropriate processing in accordance with this decision on petition.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. None

Jacqueline M. Arendt
1740 Massachusetts Avenue
Boxborough MA 01719-2209

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OFFICE OF PETITIONS

In re Application of :
Scheffer C. G. Tseng et al. :
Application No. 10/131,665 : DECISION ON PETITION
Filed: April 24, 2002 : UNDER 37 C.F.R. §1.181
Attorney Docket No.: 43022-0014 :
Title: APPARATUS AND METHOD FOR :
THE KINETIC ANALYSIS OF TEAR :
STABILITY :

This is a decision on the petition filed April 4, 2006, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

The above-identified application became abandoned for failure to submit the issue fee, publication fee, and drawings in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed August 2, 2004, which set a shortened statutory period for reply of three (3) months. A supplemental Notice of Allowability was mailed on February 17, 2005. No extensions of time are permitted for transmitting formal drawings, issue fees, or publication fees[1]. Accordingly, the above-identified application became abandoned on May 18, 2005. A Notice of Abandonment was mailed on April 28, 2005.

With the present petition, Petitioner has alleged that the mailing was not received. 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. In addition, a copy of the docket record where the non-received Office communication

1 See MPEP §710.02(e).

would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement[2].

Petitioner has met the requirements of Delgar v. Schuyler, 172 USPQ 513 (D.D.C. 1971), in that she has asserted that she has searched both the file jacket and the docket record, and she has included a copy of the latter.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met her burden of establishing that the mailing was not received.

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

With the present petition, Petitioner has included the issue fee, the publication fee, and formal drawings.

The Office of Patent Publication will be advised 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. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

The Change of Address and Power of Attorney have been entered and made of record.

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

2 See MPEP 711.03(c).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3/4/08

Paper No.: ____

TO SPE OF : ART UNIT 1646

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/131685 Patent No: 7262289 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**.

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within 7 days, to:

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

VIRGINIA TOLBERT
Certificates of Correction Branch
703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: The request is incorrect. The original IDS 1449 initialed by Examiner mailed 3/30/05 recite 10/131,685 and not 10/128,870 as stated by Applicant. Thus applicant's statement about the correction request is incorrect.

SPE

1646
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

June 12, 2008

Melissa Handler, Ph.D.
Bristol-Myers Squibb Company
P. O. Box 4000
Princeton, NJ 08543-4000

Patent No: 7,262,289 B2
Application No: 10/131,685
Applicant: Michael A. Blanar et al.
Issued: August 28, 2007
Title: **KCNQ POTASSIUM CHANNELS AND METHODS OF MODULATING SAME**

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 patent is in fact printed in accordance with the record in the Patent and Trademark Office, as passed to issue by the examiner. Per examiner, "The request is incorrect. The original IDS 1449 initialled by examiner mail 03/30 05 recite 10/131,685 and not 10/128,870 as stated by the applicant. Thus, applicant's statement about the correction request is incorrect.

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.

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
www.uspto.gov

Paper No. 5

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

COPY MAILED

OCT 0 3 2002

OFFICE OF PETITIONS

In re Application of	:	
Goto et al.	:	
Application No. 10/131,694	:	DECISION GRANTING
Filed: April 24, 2002	:	PETITION
Attorney Docket No. 09792909-5373	:	

This is a decision on the petition filed September 4, 2002 (Certificate of Mailing Date of August 31, 2002) to establish that Figures 8 and 9 were part of the originally filed application.

On April 24, 2002, the application was filed.

On May 31, 2002, the Office of Initial Patent Examination mailed a Notice stating that the application had been accorded a filing date of April 24, 2002, and advising applicants that Figures 8 and 9 described in the specification appeared to have been omitted.

In response, the present petition was filed alleging that Figures 8 and 9 were deposited on April 24, 2002. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "12 sheets of drawings, FIG(S) 1-16" on April 24, 2002.[1] Petitioner has also submitted a copy of the missing documentation- page 5 of the drawings consisting of Figures 8 and 9.

Upon review of the record, Figures 8 and 9, deposited on April 24, 2002, have not been located. However, the evidence is convincing that the application papers deposited on April 24, 2002, included Figures 8 and 9, and that the Figures were subsequently misplaced in the PTO.

In view of the above, the petition is **granted**. The copy of Figures 8 and 9 submitted with the petition will be used for examination purposes.

The petition fee will be credited to petitioner's deposit account.

The Notice mailed May 31, 2002, is hereby vacated to the extent the Notice stated Figures 8 and 9 were omitted.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 24, 2002, using the application papers filed on April 24, 2002, and the copy of Figures 8 and 9 filed on September 4, 2002.

---

[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.

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

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

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 9-23-02

2 Serial/Patent # 10/131,694

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
	Extension of Time			$
	Notice of Appeal/Appeal			$
X	Petition	3	9-4-02	$ 130
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 130

8 TO BE REFUNDED BY:

	Treasury Check
X	Credit Deposit A/C #:

9 19--3140

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

Proves we lost papers

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Steven Bradley TITLE: Petitions Atty

SIGNATURE: [signature] PHONE: 306-5683

OFFICE: Petitions

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: [signature] DATE: 10/3/02

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

Office of Finance
Refund Branch
Crystal Park One, Room 802B

FORM PTO 1577
(01/90)

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

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

COPY MAILED

SEP 2 4 2002

OFFICE OF PETITIONS

In re Application of
Noda, et al.
Application No. 10/131,697
Filed: April 24, 2002
Attorney Docket No. 09792909-5375

DECISION GRANTING
PETITION

This is a decision on the petition, filed August 5, 2002 (certificate of mailing date July 29, 2002), requesting, in effect, withdrawal of the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed May 29, 2002, insofar as it alleged page 12 of the specification was omitted on filing.

The application was filed on April 24, 2002. On May 29, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners that page 12 of the specification appeared to have been omitted.

In response to the Notice, petitioners timely filed the present. Petitioners request that page 12 be accorded a filing date of April 24, 2002 on the basis that the entire specification, including allegedly missing page 12, was received in the Patent and Trademark Office (PTO) on April 24, 2002. In support, the petition is accompanied by a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing April 24, 2002 as the date of receipt. The postcard lists, *inter alia*, that the filing included 23 pages of specification. A review of the application file reveals that there are 22 pages present. Page 12 is missing.

The return postcard constitutes *prima facie* evidence that the entire specification, including missing page 12, was filed on April 24, 2002. MPEP 503. Accordingly, the request is granted.

Pursuant to petitioners' authorization, the $130.00 petition fee will be credited to petitioners' deposit account, no. 19-3140.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of April 24, 2002, using the copy of page 12 supplied with the petition.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SAWYER LAW GROUP LLP
P O BOX 51418
PALO ALTO CA 94303

COPY MAILED

NOV 10 2005

OFFICE OF PETITIONS

In re Application of	:	
Robert P. MORRIS	:	
Application No. 10/131,728	:	ON PETITION
Filed: April 23, 2002	:	
Attorney Docket No. P218/2412P	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed April 14, 2005, which set a statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on July 15, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to David A. Bucci at (571) 272-7099 or in his absence, the undersigned at (571) 272-3217.

The application file is being referred to the Office of Patent Publication.

Brian Hearn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ExxonMobil Research & Engineering Company
P.O. Box 900
1545 Route 22 East
Annandale NJ 08801-0900

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JUL 19 2007

OFFICE OF PETITIONS

In re Application of :
Henry et al. :
Application No. 10/131,737 : ON PETITION
Filed: 04-24-2002 :
Attorney Docket No. ESW-0205 :

This is a decision on the petition under 37 CFR 1.137(a), filed May 31, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to timely pay the issue and publication fees on or before November 2, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed August 2, 2006, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on November 3, 2006. A Notice of Abandonment was mailed on December 1, 2006.

The petition satisfies the requirements of 37 CFR 1.137(a) in that petitioner has supplied (1) the required reply in the form of the payment of the issue and publication fees; (2) the petition fee; and (3) a showing to the satisfaction of the Director that the entire delay was unavoidable.

This matter is being referred to the Office of Patent Publications.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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

VIDAS, ARRETT & STEINKRAUS, P.A.
SUITE 400, 6640 SHADY OAK ROAD
EDEN PRAIRIE, MN 55344

Mail Date: 04/21/2010

Applicant	: Timothy J. Ley	: DECISION ON REQUEST FOR
Patent Number	: 7655032	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/131,772	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/23/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **815** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 092004

KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

OCT 1 2004

In re Application of:
MICHAEL MILLER et al.
Serial No.: 10/131,794
Filed: April 22, 2002
Attorney Docket No.: **4727-002 (formerly 02520/49301)**

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed April 14, 2004.

The request is **DISMISSED** as moot.

A review of the application file record reveals a proper revocation and power of attorney to the attorneys of Lowe Hauptman Gilman & Berner, LLP was filed on July 12, 2004. As such, the power of attorney for the attorneys and agents requesting withdrawal has already been revoked. Accordingly, the present request is moot, and must be dismissed.

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

Inquiries related to this decision should be directed to Edward Westin at (571) 272-1638.

Edward Westin

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

cc: LOWE HAUPTMAN GILMAN & BERNER, LLP
1700 DIAGONAL ROAD, SUITE 310
ALEXANDRIA, VA 22314

UNITED STATES PATENT AND TRADEMARK OFFICE

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KLAUS J. BACH & ASSOCIATES
PATENTS AND TRADEMARKS
4407 TWIN OAKS DRIVE
MURRYSVILLE PA 15668

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JAN 18 2005

OFFICE OF PETITIONS

In re Application of :
Dieter Lenoir et al. :
Application No. 10/131,800 : ON PETITION
Filed: April 19, 2002 :
Attorney Docket No. K194 :

This is a decision on the petition filed January 8, 2005 under 37 CFR 1.137(b),[1] to revive the above-identified application.

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

This application became abandoned November 17, 2004 for failure to timely pay the issue fee on or before November 16, 2004. Accordingly, a Notice of Abandonment was mailed January 3, 2005.

The issue fee, petition fee and publication fee have been charged to deposit account no. 50-0465. All other requirements of 37 CFR 1.137(b) having now been met, this application file is being forwarded to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

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

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

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

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

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WWW.USPTO.GOV

Paper No. None

HELLER EHRMAN LLP
275 MIDDLEFIELD ROAD
MENLO PARK CA 94025-3506

COPY MAILED
SEP 11 2006
OFFICE OF PETITIONS

In re Application of :
Audrey Goddard et al. :
Application No. 10/131,817 : DECISION ON PETITION
Filed: April 24, 2002 : UNDER 37 C.F.R. §1.137(b)
Attorney Docket Number: :
GNE.3330R1C129 :
Title: THE PRO1777 POLYPEPTIDES :
:

This is a decision on the petition filed June 12, 2006, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed September 26, 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 December 27, 2005. A notice of abandonment was mailed April 5, 2006.

With the present petition, Petitioner has submitted the petition fee, an information disclosure statement, and the proper

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.

statement of unintentional delay. 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). Although the petition indicates that a response to the non-final Office action was attached, the electronic file does not appear to contain an amendment which was filed in conjunction with the present petition.

Consequently, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.137(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]. 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

---

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.
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).

UNITED STATES 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

HELLER EHRMAN LLP
275 MIDDLEFIELD ROAD
MENLO PARK CA 94025-3506

COPY MAILED

DEC 0 1 2006

OFFICE OF PETITIONS

In re Application of :
Audrey Goddard et al. :
Application No. 10/131,817 : DECISION ON RENEWED PETITION
Filed: April 24, 2002 : UNDER 37 C.F.R. §1.137(b)
Attorney Docket Number: :
GNE.3330R1C129 :
Title: THE PRO1777 POLYPEPTIDES :

This is a decision on the renewed petition filed November 1, 2006, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed September 26, 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 December 27, 2005. A notice of abandonment was mailed April 5, 2006.

The original petition was filed on June 12, 2006, and was dismissed via the mailing of a decision on September 11, 2006 for failure to include the required reply to the Office action.

---

1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

1. The reply required to the outstanding Office action or notice, unless previously filed;
2. The petition fee as set forth in § 1.17(m);
3. A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
4. Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

With this renewed petition, Petitioner has provided the required reply to the Office action.

As such, this renewed 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 amendment which was received with the present petition can be processed.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. **10**

PERLEGEN SCIENCES INC.
2021 STIERLIN COURT
MOUNTAIN VIEW CA 94043

COPY MAILED

AUG 0 5 2002

OFFICE OF PETITIONS

In re Application of
Patil et al
Application No. 10/131,832
Filed: April 24, 2002
Attorney Docket No. 1004U-3

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.137(f)

This is a decision on the petition, filed July 8, 2002 and supplemented by facsimile transmission on August 1, 2002, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in a foreign country on August 24, 2001. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

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

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

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

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

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

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Corrected Filing Receipt which sets forth the projected publication date of November 7, 2002 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 1637 for examination in due course.

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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JUN 0 5 2008

OFFICE OF PETITIONS

LEE & HAYES PLLC
421 W. RIVERSIDE AVENUE SUITE 500
SPOKANE, WA 99201

In re Application of :
Thomas H. Taylor et al :
Application No. 10/131,849 : ON PETITION
Filed: April 25, 2002 :
Attorney Docket No. MS1-1036US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 7, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of July 31, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is November 1, 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 and the submission required by 37 CFR 1.114; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $1050 extension of time submitted with the petition on February 7, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credit to petitioner's credit card.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

This application is being referred to Technology Center AU 2623 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petition 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

TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE & MARR, LTD.
36TH FLOOR
105 WEST ADAMS STREET
CHICAGO, IL 60603

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JUN 18 2007

OFFICE OF PETITIONS

In re Patent No. 6,629,665
Issue Date: October 7, 2003
Application No. 10/131,889
Filed: April 25, 2002
Patentee(s): Tsuyoshi Okeyoshi

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed February 14, 2007. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**. Therefore, status as a small entity has been removed and all future fees paid must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

WYETH
PATENT LAW GROUP
5 GIRALDA FARMS
MADISON, NJ 07940

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FEB 15 2006

OFFICE OF PETITIONS

In re Patent No. 6,914,045	:	DECISION ON REQUEST
Abbanat et al.	:	FOR RECONSIDERATION OF
Issue Date: July 5, 2005	:	PATENT TERM ADJUSTMENT
Application No. 10/131,890	:	and
Filed: April 25, 2002	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. ACY33519	:	CERTIFICATE OF CORRECTION

This is a decision on the PETITION AND REQUEST FOR REINSTATEMENT OF ALL OF THE PERIOD OF ADJUSTMENT REDUCED PURSUANT TO § 1.704(b)(37 C.F.R. § 1.705(c)), filed July 18, 2005. Patentees request that the patent term adjustment indicated in the patent be corrected from three hundred twenty-four (324) days to three hundred eighty-five (385) days. This request is properly treated pursuant to the provisions of 37 C.F.R. § 1.705(d).

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**. (The initial determination of PTA of 385 days was increased by 59 days to 444 days for Office delay in issuing the patent after payment of the issue fee and satisfaction of all outstanding requirements).

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 forty-four (444)** days.

On July 5, 2005, the application matured into U.S. Patent No. 6,914,045, with a revised patent term adjustment of 324 days. On July 18, 2005, patentees 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 385. Patentees dispute the reduction of 120 days for the filing of a "Supplemental Papers-Oath or Declaration" after the mailing of the notice of allowance. Patentees state that the declaration filed October 28, 2004 is a copy of the declaration originally filed July 11, 2002. Patentees state that the declaration was re-filed at the request of the examiner. In support thereof, patentees submit a copy of their itemized and date-stamped return postcard.

Having reviewed the record, it is concluded that patentees' argument is persuasive. The basis for the 120-day reduction is the re-filing of the declaration on October 28, 2004. Under the circumstances, the reduction of 120 days, pursuant to § 1.704(c)(10), is not warranted.

In view thereof, the patent should have issued with a patent term adjustment of four hundred forty-four (444) 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 **FOUR HUNDRED FORTY-FOUR (444)** days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 6,914,045 B2

DATED : July 5, 2005

INVENTOR(S) : Abbanat 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 (324) days

Delete the phrase "by 324" and insert – by 444 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BRINKS HOFER GILSON & LIONE
ONE INDIANA SQUARE, SUITE 1600
INDIANAPOLIS, IN 46204

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AUG 1 2 2004

OFFICE OF PETITIONS

In re Application of
Ashton F. Pitts, et al.
Application No. 10/131,898
Filed: April 25, 2002
Attorney Docket No. 10022/164

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 May 28, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED.**

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 May 28, 2004, 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 application was

submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed 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 application, accompanies this decision on petition.

Any questions concerning this decision on petition may be directed to Retta Williams at (703) 306-5594.

This application is being forwarded to Technology Center Art Unit 2654 for appropriate action on the amendment filed May 28, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Brian Hearn /fh

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

Attachment: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 9

MEDTRONIC AVE, INC.
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

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FEB 2 0 2003

OFFICE OF PETITIONS
ON PETITION

In re Application of
Burt Goodson
Application No. 10/131,902
Filed: April 24, 2002
Attorney Docket Number: P1005 US

This is a decision on the petition filed December 23, 2002, under 37 CFR 1.137(a) to revive the above-identified application.

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

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

This above-identified application became abandoned for failure to timely file a complete reply to the Notice to file Missing Parts mailed June 5, 2002. An incomplete reply to the Notice to File Missing Parts was submitted on November 13, 2002 (certificate of mailing November 5, 2002) along with a three month extension of time. a Notice of Incomplete Reply was mailed on December 2, 2002 which continued the extendable reply period set out in the Notice to File Missing Parts. This application became abandoned on November 6, 2002. This decision precedes the mailing of a Notice of Abandonment.

PETITION TO REVIVE UNDER 37 CFR § 1.137(a)

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

The instant petition lacks items (2) and (3).

As to item (2) petitioner has failed to provide the $110.00 petition fee. a review of the file indicates a general authorization to charge the deposit account is not present.

As to item (3), the showing of record is not sufficient to establish to the satisfaction of

[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.

the Commissioner that the delay was unavoidable within the meaning of 37 CFR §1.137(a).

The Office may revive an abandoned application if the delay in responding to the relevant outstanding office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable." See, 37 CFR § 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" is applicable to ordinary human affairs, and requires no more greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business."); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case by case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). a petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2D 1130 (N.D. Ind. 1987).

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).[2] Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[3]

Petitioner's arguments have been considered but they are not persuasive. Petitioner asserts the application was unavoidably delayed because applicant inadvertently failed to include the corrected drawings as required by the Notice to File Missing Parts. Furthermore petitioner contends the Notice of Incomplete Reply was received after the six month time period of reply. Lastly, petitioner seeks to be given a new time period for reply under 37 CFR 1.134 and any fees associated be waived.

A review of the official record indicates petitioner submitted an incomplete response to the Notice to File Missing Parts. The Notice of Incomplete Reply was mailed on December 2, 2002 and received by petitioner on December 6, 2002 indicating the extendable time for reply given in the Notice of Missing Parts continued to run. Petitioner mistakenly believed the period for reply to the Notice expired at six months on December 5, 2002. However, petitioner could have purchased up to five months from the time period to reply. See 37 CFR 1.136 (a). Thus petitioner had until January 5, 2003 to file the corrected drawings with the appropriate extension of time fees. [4] a delay resulting from the lack of knowledge or improper application of the patent statue,

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[2]See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

[3]Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

[4]It should be noted the Office of Petitions called the attorney of record giving an opportunity to submit fees for the petition and the requisite extension of time. However, attorney of record failed to provide authorization to charge the required fees.

rules of practice or the MPEP does not constitute an "unavoidable" delay.[5] Even if petitioner had received the Notice of Incomplete Reply after the period for reply expired, petitioner's inability to respond would not be considered unavoidable. [6]

As the Notice to file Missing Parts informed applicant of the need to timely submit corrected drawings to avoid abandonment of the application and applicant failed to comply, abandonment of the application was not an unavoidable occurrence. The facts presented do not warrant waiving any of the required fees.

Alternative Venue

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). a grantable petition pursuant to 37 CFR § 1.137(b) must be accompanied by the required reply, the required petition fee, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR § 1.137(b) was unintentional.

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

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

By mail: 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

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[5] See Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2D 1130, 1132 (N.D. Ind. 1987); Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985) Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130,131 (1891).

[6] See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985); see also In re Colombo, Inc., 33 USPQ2D 1530, 1532 (Comm'r Pat. 1994)(while the Office attempts to notify applicants of deficiencies in their responses in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in their response in a manner permitting timely correction).

Telephone inquiries should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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WASHINGTON, D.C. 20231
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Paper No. 13

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OFFICE OF PETITIONS

MEDTRONIC AVE, INC.
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

In re Application of
Burt Goodson
Application No. 10/131,902
Filed: April 24, 2002
Attorney Docket Number: P1005 US

ON PETITION

This is a decision on the renewed petition filed March 19, 2003, under 37 CFR 1.137(a) to revive the above-identified application.

The petition to revive under 37 CFR § 1.137(a) is **DISMISSED AS MOOT**.

This above-identified application became abandoned for failure to timely file a complete reply to the Notice to file Missing Parts mailed June 5, 2002. An incomplete reply to the Notice to File Missing Parts was submitted on November 13, 2002 (certificate of mailing November 5, 2002) along with a three month extension of time. A Notice of Incomplete Reply was mailed on December 2, 2002 which continued the extendable reply period set out in the Notice to File Missing Parts. The maximum extendable period to reply to the Notice of Missing Parts was January 5, 2003. This decision precedes the mailing of a Notice of Abandonment.

Petitioner has presented evidence which establishes an authorization to charge the petition fee and the extension of time fee were timely submitted with a certificate of mailing dated December 16, 2002. The request for extension of time and authorization to charge the petition fee were not matched with the file prior to the decision on petition which was mailed on February 20, 2003.[1]

As such deposit account 01-2525 is being charged five (5) month extension of time fee of $1960.00.[2] The $110.00 petition fee is being refunded to the same deposit account.

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

---

[1] It is noted petitioner continues to try and advance the argument that the Notice to File Missing Parts was subject to a maximum six month extension of time period. However, petitioner's argument is incorrect. The period for reply to a Notice to File Missing is governed by 37 CFR 1.136(a). The 2-month time period for reply to A Notice to File Missing Parts of an Application is not identified on the Notice as a statutory period subject to 35 U.S.C. 133. Thus, extensions of time of up to 5 months under 37 CFR 1.136(a), followed by additional time under 37 CFR 1.136(b), when appropriate, are permitted. See MPEP 710 .02 (d).

[2] Petitioner is being charged the fees as they existed on December 16, 2002.

Telephone inquiries should be directed to the undersigned at (703) 306-0251.

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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MEDTRONIC VASCULAR, INC.
IP LEGAL DEPARTMENT
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

Mail Date: 04/20/2010

Applicant	: Burt Goodson	: DECISION ON REQUEST FOR
Patent Number	: 7655036	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/131,902	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/24/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **851** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/6/07

TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction on Patent No.: 6780860

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

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 114

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

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

Comments:

10/13/917

SPE

1624
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

DAVID ALAN SILVA
2314 LAFAYETTE ST
SANTA CLARA, CA 95050

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MAR 2 5 2005

OFFICE OF PETITIONS

In re Application of :
David alan Silva :
Application No. 10/131,925 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. None :

This is a decision on the petition, filed January 19, 2005, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed April 22, 2004. A Notice of Abandonment was mailed on January 11, 2005.

The petition is found to comply with the requirements of 37 CFR 1.137(b). Accordingly, the petition is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries regarding this application should be directed to the Technology Center.

The application file is being referred to Technology Center AU 3712 for consideration of the amendment filed September 22, 2004.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 5

NOTARO AND MICHALOS
100 DUTCH HILL ROAD
SUITE 110
ORANGEBURG, NY 10962-2100

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AUG 0 5 2002

OFFICE OF PETITIONS

In re Application of
Bradley D. Pesu et al.
Application No. 10/131,943
Filed: April 25, 2002
For: FLAME-RESISTANT WICK HOLDER FOR CANDLE

: DECISION DISMISSING
: PETITION

This is a decision on the petition filed on June 11, 2002, requesting that the above-identified application be accorded a filing date of 2 January, 2001, with drawings of Figures 6 and 7 as a part of the original disclosure of the application.

The petition is **dismissed.**

The application was filed April 25, 2002. However, on May 24, 2002, the Initial Patent Examination Division mailed a "Notice of Omitted Item(s)" stating that the application had been accorded an April 25, 2002, filing date, but that the drawings of Figures 6 and 7 appeared to have been omitted.

In response, on June 11, 2002, two drawings containing Figures 6 and 7 were filed accompanied by the present petition. Petitioner contends that the figures were in fact filed in the Office on April 25, 2002 and suggests that the USPTO try to locate the missing drawings. In support of the argument that the drawings were included in the application papers filed April 25, 2002, petitioners rely on a copy of the application transmittal cover sheet as proof of filing 8 sheets of drawings, figures 1-14[1].

The argument and evidence presented are not persuasive. The Office file is the official record of the papers originally filed in this application. A review of the official record reveals that no drawing Figures 6 and 7 were filed with the original application papers. Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims, and abstract), number of claims, number of sheets of drawings, and number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. As petitioner has provided no convincing evidence that drawing Figures 6 and 7 were filed in the USPTO on April 25, 2002, the petition must be dismissed.

[1]The actual application cover sheet filed April 25, 2002 confirms that 7 sheets of drawings, Figures 1-14 were being filed.

A request for reconsideration (no further petition fee is required) must be filed within **TWO MONTHS** of the date of this decision in order to be considered timely.[2] **This two month period is not extendable under 37 CFR 1.136(a).** If a timely petition is not filed the original disclosure will include only those papers present in the PTO on the date of deposit.

The application will be retained in the Office of Petitions for a period of two (2) months to await petitioners' reply to this decision. If no renewed petition is timely filed, the application will be returned to the Office of Initial Patent Examination for further processing using only the papers present in the USPTO on the date of deposit.

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

By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries specific to this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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

[2] 37 CFR 1.181(f).

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

NOTARO AND MICHALOS
100 DUTCH HILL ROAD
SUITE 110
ORANGEBURG, NY 10962-2100

COPY MAILED

AUG 2 9 2002

OFFICE OF PETITIONS

In re Application of
Bradley D. Pesu et al.
Application No. 10/131,943
Filed: April 25, 2002
For: FLAME-RESISTANT WICK HOLDER FOR CANDLE

: CORRECTED
: DECISION DISMISSING
: PETITION

This is a corrected decision on the petition filed on June 11, 2002, requesting that the above-identified application be accorded a filing date of April 25, 2002[1], with drawings of Figures 6 and 7 as a part of the original disclosure of the application.

The petition is **dismissed.**

The application was filed April 25, 2002. However, on May 24, 2002, the Initial Patent Examination Division mailed a "Notice of Omitted Item(s)" stating that the application had been accorded an April 25, 2002, filing date, but that the drawings of Figures 6 and 7 appeared to have been omitted.

In response, on June 11, 2002, two drawings containing Figures 6 and 7 were filed accompanied by the present petition. Petitioner contends that the figures were in fact filed in the Office on April 25, 2002 and suggests that the USPTO try to locate the missing drawings. In support of the argument that the drawings were included in the application papers filed April 25, 2002, petitioners rely on a copy of the application transmittal cover sheet as proof of filing 8 sheets of drawings, figures 1-14[2].

The argument and evidence presented are not persuasive. The Office file is the official record of the papers originally filed in this application. A review of the official record reveals that no drawing Figures 6 and 7 were filed with the original application papers. Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims, and abstract), number of claims, number of sheets of drawings, and number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. As petitioner

[1]Please note, the decision mailed August 5, 2002 incorrectly identified the filing date petitioners are requesting as 2 January 2001.

[2]The actual application cover sheet filed April 25, 2002 confirms that 7 sheets of drawings, Figures 1-14 were being filed.

has provided no convincing evidence that drawing Figures 6 and 7 were filed in the USPTO on April 25, 2002, the petition must be dismissed.

A request for reconsideration (no further petition fee is required) must be filed within **TWO MONTHS** of the date of this decision in order to be considered timely.[3] **This two month period is not extendable under 37 CFR 1.136(a).** If a timely petition is not filed the original disclosure will include only those papers present in the PTO on the date of deposit.

The application will be retained in the Office of Petitions for a period of two (2) months to await petitioners' reply to this decision. If no renewed petition is timely filed, the application will be returned to the Office of Initial Patent Examination for further processing using only the papers present in the USPTO on the date of deposit.

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

By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries specific to this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[3] 37 CFR 1.181(f).

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

NOTARO AND MICHALOS
100 DUTCH HILL ROAD
SUITE 110
ORANGEBURG, NY 10962-2100

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OCT 0 2 2002

OFFICE OF PETITIONS

In re Application of :
Bradley D. Pesu et al. :
Application No. 10/131/943 : ON PETITION
Filed: April 25, 2002 :
For: FLAME-RESISTANT WICK HOLDER :
FOR CANDLE

This is a decision on the renewed petition filed September 4, 2002, requesting that Figures 6 and 7, copies of which are included with the instant petition, be placed in the above identified application file, as having been filed with the original disclosure.

A "Notice of Omitted Item(s) in a Nonprovisional Application" was mailed May 24, 2002 stating that the application had been accorded a filing date of April 25, 2002 but that Figures 6 and 7 appeared to have been omitted. A petition filed June 11, 2002 requesting that the application be accorded a filing date of April 25, 2002 with Figures 6 and 7 as part of the original disclosure was dismissed in a decision mailed August 29, 2002. The August 29, 2002 decision indicated that the arguments presented were not persuasive that the drawings were presented upon filing.

Petitioners have not proven that the drawings were present upon filing and in response thereof, file the instant petition arguing that the application when filed, included a statement incorporating by reference the prior application. Petitioner asserts that the instant application is a continuation-in-part of a parent application filed August 17, 2001, which included the drawing page of Figures 6 and 7, and that the instant application contained a statement incorporating the parent application, including Figures 6 and 7, by reference.

MPEP 201.06 (c) states that:

> For the incorporation by reference to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or transmittal letter-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application.

Obviously, in view of the incorporation by reference of the prior application, the drawing

of Figures 6 and 7 is not new matter if it was a part of the disclosure of the prior application. New drawings may be entered by the primary examiner without petition so long as the new drawings contain no new matter. See MPEP § 608.02(a).

Accordingly, the petition is dismissed.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 25, 2002, with an indication in Office records that Figures 6 and 7 while not included with the application papers upon filing, were a part of the original disclosure.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

Michael Tanenbaum
1825 Calibre Woods Drive
Atlanta, GA 30329

COPY MAILED

AUG 2 6 2002

OFFICE OF PETITIONS

In re Application of Tanenbaum, et al.	
Application No. 10/131,953	DECISION REFUSING
Filed: April 24, 2002	STATUS UNDER 37 CFR
Atty. Dkt. No.: Tanenbaum	1.47(a)
Title: ELASTIC FLAP WITH SLEEVE AND GLOVE FOR LIQUID IMPERVIOUS SEAL	

This decision is in response to the petition under 37 CFR 1.47(a), filed July 30, 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 April 24, 2002 without an executed oath or declaration, naming Michael Tanenbaum, William Matthews, and Cheryl Miller as joint inventors. Accordingly, on June 3, 2002, a Notice to File Missing Parts of Nonprovisional Application was mailed, required a surcharge and an executed oath or declaration.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee, and, if applicable, surcharge; and (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks item (3) set forth above. Petitioner has failed to submit the required surcharge for late filing of acceptable oath or declaration. Any renewed petition must be accompanied by the required surcharge, currently, $65.00 for a small entity and $130.00 for a large entity.

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

By mail: Commissioner for Patents
Box DAC

Application No. 10/131,953

Washington, D.C. 20231

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

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

Telephone inquiries regarding this decision should be directed to 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. 7

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OCT 17 2002

OFFICE OF PETITIONS

Michael Tanenbaum
1825 Calibre Woods Drive
Atlanta, GA 30329

In re Application of Tanenbaum, et al.	
Application No. 10/131,953	DECISION GRANTING
Filed: April 24, 2002	STATUS UNDER 37 CFR
Atty. Dkt. No.: Tanenbaum	1.47(a)
Title: ELASTIC FLAP WITH SLEEVE AND GLOVE FOR LIQUID IMPERVIOUS SEAL	

This decision is in response to the renewed petition under 37 CFR 1.47(a), filed October 11, 2002.

The petition is **GRANTED**.

Petitioner has shown that inventors Miller and Matthews are prohibited from participating in the prosecution of the above-reference application by virtue of 37 CFR 10.10(c).

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.

Petitioner alleges that the original petition under 37 CFR 1.47(a) and declaration were submitted upon the filing of the application. The original petition and declaration cannot be located upon review of the official application file. However, in view of the evidence presented by petitioner, namely, a copy of a return postcard indicating Office receipt of these items, these items are accepted as having been received upon filing of the application. Accordingly, no surcharge for submission of the declaration is required.

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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CHERYL MILLER
1600 S. EADS STREET, #412
ARLINGTON, VA 22202

COPY MAILED

OCT 17 2002

OFFICE OF PETITIONS

In re Application of :
Tanenbaum, et al. :
Application No. 10/131,953 : LETTER
Filed: April 24, 2002 :
Atty. Dkt. No.: Tanenbaum :
Title: ELASTIC FLAP WITH SLEEVE AND GLOVE FOR LIQUID IMPERVIOUS SEAL :

Dear Madam:

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(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).

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

CC: Michael Tanenbaum
1825 Calibre Woods Drive
Atlanta, GA 30329

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WILLIAM MATTHEWS
5351 TANEY AVENUE, #201
ALEXANDRIA, VA 22304

COPY MAILED

OCT 17 2002

OFFICE OF PETITIONS

In re Application of :
Tanenbaum, et al. :
Application No. 10/131,953 : LETTER
Filed: April 24, 2002 :
Atty. Dkt. No.: Tanenbaum :
Title: ELASTIC FLAP WITH SLEEVE AND GLOVE FOR LIQUID IMPERVIOUS SEAL :

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(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).

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

CC: Michael Tanenbaum
1825 Calibre Woods Drive
Atlanta, GA 30329

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.

WYETH
PATENT LAW GROUP
5 GIRALDA FARMS
MADISON, NJ 07940

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AUG 0 5 2004

OFFICE OF PETITIONS

In re Patent No. 6,713,448 Carter et al. Issue Date: March 30, 2004 Application No. 10/132,012 Filed: April 25, 2002 Attorney Docket No. ACY33447	DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT and NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

This is a decision on the "PETITION AND REQUEST FOR RECONSIDERATION OF ALL OF THE PERIOD OF ADJUSTMENT REDUCED PURSUANT TO § 1.704(b)(37 C.F.R. § 1.705(c))," filed April 28, 2004. Patentees request that the patent term adjustment indicated in the patent be corrected from zero (0) days to forty-one (41) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of forty-one **(41)** days.

On March 30, 2004, the above-identified application matured into U.S. Patent No. 6,713,448. The instant request for reconsideration filed April 28, 2004 was timely filed within 30 days of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 0 days. Patentees dispute the reduction of 55 days. Patentees state that the formal drawings were submitted on filing of the application; they were not submitted after mailing of the notice of allowance.

A review of the PALM calculations for this application reveals that the initial determination of PTA of 41 days was reduced by 55 days for applicant's submission of drawings after the mailing of the notice of allowance. See 37 CFR 1.704(c)(10). However, a review of the application record supports a conclusion that no drawings (or any other paper, aside from the instant petition and a request for certificate of correction) were filed in this application after the mailing of the notice of allowance. There

are no drawings of record with the date of receipt of February 5, 2004, the date of receipt of drawings as shown in the PALM entry where the reduction of 55 days is noted. No drawings were required by the examiner. The drawings of record in the application, and used in the issuance of the patent, show a date of receipt in the Office of April 25, 2002.

As no paper, within the meaning of 37 CFR 1.704(c)(10), was filed after the mailing of the notice of allowance, it is concluded that the reduction of 55 days is incorrect.

In view thereof, the patent term adjustment indicated in the patent should have been forty-one **(41)** days.

The $200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 01-1425, as authorized. No additional fees are required.

The fee under § 1.18(e) is required on petition under § 1.705(d) and will not be refunded. Nor will the fee be waived. Petitioner has not shown that justice requires waiver of the fee.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by FORTY-ONE (41) days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (703) 305-0309.

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
www.uspto.gov

Paper No. 15

EDMUND P. PFLEGER
GROSSMAN TUCKER PERREAULT & PFLEGER
55 SOUTH COMMERCIAL STREET
MANCHESTER NH 03101

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APR 28 2004

OFFICE OF PETITIONS
ON PETITION

In re Application of :
Yung-Lin Lin :
Application No. 10/132,016 :
Filed: April 24, 2002 :
Attorney Docket No. 02M99.03CON2 :

This is a decision on the petition, filed April 27, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 23, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

After receipt of the file in the Office of Petitions, the application will be forwarded to Technology Center AU 2838 for processing of the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 16

Date :April 28, 2004

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Yung-Lin Lin
Application No. :10/132,016
Filed :April 24, 2002

The above-identified application has been assigned Patent No. 6,735,100 and an issue date of May 11, 2004.

It is hereby directed that this application be withdrawn from issue at the request of the applicant.

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of May 11, 2004:

"All reference to Patent No. 6,735,100 to Yung-Lin Lin of California for HIGH EFFICIENCY ADAPTIVE DC/AC CONVERTER appearing in the Official Gazette of May 11, 2004 should be deleted since no patent was granted."

Karen Creasy

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

cc: Geraldine Dozier, Crystal Park 3-441 (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane Davis (CDS), CM1-6A07
Tamara Greene, Crystal Park 3-908

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Alexandria, VA 22313-1450
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GROSSMAN, TUCKER, PERRAULT & PFLEGER, PLLC
55 SOUTH COMMERCIAL STREET
MANCHESTER, NH 03101

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AUG 2 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Lin, Yung-Lin	:	
Application No. 10/132,016	:	ON PETITION
Filed: April 24, 2002	:	
Attorney Docket No. O2M99.03CON2	:	

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 (703) 306-0482. Any telephone inquiries after approximately **September 24, 2004** should be directed to (571) 272-3206.

This matter is now being referred to the Publications Branch for processing into a patent.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Application of LIN, YUNG-LIN
Appl. No.: 10/132,016
Filed: April 24, 2002
For: HIGH-EFFICIENCY ADAPTIVE DC/AC CONVERTER

WITHDRAWAL FROM ISSUE
37 CFR 1.313

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue after payment of the issue fee due to the unpatentability of one or more claims. See 37 CFR 1.313(b)(3).

The issue fee is refundable upon 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 and Issue Fee Due in order to prevent abandonment of the application.

Telephone inquiries should be directed to Michael Sherry, Supervisory Patent Examiner, at (571) 272-2084.

The application is being forwarded to the examiner for action.

Richard K. Seidel
Director
Patent Examining Technology Center 2800

RECEIVED
OCT -8 2004
TECHNOLOGY CENTER 2800

GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC
55 SOUTH COMMERICAL STREET
MANCHESTER, NH 03101

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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WAGNER, MURABITO & HAO
TWO NORTH MARKET STREET,
THIRD FLOOR
SAN JOSE CA 95113

COPY MAILED

JAN 2 6 2006

OFFICE OF PETITIONS

In re Application of :
Jung-Lin Lin :
Application No. 10/132,016 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No. O2-0011CO2 :

This is a decision on the petition, filed January 20, 2006, and supplemented on January 25, 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 October 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) 272-3208.

The examiner of Technology Center AU 2838 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).

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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WAGNER, MURABITO & HAO, LLP
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE, CA 95113

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JAN 22 2007

OFFICE OF PETITIONS

In re Application of	:	
Yung-Lin Lin	:	
Application No. 10/132,016	:	DECISION GRANTING PETITION
Filed: April 24, 2002	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. O2-0011.CO2	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 17, 2007, 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, 2006 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 April Wise at (571) 272-1642.

This application is being referred to Technology Center AU 2838 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Karen Creasy for

Frances M. 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 Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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William J. McNichol, Jr.
REED SMITH SHAW & McCLAY LLP
2500 One Liberty Place
Philadelphia, PA 19103-7301

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JUL 1 7 2002

OFFICE OF PETITIONS

In re Application of :
Christopher Cotton et al : DECISION GRANTING
Application No. 10/132,028 : PETITION
Filed: April 25, 2002 :
Attorney Docket No. 99-40268-US-C1 :

This is a decision on the petition filed July 2, 2002, requesting, in effect, that a "Notice to File Missing Parts of Nonprovisional Application" mailed June 7, 2002 be vacated, and that the above-identified continuation application based on prior application No. 09/468,602 be accorded a filing date of April 25, 2002 with a copy of the prior application and a preliminary amendment as part of the original disclosure.

On April 25, 2002, the above-identified application was filed. A review of the application file reveals that it contains a 32 page preliminary amendment, an application transmittal letter incorporating by reference the prior application, a fee transmittal letter, an information disclosure statement (IDS) listing ten U.S. Patents, and a copy of U.S. Patent Nos. 6,328,448 and 6,301,417, which are among the ten patents listed on the IDS. No copy of prior application No. 09/468,602 is contained in the application file.

On June 7, 2002 Initial Patent Examination Division mailed a "Notice to File Missing Parts of Nonprovisional Application" stating, inter alia, that the application is informal because "the specification was submitted in multiple column format..." Prior to filing the instant petition, petitioners obtained from the Office information indicating that no copy of the prior application papers was present in the application file, and that pages from the IDS references (U.S. Patent Nos. 6,328,448 and 6,301,417) were erroneously processed by Initial Patent Examination Division as the specification, claims and drawings for the above-identified application. The "multiple column format" cited by the "Notice to File Missing Parts of Nonprovisional Application" refers to the format of the IDS references that were erroneously processed as the specification, claims and drawings for the application.

The "Notice to File Missing Parts of Nonprovisional Application" was sent in error and is hereby vacated.

On July 2, 2002, the instant petition was filed by facsimile. Together with a copy of the instant petition and a copy of petitioners' postcard receipt, on July 10, 2002, petitioners supplied by mail

a copy of the application papers allegedly filed on April 25, 2002 including, inter alia, 37 pages of specification from the prior application (including 9 pages of claims and one abstract page), 6 sheets of drawings from the prior application, a copy of the prior declaration, and a 32-page preliminary amendment (a duplicate of the preliminary amendment already contained in the application file). Petitioners argue that the application papers supplied on July 10, 2002 were originally filed on April 25, 2002. In support, the petition is accompanied by a copy of petitioner's postcard receipt acknowledging receipt in the Office on April 25, 2002 of the application papers supplied by petitioners on July 10, 2002. Petitioners request that the application be accorded a filing date of April 25, 2002, with the copy of the application papers supplied on July 10, 2002 as part of the original application.

The petition is granted. No petition fee is required.

The specification, claims and drawings supplied on July 10, 2002 will replace the pages from the IDS references (U.S. Patent Nos. 6,328,448 and 6,301,417) that were erroneously processed as the specification, claims and drawings for this application, and the application will retain the filing date of April 25, 2002.

The application is being returned to Office of Initial Patent Examination for:

(1) reprocessing the application with a filing date of April 25, 2002 using the application papers supplied on July 10, 2002, and not the pages from the IDS references (U.S. Patent Nos. 6,328,448 and 6,301,417) that were erroneously processed as the specification, claims and drawings for this application;
(2) correction of the filing receipt to show the correct number of drawing sheets (6), the correct applicants, the correct domestic priority, and the correct application title; and
(3) an indication in the bibliographic data for this application that six (6) sheets of drawings containing Figures 1-6 were present on filing.

Any inquiries related to this decision should be directed to the undersigned at (703) 308-5106.

James J. Engel
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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)
7027870	2006-04-11	10132057	2002-04-23	8707-2140

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

SMALL ENTITY

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

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

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

NOT Small Entity

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

Small Entity

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

SURCHARGE

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

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

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/s/	Date (YYYY-MM-DD)	2010-06-30
Name	Hanbum Cho	Registration Number	58993

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 7027870
Issue Date: April 11,2006
Application No. 10132057
Filed: April 23,2002
Attorney Docket No. 8707.2140 145-SUIVI CLINI

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

This is a decision on the electronic petition, filed June 30,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of June 30,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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ORRICK, HERRINGTON & SUTCLIFFE, LLP
IP PROSECUTION DEPARTMENT
4 PARK PLAZA
SUITE 1600
IRVINE, CA 92614-2558

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JUL 20 2007

OFFICE OF PETITIONS

In re Application of :
Rourke, et al. :
Application No. 10/132,063 : ON PETITION
Filed: April 24, 2002 :
Attorney Docket No.702563.55

This is a decision on the petition under 37 CFR 1.181 filed on June 20, 2007, to withdraw the holding of abandonment in the above-cited application.

The petition is **DISMISSED**.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed October 5, 2006, which set a shortened statutory period for reply of three-months from its mailing date. An amendment was filed on April 10, 2007. Notwithstanding, a Notice of Abandonment was mailed on April 19, 2007.

The instant petition was filed on June 20, 2007, wherein petitioner argues that a proper response to the non-final Office action was filed on April 10, 2007, with a certificate of mailing dated April 5, 2007. A review of the application file reveals that the response to the non-final Office action was filed on April 10, 2007, containing a certificate of mailing dated April 5, 2007. Yet, the undersigned could find no request for an extension of time within the third-month, which would have been necessary in order for the April 10, 2007, to be considered timely. Additionally, the undersigned could not locate a general authorization to charge a deposit for the request for an extension of time that was filed on, or before, April 5, 2007. The response filed April 10, 2007, is untimely without the request for an extension of time within the third month. The petition is dismissed, accordingly.

Petitioner may file a petition under 37 CFR 1.137(b) to revive the application. The fee for the petition is $1500.00 large entity or $750.00 for a small entity.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Hollingsworth & Funk
8500 Normandale Lake Blvd., Suite 320
Minneapolis, MN 55437

Mail Date: 04/21/2010

Applicant	: Kelli Hueler	: DECISION ON REQUEST FOR
Patent Number	: 7653560	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/132,073	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/25/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1646** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 7

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JUN 02 2003

OFFICE OF PETITIONS

MARGER JOHNSON & McCOLLOM, P.C.
1030 SW Morrison Street
Portland, OR 97205

In re Application of :
Ahle, et al. :
Application No. 10/132,079 : DECISION ON PETITION
Filed: April 24, 2002 :
Atty. Dkt. No.: 4430-76 :
For: AUTOMATED TISSUE WELDING SYSTEM AND METHOD :

This decision is in response to the communication received November 4, 2002. This transmittal is being treated as a renewed petition under 37 CFR 1.47.

The petition is **DISMISSED**.

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," and should only address the deficiencies noted below. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed April 24, 2002 without an executed oath or declaration and naming Karen Marie Ahle, Brooke C. Basinger, Jason De Camp, Kenton W. Gregory, Elizabeth Whitney Johansen, Benjamin Charles Martin, and Cynthia A. Sweet as joint inventors. Accordingly, on May 9, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring, among other items, an executed oath or declaration and a surcharge. A petition under 37 CFR 1.47 was filed September 16, 2002 and dismissed October 17, 2002.

The communication filed November 4, 2002 included a declaration signed by the previously non-signing inventor.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is not necessary and the petition for status under Rule 1.47(a) is considered to be moot. This application does not have any Rule 1.47(a) status and no such status should appear on the file wrapper.

However, applicant's response does not comply with the outstanding Notice to File Missing Parts of Nonprovisional Application for as stated in the decision mailed October 17, 2002, the declaration is not acceptable because non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

Any renewed petition must be accompanied an oath or declaration in compliance with 37 CFR 1.63, 1.64, and 1.52(c).

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
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office 2011 South Clark Place Customer Window, **Mail Stop Petition** Crystal Plaza Two, Lobby, Room 1B03 Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

Alesia M. Brown
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. 4

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OCT 17 2002

OFFICE OF PETITIONS

MARGER JOHNSON & McCOLLOM, P.C.
1030 SW Morrison Street
Portland, OR 97205

In re Application of :
Ahle, et al. :
Application No. 10/132,079 : DECISION REFUSING STATUS
Filed: April 24, 2002 : UNDER 37 CFR 1.47(a)
Atty. Dkt. No.: 4430-76 :
For: AUTOMATED TISSUE WELDING :
SYSTEM AND METHOD :

This is in response to the petition under 37 CFR 1.47(a), filed September 16, 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 April 24, 2002 without an executed oath or declaration and naming Karen Marie Ahle, Brooke C. Basinger, Jason De Camp, Kenton W. Gregory, Elizabeth Whitney Johansen, Benjamin Charles Martin, and Cynthia A. Sweet as joint inventors. Accordingly, on May 9, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring, among other items, an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition lacks requirement (2) stated above. An acceptable oath or declaration for the patent application in compliance with 37 CFR 1.63 and 37 CFR 1.64 has not been presented. The declaration presented with the instant petition is not acceptable as it contains alterations that have not been initialed as required by 37 CFR 1.52(c). Any renewed petition must be accompanied by a proper oath or declaration in full compliance with 37 CFR 1.63 and 37 CFR 1.64.

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

By mail: Commissioner for Patents

Box DAC
Washington, DC 20231

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 9

MARGER JOHNSON & McCOLLOM, P.C.
1030 SW Morrison Street
Portland, OR 97205

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JUN 26 2003

OFFICE OF PETITIONS

In re Application of :
Ahle, et al. :
Application No. 10/132,079 : DECISION ON PETITION
Filed: April 24, 2002 :
Atty. Dkt. No.: 4430-76 :
For: AUTOMATED TISSUE WELDING SYSTEM AND METHOD :

This decision is in response to the request for reconsideration filed June 13, 2003 wherein petitioner argues for acceptance of the declaration submitted November 4, 2002. This request is being treated under 37 CFR 1.181. No fee is due in connection with this matter.

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

Petitioner has established to the satisfaction of the Commissioner that the alterations to the declaration submitted September 16, 2002 occurred prior to execution in accordance with 37 CFR 1.52(c) and MPEP 602.01.

Accordingly, the declaration is accepted as having satisfied the Notice to File Missing Parts of Nonprovisional Application requirement for the submission of an executed oath or declaration.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 8, 2005

TO SPE OF : ART UNIT 3643

SUBJECT : Request for Certificate of Correction on Patent No.: 6789767

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 see the drawings – considering the draftsman's objection, are the new drawings acceptable?

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:

PETER M. POON
SUPERVISORY PATENT EXAMINER

_____ 3643
SPE Art Unit

OIPE
OCT 13 2004
PATENT & TRADEMARK OFFICE

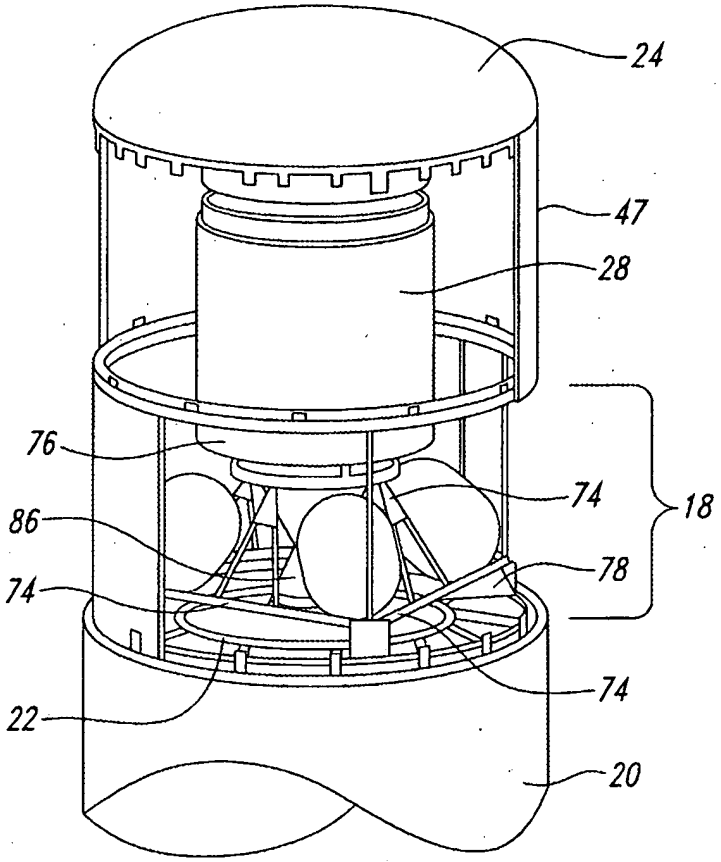

Fig. 5A

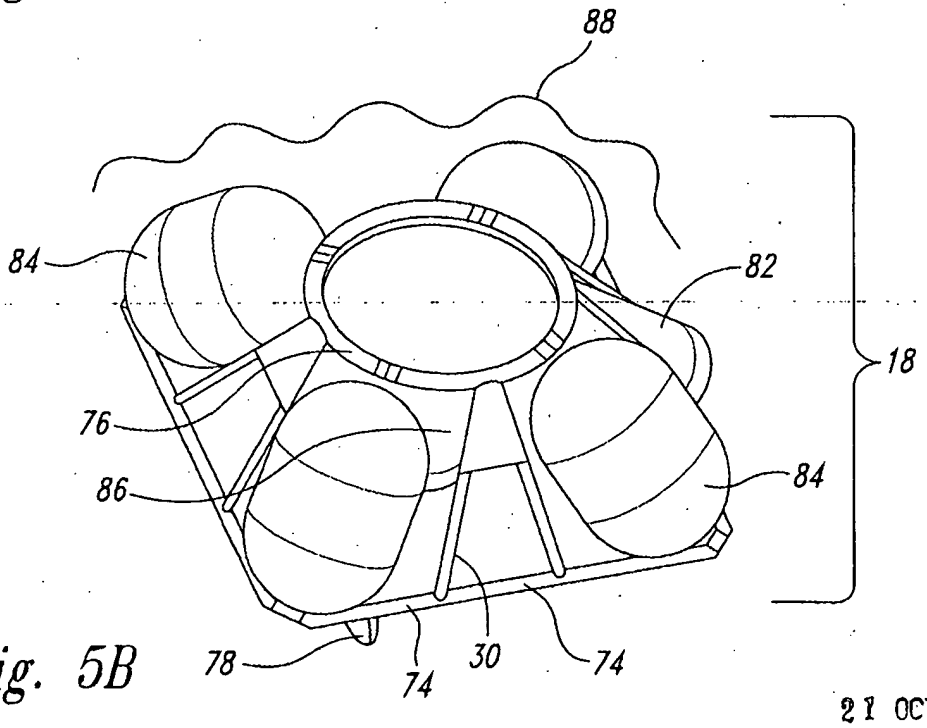

Fig. 5B

21 OCT 2004

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1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

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OFFICE OF PETITIONS

In re Application of :
Andrew A. Gray :
Application No. 10/132,085 : ON PETITION
Filed: April 4, 2002 :
Attorney Docket No. 0007975-0036 :

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

The application became abandoned for failure to reply to the non-final Office action mailed February 16, 2005. A Notice of Abandonment was mailed on April 11, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

The Office also hereby acknowledges receipt of a specification and twenty (2) sheets of drawings, containing Figures 1-24, filed on July 19, 2006.

The application file is being referred to Technology Center Art Unit 2193, 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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 6

Mark A. Hollingsworth
CRAWFORD PLLC
1270 Northland Drive, Suite 390
Mendota Heights MN 55120

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OFFICE OF PETITIONS

In re Application of
Steven B. Choi
Application No. 10/132,093
Filed: April 15, 2002
Attorney Docket No. GUID.016US01

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b), filed February 3, 2003, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to respond in an appropriate and timely manner to the "Notice to File Missing Parts of Nonprovisional Application" (the "Notice") mailed May 24, 2002, which set forth a two (2) month period for reply. No extensions of time under 37 CFR § 1.136(a) were obtained. Accordingly, this application became abandoned on August 25, 2002. The instant petition was filed before a Notice of Abandonment could be sent.

Petitioner responded appropriately to the Notice by filing, on February 3, 2003, a declaration complying with 37 CFR 1.63 and remitting the surcharge of $130.00 assessed because of the late filing of the declaration. Petitioner also remitted the outstanding filing fee.

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

Telephone inquiries concerning this matter may be directed to Kenya A. McLaughlin, Petitions Attorney, at (703) 305-0010.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT & TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
Washington, D.C. 20231

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Office of the Director
Group 3600

#3

Myron Amer, P.C.
114 Old Country Road
Suite 310
Mineola, NY 11501

In re application of : **DECISION ON PETITION**
Harrison Fuller : **TO MAKE SPECIAL**
Application No. 10/132,098 : **(INFRINGEMENT)**
Filed: April 26, 2002 :
For: POINT-OF-SALES BOX ENCLOSURE FOR COLR CODED PLASTIC GLOVES

This is a decision on the petition under 37 C.F.R §1.102(d) to make the above-identified application special, filed on July 17, 2002.

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

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

The petition filed July 17, 2002 lacks item (1) noted above. The petition will not be considered on the merits until the fee is paid.

In view of this deficiency, the petition is **DISMISSED**.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Should petitioner desire reconsideration, he should submit a renewed petition addressing the deficiency noted above.

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

kjd:9/13/02

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
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Office of the Director
Group 3600

Myron Amer, P.C.
114 Old Country Road
Suite 310
Mineola, NY 11501

Paper No. 5

In re application of : **DECISION ON RENEWED**
Harrison Fuller : **PETITION TO MAKE SPECIAL**
Application No. 10/132,098 : **(INFRINGEMENT)**
Filed: April 26, 2002 :
For: POINT-OF-SALES BOX
ENCLOSURE FOR COLOR CODED
PLASTIC GLOVES

This is a decision on the renewed petition under 37 C.F.R § 1.102(d) filed October 2, 2002 to make the above-identified application special.

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

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

A petition to make special was filed on July 17, 2002. That petition was dismissed in a decision mailed September 19, 2002 wherein it was held that requirement (1) cited above was not met.

The renewed petition filed October 2, 2002 supplies the missing item. Therefore, the petition is **GRANTED**.

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

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

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

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OFFICE OF PETITIONS

MYRON AMER P.C.
Suite 2B
350 National Boulevard
Long Beach, NY 11561-3327

In re Application of :
Harrison Fuller :
Application No. 10/132,098 : DECISION ON PETITION
Filed: April 26, 2002 :
Attorney Docket No. P-3596-10 :

This is a decision on the petition under 37 CFR 1.181 (no fee) filed June 26, 2008, requesting withdrawal of the holding of abandonment in the above-identified application. The delay in responding is regretted.

This application was held abandoned for failure to file a timely response to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) mailed on April 7, 2006. A Notice of Abandonment was mailed June 13, 2008.

Petitioner states that a reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on April 24, 2006 of, *inter alia,* a Reply to Notification of Non-Compliant Appeal Brief 04/07/06; APPENDIX; and a self-addressed return envelope. A copy of the previously submitted reply accompanies the petition.

It is noted that the postcard receipt stamped on April 24, 2006 fails to contain an application number to properly match the response with the correct application. However, since the information contained thereon (i.e., inventor's name, docket number and title of invention) was sufficient to associate the papers with the above-identified application, the petition is **GRANTED**[1].

MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the response was timely received in the USPTO, but lost thereafter.

[1] Petitioner is cautioned to ensure that the correct identifying data (including the application number) appears on all correspondence submitted to the USPTO to avoid situations of the nature which occurred in the present application.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The copy of the reply supplied with the petition will be accepted in place of the reply shown to have been received by the USPTO on April 24, 2006.

This application is being referred to Technology Center Art Unit 3653, for appropriate action in the normal course of business on the reply received with petition.

Andrea Smith
Petitions Examiner
Office of Petitions

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KOPF & HARR, P.C.
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1445 ROSS AVENUE, SUITE 4000
DALLAS TX 75202-2790

In re Application of
Steffenhagen, et al. :
Application No. 10/132,139 :
Filing Date: 25 April, 2002
Attorney Docket No. 3810.20-1 :

This is a decision on the petition filed on 28 October, 2004, alternatively under 37 C.F.R. §1.137(a) and §1.137(b).

For the reasons set forth below, the petition under 37 C.F.R. §1.137(a) is **GRANTED** and petition fee is charged to Deposit Account 13-4900 as authorized; the petition under 37 C.F.R. §1.137(b) is **DISMISSED as moot**.

BACKGROUND

The record reflects that:

- the instant application was filed on 25 April, 2002, with a correct customer number (23559) on the Transmittal but an incorrect customer number (23599) on the Application Data Sheet (ADS);

- the Office apparently picked up the correspondence information from the ADS, and the

correspondence address of record became the address in Arlington, Virginia, then correlated to the incorrect customer number rather than the actual address in Dallas, Texas;

- on 3 September, 2002, the recipient of the mail at the Arlington returned a Filing Receipt and a Corrected Filing Receipt to the Office, and informed the Office that the materials had been directed to it in error;

- the error apparently was not discovered by Petitioner until several months later, but on 10 April, 2003, Petitioner submitted to the Office via FAX (with a certificate of transmission and a receipt confirmation) a Notice of Change of Address to correct the data to customer number 23559 and the Dallas, Texas, address associated with it;

- nonetheless the 13 June, 2003, non-final Office action was mailed to the address (in Arlington, Virginia) correlated to the incorrect customer number rather than the actual address in Dallas, Texas;

- Petitioner indicates that the recipient forwarded the materials to Petitioner, and Petitioner filed a reply over a Tuesday, 14 October, 2003, certificate of mailing with a request and fee for a one-month extension of time–notably: (a) while the filing required a two- (2-) month extension of time to be timely filed and Petitioner had authorized all additional fees to be charged to Deposit Account 13-4900, the Office failed to charge the additional authorized fees,[1] and (b) Petitioner did not raise at this filing the issue of the incorrect address or re-Notice the Office as to the correct address;

- the Office mailed a final Office action (final rejection) on 14 November, 2003, with a reply due absent an extension of time on or before 14 February, 2004–notably, the mailing was directed to the Arlington, Virginia, address;

- the application went abandoned after midnight 14 February, 2004;

- the Office mailed the Notice of Abandonment on 24 June, 2004–again to the Arlington, Virginia, address

- Petitioner states that on 9 June, 2004, a paralegal from his firm attempted to obtain information about the application in a telephone call to the Office, but "the examining attorney informed her that he would not release any information to her."[2]

---

[1] This fee deficiency ($420.00, rather than $110.00) is being charged to the deposit account as authorized.

[2] Petitioner is reminded that the commentary at MPEP §102 clearly indicates that Office personnel may discuss a matter under prosecution only with the following persons: (A) an inventor; (B) an attorney or agent of record in the application; (C) an assignee of record in the application; or (D) a person with written authority from (A), (B), or (C).

- Petitioner states that on 16 June, 2004–having only then received from the Arlington, Virginia, recipient of the final Office action–Petitioner spoke with the Examiner, who thereafter transmitted to Petitioner a copy of the 14 November, 2003, final Office action;

- with the instant petition(s) Petitioner filed a request for continued examination (RCE) and fee, a submission in the form of an amendment, and makes a showing as to unavoidable delay and 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).[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]

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

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[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.

[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.

constitute the care required under Pratt,[8] 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 Unavoidable Delay

Petitioner's timely Notice to the Office in April 2003 of the correct mailing address/customer number apparently was not timely processed by the Office.

Thereafter, Petitioner appears to have perceived the mis-addressed June 2003 mailing of the non-final Office action not as a failure of the Office to process the Notice but rather as an indicator of a delay in the processing of that Notice.

While clearly not sufficient a showing to warrant a withdrawal of the holding of abandonment and Petitioner has not so plead the matter, Petitioner has evidenced an effort to have met the burdens under Pratt.

CONCLUSION

Therefore, the petition under 37 C.F.R. §1.137(a) hereby is **granted**, and the petition under 37 C.F.R. §1.137(b) is **dismissed as moot**.

The 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

---

[8] That is, in the context of ordinary human affairs the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); see also: Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

[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.

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PPG Industries
Intellectual Property Department
One PPG Place
Pittsburgh, Pennsylvania 15272

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Mark D. Lewis	)	
Application No. 10/132,142	)	
Filed: April 25, 2002	)	DECISION ON PETITION TO
For: COMPUTER IMPLEMENTED	)	MAKE SPECIAL UNDER
METHOD AND APPARATUS FOR	)	M.P.E.P. §708.02(II):
MATCHING PAINT	)	INFRINGEMENT

This is a decision on the petition, filed April 25, 2002, 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
(571) 272-3599

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FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

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OFFICE OF PETITIONS

In re Application of :
Gonzalo Serafica, et al. :
Application No. 10/132,171 : DECISION ON PETITION
Filed: April 26, 2002 : TO WITHDRAW
Attorney Docket No. 079579-0114 : FROM RECORD
:

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

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Foley & Lardner, LLP has been revoked by the assignee of the patent application on April 16, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: LANA KNEDLIK
STINSON MORRISON HECKER LLP
1201 WALNUT
SUITE 2900
KANSAS CITY, MO 64119

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/132,171	04/26/2002	Gonzalo Serafica	079579-0114.

CONFIRMATION NO. 1142

OC000000026173097

22428
FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

Date Mailed: 10/04/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/16/2007.

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

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

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HOGAN & HARTSON LLP
IP GROUP, COLUMBIA SQUARE
555 THIRTEENTH STREET, N.W.
WASHINGTON DC 20004

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OFFICE OF PETITIONS

In re Application of :

Bruce Matichuk :
Application No. 10/132,172 : DECISION ON PETITION
Filed: April 26, 2002 : TO WITHDRAW
Attorney Docket No. 90537-0002 : 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 30, 2006.

The request is **NOT APPROVED.**

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

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, ***the applicant Celcorp, the recorded assignee has failed to pay for legal services provided by the law firm***, do not meet any the conditions set forth in 37 CFR 10.40 because the assignee has properly intervened in accordance with a statement under 37 CFR 3.73(b).

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 Terri Williams at 571-272- 2991.

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Mr. Bruce Matichuk, CTO**
Celcorp
2200, 10130-103 Street
Edmonton, Alberta T5J 3N9
Canada

UNITED STATES PATENT AND TRADEMARK OFFICE

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BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON DC 20037

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OFFICE OF PETITIONS

In re Application of :
Robert B. Anthonyson : DECISION ON PETITION
Application No. 10/132,222 : UNDER 37 CFR 1.78(a)(3)
Filed: September 19, 2002 :
Attorney Docket No. 110418314US :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 23, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed Application No. 09/545,298, filed April 6, 2000.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(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 September 19, 2002 and was pending at the time of filing of the instant petition.

The reference to the prior-filed application 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).

---

[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

The instant petition does not comply with item (1).

Petitioner failed to submit an amendment to the first line of the specification (or an Application Data Sheet in accordance with 37 CFR 1.76(b)(5) to include the 35 U.S.C. § 120 benefit to the instant application.

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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OFFICE OF PETITIONS

In re Application of
Robert B. Anthonyson
Application No. 10/132,222
Filed: April 26, 2002
Attorney Docket No. 110418314US

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

This is a corrected decision on the petition under 37 CFR 1.78(a)(3), filed February 23, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed Application No. 09/545,298, filed April 6, 2000.

The petition is **DISMISSED**.

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

A reference to add the above-noted, prior-filed application on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

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

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

---

[1] *Note* 37 CFR 1.121

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

Telephone inquiries concerning this decision should 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON DC 20037

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JUN 2 8 2004

OFFICE OF PETITIONS

In re Application of
Robert B. Anthonyson
Application No. 10/132,222
Filed: April 26, 2002
Attorney Docket No. 110418314US

: 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 May 21, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed Application No. 09/545,298, filed April 6, 2000, set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

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[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

The instant pending application was filed on April 26, 2002, and was pending at the time of filing of the instant petition. A reference to the prior-filed application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(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 application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

A corrected Filing Receipt, which includes the priority claim to the prior-filed application, will follow in due course.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

The examiner of Technology Center Art Unit 3661 will consider applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to prior-filed Application No. 09/545,298, filed April 6, 2000.

Karen Creasy

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

OIPE JC46
APR 15 2005
PATENT & TRADEMARK OFFICE

1731 Pet. Dec.
IFW

PTO/SB/83 (06-03)
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	10/132,231
Filing Date	April 25, 2002
First Named Inventor	Theodore Hersh, Rebecca Hersh
Art Unit	
Examiner Name	
Attorney Docket Number	350568.01010

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

Approved
Jacqueline M. Stone, Director
Technology Center 1700
6/17/05

I hereby apply to withdraw as attorney or agent for the above identified application.

The reasons for this request are: Client Request Files ReturnedTo Client

CORRESPONDENCE ADDRESS

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☒ Change the correspondence address and direct all future correspondence to:

☐ Customer Number

OR

☒ Firm or Individual Name	Theodore Hersh, M.D.				
Address	Thione International, Inc.				
Address	2989 Piedmont Road, NE., Suite 200				
City	Atlanta	State	Georgia	ZIP	30305
Country					
Telephone		Fax			

☒ 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 ☐

This request is enclosed in triplicate (including any attachments).

Name	Nathan P. Koenig (Reg. No. 38,210)
Signature	
Date	April 13, 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.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

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DEC 2 2 2005

OFFICE OF PETITIONS

In re Application of :
Hiroyuki Matsuki et al :
Application No. 10/132,267 : ON PETITION
Filed: April 26, 2002 :
Attorney Docket No. 0717-0489P :

This is a decision on the petition under 37 CFR 1.313(c)(1-3), filed December 21, 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 September 30, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2612 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Wan Laymon
Petitions Examiner
Office of Petitions

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

UNITED STATES 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 : December 22, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Hiroyuki Matsuki et al
Application No. : 10/132,267
Filed : April 26, 2002

The above-identified application has been assigned Patent No. 6,980,240 and an issue date of December 27, 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 December 27, 2005:

"All reference to Patent No. 6,980,240 to Hiroyuki Matsuki et al of Tenri-shi, JAPAN for IMAGE PROCESSING APPARATUS, IMAGE PROCESSING METHOD AND PORTABLE IMAGING appearing in the Official Gazette of December 27, 2005 should be deleted since no patent was granted."

Wan Laymon
Petitions Examiner
Office of Petitions

cc: Paul Harrison
Deneise Boyd
Mary Louise McAskill
Niomi Farmer
Mary E. Johnson (Cookie)
Duane Davis (CDS)
Tamara K. Greene

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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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RABIN & CHAMPAGNE, P.C.
SUITE 500
1101 14TH STREET, N.W.
WASHINGTON DC 20005

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MAY 10 2007

OFFICE OF PETITIONS

In re Application of :
Yao Ou-Yang et al. :
Application No. 10/132,302 : ON PETITION
Filed: April 26, 2002 :
Attorney Docket No. TAID104 :

This is a decision on the petition filed April 12, 2007, to withdraw the holding of abandonment under 37 CFR 1.137(a).

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.

This application became abandoned November 22, 2004 for failure to file a timely response to an Office communication mailed October 20, 2004 which required a signed copy of a previously filed response and which set the longer of a one month or thirty day period for reply. No response having been timely filed, a Notice of Abandonment was mailed May 5, 2005.

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

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

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

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

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

At the outset, the petition pleads to have the abandonment withdrawn but does not comply with the requirements of 37 CFR 1.181. While petitioner does in fact cite 37 CFR 1.137(a) this matter is therefore so treated. Unfortunately however, the instant petition lacks compliance with items (1), (2) and (3) under 37 CFR 1.137(a).

The file record discloses that the office communication was sent to what was believed to be the address of record. However, petitioner contends that it was not received.

Petitioner has not provided sufficient evidence to persuade the Office that the failure to respond to the office communication in a timely manner was unvoidable.

A review of the petition reveals that the address on the petition is different from the address of record however a review of the file does not reveal that an address change was filed prior to the mailing of the Office communication on October 20, 2004.

SHOWING OF UNAVOIDABLE DELAY

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.[1]

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 or mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[2]

Since petitioners have failed to establish that the office communication wasn't in fact received, and since the unavoidable argument is based on non-receipt, petitioners have

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[1] 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).

[2] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

also not shown that the delay in responding to the Office communication was unavoidable.

Furthermore, no further consideration can be given this matter until and unless the required petition fee pursuant to 37 CFR 1.17(l) has been provided.

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

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

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

KAO H. LU
1425 E. DARBY ROAD
HAVERTOWN, PA 19083

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LEYDIG VOIT & MAYER, LTD
700 THIRTEENTH ST., N.W.
SUITE 300
WASHINGTON DC 20005-3960

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JUL 24 2008

In re Patent No.: 6,790,331 :
Issue Date: September 14, 2004 :
Application No. 10/132,307 : NOTICE
Filed: April 26, 2002 :
Attorney Docket No. 401677/SUZUYE :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

STEPHEN E. CLARK
FACE INTERNATIONAL CORPORATION
427 WEST 35TH STREET
NORFOLK, VA 23508

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Eric M. Baker
Application No. 10/132,329
Filed: April 22, 2002
Attorney Docket No. SVC078

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed July 14, 2004.

The application became abandoned for failure to pay the issue fee on or before January 12, 2004. Receipt is acknowledged of the requisite issue/publication on July 14, 2004.

The petition is GRANTED.

The application is being forwarded to Publishing Division.

Telephone inquires related to this decision should be directed to the undersigned at (703) 305-9220. Telephone inquiries related to processing at Publishing Division should be directed to (703) 305-8283.

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

PTO/SB/64 (11-03)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)	Docket Number (Optional) SVC078

First named inventor: Eric M. Baker

Application No.: 10/132,329 Art Unit: 2834

Filed: 04/22/2002 Examiner: Dougherty, T.

Title: Mounting and Heatsink Method for Piezoelectric Transformer

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JUL 15 2004
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Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX: (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional.

1. Petition fee
☑ Small entity-fee $ 665.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

07/15/2004 AKELLEY 00000031 10132329
01 FC:2453 665.00 OP

☐ Other than small entity - fee $ _____ (37 CFR 1.17(m))

2. Reply and/or fee
A. The reply and/or fee to the above-noted Office action in the form of _____ (identify type of reply):
☐ has been filed previously on _____.
☐ is enclosed herewith.
B. The issue fee of $665.00 and publication fee of $300.00
☐ has been paid previously on _____.
☑ is enclosed herewith.

This collection of information is required by 37 CFR 1.137. 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. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

3. Terminal disclaimer with disclaimer fee

☑ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $_____ for a small entity or $_____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

07/09/2004
Date

Signature

Telephone Number: 757-624-2121

David J. Bolduc
Typed or printed name

Face International Corporation
Address

427 W. 35th Street, Norfolk, VA 23508
Address

Enclosures:
☑ Fee Payment
☐ Reply
☐ Terminal Disclaimer Form
☐ Additional sheets containing statements establishing unintentional delay
☑ Other: Issue Fee Transmittal

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☑ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

04/09/2004
Date

Signature

David J. Bolduc, Reg. No. 42,340
Type or printed name of person signing certificate

PART B - FEE(S) TRANSMITTAL

RECEIVED
JUL 15 2004
OFFICE OF PETITIONS

Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (703) 746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

7590 10/10/2003

Stephen E. Clark
Face International Corporation
427 West 35th Street
Norfolk, VA 23508

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission
I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO, on the date indicated below.

David J Bolduc	(Depositor's name)
[signature]	(Signature)
07/09/04	(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/132,329	04/22/2002	Eric M. Baker	SVC078	9861

TITLE OF INVENTION: MOUNTING AND HEATSINK METHOD FOR PIEZOELECTRIC TRANSFORMER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	$665	$300	$965	01/12/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
DOUGHERTY, THOMAS M	2834	310-348000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 DAVID J. BOLDUC
2 _____
3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent); ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

☑ Issue Fee
☑ Publication Fee
☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

☑ A check in the amount of the fee(s) is enclosed.
☐ Payment by credit card. Form PTO-2038 is attached.
☐ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

Director for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature) [signature] (Date) 07/09/04

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Alexandria, Virginia 22313-1450.

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01 FC:8501 665.00 OP
02 FC:1504 300.00 OP

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Paper No. 13

Applicant : Kelly, Michael et al.
Appl No.: 10/132,335
Filed: April 25, 2002

DECISION GRANTING PETITION UNDER *37 CFR 1.84*

This decision is in response to the petition filed August 5, 2002 in the above-identified application. Petitioner requests that color drawings be accepted in accordance with 37 C.F.R. 1.84(a)(2).

The petition states that color drawings of Figures 3-10 are necessary in order to completely and accurately represent the invention.

The petition complies with 37 C.F.R. 1.84(a)(2) in that it was accompanied by (1) the appropriate fee and (2) three sets of color drawings. The specification further includes the required text language set forth in 37 C.F.R. 1.84 (a)(2)(iii).

The papers filed on August 5, 2002 fulfill the requirements set forth in 37 C.F.R. 1.84(a)(2) and the petition is GRANTED.

Marc Hoff
Supervisory Patent Examiner, Art Unit 2857
Technology Center 2800

Webb Ziesenheim Logsdon Orkin & Logsdon
Richard L Byrne
700 Koppers Building
436 Seventh Avenue
Pittsburgh PA 15219-1818

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : August 20, 2007

TO SPE OF : ART UNIT 2625 Edward L. Coles

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/132,349 Patent No.: 6968073B1

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**.

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

Thank You For Your Assistance

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

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

Comments: _____

SAMIR AHMED
SUPERVISORY PATENT EXAMINER
SPE

2624
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Washington, D.C. 20231
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Paper No. 6

Daivid T. Nikaido
RADER, FISHMAN & GRAUER, PLLC
Suite 501
1233 20th Street
Washington, DC 20036

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AUG 1 6 2002

OFFICE OF PETITIONS

In re Application of	:	
Nonaka	:	
Application No. 10/132,368	:	DECISION GRANTING
Filed: April 26, 2002	:	PETITION
Attorney Docket No. SPO-0214	:	

This is a decision on the petition filed July 3, 2002, to establish that pages 4, 6, 7, and 12 were part of the originally filed application.

On April 26, 2002, the application was filed.

On June 6, 2002, the Office of Initial Patent Examination mailed a Notice stating that the application had been accorded a filing date of April 26, 2002, and advising applicants that pages 4, 6, 7, and 12 of the specification appeared to have been omitted.

In response, the present petition was filed alleging that the missing pages were deposited on April 26, 2002. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "36 Pgs. Spec." on April 26, 2002.[1] Petitioner has also submitted a copy of the missing documentation- pages 4, 6, 7, and 12.

Upon review of the record, pages 4, 6, 7, and 12, deposited on April 26, 2002, have not been located. However, the evidence is convincing that the application papers deposited on April 26, 2002, included pages 4, 6, 7, and 12 and that the pages were subsequently misplaced in the PTO.

In view of the above, the petition is **granted**. The copy of pages 4, 6, 7, and 12 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 June 6, 2002, is hereby vacated to the extent the Notice stated that pages 4, 6, 7, and 12 were omitted.

---

[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 April 26, 2002, using the application papers filed on April 26, 2002, and the copy of pages 4, 6, 7, and 12 of the specification filed on July 3, 2002.

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

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

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

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OFFICE OF PETITIONS

In re Application of :
Rainer Weichelt :
Application No. 10/132,397 : ON PETITION
Filed: April 26, 2002 :
Attorney Docket No. 824-37718 :

This is a decision on the petition, filed September 29, 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 17, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 3637for 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).

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DORITY & MANNING, P.A.
POST OFFICE BOX 1449
GREENVILLE, SC 29602-1449

Mail Date: 04/21/2010

Applicant	: Xuedong Song	: DECISION ON REQUEST FOR
Patent Number	: 7651841	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/132,421	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/25/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1064** 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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JUL 28 2004

NOVO NORDISK PHARMACEUTICALS, INC
100 COLLEGE ROAD WEST
PRINCETON, NJ 08540

In re Application of:
Ebdrup et al.
Serial No.: 10/132,428
Filed: April 24, 2002
Attorney Docket No.: 6003.210-US

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicants' petition under 37 CFR § 1.181 filed on July 1, 2004, requesting withdrawal of the holding of abandonment 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 an Office action, setting a one month statutory time period for reply, to applicants on June 12, 2003. On September 16, 2003, the Office mailed a Notice of Informal or Non-Responsive Amendment to applicants; and on April 26, 2004, the Office mailed a Notice of Abandonment to applicants. A review of the file history shows that the Office actions of June 12, 2003, September 16, 2003, and April 26, 2004 were mailed to the incorrect correspondence address. In view of this error, this application is restored to pending status with the mailing date of this decision.

Applicants' petition is **GRANTED**.

This 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.

Bruce Kisliuk
Director, Technology Center 1600

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Paper No.

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SALT LAKE CITY UT 84110

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OFFICE OF PETITIONS

In re Application of
Warren N. Farnworth, et al.
Application No. 10/132,429
Filed: April 25, 2002
Attorney Docket No. 3400.4US (97-709.4)

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 15, 2003, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 24, 2003, using a Certificate of Mailing under 37 CFR 1.8 dated November 20, 2003, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220.

After the application is received in the Office of Petitions, the application will be forwarded to Technology Center AU 2818 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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HELLER EHRMAN LLP
4350 LA JOLLA VILLAGE DRIVE
#700, SEVENTH FLOOR
SAN DIEGO, CA 92122

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OFFICE OF PETITIONS

In re Application of	:
Vasken Bohossian et al	: DECISION ON PETITION TO
Application No. 10/132,434	: WITHDRAW FROM RECORD
Filed: April 23, 2002	:
Attorney Docket No. 24657-6065	:

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 5, 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 33123 has been revoked by the assignee of the patent application on February 27, 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.

The file record discloses that a non-final Office action was mailed on March 21, 2006, and a reply thereto was received on June 14, 2006. Accordingly, the Technology Center will take appropriate action on the reply of June 14, 2006 in due course.

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

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Law Offices of Barry N. Young
260 Sheridan Avenue
Suite 410
Palo Alto, CA 94306-2047

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788 Shrewsbury Avenue
TINTON FALLS NJ 07724

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OFFICE OF PETITIONS

In re Application of :
Artur **SOWA** :
Application No. 10/132,451 : ON PETITION
Filed: April 26, 2002 :
Attorney Docket No. 9836.002.00 :

This is a decision on the petition under 37 CFR 1.137(b), filed September 14, 2006, to revive the above-identified application.

The petition is **DISMISSED AS MOOT.**

The record shows that a Notice of Allowance and Fee(s) Due was mailed on May 8, 2006 and applicant submitted the Issue Fee August 1, 2006. As applicant continued to prosecute the application, the application has not been abandoned. As such, the petition is dismissed as moot. The petition fee will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Lori Baker Amerson at (571) 272-6052 or in her absence to the undersigned at (571) 272-7099.

David Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/31/07

TO SPE OF : ART UNIT 2816

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/132462** Patent No.: **6741108**

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

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

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

Angela Green
Certificates of Correction Branch
703.308.9380 ext. 123

Thank You For Your Assistance

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

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

Comments: _____

LINCOLN DONOVAN
SUPERVISORY PATENT EXAMINER
SPE

2816
Art Unit

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DR. LINDSAY SHUR, PRESIDENT
TECHNICAL EXCELLCNCE INC.
P.O BOX 705
HOLMDEL, NJ 07733

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OFFICE OF PETITIONS

In re Application of :
Lindsay A. Shur :
Application No. 10/132,479 : ON PETITION
Filed: April 25, 2002 :
Attorney Docket No. None :

This is a decision on the petition, filed May 13, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED** because it lacks the required petition fee pursuant to 37 CFR 1.17(h).

Further, 37 CFR 1.313(d) states that a petition under this section [37 CFR 1.313(c)] will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue**. In this case, the petition was not received by the deciding official until June 29, 2005, which is after the date upon which the above-identified application issued as U.S. Patent No. 6,912,448.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.

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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/132,493	04/25/2002	Shinichi Imade	02257/LH	1367

1933 7590 05/07/2004

FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
767 THIRD AVENUE
25TH FLOOR
NEW YORK, NY 10017-2023

EXAMINER	
LE, UYEN CHAU N	
ART UNIT	**PAPER NUMBER**
2876	

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.
10/132,493			

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.

LD

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 05/28/2010

Applicant	: Leonid Sheynblat	: DECISION ON REQUEST FOR
Patent Number	: 7623871	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/132,501	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/24/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **354** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NOVARTIS INSTITUTES FOR BIOMEDICAL RESEARCH, INC.
220 MASSACHUSETTS AVENUE
CAMBRIDGE, MA 02139

COPY MAILED

JUL 0 1 2009

OFFICE OF PETITIONS

In re Application of	:	
Alexey Terskikh, et at.	:	
Application No. 10/132,533	:	ON PETITION
Filed: April 25, 2002	:	
Attorney Docket No. 4-21101B	:	

This is a decision in response to the Petitions to Withdraw the Abandonment filed on August 3, 2003 and February 26, 2004 which are being treated as a petition under the provisions of 37 CFR 1.181 (no fee). The delay in responding is regretted; however the application was recently referred to the Office of Petitions for consideration of the petition to revive under 37 CFR 1.137(b), filed December 22, 2008.

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

The application was held abandoned for failure to reply in a timely manner to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures mailed August 9, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on October 10, 2002. A Notice of Abandonment was mailed on July 29, 2003. It is noted that a Request to Withdraw Abandonment was filed on August 8, 2003, arguing the abandonment should be withdrawn since the "missing statement" was already filed on July 16, 2002. It is noted that the Request to Withdraw Abandonment was resubmitted on February 26, 2004. On December 22, 2008 the petition under 37 CFR 1.137(b) was filed.

It is noted that the written record does not include a timely response to the Notice of August 9, 2002. Pursuant to 35 U.S.C. 133, "[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 satisfactory of the Director that such delay was unavoidable. Consequently, the application was properly held abandoned and a decision on the petition under 37 CFR 1.137(b) follows.

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

A grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The petition lacks item (1) above.

In this regard, the Supervisory Patent Examiner Larry Helms of Art Unit 1642 has indicated that the content of the Computer Readable Form (CRF) does not provide the source of genetic material in <220> to <223> section. (See *Fed. Reg.* June 1, 1998, Vol. 63, No. 104, pp 29631-32). 37 CFR 1.823. Therefore the petition cannot be granted at this time.

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) and any omitted item noted above." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

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

---

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

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

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

By Internet: EFS-Web[3]

Any questions concerning this decision may be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: JOHN PRINCE
NOVARTIS INSTITUTES FOR BIOMEDICAL RESEARCH, INC.
400 TECHNOLOGY SQUARE
CAMBRIDGE, MA 02139

[3] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

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220 MASSACHUSETTS AVENUE
CAMBRIDGE, MA 02139

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NOV 25 2009

OFFICE OF PETITIONS

In re Application of
Alexey Terskikh, et al.
Application No. 10/132,533
Filed: April 25, 2002
Attorney Docket No. 4-21101B

ON PETITION

This is a decision in response to the renewed petition, filed October 14, 2009, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to a Notice mailed August 9, 2002. A Notice of Abandonment was mailed on July 23, 2003. On December 22, 2008 a petition under 37 CFR 1.137(b) was filed; however, the petition was dismissed in a decision mailed July 1, 2009. On October 14, 2009, the present petition was filed.

Petitioner notes that the renewed petition includes, *inter alia*:

"(1) The required Reply, including:

(a) the Sequence Listing, which provides the source of the genetic material in the <229> to <223> sections;

(b) a Submission of Sequence Listing, including Statement of Verification;

(c) a Request for Continuing Application[1]

(d) a Two (2) Month Extension of Time to respond to Dismissal

(2) The petition fee of $1,500 set forth in 37 CFR 1.17(m)..."

It is initially pointed out that the requisite $1,620 petition fee pursuant to 37 CFR 1.17(m) was paid with the original petition on July 1, 2009. Accordingly, no further petition fee is being charged to counsel's deposit account.

Further, the filing of a Request for Continued Examination (RCE) is not permissible unless prosecution in the application is closed. Therefore, the improper RCE will not be accepted and the RCE filing fee will be credited to counsel's deposit account.

[1] A Request for Continued Examination (RCE) was actually filed.

Otherwise, the petition is found to satisfy the conditions for revival pursuant to the provisions of 37 CFR 1.137(b).

Petitioner is reminded that the grant of a petition under 37 CFR 1.137 is not a determination that any reply is complete, since the petition may be granted if the reply appears to be *bona fide*. After revival of the application, the Office of Patent Application Processing (OPAP) may, upon more detailed review, determine that the reply is lacking in some respect. In this limited situation, OPAP should send out a letter giving shortened statutory period under 37 CFR 1.135(c) for correction of the error or omission. Extensions of time under 37 CFR 1.136(a) are permitted. If applicant does not correct the omission within the time period set in the letter (including any extension), the application is again abandoned.

The application is being referred to the Office of Patent Application Processing (OPAP) for further pre-examination processing.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at OPAP should be directed to their hotline at (571) 272-4000.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

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FROM DIRECTORS OFFICE

FEB 10 2006

TECHNOLOGY CENTER 3600

RENNER, KENNER, GREIVE, BOBAK,
TAYLOR & WEBER
Fourth Floor
First National Tower
Akron, OH 44308-1456

In re Application of :
Willis Jay Mullet et al. :
Application No. 10/132,540 :
Filed: April 24, 2002 :

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

For: WINDING ASSEMBLY FOR DOOR
COUNTERBALANCE SYSTEM

This is in reply to applicants' petition to withdraw the holding of abandonment under 37 CFR 1.181(a) filed in the United States Patent and Trademark Office (USPTO) on August 31, 2005.

The petition is **GRANTED**.

A review of the application file reveals that a Final Office action was mailed to applicants on August 23, 2004. Applicants mailed a request for a Three-month extension of time and a Notice of Appeal with the appropriate fees which was received by the Office on February 28,2005 (the request for extension of time and the Notice of appeal each included a proper Certificate of Mail dated February 24, 2005). A Notice of Abandonment was mailed on July 28, 2005 for failure to respond to the Office Action mailed on August 25, 2004. However, applicants filed an Appeal Brief and a Request for extension of time with the appropriate fees which were received by the Office on August 31, 2005 (the Appeal Brief and Request for extension of time included a proper Certificate of Mail dated August 29, 2005).

In the petition applicants argue the application was prematurely held to be abandoned, since an Appeal Brief and Request for extension of time were timely filed. The application file provides sufficient evidence that the Appeal Brief and Request for extension of time were timely filed.

Since the application was prematurely held to be abandoned, applicants' petition to withdraw the holding of abandonment is **Granted**.

The application is being forwarded to the Supervisory Legal Instruments to withdraw the holding of abandonment and restore the application to pending status, enter the Appeal Brief received on August 31, 2005 and forward the application to the examiner for action.

for

Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6619

RAR/bkg October 20, 2005

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DAVID R. PRESTON & ASSOCIATES
12625 HIGH BLUFF DRIVE, SUITE 205
SAN DIEGO, CA 92130

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MAY 1 1 2006

OFFICE OF PETITIONS

In re Application of :
Bo Cao :
Application No. 10/132,543 : DECISION ON PETITION
Filed: April 25, 2002 : TO WITHDRAW
Attorney Docket No. 66RK001 : FROM RECORD
:

This is a decision on the requests to withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 22, 2005 (signed by Richard Sklar) and October 17, 2005 (signed by David R. Preston).

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

A review of the file record indicates that the power of attorney to all of the previously appointed attorneys has been revoked by the assignee of the patent application on March 30, 2006. The revocation and power of attorney was accepted on May 10, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

A final Office action was mailed on November 23, 2005, which set a three month shortened statutory period for reply, with extensions of time being available pursuant to the provisions of 37 CFR 1.136(a). Failure to timely reply will result in the abandonment of the application.

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

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Perkins Coie LLP
Post Office Box 1208
Seattle, WA 98111-1208

Law Offices of Richard B. Klar
28 East Old Country Road
Hicksville, NY 11801

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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HAYNES AND BOONE, LLP
IP SECTION
2323 VICTORY AVENUE
SUITE 700
DALLAS TX 75219

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OCT 28 2008

In re Patent No. 6,720,349
Issue Date: April 13, 2004
Application No. 10/132,545
Filed: April 25, 2002
Attorney Docket No. 8252D

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed August 21, 2008, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on April 14, 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).

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.

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

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

Karen Creasy
Petitions Examiner
Office of Petitions
cc:

ROBERT C. SHADDOCK /WINSTEAD PC
1100 JP MORGAN CHAST TOWER
600 TRAVIA STREET
HOUSTON TX 77002

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30 ROCKEFELLER PLAZA
44TH FLOOR
NEW YORK NY 10112-4498

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MAY 26 2010

OFFICE OF PETITIONS

In re Patent No. 6,960,430 :
Issue Date: November 1, 2005 :
Application No. 10/132,556 : ON PETITION
Filed: April 25, 2002 :
Attorney Docket No. A32367-PCT-USA-A :

This is a decision on the petition under 37 CFR 1.378(c), filed March 2, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on November 2, 2009, for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

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

As authorized the surcharge fee of $1,640 will be charged to deposit account 02-4377.

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

The patent file is being forwarded to Files Repository.

/Kimberly Inabinet/

Kimberly Inabinet
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. 3

TERRY L. WILES
POPOVICH & WILES, P.A.
IDS CENTER, SUITE 1902
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402

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AUG 2 2 2002

OFFICE OF PETITIONS

In re Application of :
Kent D. Anderson et al :
Application No. 10/132,562 : NOTICE
Filed: April 25, 2002 :
Attorney Docket No. MVA1005US :

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 3700.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No.7

WARE FRESSOLA VAN DER SLUYS &
ADOLPHSON, LLP
BRADFORD GREEN BUILDING 5
755 MAIN STREET, P.O. BOX 224
MONROE CT 06468

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JUL 0 1 2004

OFFICE OF PETITIONS

In re Application of
Ken Nakashima et al
Application No. 10/132,579
Filed: April 3, 2002
Attorney Docket No. 542-007-5

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 July 30, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/JP01/06286, filed July 19, 2001 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 April 3, 2002, and was pending at the time of filing of the instant petition. A reference to the prior-filed PCT application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

Petitioner is reminded that the foreign application should not be included in the amendment under § 120. The foreign application data was included in the declaration filed with the instant application.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed PCT application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed PCT application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. §§ 120 and 365(c). Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and (365(c) to the prior-filed PCT application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed 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 application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 1756 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to prior-filed PCT Application No. PCT/JP01/06286, filed July 19, 2001.

Karen Creasy

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WALTER W. DUFT
LAW OFFICES OF WALTER W. DUFT
8616 MAIN ST
SUITE 2
WILLIAMSVILLE, NY 14221

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APR 0 5 2006

OFFICE OF PETITIONS

In re Application of :
Arya, et al. :
Application No. 10/132,594 : ON PETITION
Filed: April 25, 2002 :
Attorney Docket No. SJ0920010131US1 :

This is a decision on the petition under 37 CFR 1.137(a), filed December 21, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee and publication fee, if applicable, on or before January 6, 2005. Accordingly, this application became abandoned on January 7, 2005. A Notice of Abandonment was mailed on February 18, 2005.

This application is being forwarded to Publishing Division for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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ALEXANDRIA, VA 22313-1450
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

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APR 0 4 2007

OFFICE OF PETITIONS

In re Application of :
Khurram Muhammad, et al. :
Application No. 10/132,624 : ON PETITION
Filed: April 25, 2002 :
Attorney Docket No. TI-32953 :

This is a decision in response to the petition, filed December 5, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to an Office action mailed April 19, 2006. A Notice of Abandonment was mailed on November 28, 2006. In response, on December 5, 2006, the present petition was filed.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,500; and (3) the requisite statement of unintentional delay[1].

The application is being referred to Technology Center AU 2611 for consideration of the amendment filed December 5, 2006.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

AGILENT TECHNOLOGIES, INC.
LEGAL DEPARTMENT, DL429
INTELLECTUAL PROPERTY ADMINISTRATION
P. O. BOX 7599
LOVELAND CO 80537-0599

In re Application of :
Jonathan Q. Li, et al. :
Application No. 10/132,626 : ON PETITION
Filed: April 25, 2002 :
Attorney Docket No. 10011386-1 :

This is a decision in response to the petition, filed October 26, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed April 26, 2005. A Notice of Abandonment was mailed on December 7, 2005. On October 26, 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 an amendment; (2) the petition fee of $1.500.00; and (3) an adequate statement of unintentional delay[1].

The application is being referred to Technology Center AU 2121 for consideration of the amendment filed October 26, 2006.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[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.

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BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON DC 20001

In re Application of	:
Saul J. Sarkis et al	:
Serial No.: 10/132,695	: PETITION DECISION
Filed: April 26, 2002	:
Attorney Docket No.: 001107.00235	:

This is a response to the petitions under 37 CFR 1.59(b), filed August 16, 2002, to expunge information from the above identified application.

Petitioner requests that an IDS submitted August 16, 2002, be expunged from the record. The petition fee set forth in 37 CFR 1.17(h) has been paid. The IDS consists of a listing of a single copending application. A copy of the application was not filed with the IDS. Any delay in acting on this petition is regretted. However, any decision on the relevance of the proprietary information could not be made until the application was taken up for examination by the examiner assigned.

A review of the IDS shows that the copending application was published (see attachment) prior to the examiner taking the application up for action and is therefor no longer proprietary information. In view thereof the requested action is moot.

The petition is **DISMISSED**.

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, 703-872-9306.

Jasemine C. Chambers
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 9

Ward & Olivo
Suite 300
382 Springfield Avenue
Summit, NJ 07901

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OCT 14 2004

OFFICE OF PETITIONS

In re Application of :
Reinfeld, et al. : DECISION ON PETITION
Application No. 10/132,703 :
Filed: April 25, 2002 :
Atty. Dkt. No.: 120-113 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 2, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned March 11, 2004 for failure to timely reply to the Office communication mailed February 10, 2004. The Notice set a one (1) month shortened statutory period of time for reply. No extensions of time in accordance with 37 C.F.R. § 1.136 were timely requested. Notice of Abandonment was mailed August 27, 2004.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 C.F.R. § 1.137(b). Accordingly, the failure to timely submit a proper reply to the Office communication is accepted as having been unintentionally delayed.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for

reply to avoid abandonment. Accordingly, since the request for extension of time submitted herewith was filed subsequent to the maximum period obtainable for reply, this fee is unnecessary. Petitioner may request a refund of the $1,005.00 fee by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

This application will be forwarded to Technology Center 3700 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
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

C. Douglass Thomas
BEYER WEAVER & THOMAS LLP
P.O. Box 70250
Oakland, CA 94612-0250

MAILED

APR 19 2005

Technology Center 2100

In re Application of:
Zuili et al.
Application No. 10/132,712
Filed: April 26, 2002
For: SYSTEM AND METHOD FOR PROVIDING MANAGEABILITY TO SECURITY INFORMATION FOR SECURED ITEMS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed January 12, 2005.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

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

for

Vincent N. Trans
Special Program Examiner 4/18/05
Technology Center 2100

cc: John S. Ferrell at Carr & Ferrell LLP
2200 Geng Road
Palo Alto, CA 94303

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

CELERA GENOMICS CORP.
ATTN: WAYNE MONTGOMERY, VICE
PRES, INTEL PROPERTY
45 WEST GUDE DRIVE
C2-4#20
ROCKVILLE, MD 20850

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APR 0 4 2003

OFFICE OF PETITIONS

In re Application of :
Song Hu, Fangcheng Gong, :
Istvan Ladunga and Maureen :
Higgins :
Application No. 10/132,720 :
Filed: April 26, 2002 :
Title of Invention: ISOLATED :
HUMAN SECRETED PROTEINS, : DECISION REFUSING
NUCLEIC ACID MOLECULES : STATUS
ENCODING HUMAN SECRETED : UNDER 37 CFR 1.47(a)
PROTEINS, AND USES THEREOF :

This is in response to a Petition under 37 CFR 1.47(a), filed September 24, 2002, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor. The delay in treating this petition is regretted.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on April 26, 2002 without a fully executed oath or declaration. Accordingly, on May 24, 2002 a "Notice to File Missing Parts of Nonprovisional Application" (hereinafter "Notice"), was mailed to Petitioner. The Notice required, in relevant part, a fully executed oath or declaration. Applicant was given two-months from the date of the Notice within which to file a fully executed oath or declaration. Extensions of time were available under 37 CFR 1.136(a).

Petitioner responded with the instant petition, extension-of-time request and Declarations executed by the available 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. Applicant lacks

item (1) as set forth above.

As to item (1), Petitioner alleges the inventor is unavailable. As to unavailability, Petitioner must establish the exercise of diligent effort in trying to find or reach the nonsigning inventor. A statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. (Emphasis supplied). See, MPEP § 409.03(d). At the very least, a search of telephone directories should be undertaken of the regions where it is suspected the non-signing inventor may reside. Copies of the results of such searches must be referred to in any renewed petition. It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

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

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

By 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) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 8

CELERA GENOMICS CORP.
ATTN: WAYNE MONTGOMERY, VICE
PRES, INTEL PROPERTY
45 WEST GUDE DRIVE
C2-4#20
ROCKVILLE, MD 20850

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APR 0 7 2003

OFFICE OF PETITIONS

In re Application of :
Song Hu, Fangcheng Gong, :
Istvan Ladunga and Maureen :
Higgins :
Application No. 10/132,720 :
Filed: April 26, 2002 :
Title of Invention: ISOLATED :
HUMAN SECRETED PROTEINS, : DECISION REFUSING
NUCLEIC ACID MOLECULES : STATUS
ENCODING HUMAN SECRETED : UNDER 37 CFR 1.47(a)
PROTEINS, AND USES THEREOF :

This is in response to a Supplemental Petition to Waive Signature Requirement Under 37 CFR 1.47(a), filed March 31, 2003, which is being treated as a Request for Reconsideration of Petition[1], to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on April 26, 2002 without a fully executed oath or declaration. Accordingly, on May 24, 2002 a "Notice to File Missing Parts of Nonprovisional Application" (hereinafter "Notice"), was mailed to Petitioner. The Notice required, in relevant part, a fully executed oath or declaration. Applicant was given two-months from the date of the Notice within which to file a fully executed oath or declaration. Extensions of time were available under 37 CFR 1.136(a).

Petitioner responded with a petition filed September 24, 2002, which was dismissed by this Office in a Decision mailed April 4, 2003, because Petitioner failed to provide adequate support for

[1]A Decision on the Petition to Waive Signature Requirement Under 37 CFR 1.47(a), filed September 24, 2002, was Dismissed in a Decision mailed on April 4, 2003. Thereafter, on April 4, 2003, the above Supplemental Petition and file were received by this Attorney.

the exercise of diligent effort in trying to find or reach the nonsigning inventor.

Petitioner responded with the instant Supplemental Petition, which provides adequate proof of the exercise of diligent effort in trying to find or reach the nonsigning inventor.

However, a closer review of the Declaration filed with the petition on September 24, 2003, reveals that the post office addresses of the named inventors have not been provided on the Declaration. As provided in 37 CFR 1.63(c), "[u]nless such information is supplied on an application data sheet in accordance with 1.76, the oath or declaration must also identify: (1) The mailing address, and the residence if an inventor lives at a location which is different from where the inventor customarily receives mail."

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 (2) as set forth above.

As to item (2), a Declaration that lists the mailing address and/or residence of the inventors 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

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) 305-0014.

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

CELERA GENOMICS CORP.
ATTN: WAYNE MONTGOMERY, VICE
PRES, INTEL PROPERTY
45 WEST GUDE DRIVE
C2-4#20
ROCKVILLE, MD 20850

Paper No. 10

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JUN 3 0 2003

OFFICE OF PETITIONS

In re Application of
Song Hu, Fangcheng Gong,
Istvan Ladunga and
Maureen Higgins
Application No. 10/132,720
Filed: April 26, 2002
Title of Invention: ISOLATED HUMAN SECRETED PROTEINS, NUCLEIC ACID MOLECULES ENCODING HUMAN SECRETED PROTEINS, AND USES THEREOF

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to a Request for Reconsideration of Petition Under 37 CFR 1.47(a), filed May 28, 2003, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **granted**.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

Petitioner has shown that the non-signing inventor, Fangcheng Gong, refuses to sign the declaration.

As provided in Rule 1.47(a), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being returned to the Office of Initial Patent Examination for continued processing.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0014.

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

Fangcheng Gong
12610 Grey Eagle Ct.
Apt. 21
Germantown, MD 20874

In re Application of
Song Hu, Fangcheng Gong,
Istvan Ladunga and
Maureen Higgins
Application No. 10/132,720
Filed: April 26, 2002
Title of Invention: ISOLATED HUMAN SECRETED PROTEINS, NUCLEIC ACID MOLECULES ENCODING HUMAN SECRETED PROTEINS, AND USES THEREOF

COPY MAILED

JUN 3 0 2003

OFFICE OF PETITIONS

LETTER

Dear Mr. Gong:

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 Derek L. Woods at (703) 305-0014. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Derek L. Woods
Petitions Attorney
Office of Petitions

cc: CELERA GENOMICS CORP.
ATTN: WAYNE MONTGOMERY, VICE PRES, INTEL PROPERTY
45 WEST GUDE DRIVE
C2-4#20
ROCKVILLE, MD 20850

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 28 2005

CELERA GENOMICS CORP.
ATTN: WAYNE MONTGOMERY, VICE PRES, INTEL PROPERTY
45 WEST GUDE DRIVE
C2-4#20
ROCKVILLE MD 20850

In re Application of:
Hu et al.
Serial No.: 10/132,720
Filed: April 26, 2002
Attorney Docket No.: CL001230

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 March 10, 2005, requesting withdrawal of the holding of abandonment of the above-identified application based on non-receipt of an Office action and to restore the application to a pending status.

A review of the file history shows that the examiner mailed an Office action to applicant on July 23, 2004, setting a one-month statutory time period for reply. As the statutory period for response is up, this application is technically abandoned.

Applicant states that the Office action of July 23, 2004 was never received and provides as evidence thereof a copy of the attorney docket report where the Office action would have been entered if received, showing non-receipt of the Office action. Based on the evidence presented, it is concluded that applicant never received the Office action. In view thereof, the application will remain in to pending status with the mailing date of this decision.

Applicant's petition is **GRANTED**. The application will be forwarded to the examiner for prompt mailing of a new Office action.

Should there be any questions about this decision, please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile at 703-872-9306.

/Marianne C. Seidel/

Bruce Kisliuk
Director, Technology Center 1600

DECISION ON PETITION
ROUTING SLIP
TC 1600

Application No.: 10/132,720 **Art Unit:** 1652 **Date** 3/17/05

For Director's Secretary:

__X__ **Granted** __ **Denied** __ **Dismissed**

___ **Decision to be reviewed and signed by Director**_____

__X__ **Mail Decision**

___ **Enter Change of Address in PALM**

__X__ **Enter paper Nos.** _____ **and the decision in PALM**

___ **Other** _____

For Tech Support Staff and/or LIE:

__✓__ **Process and enter paper Nos.** Revive ABN

___ **Charge** _____ **fee to D.A. No.** _____

___ **Other** _____

___ **Forward file to** _____

Questions should be directed to:

Marianne Seidel 272-0584

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DIW 01-03

Paper No. 6

LERNER AND GREENBERG, P.A.
Post Office Box 2480
Hollywood FL 33022-2480

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JAN 2 9 2003

OFFICE OF PETITIONS

In re Application of	:	
Rugfelt and Renberg	:	
Application No. 10/132,762	:	DECISION REFUSING STATUS
Filed: 25 April, 2002	:	UNDER 37 CFR 1.47(a)
Attorney Docket No. WTH-51118-25	:	

This is in response to the petition filed under 37 CFR 1.47(a) on 9 September, 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.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified issue application was filed on 25 April, 2002, without an executed oath or declaration. Accordingly, on 11 June, 2002, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. In response, on 9 September, petitioners filed the present petition, accompanied by authorization to charge the petition fee, a one (1) month time extension, the required surcharge, and a declaration naming Hakan Rugfelt and Bo Renberg as joint inventors and signed by joint inventor Rugfelt on behalf of himself and on behalf of joint inventor Renberg.

Petitioners' counsel states that "[u]pon completion and

presentation of the patent application, Mr. Renberg refused to joint by virtue of not signing the Declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of $130 or $65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1) and (2). In regards to item (1), petitioners have not shown that a copy of the application papers (specification, including claims, drawings, if any, and the declaration) were sent or given to the nonsigning inventor for review.

Petitioners may show proof that a copy of the application (specification, including claims, drawings, if any, and the declaration) was sent or given to the non-signing inventor for review[1] by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Likewise, before a *bona fide* refusal can be alleged, petitioners must show that a copy of the application as filed was sent or given to the non-signing inventor. If there is a written refusal, petitioners should supply a copy of that written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

In regards to item (2), the declaration filed on 9 September, 2002 does not state that the person(s) making the oath or declaration acknowledge the duty to disclose to the Office all information known to the person(s) to be material to patentability as defined in 37 CFR 1.56. Rather, the declaration

[1] See MPEP 409.03(d).

filed on 9 September, 2002, incorrectly acknowledges a duty to disclose all information material to examination of the application. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67, signed by all of the signing inventors on behalf of themselves and the non-signing inventor, must be submitted with any renewed petition.

Receipt of the statement of small entity status filed on 5 August, 2002 (certificate of mailing date 26 July, 2002), is acknowledged. Small entity status will apply. A review of Office records reveals that $370.00 was credited to petitioners' American Express credit card, number ending in 1005, on 18 September, 2002, as requested.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
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
DIW 03-03

Paper No. 9

LERNER AND GREENBERG, P.A.
POST OFFICE BOX 2480
HOLLYWOOD FL 33022-2480

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APR 0 1 2003

OFFICE OF PETITIONS

In re Application of	:	
Rugfelt and Renberg	:	
Application No. 10/132,762	:	DECISION ACCORDING STATUS
Filed: 25 April, 2002	:	UNDER 37 CFR 1.47(a)
Attorney Docket No. WTH-51118-25	:	

This is in response to the renewed petition filed under 37 CFR 1.47(a) on 24 March, 2003.

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventor, Bo Renberg, has refused to join in the filing of the above-identified application after having been mailed a copy of the application papers. Specifically, petitioners have shown that a copy of the application was sent to Renberg. However, a letter was sent by Renberg's attorney, Edward J. Chalfie, indicating that Renberg would not sign the declaration naming him as a joint inventor along with Hakan Rugfelt.

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 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 forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DRW 03-03

Bo Renberg
Asgatan 7
SE-693 35 Degerfors
SWEDEN

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APR 0 1 2003

OFFICE OF PETITIONS

In re Application of
Rugfelt et al.
Application No. 10/132,762
Filed: 25 April, 2002
For: CONFIGURATION FOR SUPPORTING AND STABILIZING AN INJURED PERSON

Dear Mr. Renberg:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at 703/308-6918. Requests for information regarding your application should be directed to the File Information Unit at 703/308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 703/308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

LERNER AND GREENBERG, P.A.
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HOLLYWOOD FL 33022-2480

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. 03292005

Paula D. Heyman
BAKER BOTTS L.L.P.
PATENT DEPARTMENT
98 SAN JACINTO BLVD. SUITE 1500
AUSTIN TX 78701-4039

Appl No.: 10/132,776
Inv: Rittman
Filed: April 25, 2002
For: System and Method for Correcting Connectivity Errors in a Mask Layout File

DECISION ON PETITION UNDER *37 CFR 1.48*

This is a decision on the applicant's "Petition to Correct And/Or Add to Originally Named Inventors to an application" filed under 37 CFR 1.48 on March 11, 2005. The applicant requests that Micha Oren be added to sole inventor as originally filed, namely, Dan Rittman.

After a careful review of the file and applicant having supplied all of the information and requirements of 37 CFR 1.48, the petition is hereby **granted**.

The patented file is being forwarded to the Tech Support unit of TC 2800 to correct the PALM data and thereafter to Publication Branch continue the road to

publication of the application as a U. S. Patent naming Dan Rittman and Micha Oren as inventors.

Matthew S. Smith

Supervisory Primary Examiner AU 2825

Technology Center 2800

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Patent No. : 6,901,265
Inventor(s) : ANTHONY R. PRATT
Issued : May 31,2005
Title : MOBILE COMMUNICATION APPARATUS
Docket No. : 46309-273229

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 petition, under 37 CFR 1.183, requesting the requirements of 37 CFR 3.81 to be waived, 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 petition to correct the Assignee under 37 CFR 1.183 should include:

A. the petition fee set forth in 37 CFR 1.117(h) (currently $130);
B. a request that 37 CFR 3.81(a) be waived to permit the correct name of the assignee to be provided;
C. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
D. 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 Petition, Applicant(s) may request that the file is forwarded to Certificates of Correction Branch, for issuance of a Certificates of Correction, if the Petition is granted.

Any petition under 37 CFR 1.183 should be directed to the attention of the Assistant Commissioner for Patents, using the following mailing address or FAX number.

By Mail:	Commissioner of Patents and Trademarks Mail Stop: Petitions Alexandria, VA 22313
By Fax:	(703) 308-6916 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 Cecelia Newman
Decisions & Certificates
of Correction Branch
(703)308-9390 ext.117 or (703) 305-8309

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 22 2006

OFFICE OF PETITIONS

MICRON TECHNOLOGY, INC.
8000 S. FEDERAL WAY
BOISE ID 83716

In re Application of :
Stephen L. James et al :
Application No. 10/132,834 : ON PETITION
Filed: April 25, 2002 :
Attorney Docket No. MTI-31714 :

This is a decision on the petition, filed June 21, 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 8, 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]

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 the undersigned at (571) 272-3208.

---

[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 examiner of Technology Center AU 2814 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

cc:
WHYTE HIRSCHBOECK DUDEK S.C.
555 EAST WELLS STREET, SUITE 1900
MILWAUKEE, WISCONSIN 53202-3819

UNITED STATES 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. _____

Date : June 22, 2006

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Stephen L. James et al
Application No. :10/132,834
Filed :April 25, 2002

The above-identified application has been assigned Patent No. 7,067,906 and an issue date of June 27, 2006.

It is hereby directed that this application be withdrawn from issue at the request of the applicant.

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of June 27, 2006:

"All reference to Patent No. 7,067,906 to Stephen L. James et al of Idaho for STANDOFFS FOR CENTRALIZING INTERNALS IN PACKAGING PROCESS appearing in the Official Gazette of June 27, 2006 should be deleted since no patent was granted."

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Paul Harrison, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080827

DATE : August 27, 2008

TO SPE OF : ART UNIT 2814

SUBJECT : Request for Certificate of Correction on Patent No.: 7,323,767

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:

N/A

/Wael M Fahmy/
Supervisory Patent Examiner, Art Unit 2814

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 18 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

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ALEXANDRIA, VA 22313-1450
www.uspto.gov

Phillip L. Kenner
RENNER, KENNER, GREIVE, BOBAK, TAYLOR & WEBER
Fourth Floor
First National Tower
Akron OH 44308-1456

In re Application of Willis J. Mullet Application No. 10/132,864 Filed: April 24, 2002 For: SECTIONAL DOOR SYSTEM	: : : : :	DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on February 23, 2004.

The petition is **GRANTED** in view of the following evidence of timely filing :

☐ Postcard receipt being dated_____.

☐ USPTO return facsimile receipt dated _____ which identifies the application by serial number and the type of Response that was filed on that date.

☒ Certificate of Mailing/Transmission signed on July 17, 2003 and supported by a statement under 37 C.F.R. 1.8(b)(3).

☐ Hand Delivery Receipt of the specific documents submitted dated _____.

☐ Certificate of Transmission of CPA under 37 C.F.R. 1.6 filed on _____.

☐ Express Mail Receipt under 37 C.F.R. 1.10 dated _____.

This application is being forwarded to the Supervisory Legal Instruments Examiner for entry of the response filed with the petition, then to the examiner for prompt action on the response.

SNM/mjz: 5/13/04

STEVEN N. MEYERS
SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 3600

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

Paper No. 5

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

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MAR 2 4 2003

OFFICE OF PETITIONS

In re Application of	:
Christopher Dow et al	:
Application No. 10/132,968	: DECISION GRANTING
Filed: April 26, 2002	:STATUS UNDER 37 CFR 1.47(a)
For: SYSTEM AND METHOD FOR	:
IMPROVED BLACKFIELD DETECTION	:

This is in response to the petition under 37 CFR 1.47(a), filed December 2, 2002.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

Telephone inquiries regarding this decision should be directed to Irvin Dingle at (703) 306-5684.

This application is being forwarded to the Initial Patent Examination Unit.

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 2023
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MAR 2 4 2003

OFFICE OF PETITIONS

CHUANG-CHUN LIU
6489 GRAYSTONE MEADOWS CIRCLE
SAN JOSE, CA 95120

In re Application of
Christopher Dow; Adam Briggs; Jateen Parekh; Chris Coley; Tai-Ming Chen; Chuang-Chun Liu
Application No. 10/132,968
Filed: April 26, 2002
For: SYSTEM AND METHOD FOR IMPROVED BLACKFIELD DETECTION

Dear Mr. Liu:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the Irvin Dingle at (703) 306-5684. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:

Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, DC 20231
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Paper No. 12

MCDONNELL BOEHNEN HULBERT & BERGHOFF
300 SOUTH WACKER DRIVE
SUITE 3200
CHICAGO IL 60606

MAIL

MAR 0 8 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
DOW et al.
Application No. 10/132,968
Filed: April 26, 2002
For: **SYSTEM AND METHOD FOR IMPROVED BLACKFIELD DETECTION**

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on May 12, 2003 (paper # 11).

A grantable request to withdraw as attorney/agent of record must do the following:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

The Request to Withdraw as Attorney is **DISMISSED AS MOOT**.

Attorneys requesting withdraw are not of record due to a Revocation of Power of Attorney executed by the assignee on June 12, 2003.

All future communications from the Office will continue to be directed to the address listed above until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Krista Zele
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4701

cc:
Laura A. Majerus
FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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AT&T LEGAL DEPARTMENT - JW
ATTN: PATENT DOCKETING
ROOM 2A-207
ONE AT&T WAY
BEDMINSTER, NJ 07921

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JAN 27 2010

In re Application of
G. Neelakantan Kartha, et al.
Application No. 10/132,985
Filed: April 26, 2002
Attorney Docket No. 130332.00055

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 12, 2009, 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 mailed December 23, 2008. A Notice of Abandonment was mailed on July 20, 2009. On November 12, 2009, the present petition was filed.

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of $810 and the submission required by 37 CFR 1.114; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay.

This application is being referred to Technology Center AU 3694 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.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed

in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: JOSEPH P. LALLY
100 CONGRESS AVENUE, SUITE 1100
AUSTIN, TX 78701

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

MACMILLAN SOBANSKI & TODD, LLC
ONE MARITIME PLAZA FOURTH FLOOR
720 WATER STREET
TOLEDO OH 43604-1619

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MAR 16 2006

OFFICE OF PETITIONS

In re Application of	:	
Hans-Christoph Lange	:	
Application No. 10/132,990	:	DECISION ON PETITION
Filed: April 26, 2002	:	UNDER 37 C.F.R. §1.181
Attorney Docket Number: 1-23786	:	
Title: BRAKE FLUID RESERVOIR WITH IMPROVED VENTING	:	

This is a decision on the petition filed June 6, 2005, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

The Office regrets the delay in issuing this decision.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 30, 2004, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on October 1, 2004. A notice of abandonment was mailed on February 9, 2005.

With the present petition, Petitioner has asserted that a response to this communication was submitted on December 30, 2004, along with a three-month extension of time. Petitioner has submitted a copy of this submission, and it is noted that it contains a certificate of mailing dated December 30, 2004.

Petitioner has requested that the holding of abandonment in the above-identified application be withdrawn. It is clear that a response was timely submitted. 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 submitted.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN.**

The three-month extension of time has been charged to Petitioner's Deposit Account, as authorized in the submission of December 30, 2004.

The Technology Center will be notified of this decision.

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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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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STOLOWITZ FORD COWGER, LLP
621 SW MORRISON ST
SUITE 600
PORTLAND, OR 97205

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OFFICE OF PETITIONS

In re Patent No. 7,151,768
Issue Date: December 19, 2006
Application No. 10/132,991
Filed: April 26, 2002
Patentee(s): Dan A. Preston, et. al.

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed November 6, 2007. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**. Therefore, status as a small entity has been removed and all future fees paid must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No.

SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, N.E.
ATLANTA GA 30309

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MAR 28 2008

OFFICE OF PETITIONS

In re Application of	:	
Bryant et al.	:	
Application No. 10/133,001	:	LETTER REGARDING
Filed: April 25, 2002	:	PATENT TERM ADJUSTMENT
Atty Docket No. 19603-0008	:	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT RECONSIDERATION," filed December 10, 2007. Applicants disclose that the correct patent term adjustment pursuant to 35 U.S.C. 154(b) should be 431 days, not 432 days.

The request for review of the 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 four hundred thirty-one **(431)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 1, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 432 days. Applicants disclose that in response to the Notice of Allowance mailed May 1, 2007 (in lieu of payment of the issue fee) a Request for Continued Examination (RCE) was filed on August 2, 2007. The Office erred in entering the date of receipt of the RCE as July 2, 2007. Accordingly, the Office did not enter the period of delay of 1 day pursuant to 37 CFR 1.704(b). In support thereof, applicants submit a copy of their itemized and date-stamped return postcard,

acknowledging receipt by the Office of the RCE on August 2, 2007.

Applicants are correct. The RCE was filed with the IDS on August 2, 2007. As such, a period of reduction of 1 day should have been entered pursuant to 37 C.F.R. §1.704(b).

In view thereof, the initial determination of the patent term adjustment at the time of the mailing of the notice of allowance is four hundred thirty-one (431) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the $200.00 fee under 37 CFR 1.18(e). The Office thanks Applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

PTA Calculations for Application: 10/133001			
Application Filing Date:	04/25/2002	PTO Delay (PTO):	567
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	135
Post-Issue Petitions:	0	Total PTA (days):	431
PTO Delay Adjustment:	-1		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
84	03/26/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		1	
78	10/01/2007	MAIL NOTICE OF ALLOWANCE			
77	09/14/2007	ISSUE REVISION COMPLETED			
76	09/14/2007	DOCUMENT VERIFICATION			
75	09/14/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
74	09/04/2007	NOTICE OF ALLOWABILITY			
73	07/02/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
72	07/02/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
71	08/08/2007	DATE FORWARDED TO EXAMINER			
70	07/02/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
69	08/08/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
68	07/02/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
67	07/02/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
66	07/02/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
65	07/02/2007	CORRESPONDENCE ADDRESS CHANGE			
64	07/02/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
63	05/29/2007	FINISHED INITIAL DATA CAPTURE			
62	05/04/2007	EXPORT TO INITIAL DATA CAPTURE			
61	05/01/2007	MAIL NOTICE OF ALLOWANCE	13		45
60	04/28/2007	ISSUE REVISION COMPLETED			

59	04/28/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
58	04/28/2007	DOCUMENT VERIFICATION			
57	03/05/2007	NOTICE OF ALLOWABILITY			
56	12/20/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
55	12/20/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
50.7	12/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		2	45
50	12/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49.7	12/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	12/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
48	01/03/2007	DATE FORWARDED TO EXAMINER			
47	12/18/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
46	01/03/2007	DATE FORWARDED TO EXAMINER			
45	12/18/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
44	01/03/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
43	12/18/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
42	12/18/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
41	10/16/2006	CASE DOCKETED TO EXAMINER IN GAU			
40	08/28/2006	MAIL APPEALS CONF. PROCEED TO BPAI			
39	08/18/2006	PRE-APPEALS CONFERENCE DECISION - PROCEED TO BPAI			
38	07/10/2006	REQUEST FOR PRE-APPEAL CONFERENCE FILED			
37	07/10/2006	NOTICE OF APPEAL FILED		65	34
36	07/10/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
35	07/05/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
34	02/06/2006	MAIL FINAL REJECTION (PTOL - 326)			
33	02/03/2006	FINAL REJECTION			
32	11/30/2005	DATE FORWARDED TO EXAMINER			

31	11/25/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
30	11/30/2005	DATE FORWARDED TO EXAMINER			
29	11/25/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		34	25
28	11/30/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
27	11/25/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
26	11/25/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
25	07/22/2005	MAIL FINAL REJECTION (PTOL - 326)			
24	07/21/2005	FINAL REJECTION			
23	05/19/2005	DATE FORWARDED TO EXAMINER			
22	05/03/2005	RESPONSE AFTER NON-FINAL ACTION		34	20
21	05/03/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
20	12/30/2004	MAIL NON-FINAL REJECTION	554		-1
19	12/27/2004	NON-FINAL REJECTION			
18	09/17/2004	CASE DOCKETED TO EXAMINER IN GAU			
17	04/29/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	10/15/2002	REFERENCE CAPTURE ON IDS			
15.7	07/15/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	07/15/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14.7	10/15/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	10/15/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	10/25/2002	CASE DOCKETED TO EXAMINER IN GAU			
12	08/25/2002	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
11	08/05/2002	APPLICATION DISPATCHED FROM OIPE			
10	08/02/2002	APPLICATION IS NOW COMPLETE			
9	07/15/2002	ADDITIONAL APPLICATION FILING FEES			
8	07/15/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
7	05/16/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			

4	05/15/2002	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
3	05/14/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/11/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	04/25/2002	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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BIB DATA SHEET

CONFIRMATION NO. 5421

SERIAL NUMBER	FILING or 371(c) DATE RULE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
10/133,015	04/26/2002	428	1794	MILI-0015

APPLICANTS

John Charkoudian, Carlisle, MA;
Neil P. Soice, Merrimack, NH;

**** CONTINUING DATA ***************************

This appln claims benefit of 60/287,172 04/27/2001

**** FOREIGN APPLICATIONS ***************************

**** IF REQUIRED, FOREIGN FILING LICENSE GRANTED ****

06/05/2002

Foreign Priority claimed ☐ Yes ☑ No 35 USC 119(a-d) conditions met ☐ Yes ☑ No Verified and Acknowledged /HAI VO/ Examiner's Signature	☐ Met after Allowance HV Initials	STATE OR COUNTRY	SHEETS DRAWINGS	TOTAL CLAIMS	INDEPENDENT CLAIMS
		MA	4	66	7

ADDRESS

WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA, PA 19104-2891
UNITED STATES

TITLE

Novel coated membranes and other articles

FILING FEE RECEIVED		
3432	FEES: Authority has been given in Paper No._____ to charge/credit DEPOSIT ACCOUNT No._____ for following:	☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time) ☐ 1.18 Fees (Issue) ☐ Other _____ ☐ Credit

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WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
P.O. BOX 7037
ATLANTA, GA 30357-0037

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NOV 1 2 2004

OFFICE OF PETITIONS

In re Application of :
Robert L. Sutherland :
Application No. 10/133,026 : ON PETITION
Filed: April 27, 2002 :
Attorney Docket No. 7141 CIP :

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed September 8, 2004.

The application became abandoned for failure to pay the issue fee on or before August 3, 2004. A Notice of Abandonment was mailed September 9, 2004.

The petition is GRANTED.

The application is being referred to Publishing Division.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (703) 305-8283.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 9

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY and POPEO, P.C.
One Financial Center
Boston, MA 02111

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SEP 2 6 2003

OFFICE OF PETITIONS

In re Application of :
Bernard Conrad and Bernard Mach :
Application No. 10/133,036 : DECISION ACCORDING STATUS
Filed: April 26, 2002 : UNDER 37 C.F.R. § 1.47(a)
Atty Docket No. 23135-507 (NOV-7) :
Title: MULTIPLE SCLEROSIS-RELATED :
SUPERANTIGEN :

This is in response to the "Request for Reconsideration of Petition under 37 C.F.R. § 1.47(a)," filed September 16, 2003.

The petition is **GRANTED**.

The above-identified application was filed on April 26, 2002, with an unexecuted declaration. Bernard Conrad and Bernard Mach were named as joint inventors. Accordingly, on July 11, 2002, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted (Notice)," requiring an executed oath or declaration and a surcharge for its late filing. On February 11, 2003, applicants timely filed a declaration executed by joint inventor Mach on behalf of himself and on behalf of non-signing inventor Conrad; the surcharge under § 1.16(l); and the instant petition under § 1.47(a). However, the petition was dismissed for failure to submit adequate proof that inventor Conrad had refused to join in the application after having been presented with the application papers (Decision mailed May 16, 2003).

On instant renewed petition, made timely by an accompanying petition for a two-month extension of time (and fee), rule 47 applicant has provided evidence establishing that the entire application package, including specification, claims and drawings, was presented to non-signing inventor Conrad and he subsequently, by his conduct in not responding, has refused to join in the application. Applicant has now met all requirements for status under § 1.47(a).

The declaration filed February 11, 2003 is now acceptable.

This application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being returned to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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Paper No. 5

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY and POPEO, P.C.
One Financial Center
Boston, MA 02111

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MAY 16 2003

OFFICE OF PETITIONS

In re Application of :
Bernard Conrad and Bernard Mach :
Application No. 10/133,036 :
Filed: April 26, 2002 :
Atty Docket No. 23135-507 (NOV-7) :
Title: MULTIPLE SCLEROSIS-RELATED :
SUPERANTIGEN :

DECISION REFUSING STATUS
UNDER 37 C.F.R. § 1.47(a)

This is in response to the "Petition under 37 C.F.R. § 1.47(a) to Accept Declaration on Behalf of Non-signing Inventor," filed February 21, 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 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 April 26, 2002, with an unexecuted declaration. Bernard Conrad and Bernard Mach were named as joint inventors. Accordingly, on July 11, 2002, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted (Notice)," requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a two-month period for reply with extensions of time obtainable under § 1.136(a).

In response, applicants filed a declaration executed by joint inventor Mach on behalf of himself and on behalf of non-signing inventor Conrad; the surcharge under § 1.16(l); and the instant petition under § 1.47(a). This response was made timely by an accompanying petition for extension of time within the fifth month. Rule 47 applicant asserts that status under § 1.47 is proper because inventor Conrad refuses to join in the application. On petition, attorney Triano sets forth the facts relied upon to establish the efforts made to secure the execution of the declaration by inventor Conrad.

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 requirement (1).

Petitioner has not shown that inventor Conrad has refused to join in the application as required by § 1.47. Before a refusal can be alleged, applicant 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. See MPEP 409.03(d). On petition, it is stated that attempts were made on June 24, 2002, July 11, 2002, August 13, 2002, January 29, 2003 (sic), and February 6, 2003, to obtain an executed declaration from inventor Conrad. However, it is not stated that inventor Conrad was presented a copy of the application papers (specification, including claims, drawings, and oath or declaration). A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956).

Furthermore, where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted. The instant statements on petition were made by attorney Triano based on what he was informed by the Universite de Geneve and NovImmune SA.

Thus, on renewed petition, rule 47 applicant must establish that the entire application package, including specification, claims and drawings, was presented to non-signing inventor Conrad and he subsequently refused to sign. If they have not already been sent, a copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the inventor is represented by counsel, to the address of the non-signing inventor's attorney. Documentary evidence, including copies of the transmittal cover letters and return mail receipts, should be made part of the record. (English translations should be provided, where appropriate). The renewed petition should also include a statement(s) of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made setting forth the circumstances of the presentation and/or of the refusal. See MPEP 409.03(d)[1].

---

[1] 8th ed. (Rev. Aug 1, 2001).

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[2]

By FAX: (703)308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Petitions Attorney
Office of Petitions

[2] Effective May 1, 2003, the United States Patent and Trademark Office has a new address for some mail. See Correspondence with the United States Patent and Trademark Office, 68 Fed. Reg. 14332 (March 25, 2003).

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Paper No. 8

MEDTRONIC AVE, INC.
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

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JAN 1 0 2003

OFFICE OF PETITIONS

In re Application of
Abbate, et al.
Application No. 10/133,037
Filed: April 25, 2002
Title: SEMI-COLLAPSED ENDOLUMINAL GRAFT MEMBRANE FORMED BY POLYMER VAPOR DEPOSITION

: DECISION NOTING JOINDER OF
: INVENTOR AND PETITION
: UNDER 37 CFR 1.47(a) MOOT

This is in response to the "Petition Under 37 CFR 1.47(a)," filed October 10, 2002, and supplemented on December 5, 2002.

Petitioner has submitted a Declaration executed by the previously non-signing inventor Anthony Abbate in compliance with 37 CFR 1.63. Therefore, in view of the joinder of the inventors, further consideration under 37 CFR 1.47(a) is not necessary and the petition is considered moot. This application does not require 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 file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Edward Tannouse at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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McDermott, Will & Emery
28 State Street
Boston, MA 02109-1775

Mail Date: 04/21/2010

Applicant	: Bernard M. Gordon	: DECISION ON REQUEST FOR
Patent Number	: 7664543	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/133,054	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/26/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1792** 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.

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)
6691717	2004-02-17	10133066	2002-04-26	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

○ An attorney or agent registered to practice before the Patent and Trademark Office

◉ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Sole Patentee			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.			
Signature	/davidsilva/	Date (YYYY-MM-DD)	2008-04-08
Name	David Silva		

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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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 6691717
Issue Date: February 17,2004
Application No. 10133066
Filed: April 26,2002
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 8,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of April 8,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in 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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9-13-06 **Paper No.:** _____

TO SPE OF : ART UNIT 1764

SUBJECT : Request for Certificate of Correction on Patent No.: 6790247 (10/133085

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.

Eva James

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-305-8309

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments:

Glenn Caldarola
Supervisory Patent Examiner
Technology Center 1700

SPE

1764
Art Unit

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BRINKS HOFER GILSON & LIONE
ONE INDIANA SQUARE, SUITE 1600
INDIANAPOLIS, IN 46204

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OCT 27 2004

OFFICE OF PETITIONS

In re Application of
Michael L. Gailey et al
Application No. 10/133,118
Filed: April 26, 2002
Attorney Docket No. 10022/168

: 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 May 28, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the 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 April 26, 2002, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional application has been included in an amendment as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3208.

This application is being forwarded to Technology Center Art Unit 2681 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to prior-filed nonprovisional Application No. 09/946,111, filed September 4, 2001.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

COPY MAILED

APR 26 2007

OFFICE OF PETITIONS

In re Application of :
Joost A. Kolkman, et al. :
Application No. 10/133,128 : DECISION ON PETITION
Filed: April 26, 2002 : TO WITHDRAW
Attorney Docket No. 0319.410US : 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 21, 2006.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request cannot be approved because there remains less than 30 (thirty days) between the date of this decision and the maximum extendable time period for filing a response to the Office action mailed on November 3, 2006.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: CHARLES K. SHOTZ, PHD.
AMGEN, INC.
1120 VETERANS BOULEVARD
SOUTH SAN FRANCISCO, CA 94080

UNITED STATES 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 : December 9, 2004

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Masayoshi Kuwabara, et al.
Application No. : 10/133,158
Filed : April 26, 2002

The above-identified application has been assigned Patent No. 6,831,198 and an issue date of December 14, 2004.

It is hereby directed that this application be withdrawn from issue at the request of the applicant.

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of December 14, 2004:

"All reference to Patent No. 6,831,198 to MASAYOSHI KUWABARA, ET AL. of JAPAN for HALOGEN-CONTAINING AROMATIC COMPOUND appearing in the Official Gazette of December 14, 2004, should be deleted since no patent was granted."

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Paul Harrison, Crystal Park 3-441 (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane K.Davis, P/OCS, CM1-6A07
Tamara K. Greene, PK3-910

UNITED STATES PATENT AND TRADEMARK OFFICE

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FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

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DEC 10 2004

OFFICE OF PETITIONS

In re Application of :
Masayoshi Kuwabara, et al. :
Application No. 10/133,158 : ON PETITION
Filed: April 26, 2002 :
Attorney Docket No. 08917-074001 :

This is a decision on the petition, filed December 9, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 13, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 1626 for further processing of the request for continued examination under 37 CFR 1.114 filed December 9, 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
www.uspto.gov

Paper No. 6

WAGNER, MURABITO & HAO LLP
Two North Market Street, Third Floor
San Jose CA 95113

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APR 0 2 2003

OFFICE OF PETITIONS

In re Application of
Hansen, Dunphy, Spindt, Cleeves, Truppa, Fink, and Iguchi
Application No. 10/133,161
Filed: April 26, 2002
Attorney Docket No. CDST-E147
For: SYSTEM AND METHOD FOR RECALIBRATING FLAT PANEL FIELD EMISSION DISPLAYS

: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed December 9, 2002 (certificate of mailing dated December 2, 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. Failure to respond will result in the abandonment of this reissue application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a).

The above-identified application was filed on April 26, 2002, without an executed oath or declaration. A "Notice to File Missing Parts of Nonprovisional Application"(the "Notice") was mailed on May 31, 2002, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration . The Notice set forth an extendable period for reply of two months from its mailing date. In response, petitioner filed the instant petition with a request for an extension of time within the fourth month, declarations, and remitted the surcharge of $130.00.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor(s) 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,

The instant petition lacks item (1) as set forth above.

As to item (1), petitioner has not satisfactorily established that inventor Fink is not able to be reached to join the prosecution of the application as there is no indication that petitioner made a diligent effort to provide the nonsigning inventor with a complete copy of the application papers. Petitioner only states that petitioner sent the application papers to Candescent for Mr. Fink's signature, but Candescent has yet to receive the executed declaration from Mr. Fink. Petitioner has not demonstrated that diligent efforts were made to locate the nonsigning inventor. Section 409.03(d) of the MPEP requires that a showing of

diligence be made in petitioner's efforts to locate a non-signing inventor before the unavailability of the nonsigning inventor will be assumed. The requisite showing of diligence is not demonstrated by the instant petition. There is no indication of what efforts were undertaken by Candescent to locate Mr. Fink and have him execute the declaration. Any renewed petition filed must detail the efforts undertaken by Candescent, and the statement should be offered by a person having first-hand knowledge of such efforts and the circumstances of Mr. Fink's refusal to join the application, if one is made.'

Deposit account 23-0085 will be assessed $130.00 for the instant petition fee.

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 South Clark Place
Arlington, Virginia

Any response mailed after May 1, 2003, should be addressed as follows:

Mail Stop Petitions
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Telephone inquiries should be directed to the undersigned at (703) 305-0010.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 10

Wagner, Murabito & Hao, LLP
Two North Market Street, Third Floor
San Jose, CA 95113

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OCT 16 2003

OFFICE OF PETITIONS

In re Application of
Hansen, Dunphy, Spindt, Cleeves, Truppa, Fink, and Iguchi :
Application No.: 10/133,161 : DECISION NOTING JOINDER
Filed: April 26, 2002 :
Attorney Docket No: CDST-E147 :
FOR: System and Method for Recalibrating Flat Panel Field Emission Displays :

This is in response to the correspondence filed October 6, 2003, noting the joinder of inventor Fink in the above-cited application.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is not necessary. This application does not have any Rule 1.47(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 Manual of Patent Examining Procedure ("MPEP"), § 409.03(j) provides that "[i]n the event the previously nonsigning inventor decides to join the application by filing an executed oath or declaration complying with 37 CFR 1.63, the oath or declaration will be placed in the application file."

Accordingly, the declaration for inventor Fink has been entered and made of record.

This application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries should 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

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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TOWNSEND AND TOWNSEND AND CREW LLP/ORACLE
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CA 94111-3834

Mail Date: 04/21/2010

Applicant	: Doug Chasman	: DECISION ON REQUEST FOR
Patent Number	: 7606881	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/133,164	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/25/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1061** 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.

17 OCT 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Kathryn L. Hester, Ph.D.
Dunlap, Codding & Rogers, P.C.
PO Box 16370
Oklahoma City, OK 73113

In re Application of
Paul H. Weigel
Application No.: 10/133,172
Filed: April 25, 2002
Attorney Docket No.: 5864-014
For: HYALURONAN RECEPTOR FOR ENDOCYTOSIS AND METHODS FOR PRODUCING SAME

DECISION ON PETITION

This is an amended[1] decision on the petition under 37 CFR 1.78(a)(6), filed March 1, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

The present 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)(5)(ii). Therefore, this is a proper petition 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 reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was

[1] A "Decision on Petition" dated 08 September 2006 was mailed to an incorrect correspondence address.

unintentional.

The instant pending nonprovisional application was filed on April 25, 2002, within twelve months of the filing date of the prior-filed nonprovisional application, Application No. 09/842,930, which was filed within twelve months of the filing date of prior-filed provisional application, Application No. 60/199,538 on April 25, 2000, for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a substitute amendment[2] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(6), is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PCT
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

---

[2] *Note* 37 CFR 1.121

By hand: Customer Service Window
Mail Stop PCT
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of PCT Legal Administration

Any questions concerning this matter may be directed to Anthony Smith at 571-272-3298.

Boris Milef
Legal Examiner
Office of Petitions and PCT Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

Paper No. 6

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

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MAR 2 4 2003

OFFICE OF PETITIONS

In re Application of :
Christopher Dow et al :
Application No. 10/133,184 : DECISION GRANTING
Filed: April 26, 2002 :STATUS UNDER 37 CFR 1.47(a)
For: SYSTEM AND METHOD FOR :
INDEXING COMMERCIALS IN A VIDEO :
PRESENTATION

This is in response to the petition under 37 CFR 1.47(a), filed December 2, 2002.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

Telephone inquiries regarding this decision should be directed to Irvin Dingle at (703) 306-5684.

This application is being forwarded to Technology Center 2600.

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 PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 2023
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CHUANG-CHUN LIU
6489 GRAYSTONE MEADOWS CIRCLE
SAN JOSE, CA 95120

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MAR 2 4 2003

OFFICE OF PETITIONS

In re Application of
Christopher Dow; Bruce Garcia; Adam Briggs; Tai-Ming Chen; Chuang-Chun Liu
Application No. 10/133,184
Filed: April 26, 2002
For: SYSTEM AND METHOD FOR INDEXING COMMERCIALS IN A VIDEO PRESENTATION

Dear Mr. Liu:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the Irvin Dingle at (703) 306-5684. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:

Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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McDonnell Boehnen Hulbert &
Berghoff LLP
300 S. wacker Drive
32nd Floor
Chicago, IL 60606

MAIL

APR 07 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re application of:
Christopher Dow, et al.
Application No. 10/133,184
Filed: April 26, 2002
For: SYSTEM AND METHOD FOR INDEXING COMMERCIALS IN A VIDEO PRESENTATION

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney/agent of record filed on May 12, 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.

Attorney requesting withdrawal (Laura A. Majerus) is not of record.

Accordingly, the request is **DENIED.**

All future communications from the Office will continue to be directed to the address listed above until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.

DATE: 01/23/07

TO SPE OF: ART UNIT 3772

SUBJECT: Request for Certificate of Correction for Appl. No.: 10/133230 Patent No.: 7022891

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the COCIN document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code COCX.

Angela Green
Certificates of Correction Branch
703.308.8390 ext. 123

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☑ Approved — All changes apply.
- ☐ Approved in Part — Specify below which changes do not apply.
- ☐ Denied — State the reasons for denial below.

Comments:

PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

3772
Art Unit

PTOL-306 (REV. 7/03) U.S. Department of Commerce Patent and Trademark Office

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ALEXANDRIA, VA 22313-1450
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Paper No. 8

BRENDA HERSCHBACH JARRELL, PH.D.
CHOATE, HALL & STEWART
53 STATE STREET
EXCHANGE PLACE
BOSTON, MA 02109

COPY MAILED
NOV 24 2003
OFFICE OF PETITIONS

In re Application of	:	
Panjwani, et al.	:	
Application No. 10/133,234	:	ON PETITION
Filed: April 26, 2002	:	
Attorney Docket No. 2002458-0006	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 16, 2003, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Office action mailed September 16, 2002, which set a two month period for reply. Accordingly, this application became abandoned on November 17, 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

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)
6,672,691	2004-01-06	10/133,249	2002-04-26	

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	/Sean P. Connolly/	Date (YYYY-MM-DD)	2008-07-21
Name	Sean P. Connolly	Registration Number	56668

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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www.uspto.gov

In re Patent No. 6672691
Issue Date: January 6,2004
Application No. 10133249
Filed: April 26,2002
Attorney Docket No. 2002-1219.ORI

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed July 21,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of July 21,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

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AMS RESEARCH CORPORATION
ATTENTION: JEFFREY J. HOHENSHELL
10700 BREN ROAD WEST
MINNETONKA, MN 55343

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OFFICE OF PETITIONS

In re Application of
Kimberly A. Anderson et al.
Application No. 10/133,271
Filed: April 26, 2002
Attorney Docket No. AMS-044

ON PETITION

This is a decision on the petition filed August 18, 2005, under 37 CFR 1.181. to withdraw the holding of abandonment for the above-identified application.

The petition to withdraw the holding of abandonment is **GRANTED**.

The application was held abandoned on October 4, 2004 for failure to file a timely response to the non-Final Office Action mailed July 1, 2004, which set a three (3) month shortened period for reply. No extensions of time in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed August 10, 2005, subsequent to the filing of the instant petition.

Petitioner asserts that a proper response, was filed on October 1, 2004. In support, petitioner submits a copy of the reply said to have been filed, but not acknowledged, with the U.S. Patent and Trademark Office, which also includes a certificate of mail, dated October 1, 2004, pursuant to 37 CFR 1.8, and a copy of the post card receipt date-stamped by the USPTO on October 4, 2004.

The evidence submitted corroborates a timely response to the non-Final Office Action. Accordingly, the holding of abandonment is withdrawn and the Notice of Abandonment is vacated. No petition fee Is due and none has been charged.

This matter is being referred to Technology Center 3732 for appropriate action on the amendment filed October 1, 2004, a copy of which was submitted upon petition.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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McGINN & GIBB PLLC
8321 OLD COURTHOUSE ROAD, SUITE 200
VIENNA, VA 22182-3817

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OFFICE OF PETITIONS

In re Application of :
Tomoya Ikeda et al :
Application No. 10/133,341 : DECISION GRANTING PETITION
Filed: April 29, 2002 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. H07-144110M/NHK :

This is a decision on the petition, filed August 20, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 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 should be directed to the undersigned at (703) 305-8680.

This application is being referred to Technology Center AU 2834 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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Paper No. 28

WENDEROTH, LIND & PONACK, L.L.P.
2033 K STREET N.W.
SUITE 800
WASHINGTON, DC 20006-1021

In re Application of :
Oshima, et. al. :
Application No. 10/133,347 :
Filed: April 29, 2002 :
Attorney Docket No. 2000-0504 :

DECISION GRANTING
PETITION UNDER
37 CFR §1.183

This is a decision on the June 4, 2004, "Petition Under 37 CFR 1.183 to Accept Substitute Specification in Reissue Application" requesting waiver of the 37 CFR 1.125(d) prohibition against the filing of a substitute specification in a reissue application. The petition is being treated pursuant to 37 CFR 1.183 for waiver of 37 CFR 1.173(a)(1) in addition to waiver of 37 CFR 1.125(d).

The petition is before the Office of Patent Legal Administration of the United States Patent and Trademark Office.

The petition is granted.

A fee of $130.00 has been charged to Deposit Account No. 23-0975 for the petition under 37 CFR 1.183, as authorized by the petition on page 1.

DECISION

37 CFR 1.125(d) prohibits the filing of a substitute specification in a reissue application, while the present petition requests entry of the substitute specification filed on June 13, 2003. Accordingly, this petition is being considered as a petition under 37 CFR 1.183 for a waiver of 37 CFR 1.125(d). 37 CFR 1.173(a)(1) requires the filing of the specification in the form of "a copy of the printed patent, in double column format, each page on only one side of a single sheet of paper." The substitute specification filed on June 13, 2003, is not a copy of the printed patent, in double column format. Accordingly, this petition is also being considered as a petition under 37 CFR 1.183 for a waiver of 37 CFR 1.173(a)(1).

On June 13, 2003, a substitute specification was filed together with an amendment. The reason for its submission was stated as "A substitute specification is filed herewith to make corrections to the application." It is noted that there is no further comment by the examiner, regarding the substitute specification, noted in the application.

Petitioner is now requesting waiver of the requirements of 37 CFR 1.125(d) and 37 CFR 1.173(a)(1) based on the fact that "In several of the applications, the Examiner required a substitute specification because of the length of the specification and the number of amendments, and indicated by telephone that substitute specifications would be required in all of the related reissue applications." [1] The petitioner continues by stating "..in the parent reissue application 09/244,037 the replacement paragraph amendments were filed on April 30, 2003. Then in the Office Action mailed July 29, 2003, the Examiner required a substitute specification. Also in related reissue application 09/662,695, which like the present application is a reissue application of U.S. Patent 5,600,672 and a divisional application of reissue application 09/244,037, the replacement paragraph amendments filed on May 7, 2003 were denied entry and a substitute specification was required in the Office Action mailed May 27, 2003."

This basis is considered to be sufficient for granting the petition. The rule will be waived, since there is no other way to present the substitute specification required by the examiner in the companion applications, and that requirement for the substitute specification by the examiner is deemed appropriate.

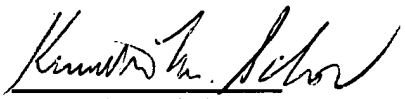
CONCLUSION

1. The request under 37 CFR 1.183 to waive the requirements of 37 CFR 1.125(d) and 37 CFR 1.173(a)(1) is granted.

2. The substitute specification filed on June 13, 2003 is accepted, and will be entered.

3. The reissue application file is being forwarded to Technology Center 2600 for further action as appropriate.

4. Telephone inquiries with regard to this decision should be directed to Dwayne D. Bost, TC2600 SPRE, at (703) 305-4778.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examining Policy

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[1] No other record of the referenced telephone conversation can be found in this application file.

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OFFICE OF PETITIONS

In re Application of
Mitsuaki Oshima, et al.
Application No. 10/133,347
Filed: April 29, 2002
Attorney Docket No. 2002_0504

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 21, 2004, 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 November 16, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

After the application is received in the Office of Petitions, the file will be forwarded to Technology Center AU 2634 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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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Jeffrey R. Filipek
WENDEROTH, LIND & PONACK, L.L.P.
2033 K STREET N.W.
SUITE 800
WASHINGTON, DC 20006-1021

In re Application of :
Oshima, et. al. :
Application No. 10/133,364 :
Filed: April 29, 2002 :
Attorney Docket No. 2002-0503 :

DECISION GRANTING
PETITION UNDER
37 CFR §1.183

This is a decision on the April 13, 2004, "Petition Under 37 CFR 1.183 to Accept Substitute Specification in Reissue Application" requesting waiver of the 37 CFR 1.125(d) prohibition against the filing of a substitute specification in a reissue application. The petition is being treated pursuant to 37 CFR 1.183 for waiver of 37 CFR 1.173(a)(1) in addition to waiver of 37 CFR 1.125(d).

The petition is before the Office of Patent Legal Administration of the United States Patent and Trademark Office.

The petition is granted.

A fee of $130.00 has been charged to Deposit Account No. 23-0975 for the petition under 37 CFR 1.183, as authorized by the petition on page 1.

DECISION

37 CFR 1.125(d) prohibits the filing of a substitute specification in a reissue application, while the present petition requests entry of the substitute specification filed on May 30, 2003. Accordingly, this petition is being considered as a petition under 37 CFR 1.183 for a waiver of 37 CFR 1.125(d). 37 CFR 1.173(a)(1) requires the filing of the specification in the form of "a copy of the printed patent, in double column format, each page on only one side of a single sheet of paper." The substitute specification filed on May 30, 2003 is not a copy of the printed patent, in double column format. Accordingly, this petition is also being considered as a petition under 37 CFR 1.183 for a waiver of 37 CFR 1.173(a)(1).

The reissue application was originally filed with a specification in double column format that complied with 37 CFR 1.173(a)(1). On May 30, 2003, a substitute specification was filed together with a supplemental amendment. Within the "REMARKS" section of the supplemental amendment, applicant states: "The specification and abstract have been reviewed and revised to make a number of editorial revisions. Due to the number of changes involved, a substitute specification and abstract have been prepared and are submitted herewith. No new matter has been added." The examiner marked the first page of the substitute specification with the notation

"OK to Enter" which he initialed. The substitute specification was entered in the application, and on August 27, 2003, a final Office action was mailed.

Petitioner is requesting waiver of the requirements of 37 CFR 1.125(d) and 37 CFR 1.173(a)(1) based on the fact that "In several of the applications, the Examiner required a substitute specification because of the length of the specification and the number of amendments, and indicated by telephone that substitute specifications would be required in all of the related reissue applications." [1] The petitioner continues by stating "..in the parent reissue application 09/244,037 the replacement paragraph amendments were filed on April 30, 2003. Then in the Office Action mailed July 29, 2003, the Examiner required a substitute specification. Also in related reissue application 09/662,695, which like the present application is a reissue application of U.S. Patent 5,600,672 and a divisional application of reissue application 09/244,037, the replacement paragraph amendments filed on May 7, 2003 were denied entry and a substitute specification was required in the Office Action mailed May 27, 2003".

This basis is considered to be sufficient for granting the petition. The rule will be waived to comply with the requirement of the examiner, since there is no other way to present the required substitute specification, and the requirement for the substitute specification by the examiner is deemed appropriate.

CONCLUSION

1. The request under 37 CFR 1.183 to waive the requirements of 37 CFR 1.125(d) and 37 CFR 1.173(a)(1) is granted.

2. The substitute specification filed on May 30, 2003 is accepted, and will be entered.

3. The reissue application file is being forwarded to the Technology Center for entry of the supplemental amendment filed with the subject petition on April 13, 2004 and further action as appropriate.

4. Telephone inquiries with regard to this decision should be directed to Dwayne D. Bost, TC2600 SPRE, at (703) 305-4778.

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examining Policy

jje

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[1] No other record of the referenced telephone conversation can be found in this application file.

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Mitsuaki Oshima et al
Application No. 10/133,364
Filed: April 29, 2002
Attorney Docket No. 2002-0503

This is a decision on the petition, filed December 21, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 16, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

After receipt of the file in the Office of Petitions, the file will be forwarded to the examiner of Technology Center AU 2634 to 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).

WENDEROTH, LIND & PONACK, L.L.P.
2033 K Street, N.W., Suite 800
Washington, D.C. 20006

Telephone: (202)721-8200
Facsimile: (202)721-8250

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OFFICE OF PETITIONS

In re Application of	:	
Mitsuaki Oshima et al	:	
Application No. 10/133,364	:	ON PETITION
Filed: April 29, 2002	:	
Attorney Docket No. 2002-0503	:	

This is a decision on the petition, filed December 21, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 16, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

After receipt of the file in the Office of Petitions, the file will be forwarded to the examiner of Technology Center AU 2634 to consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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OFFICE OF THE DIRECTOR
TC 3600

Lerner and Greenberg, P.A.
Post Office Box 2480
Hollywood, FL 33022-2480

In re Application of :
Wolfgang Dolz, et al. :
Application No. 10/133,367 :
Filed: April 26, 2002 :
For: DEVICE FOR CONVEYING A STREAM OF SHEETS FROM A SHEET PILE TO A SHEET PROCESSING MACHINE

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicants' Petition to Revive and abandoned application, which is taken as Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office on August 02, 2004.

The petition is **DISMISSED**.

A review of the file record reveals that an Office action was mailed to applicants on November 18, 2003. Since a response was not received before the expiration of the six-month statutory period for reply, the application was held abandoned, and a Notice to that effect was mailed on June 1, 2004.

Petitioner contends that the November 18, 2003 Office action was not received. In support thereof, petitioner has included a declaration by staff supervisor Christine Kahl, a copy of the file jacket for the present application, and a copy of a page of petitioner's docket book.

There is a strong presumption that an Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office on and around the due date of February 18, 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 fully comply with requirement (3) indicated above. In this regard, Christine Kahl indicates in her declaration, that after an Office action is received it is entered into a "docket book", "on the file jacket", and a "computer docket system". She goes on to declare, "had an Office action dated November 18, 2003 been received for the above-identified application, it would have been entered in the docket book for February 18, 2004, on the file jacket, and in our computer;"(emphasis added). Petitioner has not provided a copy of the above-noted computer docket records showing a list of all responses on and around the due date of February 18, 2004. As a result, petitioner's evidence of non-receipt of the Office action mailed November 18, 2003 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 Programs Examiner
Technology Center 3600
(703) 308-3868

SNM/rwg: 01/29/05

#14

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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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FROM DIRECTORS OFFICE

MAY 05 2006

TECHNOLOGY CENTER 3600

Lerner and Greenberg, P.A.
Post Office Box 2480
Hollywood, FL 33022-2480

In re Application of
Wolfgang Dolz et al.
Application No. 10/133,367
Filed: April 26, 2002

: DECISION ON RENEWED
: PETITION TO WITHDRAW
: HOLDING OF
: ABANDONMENT

For: DEVICE FOR CONVEYING A STREAM OF SHEETS FROM A SHEET PILE TO A SHEET-PROCESSING MACHINE

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 March 4, 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 November 18, 2003. 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 June 1, 2004.

Applicant's petition indicates that the Office Action mailed November 18, 2003 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 of February 18, 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 on February 18, 2004 as well as a copy of the computer docket record referred to in the statement by Christine Kahl. 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. Dunn for

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(571) 272-6619

RAR/js: 8/30/05

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Commissioner for Patents
United States Patent and Trademark Office
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FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

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FEB 16 2005

OFFICE OF PETITIONS

In re Patent No. 6,794,171 :
Issue Date: September 21, 2004 :
Application No. 10/133,372 : ON PETITION
Filed: April 29, 2002 :
Attorney Docket No. 066671-0115 :

This is a decision on the petition filed January 26, 2005, which is being treated as a petition under 37 CFR 3.81(b)[1] to accept the correction of the assignee on the front page of the above-identified patent.

The petition is **dismissed**.

Petitioner requests issuance of a certificate of correction in the name of "Daiichi Fine Chemical Co., Ltd., Takaoka (JP)." However, Office PALM computer database assignment records reflect that the city name of the assignee sought by the certificate of correction was recorded as Takaoka-Shi. Accordingly, if reconsideration of this decision is requested, petitioner must supply either the reel and frame number where the recorded assignment appears or supply a copy of the recorded assignment. If the assignment was not recorded, or submitted for recordation, prior to issuance of this patent, a certificate of correction would not be in order. Note MPEP 307.

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 should be directed to Wan Laymon at (571) 272-3220.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] *See* Official Gazette of June 22, 2004

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SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

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MAY 17 2005

OFFICE OF PETITIONS

In re Patent No. 6,794,171 :
Issue Date: September 21, 2004 :
Application No. 10/133,372 : ON PETITION
Filed: April 29, 2002 :
Attorney Docket No. 066671-0115 :

This is a decision on the renewed petition under 37 CFR 1.183, filed April 8, 2005, which is being treated as a petition under 37 CFR 3.81(b) [1] to accept the correction of the assignee on the front page of the above-identified patent.

The petition is **granted**.

Telephone inquires concerning this matter may be directed to Wan Laymon at (571) 272-3220. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] *See* Official Gazette of June 22, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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www.uspto.gov

KRAMER & AMADO, P.C.
Suite 240
1725 Duke Street
Alexandria, VA 22314

Mail Date: 04/26/2010

Applicant	: Andre Rekai	: DECISION ON REQUEST FOR
Patent Number	: 7583727	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/133,408	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/29/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1639** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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OBLON SPIVAK McCLELLAND
MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

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APR 19 2004

OFFICE OF PETITIONS

In re Application of :
Toshiyasu Takura et al :
Application No. 10/133,417 :
Filed: April 29, 2002 :
Attorney Docket No. 222218US3X :

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c), filed April 19, 2004, which is being treated under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on April 5, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Wan Laymon at (703) 306-5685.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 3746 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

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AUG 04 2004

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OBLON SPIVAK McCLELLAND
MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

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APR 19 2004
OFFICE OF PETITIONS

In re Application of :
Toshiyasu Takura et al :
Application No. 10/133,417 :
Filed: April 29, 2002 :
Attorney Docket No. 222218US3X :

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c), filed April 19, 2004, which is being treated under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on April 5, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Wan Laymon at (703) 306-5685.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 3746 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

RECEIVED: 4/22/04
OBLON, SPIVAK, McCLELLAND
MAIER & NEUSTADT, P.C.
DOCKETING DEPT.
Initials/Date Docketed: S 4/22/04
Type of Resp(s):
Due Date(s):

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is 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. 12

KEYSER MASON BALL, LLP
FOUR ROBERT SPECK PARKWAY
SUITE 1600
MISSISSAUGA, ON L4Z 1S1
CANADA

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MAR 19 2004

OFFICE OF PETITIONS

In re Application of :
Rupert Antoine :
Application No. 10/133,447 : ON PETITION
Filed: 29 April, 2002 :
Attorney Docket No. 12124-01/ejg :

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on 3 March, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 4 June, 2003, for failure to file a proper reply to the final Office action mailed on 3 March, 2003, which set a three (3) month statutory period for reply. On

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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)).

2 June, 2003, an amendment after final rejection was filed. The amendment did not place the application in *prima facie* condition for allowance, however, and an advisory action was mailed on 22 July, 2003. Notice of Abandonment was mailed on 21 October, 2003.

On 3 March, 2004, the present petition was filed, accompanied by a Request for Continued Examination (RCE) which indicated the previously filed amendment was the submission required under 37 CFR 1.114.

The application will be forwarded to Technology Center 3700 for consideration of the RCE and amendment.

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

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KENYON & KENYON
ONE BROADWAY
NEW, YORK NY 10004

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JUN 2 4 2004

OFFICE OF PETITIONS

In re Application of

Dolitzky, et al.

Application No. 10/133,460

Filed: April 26, 2002

Attorney Docket No. 1662/568073

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 26, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the Office action mailed August 25, 2003, which set a shortened statutory period for reply of two months from its mailing date. No response was received within the allowed period, and the application became abandoned on January 26, 2004. A Notice of Abandonment was mailed on April 20, 2004.

The Office action of August 25, 2003, declared the application is in condition for allowance except for formal merits and that prosecution as to the merits is closed in accordance with the practice under *Ex Parte Quayle*, 1935 C.D. 11, 453 Off. Gaz. 213. Petitioner has filed a communication canceling the claims related to the non-elected invention and new drawings.

The application is being forwarded to Technology Center 1600 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0010.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 5

MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MS-LC340
MINNEAPOLIS MN 55432-5604

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JAN 29 2003

OFFICE OF PETITIONS

In re Application of
Frans Gielen
Application No. 10/133,466
Filed: April 29, 2002
Attorney Docket No. P10408

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b), filed January 2, 2003, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to respond in an appropriate and timely manner to the "Notice to File Missing Parts in a Nonprovisional Application" (the "Notice") mailed June 24, 2002. The Notice set forth a two month period for reply beginning from its mailing date. No reply was received within the allowable period. Accordingly, this application became abandoned on August 25, 2002. The instant petition was filed before a Notice of Abandonment could be sent.

The declaration filed January 2, 2003, is acknowledged and made of record.

Deposit account 13-2546 will be assessed $1,410.00 for the petition fee ($1,280) and the surcharge ($130.00.)

The application is being forward to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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MEDTRONIC, INC.
710 MEDTRONIC PARK
MINNEAPOLIS MN 55432-9924

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MAY 03 2007

OFFICE OF PETITIONS

In re Application of:
Gielen
Application No. 10/133,466
Filed: April 29, 2002
Docket No.: P-10408.00

: ON PETITION

This is a decision on the petition filed November 30, 2006, under 37 CFR 1.59 requesting that the IDS filed December 29, 2005, be expunged from the record.

The petition is **granted.**

Petitioner asserts that the transmittal letter for the aforementioned IDS was inadvertently captioned for this application, rather than application No. 10/833,810, which application no. does appear on the PTO-SB-066 itself. It is agreed that under the circumstances of this case, petitioner has shown to the satisfaction of the Director that expungement is appropriate.

The file entry for the IDS has been closed. As such the document is no longer available to the public for inspection, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 4

Solomon Kaploun
5/1 Strouma Street
Haifa 35708
ISRAEL

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APR 2 5 2003

OFFICE OF PETITIONS

In re Application of :
SOLOMON KAPLOUN :
Application No. 10/133,488 : DECISION ON PETITIONS
Filed: April 29, 2002 : and
Title: ALL-WEATHER ENERGY AND WATER PRODUCTION VIA STEAM-ENHANCED VORTEX TOWER : **NOTICE OF ABANDONMENT**

This is in response to the "Petition to File Application Data Sheet," filed June 28, 2002. Therein, petitioner requests that "according to § 1.53(e)(2), § 1.54(a) and § 1.76 of 37 CFR, I ask the U.S. PTO to file my Application Data Sheet to complete" the above-identified nonprovisional application.

This also responds to the "Petition to file the Information Disclosure Statement by Applicant (Form PTO/SB/08A)," also filed June 28, 2002. Therein, petitioner requests that "according to § 1.51(d), § 1.54(a), § 1.97(b)(1) and § 1.98 of 37 CFR, I ask the U.S. PTO to file my additionally completed Information Disclosure to" the above-identified nonprovisional application.

For the reasons set forth below, the petitions are **DISMISSED AS INAPPROPRIATE**.

In addition, the above-identified application is **ABANDONED**.

Regarding the abandonment of the application

Application papers in the above-identified application were filed on April 29, 2002. On June 5, 2002, the Initial Patent Examination Division (IPED) mailed applicant a "Notice to File Corrected Application Papers." Applicant was notified that the application had been accorded an application number and filing date; however, the application was considered informal for failure to comply with 37 CFR 1.52. Applicant was given **TWO (2) MONTHS** from the date of the notice to file a substitute specification with correct line spacing. Applicant was further advised that obtaining extensions of time under 37 CFR 1.136(a) was allowed. However, the failure to timely file the required items would result in abandonment of the application.

The instant petitions were filed within the period for response to the Notice mailed June 5, 2002. However, the petitions are not a proper response to the Notice. The required reply to the Notice is very specific; namely, a substitute specification including line spacing on the specification, claims and abstract

of 1 ½ or double spaced as provided in 37 CFR 1.52(b)[1]. The petitions are not responsive. The petitions do not address this rule. The petitions do not appear to set forth an argument for review of the Notice. Even if the petitions were responsive, the mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. See 37 CFR § 1.181(f). In other words, the filing of a petition does not extend the period for reply to any outstanding Office action. Regardless of the filing of the petitions on June 28, 2002, applicant was required to file a timely and proper reply to the Notice.

No proper reply having been filed, the application became abandoned for failure to file a timely and proper reply to the Notice to File Corrected Application Papers mailed June 5, 2002. No extension of time having been filed, this abandonment became effective August 6, 2002.

In order to revive this application and thus, continue prosecution of this application, applicant must file a grantable petition under 37 CFR 1.137(a) or 1.137(b). A grantable petition under § 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 C.F.R. § 1.17(l); (3) a 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 unavoidable; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to § 1.137(d). A grantable petition under § 1.137(b) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to § 1.137(d). Any petition under § 1.137 must be filed without delay and must include the required reply, a substitute specification in compliance with § 1.52(b).

Regarding the inappropriateness of the Petitions filed June 28, 2002

The petitions have been considered, but are found inappropriate as i) they do not set forth any request for relief provided for in any rule; ii) they do not make clear what, if any relief, not provided for any rule is being requested; and iii) they include requests that do not require petitions.

---

[1] 37 CFR 1.52(b)(2) provides, in pertinent part, that:

The specification (including the abstract and claims) for other than reissue applications and reexamination proceedings, and any amendments for applications (including reissue applications) and reexamination proceedings to the specification, except as provided for in §§ 1.821 through 1.825, must have: (i) Lines that are 1 ½ or double spaced.

As previously stated, the petitions, despite referencing 37 CFR 1.53(e)(2)[2], do not request review of the Notice to File Corrected Application Papers. The petitions do not properly fall within any category set forth in 37 CFR § 1.181[3]. The rules cited by applicant do not specify matters to be determined directly by or reviewed by the Commissioner on petition. Nor does petitioner clearly set forth arguments that could form the basis of a petition. No petition is ordinarily required to file an Application Data Sheet or an Information Disclosure Statement, and the petitions do not make clear why petitions would be required in this instance.

Accordingly, at the present time, the petitions must be dismissed. Any request for reconsideration of the dismissal of these petitions must be filed within **TWO (2) MONTHS** from the mail date of this decision. This period is not extendable. See 37 CFR 1.181(f).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

or effective with any response mailed on or after May 1, 2003

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

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[2] 37 CFR 1.53(e)(2) provides that:

Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(h). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

[3] 37 CFR § 1.181 provides that:

(a) Petition may be taken to the Commissioner:
(1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;
(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and
(3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 8

Solomon Kaploun
5/1 Strouma Street
Haifa 35708
ISRAEL

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JUN 3 0 2003

OFFICE OF PETITIONS

In re Application of
SOLOMON KAPLOUN
Application No. 10/133,488
Filed: April 29, 2002
Title: ALL-WEATHER ENERGY AND WATER PRODUCTION VIA STEAM-ENHANCED VORTEX TOWER

DECISION ON PETITION

This is in response to the paper styled "A request to recognize ineffective the Notice of Abandonment on April 25, 2003 and to find my papers," filed June 3, 2003. This paper is properly treated as a petition under § 1.181 to withdraw the holding of abandonment. There is no fee for such a petition.

By decision mailed April 25, 2003, applicant was advised that the above-identified application was abandoned for failure to timely file the required reply to the Notice to File Corrected Application Papers mailed June 5, 2002. At the time of mailing of the decision, no reply was of record in this application.

Applicant maintains that the reply was timely filed. Consideration of applicant's arguments are unnecessary. A review of the application file reveals that the reply to the Notice to File Corrected Application Papers is now present in the application file. The reply contains a OIPE date stamp, showing that it was timely received in the Office on July 26, 2002. Applicant is advised that his application number is 10/133,488, not 10/113,488. Applicant used the wrong application number on his reply filed July 26, 2002, which likely led to the delay in the paper being associated with the correct application file.

In view thereof, the petition under § 1.181 is **GRANTED**. The holding of abandonment is hereby **WITHDRAWN**.

The period for requesting reconsideration of the dismissal of the Petition to File Application Data Sheet filed June 28, 2002, continues to run as set forth in the decision mailed April 25, 2003. Accordingly, any request for reconsideration to be considered timely filed must have been filed within **TWO (2) MONTHS** from the mail date of the decision mailed April 25, 2003. This period is not extendable. See 37 CFR 1.181(f).

The application file is being forwarded to the Office of Initial Patent Examination for review of the reply to the Notice to File Corrected Application Papers filed July 26, 2002 (Paper No. 7).

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Petitions Attorney
Office of Petitions

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Platon N. Mandros
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JUN 0 1 2004

OFFICE OF PETITIONS

Applicant: Hu et al.
Appl. No.: 10/133,494
International Filing Date: April 29, 2002
Title: METHOD OF PREPARING ELECTRODE COMPOSITION HAVING A CARBON-CONTAINING-COATED METAL OXIDE, ELECTRODE COMPOSITION AND ELECTROCHEMICAL CELL
Attorney Docket No.: 000401-172
Pub. No.: US 2003/0207178 A1
Pub. Date: November 6, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on January 6, 2004 for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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DIW 08-02

Paper No. 4

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SEP 13 2002

OFFICE OF PETITIONS

In re Application of :
Samsavar et al. :
Application No. 10/133,510 : ON PETITION
Filed: 25 April, 2002 :
Attorney Docket No. M-10647-4C US :

This is a decision on the petition filed on 24 July, 2002, which is treated as a petition under 37 CFR 1.53 and 1.10 requesting that the above-identified application be accorded a filing date of 25 April, 2002, with Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification and drawing Figures 4D, 4E, 19G, 19H, and 19I as a part of the original disclosure.

The petition is **dismissed**.

On 25 April, 2002, the application was filed.

On 24 May, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts of Nonprovisional Application stating, *inter alia*, that the application had been accorded a filing date of 25 April, 2002, but that Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification (description and claims) and drawing Figures 4D, 4E, 19G, 19H, and 19I appeared to have been omitted from the application. A two (2) month period for reply was set.

In response, on 24 July, 2002, the present petition was filed. Petitioners argue that Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification and drawing Figures 4D, 4E, 19G, 19H, and 19I were present among the application papers filed on 25 April, 2002, although petitioners

state that two (2) copies of Page 64 of the specification were inadvertently included in the application. In support, petitioners have submitted a declaration by counsel's secretary, Tammy L. Kaplan, stating that she counted the application pages and drawings prior to depositing them in Express Mail, and that no pages of specification or sheets of drawings were missing prior to depositing the application in Express Mail. Petitioners have also submitted a declaration by petitioners' registered patent attorney, James S. Hsue, stating that the application was complete when filed. Petitioners request that the application be accorded a filing date of 25 April, 2002, with Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification and drawing Figures 4D, 4E, 19G, 19H, and 19I as a part of the original disclosure.

The arguments have been considered, but are not persuasive. The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals that Pages 1-12, 15-17, 19, 21, 23-24, 26, 28, 30-31, 33, 35, 38-46, 48, 49, 51-57, 59, 60, 62, 63, 64 (two (2) copies), and 65-80 of specification, including claims and abstract, and 23 sheets drawings containing Figures 1, 2, 3A, 3B, 4A-C, 5, 6, 7A-D, 8A-C, 9-18, 19A-F, 20A-D, 21A-21C, 22-28, 29A-C, 30-33, and 34A-E were received on 12 December, 2001. No pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification and drawing Figures 4D, 4E, 19G, 19H, and 19I were filed on 25 April, 2002, since no such pages and drawing figures are present among the application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioner believes the page was among the papers he included in the application is not more persuasive than the actual papers shown to have been received by the official file. In this regard, Ms. Kaplan's declaration that she counted all of the pages and sheets of drawings prior to the filing of the application on 25 April, 2002, as well as the declaration of Attorney Hsue, are not more persuasive than the contents of the official USPTO file.

It is noted that the USPTO has a long-established and well publicized practice for *prima facie* establishing the date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of

section 503 of the Manual of Patent Examining Procedure (MPEP).[1] This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims and abstract) number of claims, number of sheets of drawings, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.[2]

While petitioners have included a copy of a postcard receipt, the postcard neither itemizes the application elements filed nor has been stamped by the USPTO. Therefore, the postcard does not serve as evidence of the filing of the application papers.

Since Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification and drawing Figures 4D, 4E, 19G, 19H, and 19I were not a part of the papers filed on 25 April, 2002, the application cannot be accorded the 25 April, 2002, filing date with these pages as a part of the original disclosure of this application.

Petitioners have also supplied a copy of Express Mail Label No.

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[1]The public was afforded a "reminder" of the then extent post card receipt practice at 857 *Off. Gaz. Pat. Off.* 667 (*O.G.*) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the *O.G.* that contains important *O.G.* notices of continuing relevance.

[2]MPEP 503.

EV029355756US (the same Express Mail number found on the itemized transmittal sheet accompanying the original application papers in the official file). Petitioners should note that a petition under 37 CFR 1.10(e) is inappropriate, however, because some, but not all, of the papers petitioners assert were filed by Express Mail on 25 April, 2002, were received on that date. 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 documents and/or fees were filed in the Office with such correspondence.[3]

As this petition was not due to an error on the part of the USPTO, the petition fee will not be refunded.

The application will be processed and examined using only the application papers present on filing on 25 April, 2002. The copy of Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification and drawing Figures 4D, 4E, 19G, 19H, and 19I and other application papers supplied on 24 July, 2002, will not be used for processing or examination, but will be retained in the application file.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 25 April, 2002, using only the application papers filed on that date.

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

[3] MPEP 513.

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Paper No. 6

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DEC 16 2002

OFFICE OF PETITIONS

In re Application of	:	
Samsavar et al.	:	
Application No. 10/133,510	:	ON PETITION
Filed: 25 April, 2002	:	
Attorney Docket No. M-10647-4C US	:	

This is a decision on the renewed petition filed on 6 December, 2002, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 25 April, 2002, with Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification and drawing Figures 4D, 4E, 19G, 19H, and 19I as a part of the original disclosure.

The petition is **GRANTED**.

On 25 April, 2002, the application was filed.

On 24 May, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts of Nonprovisional Application stating, *inter alia*, that the application had been accorded a filing date of 25 April, 2002, but that Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification (description and claims) and drawing Figures 4D, 4E, 19G, 19H, and 19I appeared to have been omitted from the application. A two (2) month period for reply was set. The petition filed on 24 July, 2002, was dismissed on 13 September, 2002.

In response, on 6 December, 2002, the present renewed petition was filed. Petitioners again argue that Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the

specification and drawing Figures 4D, 4E, 19G, 19H, and 19I were present among the application papers filed on 25 April, 2002, although petitioners state that two (2) copies of Page 64 of the specification containing claims were inadvertently included in the application.

In support, petitioners have now submitted a copy of an itemized postcard receipt bearing an Office-date stamp of 25 April, 2002, and the above-identified application number, identifying the application by first named inventor's name, invention title, and docket number and itemizing the filing of, *inter alia*, 61 page(s) Specification (not including Claims) and 25 sheet(s) of Drawings. Petitioners have also submitted a copy of Pages 1-61 of the written description, Pages 62-79 containing claims, and 25 sheets of drawings. Petitioners request that the application be accorded a filing date of 25 April, 2002, with Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification (written description) and drawing Figures 4D, 4E, 19G, 19H, and 19I as a part of the original disclosure.

A review of the record reveals that Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification (description) and drawing Figures 4D, 4E, 19G, 19H, and 19I are not located among the application papers deposited on 25 April, 2002. However, the evidence is convincing that the application papers deposited on 25 April, 2002, included Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification (written description) and drawing Figures 4D, 4E, 19G, 19H, and 19I and those pages and Figures were subsequently misplaced in the Office. Therefore, the application, including Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification and drawing Figures 4D, 4E, 19G, 19H, and 19I, is entitled to a filing date of 25 April, 2002.

The "Notice" mailed on 24 May, 2002, is vacated.

In view of the above, the petition is granted. The petition fee of $130.00 will be refunded to counsel's deposit account, No. 19-2386 as authorized in the petition filed on 24 July, 2002.

The application will be processed using the application papers filed on 25 April, 2002, and the copy of Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification (description) and two (2) sheets of drawings containing Figures 4D, 4E, 19G, 19H, and 19I supplied on 6 December, 2002. The copies of other application papers filed on

6 December, 2002, will not be used for processing or examination, but will be retained in the application file.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 25 April, 2002, using the application papers filed on that date, and the copy of Pages 13, 14, 18, 20, 22, 25, 27, 29, 32, 34, 36, 37, 47, 50, 58, and 61 of the specification (description) and drawing Figures 4D, 4E, 19G, 19H, and 19I supplied on 6 December, 2002.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 4

Cameron A. King
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

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AUG 0 8 2002

OFFICE OF PETITIONS

In re Application of	:	
Howell et al.	:	
Application No. 10/133,511	:	DECISION GRANTING
Filed: April 25, 2002	:	PETITION
Attorney Docket No. 399242000502	:	

This is a decision on the petition filed June 25, 2002, to accord the above-identified application a filing date of April 25, 2002.

On April 25, 2002, the application was deposited.

On May 17, 2002, the Office of Initial Patent Examination mailed a Notice stating that drawings were missing and that a filing date would be accorded upon receipt of drawings.

The Utility Patent Application Transmittal sheet incorporated by reference the entire disclosure of the parent application. The petition states, "The drawings in the present application are identical to those of the parent application."

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted.

Based on the incorporation by reference, it appears that the drawings were present in the Office on April 25, 2002, albeit in the file of another application, i.e., application No. 09/578,626. Therefore, on petition, the application may be accorded the requested filing date of April 25, 2002.

In view of the above, the petition is **granted**. The copy of the drawings submitted with the petition will be used for examination purposes.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 25, 2002, using the application papers filed on April 25, 2002 and the five sheets of drawings filed on June 25, 2002.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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AUG 3 1 2004

OFFICE OF PETITIONS

In re Application of	:	
Gailey et al.	:	
Application No. 10/133,536	:	DECISION GRANTING PETITION
Filed: April 26, 2002	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10022/165	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 28, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional application no. 09/946,111, filed September 4, 2001, set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on April 26, 2002, and was pending at the time of filing of the instant petition. A reference to the above-noted prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Paralegal Liana Chase at (703) 306-0482. Any inquiries after September 28, 2004 may be directed to (571) 272-3206.

This application is being forwarded to Technology Center Art Unit 3622 for appropriate action on the amendment filed May 28, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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OFFICE OF PETITIONS

In re Application of	:	
Gailey et al.	:	
Application No. 10/133,537	:	DECISION GRANTING PETITION
Filed: April 26, 2002	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10022/167	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 28, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on April 26, 2002, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the

benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Paralegal Liana Chase at (703) 306-0482.

This matter is being referred to Technology Center Art Unit 3653 for appropriate action on the amendment filed May 28, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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OFFICE OF PETITIONS

In re Application of :
Stephen Owens, et al. :
Application No. 10/133,551 : ON PETITION
Filed: April 26, 2002 :
Attorney Docket No.: GRLK-033-01 :
:

This is a decision on the petition, filed January 11, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 23, 2004, in the above-identified application, cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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 1621 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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OFFICE OF PETITIONS

Date : January 13, 2006

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Stephen Owens, et al.
Application No. : 10/133,551
Filed : April 26, 2002

The above-identified application has been assigned Patent No. 6,987,206 and an issue date of January 17, 2006.

It is hereby directed that this application be withdrawn from issue at the request of the applicant.

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of January 17, 2006:

> "All reference to Patent No. 6,987,206 to STEPHEN OWENS, ET AL. of TENNESSEE for METHODS AND MATERIALS FOR THE PREPARATION AND PURIFICATION OF HALOGENATED HYDROCARBONS appearing in the Official Gazette of January 17, 2006, should be deleted since no patent was granted."

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Paul Harrison, Crystal Park 3-441 (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane K.Davis, P/OCS, CM1-6A07
Tamara K. Greene, PK3-910

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OFFICE OF PETITIONS

ERIC ROBINSON
PMB 955
21010 SOUTHBANK ST.
POTOMAC FALLS VA 20165

In re Application of :
Setsuo Nakajima et al :
Application No. 10/133,588 : ON PETITION
Filed: April 29, 2002 :
Attorney Docket No. 740756-2493 :

This is a decision on the petition, filed December 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 August 22, 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 2891 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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Paper No. _____

Date : December 28, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Setsuo Nakajima et al
Application No. :10/133,588
Filed :April 29, 2002

The above-identified application has been assigned Patent No. 6,982,213 and an issue date of January 3, 2006.

It is hereby directed that this application be withdrawn from issue at the request of the applicant.

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of January 3, 2006:

"All reference to Patent No. 6,982,213 to Setsuo Nakajima et al of Japan for METHOD OF MANUFACTURING A SEMICONDUCTOR DEVICE BY IRRADIATING WITH A LASER BEAM appearing in the Official Gazette of January 3, 2006 should be deleted since no patent was granted."

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Paul Harrison, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89
Tamara Greene, ST-8C13

UNITED STATES PATENT AND TRADEMARK OFFICE

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July 20, 2005

Glenn T. Barrett
PILLSBURY WINTHROP SHAW PITTMAN, LLP
P. O. Box 10500
McLean, VA 22102

Patent No.: **6835337 B2**
Inventor(s): **Kiyoshi Sasaki, et al.**
Issued: December 28, 2004
Title: **METHOD FOR CONTROLLING THE FORWARD MOVEMENT SPEED OF THE SCREW IN AN INJECTION MOLDING MACHINE**

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

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Pillsbury Winthrop LLP
1600 Tysons Boulevard
McLean, VA 22102

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OFFICE OF PETITIONS

In re Patent No. 6,835,337
:
Issue Date: December 28, 2004
:
Application No. 10/133,592
: ON PETITION
Filed: April 29, 2002
:
Attorney Docket No. **P291198 7TI-02S0212-1**

This is a decision on the petition filed January 4, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the names of the assignees on the front page of the above-identified patent by way of Certificate of Correction.

The request is **granted**.

Deposit account 03-3975 will be charged $100.00 for the fee for the certificate of correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

The file is being forwarded to the Certificate of Correction Branch for further processing.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

[1] See *Official Gazette* of June 22, 2004.

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OFFICE OF PETITIONS

ANDREWS KURTH LLP
1350 I STREET, N.W.
SUITE 1100
WASHINGTON DC 20005

In re Application of :
HITE, Thomas D. et al. :
Application No. 10/133,611 : DECISION ON PETITION
Filed: April 25, 2002 : TO WITHDRAW
Attorney Docket No. **META03-00004** : 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 21, 2009.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office 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 Sean Wooden on behalf of all attorneys of record who are associated with customer No. 38598. All attorneys/agents associated with the Customer Number 38598 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Thomas Hite at the address indicated below. There is an outstanding Office action mailed August 24, 2009 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

cc: **THOMAS HITE**
905 SUNSET HILL DRIVE
ROCKWALL TX 75087

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wk

Mailed: 2-28-07

In re application of	:	
Janne Salonen	:	DECISION ON
Serial No. 10/133,627	:	PETITION
Filed: April 29, 2002	:	
For: SCREEN PLATE OF AN IMAGING MEASURING INSTRUMENT	:	

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION mailed August 11,2006.

On February 12, 2007, the instant petition under 37 CFR 1.181 was filed to formally request the withdrawal of finality of the August 11, 2006 office action.

Applicant's position for the withdrawal of the finality is that the action of August 11, 2006, should be considered " that action immediately subsequent to the filing of the RCE" and that in the action of August 11, 2006, the above conditions for a proper final rejection were not satisfied.

DECISION

Rule 1.181, Section (f) states:
§ 1.181 Petition to the Commissioner.

(f) Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable

The instant petition was filed six months after the final rejection was mailed. Also, no previous request has been made to withdrawn the finality of the office action. This is clearly not a timely filed petition. Accordingly, the instant petition is **DISMISSED.**

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Ronald J. Kubovcik
Kubovcik & Kubovcik
The Farragut Building
Suite 710
900 17th Street, N.W.
Washington, D.C. 20006

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DCM

JUL 21 2004

In re Application of
Greib, et al.
Serial Number: 10/133,631
Filed: April 29, 2002
For: METHODS FOR STERILIZING TISSUE USING CRYOPRESERVATIVES

DECISION ON PETITION

This is a decision on the Petition to Make Special because of Actual Infringement, filed under sections 37 C.F.R. 1.102 and 708.02 II of the MPEP on January 15, 2004, regarding the above-referenced application. The fee required under 37 CFR 1.17(h) has been paid. The petition meets the requirements of section 708.02 II of the MPEP.

If the examiner finds any interfering application for the same subject matter, the examiner should consider such application simultaneously with this case and should state in the official letter of such application that the examiner is taking it out of its turn because of a possible interference.

Should an appeal be taken or this case become involved in interference, then consideration of the appeal or interference will be expedited by the Patent and Trademark Office, contingent upon diligent prosecution by applicant.

After allowance, this case will be given priority for printing. See MPEP 1309.

The petition is **GRANTED.**

Marian C. Knode

Marian C. Knode, Special Programs Examiner
Technology Center 1700
Chemical and Materials Engineering

Donald R. McPhail
FLESHNER & KIM, LLP
P.O. BOX 221200
CHANTILLY VA 20153

UNITED STATES PATENT AND TRADEMARK OFFICE

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JOHN F. HAYDEN
Fish & Richardson P.C.
11th Floor
1425 K Street, NW
Washington DC 20005

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OFFICE OF PETITIONS

In re Application of :
Schreck et al. :
Application No. 10/133,633 : ON PETITION
Filed: April 29, 2002 :
Attorney Docket No. 13906-009001/W071/2002 :

This is a decision on the petition under 37 CFR 1.182, filed January 25, 2005, to change the name of the first named inventor.

The petition is **granted.**

The name of the first inventor will be changed from Stefan Dieter Lang to Stefan Dieter Schreck. The Office records have been corrected to reflect the change of the first inventor's name as noted above.

This matter is being referred to Technology Center Art Unit 2162.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

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ANTONELLI, TERRY, STOUT & KRAUS, LLP
SUITE 1800
1300 NORTH SEVENTEENTH STREET
ARLINGTON, VA 22209

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JUN 16 2006

OFFICE OF PETITIONS

In re Application of :
Kevin Davis, et al. :
Application No. 10/133,648 : DECISION ON REQUEST
Filed: April 29, 2002 : TO WITHDRAW
Attorney Docket No. 3350-104 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed June 30, 2005.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 CFR § 1.136(a).

The request was signed by Alfred A. Stadnicki on behalf of himself and all the attorneys/agents of record who are associated with Customer No. 020457.

All the attorneys/agents associated with Customer Number 020457 have been withdrawn. Accordingly, 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.

While assignee attempted to intervene in the above-identified application, the power of attorney filed July 20, 2005 does not comply with 37 CFR 3.73(b) in that the reel and frame number where the recorded assignment appears in the assignment records of the USPTO has not been provided.

Therefore, in order for the power of attorney to be acceptable, compliance with 37 CFR 3.73(b) must be satisfied. A form for comply with the provisions of 37 CFR 3.73(b) may be found on the USPTO.gov website (Form No. PTO/SB/96).

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. A courtesy copy of this decision is being mailed to the address noted in the request and the address noted in the power of attorney filed July 20, 2005.

There is an outstanding Office action mailed February 21, 2006 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Sherry D. Brinkley at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Conferee:

cc: KEVIN DAVIS
5006 SOUTHERN STAR TERRACE
COLUMBIA, MD 21044

MR. HANS DREYER
DIRECTOR, INTELLECTUAL PROPERTY (LEGAL DEPARTMENT)
CHECKFREE CORPORATION
6000 PERIMETER DRIVE
DUBLIN, OH 43017-3233

WILLIAM R. SILVERIO
SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, N.E.
ATLANTA, GA 30309-3996

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SUITE 1800
1300 NORTH SEVENTEENTH STREET
ARLINGTON, VA 22209

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APR 25 2006

OFFICE OF PETITIONS

In re Application of :
Stephen Frederick Engdahl et al :
Application No. 10/133,649 : DECISION ON PETITION
Filed: April 29, 2002 : TO WITHDRAW
Attorney Docket No. 3350-103 : 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 28, 2005.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney appearing in the oath filed on July 23, 2002, to Mr. Alfred A. Stadnick, along with all of the other attorneys associated with the law firm of Antonelli, Terry, Stout & Kraus LLP, has been revoked by the assignee of the patent application in a communication mailed October 28, 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 applicant.

It is noted that the power of attorney submitted on August 8, 2005 was improperly accepted by the Office on October 28, 2005. In this regard, compliance with 37 CFR 3.73(b) has not been satisfied in that the reel and frame number where the recorded assignment appears in the assignment records of the USPTO has not been provided. Therefore, in order for the power of attorney to be acceptable, compliance with 37 C.F.R. 3.73(b) must be satisfied. A form for complying with the provisions of 37 C.F.R 3.73(b) may be found on the USPTO.gov website (Form No. PTO/SB/96).

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-3218.

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, GA 30309

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1300 NORTH SEVENTEENTH STREET
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In re Application of
Stephen Frederick Engdahl et al
Application No. 10/133,649
Filed: April 29, 2002
Attorney Docket No. 3350-103

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 28, 2005.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney appearing in the oath filed on July 23, 2002, to Mr. Alfred A. Stadnick, along with all of the other attorneys associated with the law firm of Antonelli, Terry, Stout & Kraus LLP, has been revoked by the assignee of the patent application in a communication mailed October 28, 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 applicant.

It is noted that the power of attorney submitted on August 8, 2005 was improperly accepted by the Office on October 28, 2005. In this regard, compliance with 37 CFR 3.73(b) has not been satisfied in that the reel and frame number where the recorded assignment appears in the assignment records of the USPTO has not been provided. Therefore, in order for the power of attorney to be acceptable, compliance with 37 C.F.R. 3.73(b) must be satisfied. A form for complying with the provisions of 37 C.F.R 3.73(b) may be found on the USPTO.gov website (Form No. PTO/SB/96).

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-3218.

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, GA 30309

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FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

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OFFICE OF PETITIONS

In re Application of :
Tetsuya Yano et al :
Application No. 10/133,670 : ON PETITION
Filed: April 29, 2002 :
Attorney Docket No. 03500.016375 :

This is a decision on the petition, filed April 20, 2002, 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 above-identified application is expressly abandoned in favor of a continuing application filed April 20, 2004.

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

Telephone inquiries should be directed to Irvin Dingle at (703) 306-5684.

The application is being forwarded to Files Repository.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

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OFFICE OF PETITIONS

In re Application of :
Michael J. Dorough et al :
Application No. 10/133,685 :
Filed: April 25, 2002 :
Attorney Docket No. 303.821US1 :

ON PETITION

This is a decision on the petition, filed November 9, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 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) 272-3208.

The examiner of Technology Center AU 2863 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WWW.USPTO.GOV

Paper No. 14

JEFFREY THURNAU
THE GATES CORPORATION
MAIL STOP 31-4-1-A3
900 S. BROADWAY
DENVER, CO 80209

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SEP 2 6 2003

OFFICE OF PETITIONS

In re Application of :
Yahya Hodjat :
Application No. 10/133,687 : ON PETITION
Filed: April 25, 2002 :
Attorney Docket No. P02-009A :

This is a decision on the petition under 37 CFR 1.313(c), filed by facsimile transmission on September 25, 2003, which is being treated as a petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 24, 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.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 3725 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
WWW USPTO GOV

Paper No. 3

UNIVERSITY OF CALIFORNIA
LOS ALAMOS NATIONAL LABORATORY
PO BOX 1663 MS A187
LOS ALAMOS NM 87545

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JUN 1 8 2003

OFFICE OF PETITIONS

In re Application of
Davenhall, et al.
Application No. 10/133,709
Filed: April 26, 2002
Attorney Docket No. S-97,847

ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(b), filed June 6, 2003.

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of a PCT international application filed on April 4, 2003. However, the US Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the PCT application.

Applicant failed to file a Rescission of Nonpublication Request before the PCT filing. Accordingly, as no rescission was filed prior to 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.

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 due to the notice of foreign filing. 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 1700 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.

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
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SCHEEF & STONE, L.L.P.
5956 SHERRY LANE
SUITE 1400
DALLAS TX 75225

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SEP 0 7 2005

OFFICE OF PETITIONS

In re Application of :
Thomas A. SEXTON et al. :
Application No. 10/133,719 : ON PETITION
Filed: April 26, 2002 :
Attorney Docket No. NC17076C1(NOKI02-00129) :

This is a decision on the petition under 37 CFR 1.137(b), filed August 15, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed May 6, 2005, which set a statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on August 7, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

Since the above-identified application is not a utility or plant application filed before June 8, 1995, a terminal disclaimer under 37 CFR 1.137(d) is not required. The terminal disclaimer fee of $130 is being credited to Deposit Account No. 50-2032

Telephone inquiries concerning this decision should be directed to David A. Bucci at (571) 272-7099 or in his absence, the undersigned at (571) 272-3217.

The application file is being referred to the Office of Patent Publication.

Brian Hearn
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20090401

DATE :

TO SPE OF : ART UNIT 1631

SUBJECT : Request for Certificate of Correction on Patent No.: 7034134

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:

Amendments to the specification and seqeunce lisiting were properly filed 7/9/2004, but were not included in issued patent.

/Marjorie Moran/
Supervisory Patent Examiner.Art Unit 1631

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 7

Michael W. Farn
FENWICK & WEST L.L.P.
Silicon Valley Center
801 California Street
Mountain View, CA 94041

MAILED

JUN 1 8 2004

Technology Center 2100

In re Application of:
Kee H. Koh
Application No. 10/133,813
Filed: April 24, 2002
For: CRYPTOSYSTEMS USING COMMUTING PAIRS IN A MONIOD

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed June 03, 2004.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed June 03, 2004 meets all the requirements. Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

James R. Matthews

for Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
703-305-9750

cc: Edward J. Radlo
SONNENSCHEIN NATH & ROSENTHAL LLP
685 Market Street, 6th Floor
San Francisco, CA 94105

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JORDAN AND HAMBURG LLP
122 EAST 42ND STREET
SUITE 4000
NEW YORK NY 10168

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OFFICE OF PETITIONS

In re Application of	:	
Goto et al.	:	
Application No. 10/133,839	:	ON PETITION
Filed: April 26, 2002	:	
Attorney Docket No. F-7397	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 4, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Request for Continued Examination (RCE); (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

This matter is being referred to Technology Center 3700 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 9

DOUGLAS W. SWARTZ
SHERIDAN ROSS PC
1560 BROADWAY, SUITE 1200
DENVER, CO 80202-5141

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FEB 20 2004

OFFICE OF PETITIONS

In re Application of :
Kazunori Sawafuji :
Application No. 10/133,871 : DECISION GRANTING PETITION
Filed: April 25, 2002 : UNDER 37 CFR 313(c)(2)
Attorney Docket No. 2933P13 :

This is a decision on the petition, filed October 24, 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 29, 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 2636 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).

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

SAMUEL B. ABRAMS
PENNIE & EDMONDS LLP
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-2711

COPY MAILED

JUN 1 1 2002

OFFICE OF PETITIONS

In re Application	:	
Radoje Drmanac	:	
Application No. 10/133,888	:	LETTER
Filed: April 25, 2002	:	
Attorney Docket No. 9598-084-999	:	

This is in response to the paper filed June 4, 2002 under 37 CFR 1.28(b) requesting that status as a Small Entity be removed.

In accordance with the June 4, 2002 request, status as a Small Entity has been removed and the large entity issue fee has been accepted.

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
(703) 305-9285

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 04/21/09

TO SPE OF : ART UNIT 3762

SUBJECT : Request for Certificate of Correction for Appl. No.: 10133906 Patent No.: 7483748 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: The Certificate of correction does not point out claim & line number or Column & line number

4/27/9

ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

3762

UNITED STATES 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 : 09/28/09

Patent No. : 7483748 B2
Patent Issued : 01/27/09
Docket No. : **1023-589US01**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Respecting the alleged errors in the documents filed on 04/14/09; please see attachments. **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

In view of the foregoing, your request in this matter is hereby denied.

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(703) 305-8309 or (703) 756-1574

MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MINNEAPOLIS MN 55432-9924

LMN

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 04/21/09

TO SPE OF : ART UNIT 3762

SUBJECT : Request for Certificate of Correction for Appl. No.: 10133906 Patent No.: 7483748 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: The Certificate of correction does not point out claim & line number or Column & line number

4/21/9

ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

3762

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/16/09

TO SPE OF : ART UNIT 3762

SUBJECT : Request for Certificate of Correction for Appl. No.: 10133906 Patent No.: 7483748

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 9C62-D
Palm Location 7580

You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☐ **Approved**	**All** changes apply.
☒ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: Column 24 Lines 26-27 do not apply. The changes would change the scope of the claim by deleting "immediately" & "immediately" was in the claim at time of allowance. /C H L/ 11/25/9

/Carl H. Layno/ 11/30/2009
Supervisory Patent Examiner, AU 3762/3766

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NATIONAL INSTITUTES OF HEALTH
P. O. BOX 2903
MINNEAPOLIS MN 55402

MAILED

JUN 28 2010

OFFICE OF PETITIONS

In re Application of :
KHAN et al. :
Application No. 10/133,937 : ON APPLICATION FOR
Filed: April 25, 2002 : PATENT TERM ADJUSTMENT
Attorney Docket No. 16427.1US01 :

This is in response to the "Request for Reconsideration of the Patent Term Adjustment under 37 C.F.R. § 1.705" filed March 10, 2010, which is being 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 563 days, not 0 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]

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).

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[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.

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