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GRANVILLE, OH 43023

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DEC 0 8 2004

OFFICE OF PETITIONS

In re Application of
Block et al.
Application No. 10/159,539
Filed: May 31, 2002
Attorney Docket No. 24942B

: 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 December 1, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional Application No. 09/607,478, filed on June 30, 2000, set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

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

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

The instant petition complies with all of the above requirements.

However, when the instant application was filed, a reference claiming priority to provisional Application No. 60/295,431 was included on the Utility Patent Application Transmittal form. In the amendment submitted with the instant petition, only Application No. 09/607,478 is mentioned. Petitioner has failed to indicate whether or not the priority claim to the above-noted provisional application is still desired.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment[1] clarifying the relationship, or lack thereof, of the above-noted provisional application to the instant application is required.

---

[1] *Note* 37 CFR 1.121

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

Any questions concerning this matter may be directed Paralegal Liana Chase at (571) 272-3206.

Frances Hicks

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

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OFFICE OF PETITIONS

In re Application of
Block et al.
Application No. 10/159,539
Filed: May 31, 2002
Attorney Docket No. 24942B

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the renewed petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed January 19, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **GRANTED**.

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

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

The instant application was filed on May 31, 2002 and was pending at the time of filing of the instant petition. A reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii).

Additionally, the intermediate nonprovisional application was filed within twelve months of provisional Application No. 60/295,431, which was filed on June 1, 2001, for which priority is claimed. A reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title.

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

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should 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 applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to Paralegal Liana Chase at (571) 272-3206.

This matter is being referred to Technology Center Art Unit 1771 for appropriate action on the amendment submitted January 19, 2005, including consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed nonprovisional application, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application.

Frances Hicks

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

ATTACHMENT : Corrected Filing Receipt

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JAN 29 2009

OFFICE OF PETITIONS

In re Application of
Thomas L. Block
Application No. 10/159,539
Filed: May 31, 2002
Attorney Docket No. 24942B

DECISION ON PETITIONS

This is a decision on the petition under 37 CFR 1.181 (no fee) to withdraw the holding of abandonment filed November 24, 2008. This is also a decision on the petition under 37 CFR 1.137(b), to revive the above-identified application filed November 24, 2008.

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

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

The petition under 37 CFR 1.181 is granted because the Office communication mailed January 14, 2008, did not require applicant to take any action or file any reply. Also, no time period was set in the communication that required applicant to reply.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition under 37 CFR 1.137(b) is dismissed as moot in view of the granting of the petition under 37 CFR 1.181(a). Petitioner may request a refund of the petition fee by writing to the Office of Finance Refund section. A copy of this letter should accompany the 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 1794.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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FOLEY & LARDNER LLP
777 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202-5306

Mail Date: 04/21/2010

Applicant	: Shane Conneely	: DECISION ON REQUEST FOR
Patent Number	: 7668535	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/159,545	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/31/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **768** 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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100 GALLERIA PARKWAY, NW, STE 1750
ATLANTA, GA 30339-5948

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Dennis William Mueller :
Application No. 10/159,547 :
Filed: May 31, 2002 :
Attorney Docket No. 191314-1030 :

This is a decision on the petition under 37 CFR 1.313, filed November 22, 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 September 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 Wan Laymon at (571) 272-3220.

Appropriate action will be taken on the petition under 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for the benefit of priority to the prior-filed provisional application (60/378,450) noted in the concurrently filed amendment. Afterwards, this matter is being referred to Technology Center AU 2856 for processing of the RCE and for appropriate consideration of applicant's entitlement to claim the benefit of priority to the provisional application.

Wan Laymon
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).

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ATLANTA, GA 30339-5948

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OFFICE OF PETITIONS

In re Application of	:
Dennis W. Mueller	:
Application No. 10/159,547	: DECISION ON PETITION
Filed: May 31, 2002	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 191314-1030	:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 22, 2004, and supplemented on February 10, 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 amendment filed February 10, 2005.

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 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-fiiled 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, Application No. 60/378,450, which was filed on May 7, 2002, 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 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 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 the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 2856 for appropriate action on the amendment submitted February 10, 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. 60/378,450, filed May 7, 2002.

Karen Creasy

Karen Creasy
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	:	
Dennis W. Mueller	:	
Application No. 10/159,547	:	ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. 191314-1030	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed March 7, 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 amendment filed February 10, 2005.

The petition is **DISMISSED** as moot.

The petition is dismissed as moot in view of the decision mailed March 7, 2005, granting the petition filed on November 22, 2004 and supplemented on February 10, 2005.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 2856 for appropriate action on the amendment submitted February 10, 2005, and supplemented on March 7, 2005.

Karen Creasy

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

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Paper No. 6

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MAY 6 2003

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TECHNOLOGY CENTER 2600

WATERS & MORSE, P.C.
400 LEDYARD BUILDING
125 OTTAWA, AVENUE, NW
GRAND RAPIDS, MI 49503

In re Application of :
McKitrick et al. :
Application No. 10/159,555 :
Filed: May 31, 2002 :
For: POINT SOUND MASKING SYSTEM :
OFFERING VISUAL PRIVACY :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request to withdraw as attorney/agent of record filed on April 17, 2003.

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

Petitioner has met all of the above. Accordingly, the request is **GRANTED**.

All of the attorneys of record are granted the request for withdraw of attorney/agent.

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

Kenneth A. Wieder

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

cc: DR. KIM A. SENA
8841 E. FULTON
ADA, MI 49301

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

William L. Shaffer
TOWNSEND AND TOWNSEND AND CREW, LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834

MAR 28 2003

In re Application of:	:	
RODOV *et al.*	:	
Serial No.: 10/159,558	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Filed: May 30, 2002	:	
Attorney Docket No.: 020441-001200US	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed March 11, 2003.

A grantable request to withdraw as attorney of record must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of others. A request to withdraw will not be approved unless at least thirty (30) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period, which can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above stated requirements. The request was signed by William L. Shaffer on behalf of himself and all the attorneys associated with Customer No. 20350. There is no outstanding Office action, which requires a response at this time.

The request is APPROVED.

There are no attorneys of record at this time.

All future communications from the Office will be directed to, Henry K. Woodward, at the address indicated below until otherwise notified by applicant.

Inquiries related to this decision should be directed to Clayton E. LaBalle at (703) 308-0519.

Clayton E. LaBalle, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Henry K. Woodward
Beyer Weaver & Thomas, LLP, Intellectual Property Law
590 West El Camino Real
Mountain View, CA 94040

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United States Patent and Trademark Office
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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

Mail Date: 04/21/2010

Applicant	: Javed Khan	: DECISION ON REQUEST FOR
Patent Number	: 7655397	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/159,563	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/31/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **341** 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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INTERNATIONAL BUSINESS MACHINE CORPORATION
DEPT. 915, 972E, 1000 RIVER STREET
ESSEX JUNCTION, VT 05452

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OFFICE OF PETITIONS

In re Application of	:	
Timothy H. Daubenspeck et al	:	
Application No. 10/159,573	:	ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. BUR919990076US2	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 28, 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 June 8, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on September 9, 2004.

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.

Pursuant to petitioner's authorization, Deposit Account No. 09-0456 was charged a total of $2,960.00 – $1,330.00 for the petition to revive an unintentionally abandoned application, $1,330.00 for the issue fee and $300.00 for the publication fee.

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

This matter is being referred to Publishing Division.

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

cc: DeLIO & PETERSON
121 WHITENY AVNEUE
NEW HAVEN, CT 06510-1241

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/21/05

TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction on Patent No.: 6906050 / 10/159,580

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.

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

Comments:
Patel, Sudhaker

SPE

1624
Art Unit

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OFFICE OF PETITIONS

In re Application of	:
Christopher Lane et al	:
Application No. 10/159,581	: DECISION GRANTING PETITION
Filed: May 30, 2002	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 306812003400	:

This is a decision on the petition, filed November 4, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 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 (571) 272-3218.

This matter is being referred 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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ATLANTA, GA 30339-5948

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OFFICE OF PETITIONS

In re Application of :
Dennis William Mueller :
Application No. 10/159,585 : DECISION ON PETITION
Filed: May 31, 2002 : UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 191314-1020 :

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 29, 2004 and supplemented on March 7, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of prior-filed provisional Application No. 60/378,450, filed May 7, 2002.

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 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, Application No. 60/378,450, which was filed on May 7, 2002, 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 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 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 above-noted, 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 above-noted, prior-filed provisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 3662 for examination in due course.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 9

GREGORY L BRADLEY
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OFFICE OF PETITIONS

In re Application of LAZZARO et al. Application No. 10/159,592 Filed: May 30, 2002 Attorney Docket No. VI/02-004	DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed November 10, 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 present nonprovisional application is the subject of an application filed in an eighteen month publication country on May 30, 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 present petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of April 1, 2004, accompanies this decision on petition.

The $1,330.00 petition fee will be charged to Deposit Account No. 13-2530, as authorized.

This application is being forwarded to Technology Center Art Unit 3763 for examination in due course.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing

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Paper No.

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BOSTON, MA 02210-2211

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FEB 27 2004

OFFICE OF PETITIONS

In re Application of :
Ihor A. Lys et al :
Application No. 10/159,593 : NOTICE
Filed: May 30, 2002 :
Attorney Docket No. C01104/70062 :

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.

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

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EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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APR 1 4 2004
OFFICE OF PETITIONS

In re Application of	:	
Motasim Sirhan et al	:	
Application No. 10/159,602	:	NOTICE
Filed: May 30, 2002	:	
Attorney Docket No. 020460-000250US	:	

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 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

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Paper No. 6

Mr. Paul Wood
812 Almeria Avenue
Coral Gables FL 33134

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FEB 2 4 2004

OFFICE OF PETITIONS

In re Application of Paul Christopher Wood Application No. 10/159,610 Filed: June 3, 2002 Title: FUNDAMENTAL STOCK MARKET INDEX AND INDEX FUND OR FUNDS	DECSION ON PETITION UNDER 37 C.F.R. §1.137(A)

This is a decision on the petition filed February 2, 2004, pursuant to 37 C.F.R. §1.137(a)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the "Notice to File-Corrected Application Papers" (notice[2]), mailed July 10, 2002, which set a period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on September 11, 2002. A Notice of Abandonment was mailed on January 16, 2004.

With the instant petition, Petitioner has supplied an abstract, along with an assertion that the notice was not received.

Petitioner has failed to meet requirement (3) above.

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1 A grantable petition pursuant to 37 CFR §1.137(a) must be accompanied by:

(1) the required reply (in a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof);
(2) the petition fee;
(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 as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

2 The notice stated that an abstract must be submitted on a separate sheet

Regarding the third requirement above, the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR §1.137(a).

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

35 USC §133 states, "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." (emphasis added)

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

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[4]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[5]

Nonawareness of a PTO rule will not constitute unavoidable delay[6]

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3 Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA)1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir. 1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1425, 7 U.S.P.Q.2d (BNA) 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."

4 Id.

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

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

The burden of showing the cause of the delay is on the person seeking to revive the application[7].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[8].

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[9].

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account[10]."

A petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable[11]."

The regulations and portion of the MPEP and relevant to the abandonment of this application

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

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

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

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

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7 Id.

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

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

10 Smith v. Mossinghoff, 671 F.2d at 538; 213 USPQ at 982.

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

37 C.F.R. § 1.136 Extensions of time.

(a)

(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 1.193(b);

(iii) The reply is a request for an oral hearing submitted pursuant to § 1.194(b);

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.196, § 1.197 or § 1.304; or

(v) The application is involved in an interference declared pursuant to § 1.611.

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to §§ 1.193(b), 1.194, 1.196 or 1.197; § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in ex parte reexamination proceedings, § 1.956 for extensions of time in inter partes reexamination proceedings; and § 1.645 for extensions of time in interference proceedings.

(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. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.645 for extensions of time in interference proceedings; § 1.550(c) for extensions of time in ex parte reexamination proceedings; and § 1.956 for extensions of time in inter partes reexamination proceedings.

(c) If an applicant is notified in a "Notice of Allowability" that an application is otherwise in condition for allowance, the following time periods are not extendable if set in the "Notice of Allowability" or in an Office action having a mail date on or after the mail date of the "Notice of Allowability":

(1) The period for submitting an oath or declaration in compliance with § 1.63;

(2) The period for submitting formal drawings set under § 1.85(c); and

(3) The period for making a deposit set under § 1.809(c).

[47 FR 41277, Sept. 17, 1982, effective Oct. 1, 1982; 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; 54 FR 29551, July 13, 1989, effective Aug. 20, 1989; para. (a) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (c) added, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; paras. (a)(2) and (b) revised, 65 FR 76756, Dec. 7, 2000, effective Feb. 5, 2001; para. (c) revised, 66 FR 21090, Apr. 27, 2001, effective May 29, 2001]

MPEP 711.03(c) states, in part:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION

In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based upon unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

See also 1156 O.G. 53 (October 25, 1993), which may be viewed at http://www.uspto.gov/web/offices/com/sol/og/con/files/cons074.htm.

Application of the standard to the current facts and circumstances

With the instant petition, Petitioner has set forth that he did not receive the notice.

The showing in the instant petition is not sufficient to withdraw the holding of abandonment because (1) applicant did not include a statement that a thorough search of the file jacket and docket records were conducted, and (2) applicant did not include a copy of the docket record where the non-received Office communication would have been entered and docketed, had it been received.

Since Petitioner is a pro se applicant, it is possible that he does not have a file jacket, and does not maintain a docket record. If such is the case, he must state this. Furthermore, Petitioner must state not only that the Office communication was not received, but also that he searched the place where he normally would keep such communications and could not find it. Petitioner must also explain his system for keeping track of patent matters – where he keeps the correspondence[12]; where he writes down due dates[13]; how he knows replies are due, etc. In

12 Does Petitioner have a file/some means of organization where he keeps correspondence pertaining to this application?

essence, Petitioner must explain how he reminds himself of response due dates and show that the due date for the notice was not entered into that system. The Office would like to see documentary evidence and records as may exist which would substantiate that Petitioner exercised due diligence with respect to his most important business.

Since Petitioner states that he did not receive the notice of July 10, 2002, a copy is enclosed.

As such, this petition is **DISMISSED**.

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

The reply to this letter may be submitted by mail[14], hand-delivery[15], or facsimile[16].

Petitioner has requested that this decision be sent to an address in San Francisco. As a one time courtesy, this decision will be mailed to both the address of record and the Californian location. All subsequent mailings from the Patent Office, however, will be sent only to the address of record. If petitioner desires to receive future correspondence regarding this application at the Californian location, the change of correspondence address must be submitted. A blank Change of Correspondence Address Form (PTO/SB/122) may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

Telephone inquiries *pertaining to this decision* should be directed to the undersigned at (703) 305-0011.

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

Encl.

cc: Paul Wood
521 18th Avenue
San Francisco, CA 94121

---

13 This need not be a log. This may be in the form of a calendar or date book.

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

15 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.

16 (703) 872-9306, attention Office of Petitions, Attorney Paul Shanoski.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 10

VENABLE LLP
P.O. BOX 34385
WASHINGTON DC 20045-9998

COPY MAILED

JUN 29 2005

OFFICE OF PETITIONS

In re Application of
Paul Christopher Wood
Application No. 10/159,610
Filed: June 3, 2002
Title: FUNDAMENTAL STOCK MARKET INDEX AND INDEX FUND OR FUNDS

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

This is a decision on the petition under 37 CFR §1.137(b)[1], filed May 25, 2005, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the "Notice to File-Corrected Application Papers" (notice[2]), mailed July 10, 2002, which set a period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on September 11, 2002. A Notice of Abandonment was mailed on January 16, 2004.

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

---

1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 The notice stated that an abstract must be submitted on a separate sheet

With the present petition, Petitioner has submitted the petition fee and a statement which is being construed as the proper statement of unintentional delay. The abstract was submitted with a petition under 37 C.F.R. §1.137(a) on February 2, 2004, which was dismissed via the mailing of a decision on February 24, 2004.

Petitioner has met all requirements for a grantable petition under 37 C.F.R. §1.137(b). As such, the petition is **GRANTED**. 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 Revocation of Power of Attorney has been entered and made of record.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Katrina Lyon
Lyon & Harr, LLP
Suite 800
300 Esplanade Drive
Oxnard, California 93030

MAILED
DEC 30 2005
TECHNOLOGY CENTER 2100

In re Application of: David Salesin et al.	)	
Application No.: 10/159,627	)	**DECISION ON PETITION**
Filed: May 30, 2002	)	**UNDER 37 C.F.R. § 1.84(a)(2)**
For: SYSTEM AND METHOD FOR FOR	)	**TO ACCEPT COLOR**
ADAPTIVE DOCUMENT VIA	)	**DRAWINGS**
MANIFOLD CONTENT	)	

This is a decision on the petition under 37 C.F.R. § 1.84(a)(2), filed September 13, 2002 requesting acceptance of color drawings. The petition requests that all the drawings, which are in color, be accepted in lieu of black and white drawings.

A grantable petition under 37 C.F.R. § 1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R. § 1.17(h), three (3) sets of the color drawings in question, and the specification must contain specific language (set out in the rule) in the first paragraph of the Brief Description of the Drawings.

Applicant's submission meets all the criteria set out above. The petition is **GRANTED**.

The application file is being forwarded to the Publications Branch for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JEAN NORRID
1916 S. LOGAN ST.
DENVER, CO 80210

MAILED

JUL 19 2010

OFFICE OF PETITIONS

In re Patent No. **6,902,086**
Issue Date: June 7, 2005
Application No. 10/159,631
Filed: May 30, 2002
Attorney Docket No. **4070-00101**

DECISIONS ON PETITION
UNDER 37 CFR 1.378(c)

This is a decision on the petition under 37 CFR 1.378(c), filed May 28, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight on June 7, 2009 for failure to pay the 3½ 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.

Petitioner will not receive future correspondence related to maintenance fees for the patent unless a "Fee Address" Indication Form (see **PTO/SB/47**) and Request for Customer Number (see **PTO/SB/125**) are submitted.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

ATTACHMENT(s): PTO/SB/47 Fee Address Indication Form
PTO/SB/125 Request for Customer Number

2010 JUN -2 AM 10: 04

M/A
C-C

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 a valid OMB control number

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

Docket Number (Optional) 4070 · 00101

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

OPAP MAY 2 8 2010 IAP8 PATENT & TRADEMARK OFFICE

RECEIVED
JUN 08 2010
OFFICE OF PETITIONS

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

Patent No. 6,902,086 Application Number 10/159,631

Issue Date JUNE 7, 2005 Filing Date MAY 30, 2002

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue 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).

Also complete the following information, if applicable

The above – identified patent

[X] Is a reissue of original Patent No. 6,902,086 original issue date 06/07/2005

original application number 10/159.631

original filing date 05/30/2002

06/04/2010 DALLEN 00000048 6902086
01 FC:1599 2130.00 OP

[ ] resulted from the entry into the U.S. under 35 U.S.C. 371 of international application _____

filed on _____

CERTIFICATE OF MAILING (37 CFR 1.89(a))

I hereby certify that this paper (*along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class main in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

05-26-2010
Date

Jean Norrid
Signature

JEAN NORRID
Typed or Printed Name of Person Signing Certificate

Adjustment date: 07/20/2010 LDIEP1
06/04/2010 DALLEN 00000048 6902086
01 FC:1599 2130.00 OP

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, Virginia 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, Virginia 22313-1450**

01 FC:2551 490.00 OP
02 FC:1558 1640.00 OP

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

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

1. SMALL ENTITY

[X] Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

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

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

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
[ ] $ _____	3 ½ yr fee	(1551)	[X] $ 490.00	3 ½ yr fee	(2551)
[ ] $ _____	7 ½ yr fee	(1552)	[ ] $ _____	7 ½ yr fee	(2552)
[ ] $ _____	11 ½ yr fee	(1553)	[ ] $ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED $ $490.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of $ 1640.00 (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of a maintenance fee.

SURCHARGE FEE BEING SUBMITTED $ $1640.00

5. MANNER OF PAYMENT

[ ] Enclosed is a check for the sum of $ _____

[ ] Please charge Deposit Account No. _____ the sum of $ _____

[X] Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

[ ] The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. _____

7. OVERPAYMENT

As to any overpayment made please

☐ Credit to Deposit Account No. _____

OR

☒ Send refund check

RECEIVED
JUN 08 2010
OFFICE OF PETITIONS

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.

8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

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

Jean Norrid — 05-26-2010
Signature(s) of Petitioner(s) — Date

JEAN NORRID — _____
Typed or printed name(s) — Registration Number, if applicable

303-744-1778
Telephone Number

1916 S. LOGAN ST.
Address

DENVER CO 80210
Address

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."

ENCLOSURES

☒ Maintenance Fee Payment

☒ Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)

☒ SB 123

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THOMAS KAYDEN HORSTEMEYER & RISLEY
100 GALLERIA PARKWAY, NW, STE 1750
ATLANTA, GA 30339-5948

COPY MAILED

MAY 23 2005

OFFICE OF PETITIONS

In re Application of :
Paul A. Wilson :
Application No. 10/159,637 : ON PETITION
Filed: May 30, 2002 :
Attorney Docket No. 80340-1010 :

This is a decision on the petition, filed May 16, 2005, under 37 CFR 1.313(c)(1) 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 due to unpatentability of one or more claims. See 37 CFR 1.313(c)(1).

The application is hereby withdrawn from issue.

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

This matter is being referred to Technology Center AU 1751 for consideration of the concurrently filed Amendment.

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

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6642193	2003-11-04	10/159,639	2002-05-30	ROBCA39.001GUS

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	/raymond d. smith/	Date (YYYY-MM-DD)	2008-04-16
Name	Raymond D. Smith	Registration Number	55634

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6642193
Issue Date: November 4,2003
Application No. 10159639
Filed: May 30,2002
Attorney Docket No. ACC-003

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

This is a decision on the electronic petition, filed April 16,2008 ,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 16,2008 . 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

MAILED

OCT 21 2009

OFFICE OF PETITIONS

MICROSOFT CORPORATION
C/O LYON & HARR, LLP
300 ESPLANADE DRIVE
SUITE 800
OXNARD CA 93036

In re Application of

Salesin, et al.

Application No. 10/159,640

Filed: May 31, 2002

Attorney Docket No. MCS-006-02

: DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 14, 2009.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to seek further judicial review with the two month period allowed after the decision by the Board of Patent Appeals and Interferences mailed May 22, 2009. The application became abandoned on July 23, 2009. A Notice of Abandonment was mailed on August 12, 2009.

The Request for Continued Examination filed September 14, 2009, is noted.

The application is being forwarded to Technology Center 2600, GAU 2628 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 13

LARRY MASON LEE
4408 SPICEWOOD SPRINGS RD.
AUSTIN, TX 78759

COPY MAILED
MAY 1 8 2004
OFFICE OF PETITIONS

In re Application of

Walter Wayne Nehring

Application No. 10/159,641

Filed: June 3, 2002

Attorney Docket No. 02-0402

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 22, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the final Office action mailed August 13, 2003, which set a shortened statutory period for reply of three (3) months. A response was filed on September 11, 2003, but it failed to place the application in condition for allowance. No further responses were received within the allowable period and the application became abandoned on November 13, 2003.

The Request for Continued Examination filed March 22, 2004, is noted and made of record.

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

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JJGJR.: 06-06

Paper No: __

LARRY MASON LEE
4408 SPICEWOOD SPRINGS RD.
AUSTIN TX 78759

COPY MAILED
JUN 12 2006
OFFICE OF PETITIONS

In re Application of	:	
Nehring	:	
Application No. 10/159,641	:	ON PETITION
Filed: 3 June, 2002	:	
Attorney Docket No. 02-0402	:	

This is a decision on a petition filed on 2 December, 2005, under 37 C.F.R. §1.137(b).

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

BACKGROUND

The record indicates:

- Petitioner failed to reply timely and properly to the final Office action mailed on 13 July, 2005, with reply due absent an extension of time on or before 13 October, 2005;
- the application went abandoned by operation of law after midnight 13 October, 2005;
- it does not appear that the Office mailed the Notice of Abandonment before the instant petition was filed;
- on 2 December, 2005, Petitioner filed the instant petition, fee, reply in the form of an

after final amendment, which reply is not of right[1]–however, the Examiner has indicated that it will be entered–and made a statement of unintentional delay–thus, Petitioner appears to have satisfied the regulatory requirements under 37 C.F.R. §1.137(b).

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and

---

[1] A proper reply is a an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission). (See: MPEP §711.03(c).)

[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

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

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

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

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

regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

Allegations as to
Unintentional Delay

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

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

CONCLUSION

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

The application is released to the Examiner in Technology Center 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

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

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LESAVICH HIGH-TECH LAW GROUP, P.C.
SUITE 325
39 S. LASALLE STREET
CHICAGO IL 60603

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MAY 12 2008

In re Application of	:	
MONTELO, Patrick A. et al.	:	
Application No. 10/159,649	:	DECISION ON PETITION
Filed: May 31, 2002	:	TO WITHDRAW
Attorney Docket No. **01-669-A**	:	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 15, 2008.

The request is **APPROVED**.

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

The request was signed by Stephen Lesavich on behalf of all attorneys of record who are associated with customer No. 32097. All attorneys/agents associated with the Customer Number 32097 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

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

Tredelle D. Jackson
Petitions Examiner
Office of Petitions

cc: **PATRICK MONTELO**
1425 MOHAWK DRIVE
SCHUMBURG, IL 60193

cc: **MARK DUNCAN**
MANAGER, INTELLECTUAL PROPERTY
THE SERVICEMASTER COMPANY
860 RIDGE LAKE BLVD.
MAIL STOP A3-4008
MEMPHIS, TN 38120

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DIW 08-02

Paper No. 7

ROGER M. RATHBUN
13 MARGARITA COURT
HILTON HEAD ISLAND SC 29926

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AUG 16 2002

OFFICE OF PETITIONS

In re Application of	:
Nicora et al.	: DECISION GRANTING
Application No. 10/159,652	: PETITION
Filed: 31 May, 2002	:
Attorney Docket No. NDH- 1	:

This is a decision on the petition styled under 37 CFR 1.181, filed on 12 July, 2002, which is treated as a petition filed under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 31 May, 2002, with six (6) sheets of drawings as a part of the original disclosure.

On 31 May, 2002, the application was filed.

On 1 July, 2002, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that the application had not been accorded a filing date because the application was deposited without drawings and that the filing date of the application would be the date of receipt of the drawings.

In response, on 12 July, 2002, the present petition, a $130.00 petition fee, and, *inter alia*, six (6) sheets of drawings were filed. Petitioner argues that six (6) sheets of drawings were filed with the other application papers on 31 May, 2002, and that the drawings were misplaced in the U.S. Patent and Trademark Office (Office). In support of the petition, a copy of petitioner's postcard receipt was supplied with the petition. The postcard receipt, which shows an Office stamp of 05/31/02, and the above-identified application number, acknowledges receipt of, *inter alia*, 6 sheets of drawings. Petitioner requests that the application, including six (6) sheets of drawings, be accorded a filing date of 31 May, 2002.

Upon review of the record, no sheets of drawings deposited on 31 May, 2002, have been located among the application papers. However, the evidence is convincing that the application papers deposited on 31 May, 2002, included six (6) sheets of drawings, which were subsequently misplaced in the USPTO. Therefore, the application, including six (6) sheets of drawings, was complete on filing and entitled to a filing date of 31 May, 2002.

In view of the above, the petition is granted. The application will be processed with the six (6) sheets of drawings submitted with the present petition. The petition fee is unnecessary and petitioners may request a refund thereof by writing to the Office of Finance, ATTN: Refund Section. A copy of this decision should accompany petitioners' request.

The "Notice" mailed on 1 July, 2002, was sent in error and is hereby withdrawn.

The application will be processed and examined using the application papers filed on 31 May, 2002, and the six (6) sheets of drawings supplied on 12 July, 2002. The copies of other application papers supplied on 12 July, 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 reprocessing with a filing date of 31 May, 2002, using the application papers filed on that date, and the six (6) sheets of drawings supplied on 12 July, 2002.

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

D Wood

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

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CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC
ATTN: JOHN CURTIN
P.O. BOX 1995
VIENNA VA 22183

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MAY 08 2007

OFFICE OF PETITIONS

In re Application of Jingyu Zhou et al. Application No. 10/159,676 Filed: May 31, 2002 Attorney Docket No. GSH 08-892056 US2 Title: METHOD FOR ENGINEERING CONNECTIONS IN A DYNAMICALLY RECONFIGURABLE PHOTONIC SWITCHED NETWORK	DECISION ON PETITION UNDER 37 C.F.R. §1.181

This is a decision on the petition filed on February 22, 2007, 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 reply in a timely manner to the non-final Office action, mailed July 13, 2006, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on October 14, 2006. A notice of abandonment was mailed on January 24, 2007.

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

would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement[1].

Petitioner has met the requirements of Delgar v. Schuyler, 172 USPQ 513 (D.D.C. 1971), in that he has asserted that the Office communication was not received, that he has searched both the file jacket and the docket record, and he 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 his 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**.

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[2]. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski

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

---

1 See MPEP 711.03(c).
2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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Paper No. 14

APPLIED MATERIALS, INC.
2881 SCOTT BOULEVARD, M/S 2061
SANTA CLARA, CA 95050

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OCT 3 1 2003

OFFICE OF PETITIONS

In re Application of	:
Ian S. Latchford et al	:
Application No. 10/159,711	: DECISION GRANTING PETITION
Filed: May 31, 2002	: UNDER 37 CFR 313(c)(2)
Atty Dkt No. AMAT/6651/DSM/BCVD/JW	:

This is a decision on the petition, filed October 29, 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 October 6, 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 2812 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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Mailed: 5/23/05

dss
Paper Number _____

In re application of
K. Shinler
Serial No.10/159,727
Filed: May29, 2002
For: SWEEPING SYSTEM WITH REMOVABLE FRONT HOPPER

DECISION ON PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION UNDER 37 CFR 711.03(c) II, originally filed February 14, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment mailed February 07, 2005, be withdrawn since the applicant did not receive the Notice of Non-Compliant Amendment mailed July 15, 2004.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.03(c) - NEW PROCEDURE TMOG 1170 O.G. 114). A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the applicant or any authorized representative of the applicant did not receive the Notice of Non-Compliant Amendment, mailed July 15, 2004. The evidence provided includes a statement by the petitioner that the Notice of Non-Compliant Amendment was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Notice of Non-Compliant Amendment was not received. Also provided is a copy of the attorney's application docket records where the Notice of Non-Compliant Amendment would have been posted had it been timely received.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded for prompt remailing of the Notice of Non-Compliant Amendment originally mailed July 15, 2004 and restarting of the period of response from the remail date thereof.

The Petition is **GRANTED**.

JStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

John F. Klos
Fulbright & Jaworski L.L.P.
2100 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2112

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Paper No. 6

Steven Thrasher
391 Sandhill Dr.
Richardson, TX 75080

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APR 1 4 2004

OFFICE OF PETITIONS

In re Application of :
Steven A. Swidler :
Application No. 10/159,739 : ON PETITION
Filed: May 31, 2002 :
Attorney Docket No. 19010.00021 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 29, 2004, to revive the above-identified application.

The application became abandoned for failure to timely respond to a Notice to File Corrected Application Papers mailed July 10, 2002. The notice required substitute drawings in compliance with 37 CFR 1.84. A Notice of Abandonment was mailed on January 20, 2004.

In response, on March 29, 2004, the present petition was filed. Petitioner argues that the substitute drawings were filed on July 16, 2002. Petitioner notes that the letter transmitting the drawings was directed to a wrong application number; however, it included a copy of the July 10, 2002 notice citing the correct application number. Petitioner suggests that the drawings may be filed in the incorrect application number. Accordingly, petitioner requests, in effect, that the abandonment be withdrawn and that the petition fee be refunded.

It is noted that the letter transmitting the drawings purportedly filed July 16, 2002, does not include a certificate of mailing, nor does petitioner include a post card receipt evidencing the filing on July 16, 2002. Further, a review of the record of the other application failed to uncover drawings filed July 16, 2002. Consequently, the showing is inadequate to establish that the drawings in question were timely filed on July 16, 2002, and subsequently misplaced in the Office. Absent convincing evidence, a petition and petition fee is necessary to revive the above-identified application.

The petition is **GRANTED**.

The application is being returned to the Office of Initial Patent Examination (OIPE) for further review of the nine pages of drawings provided on March 29, 2004.

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

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

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NOV 30 2005

RICHARD ARON OSMAN
SCIENCE AND TECHNOLOGY LAW GROUP
75 DENISE DRIVE
HILLSBOROUGH, CA 94010

In re Application of	:
Richard Harland et al	:
Serial No.: 10/159,749	: PETITION DECISION
Filed: May 29, 2002	:
Attorney Docket No.: B97-020-4	:

This is in response to the petition under 37 CFR 1.181, filed September 15, 2005, requesting the Group Director reassign the above identified application to a different examiner.

BACKGROUND

The file history shows that this application was filed on May 29, 2002, and consisted of the following papers (according to the transmittal letter): Fee Transmittal Form; Specification and claims (44 pages); drawings (1 sheet); Oath or declaration (2 pages – indicated as copy from previous application); Nucleotide sequence submission in paper and request to use CRF from a previous application; Assignment papers; Power of attorney; IDS; and return receipt postcard. These were coded in IFW as SEQLIST (14 pages); MISC OIPE (1 page); LET (1 page); NPL (5 pages); WFEE (1 page – shown twice); WCLM (1 page); IDS (2 pages); TRNA (4 pages); SPEC (27 pages); CLM (2 pages); ABST (1 page); OATH (5 pages).

The examiner mailed a first Office action to applicants on November 13, 2003, requiring restriction between four identified inventions, each involving sequences. Applicants replied on November 20, 2003, electing Group I and traversing the requirement. The examiner accepted the traversal and rejoined all of the Groups and proceeded to examine them. Rejections for Obvious Double Patenting and under 35 U.S.C. 112, first paragraph, for lack of written description and enablement, were set forth in an Office action mailed January 21, 2004.

Applicants replied on April 21, 2004, supplying a terminal disclaimer to overcome the Obvious Double patenting rejection and arguing the rejections under 35 U.S.C. 112, first paragraph. As evidence of compliance with the statute, applicants, on page 7 of the response, indicate that a "second expert 37CFR1.132 Declaration ..." is of record. No further mention or explanation is given.

On July 7, 2004, the examiner mailed a Final Office action to applicants withdrawing the Obvious Double Patenting rejection. The examiner stated at page 2 the "Applicants' response

refers to a second declaration under 37 CFR 1.132. However, neither a first nor second 37 CFR 1.132 declaration are of record in this file." The rejections under 35 U.S.C. 112, first paragraph for lack of written description and enablement were maintained. The examiner further commented on page 8 that no 37 CFR 1.132 declaration was submitted with applicants' reply on 4-21-04, and reiterated the statement at pages 11 and 12.

Applicants then filed a Notice of Appeal on October 7, 2004 and a proper Appeal Brief on December 6, 2004. Applicants again stated at page 4 of the Brief, first full paragraph and footnote, that a declaration under 37 CFR 1.132 is of record and viewable at the USPTO PAIR Image File Wrapper showing a date of 5-29-02. Applicants again refer to the "specification and uncontroverted evidence of record establish that the claims are enabled and in compliance with 35 U.S.C. 112, first paragraph."

The examiner prepared and mailed an Examiner's Answer to applicants on March 10, 2005. On page 15, the examiner comments on the alleged declaration under 37 CFR 1.132, stating that she had reviewed the file history and the papers submitted on 5-29-02 extensively, but found no submission under 37 CFR 1.132 and no postcard receipt evidence of the transmittal of such had been provided. The declaration could not be considered.

Applicants submitted a Reply Brief on April 15, 2005, in which, on page 2, applicants again repeat that a declaration is on file and that they have viewed it and downloaded a copy which accompanies the Reply Brief. Applicants strongly criticize the examiner for failing to find and consider the declaration.

In response to the now provided declaration the examiner withdrew the Final Office action and prepared and mailed a new Office action to applicants on June 24, 2005. The examiner fully considered the Reply Brief and all previous replies and the declaration. Specific comments as to why the declaration does not overcome the rejections of record were set forth at pages 14-15 of the Office action.

In response applicants filed this petition and a response to the Office action on September 15, 2005. The examiner has not replied to the Office action and is awaiting decision on this petition.

DISCUSSION

Applicants' petition requests transfer of this application to a new examiner for continuation of prosecution due to extraordinary circumstances. The circumstances alleged are that the examiner has not been truthful when assuring the Board that an extensive review of materials submitted on 5-29-02 had been made. The petition also alleges that specific Supervisory Examiners failed to exercise proper responsibility in reviewing the Examiner's Answer.

A review of the file shows, as noted above, what applicants allege was filed on May 29, 2002. The transmittal letter does not indicate filing of a declaration under 37 CFR 1.132. It does indicate (item 4) the filing of an Oath or declaration of 2 pages which is a copy from a previous application. In actuality the copied declaration, including power of attorney, is 3 pages in length, not 2. Item 16 is provided for applicants to list other items being filed which are not identified

above, but applicants fail to list a declaration under 37 CFR 1.132 here, as they should. The only items listed are a transmittal letter and request to use the CRF from a prior application.

In preparing the first Office action on the merits (mailed January 9, 2004) the examiner was totally unaware of the existence of any declaration under 37 CFR 1.132 and did not consider it. Nor would the examiner expect to find such a declaration since the filing of a declaration under 37 CFR 1.132 with the initial papers is highly unusual. Further, when the application papers were coded and scanned the declaration was included as part of the inventors oath or declaration rather than as a separate paper. (While it is possible to split combined documents into separate documents in IFW, this has intentionally not been done in this instance so that the papers remain as originally coded.)

Applicants' reply to the January 9, 2004, Office action alleges the existence of the declaration, but provides no copy of one with the reply or date one was filed, only that one exists in the file. The examiner was not able to find it and so commented in the next (Final) Office action. Further confusion is raised by applicants' reference to the declaration as a "second" declaration, inferring that at least two declarations have been filed when such is not the case.

Applicants then filed an Appeal Brief stating that the declaration had been viewed by applicants in the USPTO PAIR IFW system and was filed on May 29, 2002. However, under what document code the declaration was found was not mentioned and no copy was provided with the Brief. However the examiner was taken to task for not finding and reviewing the declaration.

In the Examiner's Answer the examiner states that the 5-29-02 documents have been "extensively" reviewed, but no declaration found. It is not clear how extensive a review of the 5-29-02 documents was made, however it is clear that a page by page review of all documents was not made. Nor would such be expected to be made of documents, such as the Oath, since they do not relate directly to the prosecution of the application.

Only with the Reply Brief do applicants state where the declaration can be found (as part of the OATH document) and provide a copy of the declaration. However, applicants severely criticize the examiner for not finding the declaration earlier and especially criticize the "extensive review" statement of the examiner. Applicants note especially that the Oath is listed as 5 pages which they categorize as overly or unusually long. However, it is not unusual for a declaration with multiple inventors to be several pages in length, especially where each inventor signs a separate copy of the declaration as commonly occurs. Thus the listed length did not and would not be expected to signify to the examiner that papers other than the oath were contained in the scanned document. Although applicants detail a specific technique for reviewing first and last pages of documents to determine that they are complete and not mixed, such technique does not always work. Further, each individual has his/her own method of making what he/she considers an "extensive" review of documents, the scope of which may vary markedly.

Following the presentation of the declaration to the examiner, the examiner took the proper by considering the declaration and providing in a non-Final Office action the results of the consideration, thus allowing applicants to provide proper rebuttal to such consideration prior to consideration by the Board of Patent Appeals and Interferences.

DECISION

The petition is **DENIED**. Applicants criticism of the examiner's actions and request for transfer to another examiner are not found to be justified based on the prosecution history which reflects in part applicants' failings also. No examiner would expect to have a declaration under 37 CFR 1.132 filed with the initial application papers even in a continuing application as such declarations are used to overcome rejections of record and the initial application papers contain no rejection of record. It is also noted that the declaration contains the serial number of the parent application in which it was first filed and used to address rejections of those claims which have now been patented. It is thus questioned whether the instant declaration would be proper or sufficient to address any rejections of new/different claims in the instant application.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.

George C. Elliott *George C. Elliott*
Director, Technology Center 1600

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ATLANTA GA 30309

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OFFICE OF PETITIONS

In re Application of	:	
Jeffrey Aaron	:	
Application No. 10/159,757	:	DECISION ON
Filed: May 29, 2002	:	PETITION
Atty Docket No.60027.5045US01/	:	
BLS 02038	:	

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. §1.181 filed March 25, 2008.

The above-identified application became abandoned for failure to file a reply to the final Office action mailed May 29, 2007. This Office action set a three-month period for reply, with extensions of time obtainable under §1.136(a). No reply timely filed and no extension of time obtained, the application became abandoned on August 30, 2007. A courtesy Notice of Abandonment was mailed on February 19, 2008.

In response, applicants filed the instant petition to withdraw the holding of abandonment based on failure to receive the Office action mailed May 29, 2007. The practitioner certifies that the Office action was never received at the correspondence address of record. The practitioner states that he has searched the file jacket and referenced the docket records and provides a copy of the docket records where the due date for this Notice would have been entered had it been received.

A review of the application file reveals no irregularities in the mailing of the Office action mailed May 29, 2007. Thus,

there is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. The following showing is required:

> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has adequately supported his claim of non-receipt with such evidence.

In view thereof, the Notice of Abandonment mailed February 19, 2008 and holding of abandonment is hereby **WITHDRAWN**.

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

No fee is required on petition under § 1.181.

Technology Center AU 2137 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for re-mailing of the final Office action mailed May 29, 2007 and for restarting of the period for reply.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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BOZICEVIC FIELD & FRANCIS
200 MIDDLEFIELD ROAD
SUITE 200
MENLO PARK, CA 94025

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SEP 20 2005

OFFICE OF PETITIONS

In re Patent No. 6,750,247	:	
Issue Date: June 15, 2004	:	
Application No. 10/159,772	:	ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. UCSC-248	:	

This is a decision on the petition filed August 17, 2004, which is being treated as a petition under 37 CFR 3.81(b)[1] to accept the correction of the assignees 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

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PROSKAUER ROSE LLP
PATENT DEPARTMENT
1585 BROADWAY
NEW YORK NY 10036-8299

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OFFICE OF PETITIONS

In re Patent No. 7,061,942	:	
Ciro Aloisio Noronha, Jr., et al.	:	
Issue Date: June 13, 2006	:	LETTER REGARDING
Application No. 10/159,787	:	PATENT TERM ADJUSTMENT
Filed: May 31, 2002	:	
Attorney Docket No. 68775-032	:	

This is a decision on correspondence entitled, "37 CFR 1.322 & 37 CFR 1.323 REQUEST FOR CERTIFICATE OF CORRECTION FOR USPTO AND/OR APPLICANT MISTAKE," filed January 28, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from one hundred forty-six (146) days to zero (0) days. The correspondence, if filed by a proper party, would be treated under 37 CFR 1.705(d).

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

37 CFR 1.705(f) states, "No submission or petition on behalf of a third party concerning patent term adjustment under 35 U.S.C. 154(b) will be considered by the Office. Any such submission or petition will be returned to the third party, or otherwise disposed of, at the convenience of the Office."

The present petition was filed by Sidney L. Weatherford, who claims to be an attorney of record. However a review of Office databases and the application file itself does not reveal that Sidney L. Weatherford is an attorney of record. It is noted that the return address listed on the proposed certificate of correction filed with the present petition is not the correspondence address of record or the assignee of record's address. In short, the practitioner who filed the present petition appears to be a third party in relation to the above-identified patent.

As such, the petition is dismissed and its merits will not be addressed.

A courtesy copy of this decision will be mailed to the address listed on the proposed certificate of correction.

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

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

CC: SIDNEY L. WEATHERFORD
6300 LEGACY, MS EVR 1-C-11
PLANO TX 75024

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/159,797	05/31/2002	Thomas Hagmann	13907-016001	8435

7590 07/09/2008

Mark Kirkland
Fish & Richardson P.C.
3300 Dain Rauscher Plaza
60 South Street
Minneapolis, MN 55402

EXAMINER
NGUYEN, TAN D

ART UNIT	PAPER NUMBER
3689	

MAIL DATE	DELIVERY MODE
07/09/2008	PAPER

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

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

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JUL 08 2008

TECHNOLOGY CENTER 3600

Mark Kirkland
Fish & Richardson P.C.
3300 Dain Rauscher Plaza
60 South Street
Minneapolis, MN 55402

In re Application of Thomas Hagmann et al. Application No. 10/159,797 Filed: May 31, 2002 Attorney Docket No.: 13907-016001 For: DYNAMIC REPRESENTATIONS OF PROCESSES	DECISION ON PETITION REGARDING DESIGNATION AS NEW GROUNDS OF REJECTION UNDER *37 CFR 1.181*

This is a decision on applicant's petition under 37 C.F.R. 1.181, filed December 13, 2007, requesting the designation of a new grounds of rejection in the Examiner's Answer mailed November 27, 2007.

The petition is **DISMISSED AS MOOT**.

In review of the file, it is agreed that a new grounds of rejection was added in the Examiner's Answer mailed November 27, 2007. However, in reviewing the reply brief filed on February 1, 2008, it was determined that the appellant is also correct when stating that the prior art of record does not read on the pending claims of record. Therefore, the examiner's answer mailed November 27, 2007 is hereby withdrawn and the application returned to the examiner for further review.

The application has been forwarded to the Examiner to consider a new grounds of rejection or allowance of the application.

SUMMARY: The petition is **DISMISSED AS MOOT** to the extent indicated above.

Questions regarding this decision should be directed to John G. Weiss at (571) 272-6812.

Wynn Coggins, Director
Patent Technology Center 3600
Telephone: (571) 272-5350

Jgw/snm : 6/25/08

SM

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TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER, EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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APR 25 2006
OFFICE OF PETITIONS

In re Application of	:
Leon Kaufman et al	:
Application No. 10/159,813	: DECISION GRANTING PETITION
Filed: May 30, 2002	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 021106-000430US	:

This is a decision on the petition, filed April 19, 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 16, 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 2624 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

C:\Documents and Settings\FHicks\My Documents\470\Apr9\159813.wpd

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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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MAR 16 2005

TECHNOLOGY CENTER 3600

Alston & Bird LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000

In re Application of
Heinz Heusel
Application No. 10/159,824
Filed: May 29, 2002
For: ROOFING SYSTEM FOR USE IN HIGH-WIND ZONES

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on September 2, 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 Transmission signed on May 24, 2004, and supported by a statement under 37 C.F.R. 1.8(b)(3), by the person who signed the Certificate of Transmission.

☐ 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.

KJD/rwg: 1/26/05

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

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ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

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OFFICE OF PETITIONS

In re Application of	:	
HEUSEL, Heinz	:	
Application No. 10/159,824	:	DECISION ON PETITION
Filed: May 29, 2002	:	TO WITHDRAW
Attorney Docket No. **45063/239596**	:	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 28, 2007.

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 October 05, 2007.

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

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

Tredelle D. Jackson
Petitions Examiner
Office of Petitions

cc: **HEINZ HEUSEL**
HEDAWA
PROFILSYTEME GMB
RATHAUSTRASSLE 4
D-72138 KIRKCHENTELLINSFURT
GERMANY

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SHERIDAN ROSS, P.C.
1560 Broadway, Suite 1200
Denver, CO 80202

In re Application of:	)	
Bernhard Hiller	)	**DECISION ON PETITION TO**
Application No. 10/159,827	)	**WITHDRAW RESTRICTION**
Filed: May 31, 2002	)	**REQUIREMENT UNDER 37 CFR**
For: LOAD/UNLOAD RAMPS AND THEIR COMPOSITIONS	)	**§1.144**

This is a decision on the petition filed July 23, 2004 under 37 C.F.R. §1.144 to withdraw an outstanding restriction requirement.

The petition is **DENIED**.

On February 20, 2004, the examiner required restriction between Species A, drawn to a load/unload ramp comprising a thermoplastic polymer and polyaramide; Species B, drawn to a load/unload ramp comprising a thermoplastic polymer, polyaramide, and polytetrafluoroethylene; Species C, drawn to a thermoplastic polymer, polyaramide, and perfluoropolyether; Species D, drawn a load/unload ramp comprising an acetal copolymer, and polyaramide; Species E, drawn to a load/unload ramp comprising an acetal copolymer, polyaramide, and polytetrafluoroethylene; Species F, drawn to a load/unload ramp comprising an acetal copolymer, polyaramide, and perfluoropolyether; and Species G, drawn to a load/unload ramp comprising an acetal homopolymer and perfluoropolyether.

The rationale used by the examiner in support of the restriction requirement was that Species A-G are patentably distinct species of the claimed invention.

On March 19, 2004, applicant elected Specie E, claims 11-15, 21-30, 35-41, 47 and 59-63, while traversing the requirement. Applicant argued that the examiner failed to address the purported serious burden in examining this case, and that the examiner's reasons for restriction did not include an appropriate explanation of 1) separate

classification of the alleged distinct inventions; 2) separate status in the art when they are classified together; or 3) a different field of search for each of the alleged inventions.

On April 30, 2004, the examiner maintained the election of species requirement, making it Final, stating that election of species is based on claims drawn to patentably distinct inventions, and Applicant has not indicated otherwise.

On July 23, 2004, petitioner filed the instant petition.

REGULATIONS AND PRACTICE

37 C.F.R. § 1.144 states:

> After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Commissioner to review the requirement ... A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

37 C.F.R. § 1.181 states:

> (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.
> (b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.
> (c) When a petition is taken from an action or requirement of an examiner in the ex parte prosecution of an application, or in the ex parte or inter partes prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.

MPEP § 808.01(a) states:

> Where there is no disclosure of relationship between species (see MPEP § 806.04(b)), they are independent inventions and election of one invention following a requirement for restriction is mandatory even though applicant disagrees with the examiner. There must be a patentable difference between the species as claimed. See MPEP § 806.04(h). Since the claims are directed to independent inventions, restriction is proper pursuant to 35 U.S.C. 121, and it is not necessary to show a separate status in the art or separate classification.

DECISION

Petitioner argues that the Examiner summarily concluded that this application contained claims directed to seven patentably distinct species (Species A-G) of the claimed invention and that there were no generic claims. The Examiner provided no reasons or examples to support this conclusion, no identification of separate classifications, status in the art or different field of search, and not even an argument that examination without restriction would be an undue burden. The Examiner concluded that the alleged seven species were distinct, but provided no reasons to support these conclusions and no reasons to insist on restriction. He merely proffered bare conclusions with nothing more. With no basis provided for the conclusion that the alleged species are distinct, or for insisting on restriction between the alleged species, there was nothing for Applicant to rebut and therefore no real opportunity to respond on the merits of the restriction.

In response, it is noted that the Examiner described in detail the inventions that are set forth in each Species. For example, Species A is drawn to a load/unload ramp comprising a thermoplastic polymer and polyaramide. The reason for requiring restriction is that the species are independent inventions that are patentably distinct. Applicant has not set forth any argument that the alleged species are not patentably distinct. Since the claims are directed to patentably distinct independent inventions, restriction is proper pursuant to 35 U.S.C. 121, and it is not necessary to show a separate status in the art or separate classification.

For the above reasons, the petition is **DENIED** and the restriction requirement is deemed to be proper.

Petitioner may submit a request for reconsideration within **TWO MONTHS** of the date of this decision. If applicant decides not to file a request for reconsideration of this decision, then an amendment canceling non-elected claims must be timely filed in order for the examiner to allow the case. The application will be held to await a response.

Mark Powell, Director
Technology Center 2600
Communications

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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

COHEN, PONTANI, LIEBERMAN & PAVANE
Suite 1210
551 Fifth Avenue
New York NY 10176

In re Application of
Peter Thurmann et al.
Application No. 10/159,828
Filed: May 31, 2002
For: OBJECT-SUPPORT COLUMN

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on July 31, 2003.

The petition is **GRANTED.**

A review of the file record indicates that the application was held abandoned for failure to timely respond to the Office action dated December 23, 2002.

Applicant asserts that a timely response was filed including a request for a three-month extension of time and has submitted documents to support this assertion.

However, the original response, including a request for a three-month extension of time has recently been located. It was received in the Office on June 25, 2003 and bears a certificate of mailing date of June 23, 2003. Therefore, the holding of abandonment is withdrawn and the application is restored to pending status.

The application is being forwarded to the to the Supervisory Legal Instruments Examiner to process the withdrawal of abandonment. Thereafter, it will be forwarded to the examiner for action on the response.

Telephone inquiries relative to this decision should be directed to Special Programs Examiner Kenneth J. Dorner at (703) 308-0866.

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

KJD/ekn 11/7/03

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Paper No.

MERCHANT & GOULD (MICROSOFT)
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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JUN 3 0 2006
OFFICE OF PETITIONS

In re Application of	:	
Williams et al.	:	DECISION ON PETITION
Application No. 10/159,851	:	
Filed: May 31, 2002	:	
Atty Docket No. 190447.1/	:	
40062.190US01	:	

This is in response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT (37 C.F.R. 1.181) OR, ALTERNATIVELY, PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY (37 CFR 1.137) filed February 20, 2006.

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

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

On January 20, 2006, the Office mailed a Notice of Abandonment in the above-identified application. The application became abandoned for failure to timely pay the issue fee and publication fee within the statutory period of three months from the mailing date of the Notice of Allowance mailed August 26, 2005. An authorization to charge the $300 petition fee (and fee of $9.00 for advance order of patent copies) and $1400 issue fee to a Deposit Account was received on September 20, 2005. However, when presented on September 21, 2005, the $300 fee (and $9 fee) was charged but the Deposit Account was found insufficient to pay the $1400 issue fee. No further reply received and no extension of time obtainable, the application

became abandoned effective November 27, 2005. A courtesy Notice of Abandonment was mailed on January 20, 2006.

Applicants replied with the instant petition. Applicants assert that the balance for the Deposit Account never fell below $7,000 on September 21, 2005, and thus, there were always sufficient funds to charge the issue fee. In support thereof, applicants submitted a Declaration of Amanda Tatreau, Accounts Payable Coordinator, and a copy of their Deposit Account Statement from the USPTO for September 2005. Alternatively, applicants submit that the delay in replying was unintentional and request revival pursuant to 37 CFR 1.137(b).

Petitioner's evidence has been considered, but not found persuasive that the holding of abandonment should be withdrawn. Specifically, a further investigation confirms that the conclusion that the Deposit Account was insufficient at the time of presentation of the issue fee is correct. The Office of Finance has provided a spreadsheet in ascending order based on the system date and timestamp of each transaction that shows that at the time the fee operator attempted to process the issue fee payment for the application (8:22am on 9/21/06), the account balance was $1,176.76 (A copy of this spreadsheet is enclosed). Further, the Office of Finance explained that it appears on the Deposit Account statement that the Deposit Account had sufficient balance to cover the charge because it reflects the subsequently submitted online replenishment at 9:26 am.

As provided in 37 CFR 1.25(a), charges to accounts with insufficient funds will not be accepted. As the Deposit Account was insufficient when the issue fee was presented, it was properly not accepted. Accordingly, the application became abandoned for failure to timely pay the issue fee. Under the circumstances, withdrawal of the holding of abandonment is not warranted.

Nonetheless, petitioner has met the requirements for revival of the application. The petition included the required reply[1] in the form of payment of the issue fee; payment of the petition fee set forth in 37 CFR § 1.17(m); and the required statement of unintentional delay. No terminal disclaimer is required.

---

[1] The publication fee was timely paid. There was no distinct but concurrent requirement for new drawings

The Office of Patent Publication has been advised of this decision.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Office of Finance - Deposit Account Spreadsheet

Office of Finance - Deposit Account Spreadsheet

Docket #	Fee Code	Sale Amount	Credit Amount	Current Balance
				$9,579.76
14283.0018US01	7001	$325.00		$9,254.76
BS98-020	1806	$180.00		$9,074.76
7449.22USU1	2011	$150.00		$8,924.76
7449.22USU1	2111	$250.00		$8,674.76
7449.22USU1	2311	$100.00		$8,574.76
7449.22USU1	2051	$65.00		$8,509.76
7449.22USU1	2202	$75.00		$8,434.76
14283.0019US01	7001	$325.00		$8,109.76
14283.0020US01	7001	$325.00		$7,784.76
14283.0021US01	7001	$325.00		$7,459.76
13174.6US02	7004	$150.00		$7,309.76
6159.9US01	7205	$100.00		$7,209.76
6159.9US01	7201	$400.00		$6,809.76
	8521	$40.00		$6,769.76
	8522	$25.00		$6,744.76
	8522	$25.00		$6,719.76
	8522	$25.00		$6,694.76
	8522	$25.00		$6,669.76
	8522	$25.00		$6,644.76
	8522	$25.00		$6,619.76
	8522	$25.00		$6,594.76
	8522	$25.00		$6,569.76
	8522	$25.00		$6,544.76
	8522	$25.00		$6,519.76
	8522	$25.00		$6,494.76
	8522	$25.00		$6,469.76
7293.132US02	7004	$300.00		$6,169.76
7293.133US02	7004	$450.00		$5,719.76
14917.157US01	8021	$40.00		$5,679.76
5102.287US01	7205	$100.00		$5,579.76
5102.287US01	7201	$400.00		$5,179.76
08688.0382US01	2011	$150.00		$5,029.76
08688.0382US01	2111	$250.00		$4,779.76
08688.0382US01	2311	$100.00		$4,679.76
08688.0383US01	2011	$150.00		$4,529.76
08688.0383US01	2111	$250.00		$4,279.76
08688.0383US01	2311	$100.00		$4,179.76
	9204		($50.00)	$4,229.76
14917.35US01	1011	$300.00		$3,929.76
14917.35US01	1111	$500.00		$3,429.76
14917.35US01	1311	$200.00		$3,229.76
14917.36US01	1011	$300.00		$2,929.76
14917.36US01	1111	$500.00		$2,429.76
14917.36US01	1311	$200.00		$2,229.76
00758.1748WOI1	1601	$300.00		$1,929.76
00758.1748WOI1	1703	$65.00		$1,864.76
00758.1748WOI1	8007	$80.00		$1,784.76
00758.1873WOI1	1601	$300.00		$1,484.76
00758.1873WOI1	1703	$208.00		$1,276.76

00758.1873WOI1	8007	$60.00		$1,216.76
	8021	$40.00		$1,176.76
MS190447.1/4	1504	$300.00		$876.76
MS190447.1/4	8001	$9.00		$867.76
163.1208US01	1455	$200.00		$667.76
11669.126USC1	1201	$200.00		$467.76
11669.126USC1	1202	$150.00		$241.00
	9203		($60,000.00)	$60,241.00
[redacted]				
40332.3US01	7004	$150.00		
60027.0494.US01/BS050·	1011	$300.00		
60027.0494.US01/BS050·	1111	$500.00		
60027.0494.US01/BS050·	1311	$200.00		
60027.0494.US01/BS050·	1201	$200.00		
60027.0494.US01/BS050·	1202	$100.00		
14917.43US01	1011	$300.00		
14917.43US01	1111	$500.00		
14917.43US01	1311	$200.00		
	1504	$300.00		
	2501	$700.00		
	8001	$6.00		
70037.0013US01	8021	$40.00		
758.1149USD3	1501	$1,400.00		
758.1149USD3	1504	$300.00		
	8021	$40.00		
9680.275US01	7004	$150.00		
	8021	$40.00		
13674.51US01	7205	$100.00		
13674.51US01	7208	$200.00		
13674.46US01	7205	$100.00		
13674.46US01	7208	$200.00		
9728.212US01	7004	$450.00		
60209.1US01	7001	$325.00		
09188.0333US01	7001	$1,300.00		

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MERCHANT & GOULD (MICROSOFT)
P O BOX 2903
MINNEAPOLIS, MN 55402-0903

COPY MAILED
AUG 0 1 2006
OFFICE OF PETITIONS

In re Application of
Lyndsay Williams et al
Application No. 10/159,851
Filed: May 31, 2002
Attorney Docket No.
190447.1/40062.190US01

DECISION GRANTING PETITION
UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition, filed July 31, 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 February 20, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2674 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

C:\Documents and Settings\FHicks\My Documents\470\313\159851.wpd

---

[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).*

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

COPY MAILED

OCT 0 1 2008

OFFICE OF PETITIONS

In re Application of :
Kerry Quinn :
Application No. 10/159,853 :
Filed: May 30, 2002 :
Attorney Docket No. :

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed May 28, 2008, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on May 30, 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 accompanies this decision on petition.

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

This application is being referred to Technology Center AU 3763 for further processing.

Irvin Dingle
Petition Examiner
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/159,853	05/30/2002	Kerry Quinn	

CONFIRMATION NO. 3938

POA ACCEPTANCE LETTER

25226
MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

OC000000032340317

Date Mailed: 09/30/2008

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/25/2008.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/idingle/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/159,853	05/30/2002	Kerry Quinn	

CONFIRMATION NO. 3938

POWER OF ATTORNEY NOTICE

RAMON L. PIZARRO
Suite 200
3515 SOUTH TAMARAC DRIVE
DENVER, CO 80237

OC000000032340316

Date Mailed: 09/30/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/25/2008.

- 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).

/idingle/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/159,853	05/30/2002	Kerry Quinn	

CONFIRMATION NO. 3938

NONPUBLICATION RESCISSION LETTER

25226
MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

OC000000032340330

Date Mailed: 09/30/2008

Communication Regarding Rescission Of Nonpublication Request and/or Notice of Foreign Filing

Applicant's rescission of the previously-filed nonpublication request and/or notice of foreign filing is acknowledged. The paper has been reflected in the Patent and Trademark Office's (USPTO's) computer records so that the earliest possible projected publication date can be assigned.

The projected publication date is 01/08/2009.

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv), 1272 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (571) 272-3282.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

/idingle/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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ISIS PHARMACEUTICALS INC
1896 RUTHERFORD RD.
CARLSBAD, CA 92008

COPY MAILED

JUN 02 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Susan M. Frier et al :
Application No. 10/159,856 :
Filed: May 31, 2002 :
Attorney Docket No. RTS-0365 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 25, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Office action mailed September 17, 2004, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 18, 2004.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $225 extension of time submitted with the petition on April 25, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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. See MPEP 601.03.

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

The matter is being referred to Technology Center AU 1635 for further processing.

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

October 2004

PAUL AND PAUL
2900 Two Thousand Market Street
Philadelphia, PA 19103

OCT 28 2004

In re Application of:
Thomas W. Welsh et al.
Serial No.: 10/159,890
Filed: June 1, 2002
Attorney Docket No.: 122-02

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the "REQUEST FOR REIN STATEMENT OF APPLICATION" filed on February 23, 2004, via facsimile transmission. It is being treated as a petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a). There is no fee for this petition.

The petition is **GRANTED**.

The application was held abandoned for failure to file a proper reply to the Office action mailed on May 19, 2003. A Notice of Abandonment was mailed on January 6, 2004.

Petitioner asserts that a response to the Office action of May 19, 2003 was timely filed via facsimile transmission on June 18, 2003. The evidence provided by the petitioner includes a declaration which attests upon a personal knowledge basis to the previous facsimile transmission as well as a copy of the sending unit's report confirming transmission. A copy of the itemized telephone bill for the telephone number to which the sending facsimile machine was connected at the time of the transmission was also provided by the petitioner. A copy of the response was included as an attachment to the petition. The copy of the response contains the required certificate of facsimile transmission (dated June 18, 2003) under 37 C.F.R. § 1.8 (a)(1)(ii). The evidence is sufficient under 37 C.F.R. § 1.8 (b) to establish that the response was timely filed.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed May 19, 2003 is hereby **VACATED** and the holding of abandonment is withdrawn.

The copy of the response submitted with the petition on February 23, 2004 is accepted since the response originally submitted was apparently lost.

The response will be processed by the Technology Center 2800 support staff and the examiner will prepare an Office action based upon the response.

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

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

UNITED STATES 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

Robert C. Klinger
Jackson Walker, L.L.P.
Suite 600
2435 North Central Expressway
Richardson TX 75080

COPY MAILED

DEC 0 1 2004

OFFICE OF PETITIONS

In re Application of :
Jeffery S. Doss et al. :
Application No. 10/159,910 :
Patent No. 6,751,109 :
Filed: May 31, 2002
Issue Date: June 15, 2004 :
Attorney Docket No. 101950-00097 :
Title: DUAL INPUT AC/DC/ BATTERY :
OPERATED POWER SUPPLY

DECISION ON PETITION
UNDER 37 C.F.R. §1.28(c)

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

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

Your fee deficiency submission under 37 CFR §1.28 is hereby accepted. The petition is **GRANTED** accordingly.

This file is being forwarded to Files Repository.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GUNNISON MCKAY & HODGSON, LLP
1900 GARDEN ROAD
SUITE 220
MONTEREY CA 93940

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JAN 08 2007

OFFICE OF PETITIONS

In re Application of	:	
Dmitriev	:	
Application No. 10/159,919	:	DECISION ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. SUN-P7901	:	

This is a decision on the petition under 37 CFR §1.137(b), filed July 25, 2006 to revive the above-identified application.

This application became abandoned for failure to timely submit corrected drawings, as required by the Notice of Allowability which was mailed February 13, 2006 and set a 3 month period for reply. Extensions of time were not available under 37 CFR §1.136(a). Accordingly, this application became abandoned on May 14, 2006. A Notice of Abandonment was mailed on July 13, 2006.

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

The Office acknowledges receipt of corrected drawings submitted with the instant petition.

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

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

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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3M INNOVATIVE PROPERTIES COMPANY
P.O. BOX 33427
ST. PAUL, MN 55133-3427

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NOV 0 3 2005

OFFICE OF PETITIONS

In re Application of :
William J. Bryan et al :
Application No. 10/159,925 :
Filed: May 29, 2002 :
Attorney Docket No. 1004-037US01

ON PETITION

This is a decision on the petition, filed November 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 May 27, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 3722 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper N .: _____

DATE : February 1, 2006

TO SPE OF : ART UNIT 1636

SUBJECT : Request for Certificate of Correction on Patent No.: 6,946,126

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

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

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

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

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

Magdalene Talley

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9309 ext. 116

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

Note your decision on the appropriate box.

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

Comments:

The changes to the Title Page are not entered because the references listed in the Certificate of Correction are not of record. The change to Column 34, lines 17-18, is not entered as it would change the scope and nature of the claim. The other changes are entered.

SPE

1636
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:5

DATE : July 17, 2008

TO SPE OF : ART UNIT 1636

SUBJECT : Request for Certificate of Correction on Patent No.: 6946126

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 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 IDSs referred to by applicants are acknowledged. However, the prosecution history indicates that said IDSs were never scanned into the file, never made of record and the references cited in said IDSs were never considered by the examiner. The references will however be printed in the patent but it is noted that they have not been considered by the examiner. With regard to the proposed change to the claims, said amendment will not be entered because it changes the scope of the claims. Applicants appear to indicate that the previous Certificate of Correction request was not forwarded to the examiner and request that the instant C of C be forwarded to the examiner of record. It is noted that the examiner did review the previous C of C and the decision not to enter the amendment in said previous C of C was the decision of the examiner. /D.G./
/Joseph Woitach SPE 1636

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : January 29, 2009

TO SPE OF : ART UNIT 1636

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/159946 Patent No.: 6946126

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Magdalene Talley
Certificates of Correction Branch
703-308-9390 ext. 120

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

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

Note your decision on the appropriated box.

☐ **Approved** All changes apply.

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

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

Comments:

The request for reconsideration filed 29 Jan 2009 remain unentered for the following reasons.

1. The reference to the copy of the return post is not clear. There is no post card attached to the telefax communication in the image file document of 29 Jan 2009. The last page of the 01 Sep 2008 contains post card receipts but it is not clear if these receipts are the ones to which the current request refers.
2. The reference to the 01 Sep 2008 decision is noted and not entered for the reasons previously communicated to patentee:
   - The changes to the title page are not entered. The references listed on the Certificate of Corrections are not of record.
   - The change to column 38, lines 17 – 18 are not entered as it would change the scope and nature of the claims
   - Other changes requested have been done.

/ Christopher S. F. Low /
Supervisory Patent Examiner, Art Unit 1636

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date Mailed : May 14, 2009
Serial No. :10/ 159946
Patent No. :6,946,126 B2
Patent Issued :September 20, 2005
Title :REPLICATING ADENOVIRUS VECTORS

Re: Request for Certificate of Correction

The request for reconsideration filed Jan. 29, 2009 remains unentered for the following reasons.

1. The reference to the copy of the return post is not clear. There is no post card attached to the telefax communication in the image file document of 29 Jan. 2009. The last page of the 01 Sept. 2008 contains post card receipts but it is not clear if these receipts are the ones to which the current request refers.

2. The reference to the 01 Sep. 2008 decision is noted and not entered for the reasons previously communicated to you:

> The changes to the title page are not entered. The references listed on the Certificate of Correction are not of record.

> The changes to the title are not of record. The references listed on the Certificate of Corrections are not of record.

> The change to column 38, lines 17-18 are not entered as it would change the scope and nature of the claims.

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

Magdalene Talley
For Mary F. Diggs, Supervisor
Decisions and Certificate
Of Correction Branch
(703)756-1540
FAX 571-270-9942

Myers Bigel, Sibley & Sajovec
P.O. Box 37428
Raleigh, NC 27627

MD/mt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date Mailed : May 19, 2009
Serial No. : **10/159946**
Patent No. :6,946,126 B2
Patent Issued :September 20, 2005
Title :REPLICATING ADENOVIRUS VECTORS

Re: Request for Certificate of Correction

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

Respecting the alleged error(s) in the Attorney, Agent, or Firm, since the Attorney, Agent, or Firm is printed *solely* in accordance with the PTOL-85b (Issue Fee Transmittal), submitted at time of payment of the base issue fee, no correction is in order here under the provisions of Rules 1.322.

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

Any petition under 37 CFR 1.182 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
Box DAC
Washington, D.C. 20231

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

If, the petition under 37 CFR 1.182 (required fee currently $130), is filed and granted, the patentee would be entitled to a certificate of correction under 37 CFR 1.323 (required fee currently $100).

Magdalene Talley
For Mary F. Diggs, Supervisor
Decisions and Certificate
Of Correction Branch
(703)756-1540
FAX 571-270-9942

Plumsea Law Group, LLC
10411 Motor City Drive, Ste. 320
Bethesda, MD 20817

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Paper No. 6

James H. Morris
Wolf, Greenfield & Sacks, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210

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APR 0 7 2003

OFFICE OF PETITIONS

In re Application of
Watson
Application No. 10/159,954
Filed: May 31, 2002
Attorney Docket No. S01022/80914
For: DATA MANIPULATION

DECISION GRANTING STATUS
UNDER 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed January 27, 2003.

The petition is **GRANTED**.

Petitioner has shown that inventor Victor Watson has refused to join in the filing of the above-identified application after having been presented with the application papers.

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

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

After this decision is mailed, the above-identified application will be returned to the Office of Initial Patent Examination for further processing.

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

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

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APR 0 7 2003

OFFICE OF PETITIONS

VICTOR WATSON
131 MORTIMER ORAD
ITCHEN, SOUTHAMPTON S019 2HJ
UNITED KINGDOM

In re Application of :
Watson :
Application No. 10/159,954 : LETTER
Filed: May 31, 2002 :
Attorney Docket No. S01022/80914 :
For: DATA MANIPULATION :

Dear Sir:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0310. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 13, 2007

TO SPE OF : ART UNIT 3734 Michael J. Hayes

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/159,964 Patent No.: 7131440 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.

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

Comments: _____

TODD E. MANAHAN
SUPERVISORY PATENT EXAMINER
SPE

3731
Art Unit

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51 Louisiana Avenue, N.W
WASHINGTON DC 20001-2113

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SEP 0 2 2004

OFFICE OF PETITIONS

In re Application of
Painsith et al.
Application No. 10/159,985
Filed: June 3, 2002
For: OPERATIONAL TOOLS CARRIER
Pub. No.: US 2003/0223224 A1
Pub. Date: December 4, 2003

This is a decision mailed on the request for corrected patent application publication under 37 CFR 1.221(b), filed on July 22, 2004 for the above-identified application.

The request is DISMISSED.

The decision is being mailed to the correspondence address of record according to the customer number and a copy of the decision is being mailed to Mr. Philip T. Shannon, who is acting in a representative capacity. All paper mailed by the Office will be mailed to correspondence address of record, until it is officially changed by applicant.

The instant request is that the application be republished because the assignee information (Victorinox A.G.) and the foreign application priority data is missing from the front page of the publication.

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 22, 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).

The instant request does not identify a material mistake in the publication made by the Office. The assignment information was not printed on the patent application publication, because it was not provided on the transmittal letter or on an application data sheet.[2] The Office prints the assignee information as reflected on the transmittal letter or application data sheet, if provided by applicant and does not look at the assignment records for the assignment information.

Even if the assignment information was provided by applicant, this would not be a material mistake. A "material mistake" must affect the public's ability to appreciate the technical disclosure of the patent application publication, or determine the scope of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

On July 11, 2002 and September 11, 2002, Filing Receipts were mailed, which did not list the assignment information. To avoid this type of problem in the future, applicant's representative should make request a corrected filing receipt using the facsimile number (703-746-9195) on the Filing Receipt.

On June 3, 2002, the application was filed with a benefit claim to WIPO publication number WO 01/39629, which is not an application. 37 CFR 1.78 in summary requires that the benefit claim to an earlier filed application be contained in the first sentence of the application or be submitted in an amendment or application data sheet within the required time frame within the later of four months from the actual filing date or the date on which the national stage commenced, or sixteen months from the filing date of the prior-filed application.[3] Since, a proper benefit claim to an earlier filed application was not made within the required time period, it was not published on the patent application publication.

In order to make a late benefit claim to the earlier filed applications, applicant must submit a petition to accept an unintentionally delayed claim under 35 U.S.C. 119 and 120 for the benefit of the earlier filed applications. The petition must include 1) the surcharge ($1330) 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.

Applicant's request for a corrected patent application publication on July 22, 2004, may constitute a "failure to engage in reasonable efforts to conclude processing or examination of the application." See 1.704(c). This determination will be made on or after a mailing of a Notice of Allowance.

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[2]See Comment 59, Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57047 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 84 (Oct. 10, 2000) (final rule).

[3]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(b), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

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

The application is being forwarded to Technology Center 3728 to await further examination in due course.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice).

Mark O. Polutta

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

cc:
Philip T. Shannon
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
At First Avenue & 48th Street
New York, N.Y. 10017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

FROSS ZELNICK LEHRMAN & ZISSU, PC
866 UNITED NATIONS PLAZA
NEW YORK, NY 10017

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DEC 23 2004

OFFICE OF PETITIONS

In re Application of	:	
Painsith et al.	:	
Application No. 10/159,985	:	
Filed: June 3, 2002	:	ON PETITION
Attorney Docket No.	:	
SABI 0418259	:	

This is a decision on the petition under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c), filed October 18, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of prior-filed PCT application No. PCT/AT99/00316, filed December 30, 1999, and under 35 U.S.C. § 119(a)-(d) for the benefit of a prior-filed foreign application A2034/99, as set forth in the concurrently filed amendment, and the declaration filed September 11, 2002, respectively.

The petition is **GRANTED**.

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

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on June 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).

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.

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;

(3) the surcharge as set forth in 37 CFR 1.17(t);

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

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

The above-identified pending nonprovisional application was filed on June 3, 2002, which is after November 29, 2000, and the intermediate PCT application was filed within 12 months of December 2, 1999, which is the earliest filing date of the foreign application to which benefit is claimed. The declaration filed on September 11, 2002 also identifies the foreign application for which priority is claimed.

Pursuant to petitioner's authorization, the $1370.00 surcharge was charged to petitioner's deposit account. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)- (d) is granted.

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

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 37 CFR 1.55(a) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) and 35 U.S.C. § 119(a)-(d) and 37 CFR 1.55(a) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

This matter is being referred to Technology Center Art Unit 3728 for 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 PCT application and for consideration of the claim for priority under 35 U.S.C. § 119 (a)-(d) for the benefit of the foreign application as set forth in the filed amendment filed with the instant petition on October 18, 2004, and declaration filed September 11, 2002, respectively.

Any inquiries concerning this decision may be directed to Attorney/Advisor Derek L. Woods at (571) 272-3232.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 5

BRINKS HOFER GILSON & LIONE
PO BOX 10395
CHICAGO IL 60610

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MAY 07 2003

OFFICE OF PETITIONS

In re Application of Daniel Gizaw Application No. 10/159,990 Filed: May 29, 2002 Attorney Docket No. 10541-1276 V200-0835	: : : : :	DECISION REFUSING STATUS UNDER 37 CFR 1.47(b)

This is in response to the Petition Under 37 CFR 1.47(a) to Accept Application When an Inventor Refuses to Sign or Cannot be Reached, filed January 24, 2003, which is being treated as a petition under 37 CFR 1.47(b).[1]

The petition under 37 CFR 1.47(b) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on May 29, 2002, without an executed oath or declaration or the statutory basic filng fee. Accordingly, a Notice to File Missing Parts of Nonprovisional Application was mailed on June 26, 2002, requiring an executed oath or declaration, the statutory basic filing fee, a surcharge for their late filing, and an additional claims fee. This Notice set a period for reply of two months.

In reply, applicant filed the instant petition, made timely by obtaining a five month extension of time. The $1,970 fee for the five month extension of time has been charged to Deposit Account No. 23-1925, as authorized. Accompanying the petition was a statement of facts from attorney Michael A. Massing. According to Massing, he mailed the application papers to the last known address of inventor Gizaw on May 29, 2002. However, as of the date of the petition, no executed declaration from Gizaw has been received.

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[1] A petition under 37 CFR 1.47(b) is the proper petition when all of the inventors refuse to execute the application for patent.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application; and (6) proof of irreparable damage. The instant petition does not satisfy requirement (2).

There is no indication that applicant has submitted an oath or declaration. On renewed petition, applicant must submit an oath or declaration in compliance with 37 CFR 1.63. The declaration must be executed, and must identify the full name, residence, post office address, and citizenship of the nonsigning inventor. In addition, the title or position of the person signing must be stated if signing on behalf of a corporation. A corporation may authorize any person, including a registered attorney or agent, to sign the oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, proof of the attorney's or agent's authority in the form of a statement signed by the appropriate corporate officer must be submitted, or the attorney or agent can simply state that he or she is authorized to sign on behalf of the corporation.[2]

In addition to the five month extension of time fee, the following fees have been charged to Deposit Account No. 23-1925: $130 petition fee, $750 statutory basic filing fee, $130 surcharge for late filing of the declaration and filing fee, and $18 fee for the additional claim.

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

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

By FAX: (703) 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) 305-0272.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

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[2] See MPEP 409.03(b).

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Paper No. 9

BRINKS HOFER GILSON & LIONE
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CHICAGO IL 60610

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AUG 14 2003

OFFICE OF PETITIONS

In re Application of Daniel Gizaw Application No. 10/159,990 Filed: May 29, 2002 Attorney Docket No. 10541-1276 V200-0835	DECISION ACCORDING STATUS UNDER 37 CFR 1.47(b)

This is in response to the renewed petition under 37 CFR 1.47(b), filed August 1, 2003 (Certificate of Mailing dated July 29, 2003).

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

The above-identified application was filed on May 29, 2002, without an executed oath or declaration or the statutory basic filing fee. Accordingly, a Notice to File Missing Parts of Nonprovisional Application was mailed on June 26, 2002, requiring an executed oath or declaration, the statutory basic filing fee, a surcharge for their late filing, and an additional claims fee. This Notice set a period for reply of two months.

In reply, applicant filed a petition under 37 CFR 1.47(b) on January 24, 2003, made timely by obtaining a five month extension of time. The $1,970 fee for the five month extension of time has been charged to Deposit Account No. 23-1925, as authorized. Accompanying the petition was a statement of facts from attorney Michael A. Massing. According to Massing, he mailed the application papers to the last known address of inventor Gizaw on May 29, 2002. However, as of the date of the petition, no executed declaration from Gizaw has been received.

The petition was dismissed in a decision mailed on May 7, 2003. Rule 47 applicant failed to provide an acceptable oath or declaration in compliance with 37 CFR 1.63.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application; and (6) proof of irreparable damage.

On renewed petition, made timely by obtained a one month extension of time, Rule 47 applicant has submitted a declaration executed by Scott Confer, Assistant Secretary for the assignee, on behalf of nonsigning inventor Gizaw. Applicant previously satisfied the other requirements for a grantable petition with the petition filed on January 24, 2003.

Accordingly, the application is hereby accorded Rule 1.47(b) status.

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

The $110 fee for the one month extension of time has been charged to Deposit Account No. 06-1500, as authorized.

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

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

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DANIEL GIZAW
43511 REVERE DR
BELLEVILLE MI 48111

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AUG 14 2003

OFFICE OF PETITIONS

In re Application of
Daniel Gizaw
Application No. 10/159,990
Filed: May 29, 2002
Title: EXTERIOR WINDING STRATEGY FOR SALIENT POLE BRUSHLESS MOTOR FOR FUEL PUMP APPLICATION

LETTER

Dear Mr. Gizaw:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 USC 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 Cliff Congo at (703) 305-0272. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

Michael A. Massing
Brinks, Hofer, Gilson & Lione
PO Box 10395
Chicago, Illinois 60610

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Paper No. 11

GEORGE M. COOPER
JONES, TULLAR & COOPER, P.C.
EADS STATION, PO BOX 2266
ARLINGTON, VA 22202

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JUN 2 5 2004

OFFICE OF PETITIONS

In re Application of
Leyva et al.
Application No. 10/160,016
Filed: June 4, 2002
Attorney Docket No. Leyva 3

ON PETITION

This decision concerns the April 2, 2004 "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)." The petition asserts timely response to an Office action and is being properly treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-referenced application.

The petition is **GRANTED.**

The application was held abandoned as of October 10, 2003 for failure to timely submit a proper reply to the September 9, 2003 Office communication which set forth a 1-month shortened statutory period for reply.

The petition asserts timely response to this Office communication. In support, the petition is accompanied by a copy of counsel's postcard receipt, indicating receipt in the USPTO on October 8, 2003 of an amendment for Application No. 10/160,0**61**, which should have been 10/160,0**16**. The transposed application number was also included in the amendment transmittal.

The Office notes that despite the transposition in the application number, the amendment transmittal provides sufficient information (name of first named inventor; filing date; invention title; attorney name, law firm name and docket number; Examiner name and Art Unit) for the amendment to be matched with the proper file. Accordingly, the amendment may be considered timely filed. The petition is thus granted and the March 22, 2004 Notice of Abandonment vacated.

The $665 petition fee enclosed with the petition and intended for a §1.137(b) petition has been credited to Deposit Account No. 10-1213 as authorized.

The file is being returned to Technology Center 2800 for continued examination.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

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

WENDEROTH, LIND & PONACK, L.L.P.
2033 K STREET N. W.
SUITE 800
WASHINGTON DC 20006-1021

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JAN 20 2006

OFFICE OF PETITIONS

In re Application of :
Osamu Nabeya et al. :
Application No. 10/160,017 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket No. 2002_0740A :

This is a decision on the petition filed April 20, 2005, to withdraw the holding of abandonment , which is treated 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 February 22, 2005 as was required by the Notice of Allowance mailed November 19, 2004. This application therefore became abandoned on February 23, 2005. Accordingly, a Notice of Abandonment was mailed March 23, 2005.

The file record discloses that the Notice of Allowance was mailed to the address of record. However, petitioner contends that it was not received. In support, petitioner indicates that a search of the file jacket revealed that the Notice was not received and submits copies of pages from the docketing system, wherein receipt of the Notice of Allowance would have been entered, had it been received to substantiate the claim. The statement and attachments corroborate non-receipt of the Notice of Allowance.

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 3723 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 (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 16

ANTONELLI, TERRY, STOUT & KRAUS
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-9889

COPY MAILED
MAY 17 2004
OFFICE OF PETITIONS

In re Application of	:	
Ikuya Arai et al	:	
Application No. 10/160,022	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. 520.32696CX7	:	

This is a decision on the petition, filed May 14, 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 2, 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 2111 for processing of the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

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

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Melvin Kraus
Antonelli, Terry, Stout & Kraus, LLP
1300 North Seventeenth Street
Suite 1800
Arlington, Virginia 22209-3873

MAILED

MAR 2 2 2005

Technology Center 2100

In re Application of: Ikuya Arai et al.	)	**DECISION ON PETITION TO MAKE SPECIAL UNDER 37 C.F.R. §1.59(b) AND M.P.E.P. §724.05 TO EXPUNGE AND RETURN DOCUMENTS**
Application No. 10/160,022	)	
Filed: June 4, 20002	)	
For: DISPLAY UNIT WITH COMMUNICATION CONTROLLER	)	

This is a decision on the petition under 37 CFR 1.59(b), filed August 12, 2004 to expunge information submitted pursuant to MPEP 724.02.

Petitioner requests that a documents filed under seal in accordance with M.P.E.P. §724.02 and referenced in the Information Disclosure Statement filed on August 12, 2004 be expunged from the record. Petitioner states that the information contains proprietary material.

The petition is **GRANTED**.

Relevant parts of the M.P.E.P. which relate to this petition are reproduced below with emphasis added to key phrases:

724.05 Petition To Expunge Information or Copy of Papers in Application File

I. INFORMATION SUBMITTED UNDER MPEP § 724.02

A petition under 37 CFR 1.59(b) to expunge information ... If the information is found to be important to a reasonable examiner in deciding on patentability, any petition to expunge the information will be denied. Any such petition to expunge information submitted under MPEP § 724.02 should be submitted at the time of filing the information under MPEP § 724.02 and directed to the Technology Center (TC) to which the application is assigned. Such petition must contain:

(A) a clear identification of the information to be expunged without disclosure of the details thereof;

(B) a clear statement that the information to be expunged is trade secret material, proprietary material, and/or subject to a protective order, and that the information has not been otherwise made public;

(C) 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;

(D) a statement that the petition to expunge is being submitted by, or on behalf of, the party in interest who originally submitted the information;

(E) the fee as set forth in 37 CFR 1.17(h) for a petition under 37 CFR 1.59(b).

... it is important that both the submission of any material under MPEP § 724.02 and the submission of any petition to expunge occur as early as possible during the examination process.

The information in question has been determined by the undersigned to not be material to the examination of the instant application. Applicant's submission meets all the remaining criteria[1] set out above, accordingly, the Petition is **GRANTED**.

The undersigned notes that the IDS was improperly removed from the sealed envelope and placed in the application file. Furthermore, because the application was scanned the Office cannot guarantee that the proprietary information has not already been copied. The USPTO no longer returns expunged papers. The expunged material is being "closed" to make it inaccessible to non-PTO personnel.

Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

Any inquiries with respect to this decision may be directed to the undersigned.

Pinchus M. Laufer

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, & Information Security
(571) 272-3599

[1] Applicant's representative confirmed that the statement on page 2 of the petition "Petitioner's commit to return" is an obvious typographical error which should read "commit to retain".

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ANTONELLI TERRY STOUT & KRAUS LLP
1300 NORTH SEVENTEENTH STREET, SUITE 1800
ARLINGTON, VA 22209-3873

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JUN 30 2005

OFFICE OF PETITIONS

In re Application of	:	
Ikuya Arai et al	:	
Application No. 10/160,022	:	DECISION GRANTING PETITION
Filed: June 4, 2002	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 520.32696CX7	:	

This is a decision on the petition, filed June 29, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 17, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2111 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), 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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1300 NORTH SEVENTEENTH STREET, SUITE 1800
ARLINGTON, VA 22209-3873

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NOV 0 2 2005

OFFICE OF PETITIONS

In re Application of	:
Ikuya Arai et al	:
Application No. 10/160,022	: DECISION GRANTING PETITION
Filed: June 4, 2002	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 520.32696CX7	:

This is a decision on the petition, filed November 1, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 3, 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 2111 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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MAR 0 2 2006

OFFICE OF PETITIONS

In re Application of	:	
Ikuya Arai et al	:	
Application No. 10/160,022	:	DECISION GRANTING PETITION
Filed: June 4, 2002	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 520.32696CX7	:	

This is a decision on the petition, filed February 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 November 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) 272-3218.

This matter is being referred to Technology Center AU 2111 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement (and Request for Clarification of the Record).

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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AUG 31 2006

OFFICE OF PETITIONS

In re Application of	:	
Ikuya Arai et al	:	
Application No. 10/160,022	:	DECISION GRANTING PETITION
Filed: June 4, 2002	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 520.32696CX7	:	

This is a decision on the petition, filed August 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 June 19, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2111 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment.*

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ARLINGTON, VA 22209-3873

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OFFICE OF PETITIONS

In re Application of	:
Ikuya Arai et al	:
Application No. 10/160,022	: DECISION GRANTING PETITION
Filed: June 4, 2002	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 520.32696CX7	:

This is a decision on the petition, filed December 22, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 2, 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 2111 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment.*

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MAR 0 3 2006

OFFICE OF PETITIONS

In re Application of	:	
Ikuya Arai et al	:	
Application No. 10/160,056	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. 520.32696CX6	:	

This is a decision on the petition, filed February 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 9, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2111 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

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

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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

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MAR 1 8 2005

OFFICE OF PETITIONS

In re Application of :
Samir Roy et al :
Application No. 10/160,060 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket No. 13587.298

This is a decision on the petition, filed March 17, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 11, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter will be forwarded to Technology Center AU 1623 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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MARTIN & FERRARO, LLP
1557 LAKE O'PINES STREET NE
HARTVILLE, OH 44632

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OCT 19 2005
OFFICE OF PETITIONS

In re Application of	:
Gary K. Michelson	:
Application No. 10/160,062	: DECISION GRANTING PETITION
Filed: June 4, 2002	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 101.0111-00000	:

This is a decision on the petition, filed October 13, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

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

This matter is being referred to Technology Center AU 3732 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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REHOVOT
ISRAEL

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JUL 3 1 2007

OFFICE OF PETITIONS

In re Application of	:	
Moshe Ein-Gal	:	DECISION ON PETITION
Application No. 10/160073	:	
Filed: 06/04/2002	:	
Atty Docket No. 1163EIN-US	:	

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on 6 June, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

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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)).

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

This application became abandoned on 13 January, 2007, for failure to file a timely reply to the final Office action mailed on 12 September, 2006, which set a three (3) month shortened statutory period for reply. A one month extension of time under 37 CFR 1.136(a) was filed along with an amendment after final rejection on 12 January, 2007. The amendment after final rejection failed to place the application in condition for allowance, however, an Advisory Action was mailed on 7 March, 2007. The filing of the present petition precedes the mailing of Notice of Abandonment.

The petition lacks the required reply. The only proper reply to a final Office action is a Notice of Appeal and fee, Request for Continuing Examination and submission under 37 CFR 1.114, a continuing application, or an amendment placing the application in *prima facie* condition for allowance. The examiner has determined that the amendment filed on 6 June, 2007, does not place the case in *prima facie* condition for allowance.

A copy of the examiner's Advisory Action is enclosed for petitioner's reference.

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

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/160,073	Applicant(s) EIN-GAL, MOSHE	
	Examiner Baisakhi Roy	Art Unit 3737	

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

THE REPLY FILED 06 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

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

NOTICE OF APPEAL

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

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,5-18,21 and 23*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

Continuation of 11. does NOT place the application in condition for allowance because: The structural limitations as presented in the claims of the focused transducer and the beam shaping device comprising a lens including the functional aspects of t he wave transducer has been addressed in Bab et al. in the final action. Therefore the previous rejection is maintained.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/160,073	EIN-GAL, MOSHE	
	Examiner	Art Unit	
	Baisakhi Roy	3737	

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

THE REPLY FILED 06 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

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

NOTICE OF APPEAL

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

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,5-18,21 and 23*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

Continuation of 11. does NOT place the application in condition for allowance because: The structural limitations as presented in the claims of the focused transducer and the beam shaping device comprising a lens including the functional aspects of t he wave transducer has been addressed in Bab et al. in the final action. Therefore the previous rejection is maintained.

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Owens Corning
Patent Dept., Bldg. 11
2790 Columbus Road
Granville, OH 43023

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AUG 2 5 2004
OFFICE OF PETITIONS

In re Application of
Jeffrey A. Tilton, et al.
Application No. 10/160,076
Filed: May 31, 2002
Attorney Docket No. 24939B

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 4, 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 application 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 31, 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 applications 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 Marianne Jenkins at (703) 306-3475.

This application is being referred to Technology Center Art Unit 1771 for appropriate action on the amendment filed June 4, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Frances Hicks

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

Attachment: Corrected Filing Receipt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : **September 17,2007**

TO SPE OF : ART UNIT **2622**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/160,089** Patent No.: **7245320 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: _____

NGOC-YEN VU (9/18/07)
SUPERVISORY PATENT EXAMINER

SPE **2622 Art Unit**

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FISH & RICHARDSON P.C.
P.O BOX 1022
Minneapolis MN 55440-1022

In re Application of	:
Hrastar et al.	:
Application No. 10/160,094	: DECISION ON PETITION
Filed: June 3, 2002	: UNDER 37 CFR 1.181
For: METHODS AND SYSTEMS FOR	:
IDENTIFYING NODES AND MAPPING THEIR	:
LOCATIONS	

This application has been referred to this office in view of the communication filed February 9, 2006, self-styled as a petition to the Director under 37 CFR 1.181 requesting that the USPTO "prevent" the issuance of an application of another, such that an interference may be declared between that application and the above-captioned instant application.

The petition is **DISMISSED**.

Notwithstanding petitioner's third party status with respect to the application of another (no. 10/966,353) petitioner, in essence, asserts that he has standing to request withdrawal of that application from issue under 37 CFR 1.313, or at least deferral of issuance of that application under 37 CFR 1.314.. However, petitioner has not shown, nor is it apparent, that petitioner has any standing to assert the relief requested. Rather, the express language of those regulations is directed only to the Office and to the applicant of those applications.[1] Therefore, petitioner has not shown, nor is it apparent, that petitioner may invoke, or request to invoke, this regulation *per se*, or under the aegis of the patent statutes or regulations.

Moreover, a mere assertion of a right to have the Office act in accordance with the statutes and regulations does not confer standing upon a third party. The Boeing Company v. Commissioner

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[1] See also, MPEP 1308. The MPEP has no binding force on the courts, but it commands notice as an official interpretation of statutes and regulations with which it does not conflict. Syntex v. U.S. Patent and Trademark Office, 882 F.2d 1570, 1571 n.3, 11 USPQ2d 1866, 1867 n.3 (Fed. Cir. 1989).

of Patents and Trademarks, 853 F.2d 878, 7 USPQ2d 1487 (Fed. Cir. 1988). A third party does not have standing to challenge Office decisions regarding patent applications during the prosecution process, including the decision to grant a patent to an applicant during the *ex parte* prosecution process. See, e.g., Godtfredsen v. Banner, 503 F.Supp 642, 647, 207 USPQ 202, 207 (D.D.C. 1980), Syntex v. United States Patent and Trademark Office, 882 F.2d 1570, 1574-1575, 11 USPQ2d 1866, 1870 (Fed. Cir. 1989); Hallmark Cards Inc. v. Lehman, 959 F.Supp. 539, 42 USPQ2d 1134 (D.D.C. 1997).

Petitioner's assertion as to "irreparable harm" arising should this application issue as a patent or an interference not now be declared, are merely assertions to that effect. The Patent and Trademark Office will not withdraw another's application from issue based on the inadequate speculative premises of a third party. Hitachi Metals Ltd. v. Quigg, 776 F.Supp 3, 11, 20 USPQ2d 1920, 1926 (Fed. Cir. 1989). Moreover, such speculation does not confer upon petitioner any standing with respect to the requested disruption of the orderly prosecution and issuance of a patent to the other applicant, as the statutes already provide adequate remedies for petitioner in an infringement action should this application issue in a timely manner. Id.; see also Godtfredsen, supra. There is nothing in the patent statutes which gives rise to a right in nonapplicants to object to the way in which patent applications of others are prosecuted. Animal Defense Fund v. Quigg, 932 F.2d 920, 930, 18 USPQ2d 1677, 1685 (Fed. Cir. 1991). A third party has no right to intervene in the prosecution of a particular patent application to prevent its issuance. Id. As such, petitioner lacks standing to request any intervention in the application of another that would prevent the due course issuance of the third party application which is asserted to have been allowed, including withdrawal from issue for consideration of, *inter alia*, a possible interference.

Rather, to the extent that petitioner seeks, in the guise of an *ex parte* petition, to now force an adversary proceeding in another's application, militates away from considering, much less granting, any of the relief(s) requested. Under 37 CFR 41.202, petitioner may request, but cannot demand, an interference. A party does not have a right to an adversary proceeding, including the declaration of an interference, as such is discretionary on the part of the PTO. Doyle v. Brenner, 383 F.2d 210, 154 USPQ 464 (D.D.C. 1967); American International PLC v. Corning Glass Works, 618 F.Supp. 507, 510, 226 USPQ 738, 740 (E.D. Mich 1984).

Note further that an interference may be declared with either a pending application, or with one that has issued as a patent. 35 USC 135(a); 37 CFR 41.203(b)(2). Since an interference may be declared between an application, or a patent arising from that application, petitioner has failed to advance any compelling reason for withdrawing from issue another's application. The

statutes and regulations adequately provide for petitioner's requested interference with this case, whether this case is in the form of a pending application, or an issued patent, and, as such, do not afford petitioner any reasonable basis to request that the timely issuance of an application that is asserted to have been allowed, be disturbed.

Further in this regard, to create a right in a third party to challenge a result favorable to another applicant (i.e., petitioner's asserted *ex parte* indication of allowable subject matter to the applicant in another application) would be unprecedented, and such a right cannot be inferred. Syntex at 1575, 11 USPQ2d at 1870. Accordingly, petitioner's third party request to withdraw another's application from issue, or to otherwise intervene, is dismissed.

It is noted that the document filed February 13, 2006, purporting to comply with the requirements of 3.73(b) for purposes of intervention by the putative assignee of the entire interest fails to indicate **where** e.g. by reel and frame, that information is recorded at the USPTO. But see 3.73(b)(1)(ii).

This application is referred to the Technology Center for appropriate treatment of e.g., the RCE and submission in due course.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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JUL 2 6 2004

OFFICE OF PETITIONS

In re Application of :
Takashi Nakano et al :
Application No. 10/160,098 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket No. 11-094 :

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 15, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2814 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

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

---

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

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United States Patent and Trademark Office
P.O. Box 1450
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POSZ LAW GROUP, PLC
SUITE 101
12040 SOUTH LAKES DRIVE
RESTON, VA 20191

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JUL 27 2005

OFFICE OF PETITIONS

In re Application of :
Takashi Nakano et al :
Application No. 10/160,098 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket No. 11-094

This is a decision on the petition, filed July 25, 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 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 Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2814 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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MCDERMOTT WILL & EMERY LLP
600 13TH STREET, NW
WASHINGTON, DC 20005-3096

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OFFICE OF PETITIONS

In re Application of :
Masaaki Noda et al :
Application No. 10/160,118 :
Filed: June 4, 2002 :
Attorney Docket No. 60188-441

ON PETITION

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

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

This matter will be forwarded to Technology Center AU 2814 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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WASHINGTON, DC 20005-3096

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OFFICE OF PETITIONS

In re Application of :
Masaaki Noda et al :
Application No. 10/160,118 :
Filed: June 4, 2002 :
Attorney Docket No. 60188-441

ON PETITION

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 June 2, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2814 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

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OFFICE OF PETITIONS

In re Application of :
Dunling LI et al. :
Application No. 10/160,122 : DECISION ON PETITION
Filed: June 4, 2002 :
Attorney Docket No. TI-34431 :

This is a decision on the petition under 37 CFR 1.137(b), filed September 19, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply to the Notice of Allowance and Fee(s) Due ("Notice"), mailed June 12, 2007, which set a shortened statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on September 13, 2007.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an issue fee payment; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of June 12, 2007 is accepted as having been unintentionally delayed.

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

Telephone inquiries concerning this decision should be directed to Brian Sines at (571) 272-6051 or in his absence, the undersigned at (571) 272-7099.

The application file is being referred to the Office of Publications.

David Bucci
Petitions Examiner
Office of Petitions

cc:

Warren L. Franz
7839 Churchill Way, Mail Station 3999
Dallas, TX 75251

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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 8910
Reston, VA 20195

Mail Date: 04/21/2010

Applicant	: Qi Bi	: DECISION ON REQUEST FOR
Patent Number	: 7596089	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/160,125	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/04/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1536** 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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JUN 29 2004

OFFICE OF THE DIRECTOR
TC 3600

WENDEROTH, LIND & PONACK, LLP
2033 K STREET N.W.
SUITE 800
WASHINGTON, DC 20006-1021

In re Application of	:	
Seiji Abe	:	
Serial No. 10/160,161	:	NOTICE OF WITHDRAWAL
Filed: June 4, 2002	:	FROM ISSUE
For: DISPLAY DEVICE	:	

The above-identified application is withdrawn from issue after the payment of the issue fee due to unpatentability of one or more claims.

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 Examiner Brian Green at (703) 308-1011.

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

Robert Oberleitner, Director
Technology Center 3600

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OCT 27 2004

Bruce Hoofnagle
P.O. Box 370
Lisbon MD 21765-0370

In re Application of
Irwin R. Berman et al
Serial No.: 10/160,166
Filed: June 4, 2002
For: Focused Dosimetry Device and Methods Associated Therewith

DECISION ON PETITION

This is in response to applicants' petition filed August 23, 2004 to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the age of the applicant.

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

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

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, Washington, DC 20231, or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle

John E. Kittle
Director,
Technology Center 3700/2900

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Paper No. 10

Westerman Hattori Daniels & Adrian
1250 Connecticut Avneue, NW
Suite 700
Washington, DC 20036

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OFFICE OF PETITIONS

In re Application of	:	
Kenzo Nishida et al.	:	
Application No. 10/160,181	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. 010239A	:	

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

The petition is Granted.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner in reply to the final Office action mailed April 8, 2003, which set a shortened statutory period for reply of three months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the application became abandoned on July 9, 2003.

The application file is being to Technology Center AU 3661 for processing the Request for Continued Examination pursuant to 37 CFR 1.114 filed with the instant petition.

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

Latrice Bond

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

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RICHARD LACAVA
DICKSTEIN SHAPIRO MORIN & OSHINSKY
41ST FLOOR, 1177 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-2714

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Masayuki Atokawa et al	:	
Application No. 10/160,198	:	
Filed: May 30, 2002	:	
Attorney Docket No. M1071.1727/P1727	:	

This is a decision on the petition under 37 CFR 1.313(c)(3), filed July 6, 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 May 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 should be directed to Wan Laymon at (703) 306-5685.

This matter is being referred to Technology Center AU 2817 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).

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JUL 22 2004

MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK NY 10154-0053

In re Application of	:
Gershon Golomb et al	:
Serial No.: 10/160,207	: PETITION DECISION
Filed: May 30, 2002	:
Attorney Docket No.: 4313-4002	:

This is in response to the petition under 37 CFR 1.59(b), filed June 17, 2004, to expunge a paper from the above identified application.

Petitioner states that the paper submitted May 12, 2004, was improperly directed to the this application. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

A review of the application file history shows that the examiner mailed an Office action to applicants on April 1, 2004, which was a complete action on the merits. The paper submitted May 12, 2004, responds to a restriction requirement. However no restriction requirement was made in the Office action of April 1, 2004. Thus the reply does not properly respond to the Office action. Applicants state that the response was intended for a different, but related, application. Inadvertently the Serial Number of the above identified application was placed on the response. Applicants request that the improper response be returned or, if an IFW application file, be closed to the public.

The petition is **GRANTED**. The improper reply paper will be closed to the public as it does not relate to this application. Applicants remain under obligation to reply to the Office action mailed April 1, 2004, within the time period set therein or as may be extended under 37 CFR 1.136(a),

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.

Bruce M. Kisliuk
Director, Technology Center 1600

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CARR & FERRELL LLP
2200 GENG ROAD
PALO ALTO, CA 94303

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OFFICE OF PETITIONS

In re Application of :
Matthew Bell :
Application No. 10/160,217 :
Filed: May 28, 2002 :
Attorney Docket No. PA4098US

ON PETITION

This is a decision on the petition, filed March 21, 2007 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 22, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2629 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

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Date : March 22, 2007

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner for Patent Examination Policy

SUBJECT : Withdrawal from Issue of Application No. 10/160,217

Applicant(s) : Matthew Bell
Application No. : 10/160,217
Filed : May 28, 2002

The above-identified application has been assigned Patent No. 7,199,782 and an issue date of April 3, 2007.

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: April 3, 2007.

> "All reference to Patent No. 7,199,782 to Matthew Bell of California for INTERACTIVE VIDEO DISPLAY SYSTEM appearing in the Official Gazette of April 3, 2007 should be deleted since no patent was granted."

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Paul Harrison
Deneise Boyd
Mary Louise McAskill
Niomi Farmer
Mary E. Johnson (Cookie)
Duane Davis
Brad Harris
Kim Terrell

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PETROLEUM GEO-SERVICES, INC.
P.O. BOX 42805
16010 BARKER'S POINT LANE
HOUSTON TX 77242-2805

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OFFICE OF PETITIONS

In re Patent No. 6,851,511 :
Issued February 8, 2005 :
Application No. 10/160,230 : ON PETITION
Filed: May 31, 2002 :
Attorney Docket Number: PGS-02-05US :

This is a decision on the petition, filed April 29, 2005, under CFR 3.81(b)[1] to correct the assignee's name on the front of the Patent.

The petition is **GRANTED**.

Petitioner states that the assignee's name is PGS Americas, Inc. and that failure to include the correct assignee's name on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee was a clerical error and inadvertent. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignee on the front page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Further, Office assignment records reflect that PGS Americas, Inc. is the assignee of record. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to issue.

---

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

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3212. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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MCDERMOTT WILL & EMERY LLP
600 13TH ST NW
WASHINGTON DC 20005-396

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OFFICE OF PETITIONS

In re Patent No. 6,717,323	:	
Soghomonian, et al.	:	DECISION REGARDING
Issue Date: April 6, 2004	:	PATENT TERM ADJUSTMENT
Application No. 10/160,257	:	
Filed: June 4, 2002	:	
Attorney Docket No. 57357-023	:	

This letter is in response to the "LETTER REQUESTING CORRECTION OF INCONSISTENCY IN PATENT TERM ADJUSTMENT," filed December 2, 2004, requesting correction of the patent term adjustment (PTA) indicated on the patent.

The petition is **DISMISSED**.

Patentees are given **thirty (30) days** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

On April 6, 2004, the above-identified application matured into U.S. Patent No. 6,717,323. The patent issued with a Patent Term Adjustment of zero (0) days. Patentees point out that this was inconsistent with the Issue Notification, which indicated a patent term adjustment of seventy-nine (79) days.

A review of the application file reveals that applicants filed two Information Disclosure Statements (IDS) on October 3, 2003, after the Notice of Allowance was mailed on September 4, 2003. The first IDS was a copy of a previously filed IDS, and included a USPTO date-stamped postcard receipt showing that it had been previously filed on August 19, 2003. However, the second IDS explicitly stated that it was being filed after the Notice of Allowance but prior to payment of the issue fee. Accordingly, pursuant to 37 C.F.R. § 1.704(c)(10), applicants should have been assessed delay for the number of days beginning on the date the IDS was filed and ending on the mailing date of the Office action or notice in response to the IDS.[1] A Supplemental Notice of Allowability was mailed on January 22, 2004. In view thereof, applicants should have been assessed applicant delay of one hundred twelve (112) days.

The correct determination of PTA at the time of issuance is ZERO (0) days (79 days of PTO delay, reduced by 112 days of applicant delay).

The fee for the IDS filed on October 3, 2003 was never charged. Accordingly, the $180 fee has also been charged to Deposit Account No. 50-0417.

The application file is being forwarded to Files Repository.

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

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

---

[1] The IDS did not contain the statement that each item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than **thirty** days prior to the filing of the IDS. See 37 C.F.R. 1.704(d).

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Docket Clerk
P.O. Drawer 800889
Dallas, TX 75380

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APR 1 8 2005

OFFICE OF PETITIONS

In re Application of	:	
Doyle et al.	:	DECISION ON APPLICATION
Application No. 10/160,281	:	FOR
Filed: May 31, 2002	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	
P05185 (NATI15-05185)	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 CFR 1.705(b)," filed October 13, 2004. Applicants requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to seventy-five (75) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero **(0)** days, including 8 (not 17) days of applicant delay. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On July 15, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On October 13, 2004, applicants timely[1]

[1] PALM records indicate that the Issue Fee payment was received in the Office on October 15, 2004.

submitted an application for patent term adjustment (with required fee), asserting that the patent term adjustment should be increased to 75 days. Applicants assert that the application is entitled to a period of adjustment of 83 days for Office failure to mail a first action under 35 U.S.C. 132. Applicants maintain that the Office did not mail a first Office action on the merits until October 22, 2003, fourteen months and 83 days after the application filing date. In addition, applicants state that the patent term adjustment should have only been reduced by 8 days for applicant delay. Applicants dispute the period of reduction of 9 days entered for applicant delay in filing a response to the Notice to File Missing Parts of Application mailed July 1, 2002. Applicants state that their response was filed on September 10, 2002, within the three-month period set forth in § 1.704(b), resulting in no deduction.

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

A review of the application history confirms that the application is not entitled to a period of adjustment pursuant to § 1.703(a)(1) for Office delay. The relevant Office action is mailing of a restriction requirement on July 16, 2003, not the mailing of a non-final Office action on October 22, 2003. As stated in the Final Rule:

> a written restriction requirement, a written election of species requirement, a requirement for information under 1.105, an action under Ex parte Quayle, 1935 Comm'r Dec. 11 (1935), and a notice of allowability (PTOL-37) are each an action issued as a result of the examination conducted pursuant to 35 U.S.C. 131. As such, each of these Office actions is a notification under 35 U.S.C. 132[1].

As a first action under 35 U.S.C. 132, a restriction requirement, was mailed on July 16, 2003, within 14 months of

---

[1] Office notices and letters issued as part of the pre-examination processing of an application are not notices issued as a result of an examination conducted pursuant to 35 U.S.C. 131, and thus are not notifications under 35 U.S.C. 132. Examples of such notices are: a Notice of Incomplete Nonprovisional Application (PTO-1123), a Notice of Omitted Item(s)in a Nonprovisional Application (PTO-1669), a Notice to File Missing Parts of Application (PTO-1533), a Notice of Informal Application (PTO-152), a Notice to File Corrected Application Papers Filing Date Granted (PTO-1660), or a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (PTO-1661).

applicant's filing date of May 31, 2002, the application is not entitled to a period of adjustment pursuant to § 1.703(a)(1).

However, applicants are correct that a period of reduction of 9 days for applicant delay should not have been entered. A review of the application file reveals that applicants' response to the Notice to File Missing Parts of Application mailed July 1, 2002, is of record in the application with a date of receipt by the Office of September 10, 2002. This response was complete. The response was filed within the three-month period under 37 CFR 1.704(b). Accordingly, applicants should not have been assessed a reduction. Applicants did not "fail to engage" by delaying in responding to the Notice to File Missing Parts of Application mailed July 1, 2002.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is zero (0) days (including 8 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.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

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

Kery A Fries
for

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

Attachment: Copy of Revised PAIR Screen

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OSHA LIANG L.L.P.
1221 MCKINNEY STREET
SUITE 2800
HOUSTON TX 77010

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OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,754,058 :
Issued: June 22, 2004 :
Application No. 10/160,326 :
Filed: May 31, 2002 :
Attorney Docket Number: 04995.066001 :

This is a decision on the petition, filed March 2, 2005, to correct the assignee's name on the front of the Patent, which is being treated as a request under 37 CFR 3.81(b)[1]

The petition is **GRANTED**.

Petitioner states that the name of the second assignee was inadvertently not included on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the name of the second assignee on the front page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

A request for certificate of correction (and fee) as required by 3.81(b) was filed August 3, 2004 and dismissed in a decision mailed November 5, 2004 since the request was not accompanied by a petition under 37 CFR 3.81.

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

Office assignment records however, reflect that Fuji Jukogyo Kabushiki Kaisha is also an assignee of record. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to issue.

The petition fee and the fee for the certificate of correction have been properly posted to the finance records for this patent.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3212. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This file is being referred to the Certificates of Correction Branch for issuance of a certificate of correction.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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Technology Center 2100

Paper No. 5

Michael P. Noonan
ZAGORIN O'BRIEN & GRAHAM LLP
401 W 15th Street
Suite 870
Austin, TX 78701

In re Application of:	)	
Lee P. Noehring, et al.	)	
Application No. 10/160,330	)	**DECISION ON REQUEST FOR**
Filed: May 30, 2002	)	**WITHDRAWAL AS ATTORNEY**
For: SYSTEM AND METHOD FOR MANAGING SECURITY PACKET PROCESSING	)	

This is a decision on the Request To Withdraw from Representation filed May 6, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed May 6, 2003 meets all the requirements. Accordingly the request is **GRANTED**.

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

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

cc: GAMMAGE & BURNHAM
Two North Central Ave.
18th Floor
Phonix, AZ 85004

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NORRIS, MCLAUGHLIN & MARCUS, P.A.
875 THIRD AVE.
18TH FLOOR
NEW YORK NY 10022

COPY MAILED

OCT 22 2004

OFFICE OF PETITIONS

In re Application of	:	
Akira Juura	:	
Application No. 10/160,340	:	ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. 101188-41	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 8, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Final Office action mailed January 2, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on April 3, 2004.

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

The application file is being referred to Technology Center AU 3683.

Karen Creasy

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

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,695,787	2004-02-24	10/160,341	2002-05-31	320528918

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

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

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

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

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

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

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Robert G. Woolston/	Date (YYYY-MM-DD)	2008-06-26
Name	Robert G. Woolston	Registration Number	37263

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6695787
Issue Date: February 24,2004
Application No. 10160341
Filed: May 31,2002
Attorney Docket No. NEO-001 CIP

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

This is a decision on the electronic petition, filed June 26,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of June 26,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8-16-06

TO SPE OF : ART UNIT 1646

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/160360 Patent No.: 6893633

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 check Cols.

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

Certificates of Correction Branch

703-308-9390 ext. 117

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: The requested corrections are nowhere to be found in the patent. For example, there is no recitation of "herpesvirus" in claim 3.

SPE

1646

Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8-16-06

TO SPE OF : ART UNIT 1646

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/1603468 Patent No.: 6821510

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.

Check col.

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

E Young

Certificates of Correction Branch

703-308-9390 ext. _____

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: There is no recitation of "Knobb" at column 2, line 1.
The rest of the requests appear to have already been entered into the patent.

[signature] 1646

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

Friedrich Kueffner
Suite 910
317 Madison Avenue
New York NY 10017

COPY MAILED

OCT 0 2 2002

OFFICE OF PETITIONS

In re Application of Muller Application No. 10/160,373 Filed: May 31, 2002 Attorney Docket No. GR-30DIV For: POCKET WHEEL FEEDING DEVICE	DECISION DISMISSING PETITION

This is a decision on the petition, filed August 14, 2002 (certificate of mailing date August 8, 2002), requesting, that allegedly omitted figures 2 & 3 be accorded a filing date of May 31, 2002. The petition will be treated under 37 CFR 1.53(e).

The application was deposited on May 31, 2002. On July 2, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioner that a filing date had been accorded to the application, but drawing figures 2 & 3 described in the specification appeared to have been omitted.

In response to the Notice, petitioner timely filed the present petition. Petitioner requests that drawing figures 2 & 3 be accorded a filing date of May 31, 2002 on the basis that 5 sheets of drawing figures, including drawing figures 2 & 3, were received in the Patent and Trademark Office (PTO) on May 31, 2002. In support, the petition is accompanied by a copy of applicant's itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing May 31, 2002 as the date of receipt. The postcard lists, *inter alia*, that the filing included 5 sheets of drawings. A review of the application file reveals that only 3 sheets of drawings are present.

The return postcard constitutes *prima facie* evidence that 5 sheets of drawing figures, including drawing figures 2 & 3, were filed on May 31, 2002. MPEP 503. Unfortunately, either petitioner did not submit a copy of figures 2 & 3 with the instant petition, or they were misplaced in the Office. Therefore, the petition is **dismissed**.

The application will be retained in the Office of Petitions until petitioner submits a copy of figures 2 & 3. At that point, the petition fee will be credited to petitioner's deposit account and the application will be forwarded to the Office of Initial Patent Examination for further processing.

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

E. Shirene Willis

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

Friedrich Kueffner
Suite 910
317 Madison Avenue
New York NY 10017

COPY MAILED

NOV 0 5 2002

OFFICE OF PETITIONS

In re Application of
Muller
Application No. 10/160,373
Filed: May 31, 2002
Attorney Docket No. GR-30DIV
For: POCKET WHEEL FEEDING DEVICE

DECISION GRANTING
PETITION

This is a decision on the reconsideration petition, filed October 15, 2002 (certificate of mailing date October 9, 2002), requesting that allegedly omitted figures 2 & 3 be accorded a filing date of May 31, 2002. The petition will be treated under 37 CFR 1.53(e).

The application was deposited on May 31, 2002. On July 2, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioner that a filing date had been accorded to the application, but drawing figures 2 & 3 described in the specification appeared to have been omitted.

In response to the Notice, petitioner timely filed the present petition. Petitioner requests that drawing figures 2 & 3 be accorded a filing date of May 31, 2002 on the basis that 5 sheets of drawing figures, including drawing figures 2 & 3, were received in the Patent and Trademark Office (PTO) on May 31, 2002. In support, the petition is accompanied by a copy of applicant's itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing May 31, 2002 as the date of receipt. The postcard lists, *inter alia*, that the filing included 5 sheets of drawings. A review of the application file reveals that only 3 sheets of drawings are present.

The return postcard constitutes *prima facie* evidence that 5 sheets of drawing figures, including drawing figures 2 & 3, were filed on May 31, 2002. MPEP 503. Accordingly, the petition is **granted**.

The $130.00 petition fee submitted on August 14, 2002 will be refunded via a treasury check that will be scheduled shortly.

The application will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of May 31, 2002, using the copies of drawing figures 2 and 3 submitted with the instant petition.

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

E. Shirene Willis

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

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 10/31/02

2 Serial/Patent # 10/160,373

	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	8/14/02	$ 130.00
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 130.00

8 TO BE REFUNDED BY:

X Treasury Check

Credit Deposit A/C #:

9 [ ][ ]--[ ][ ][ ][ ]

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

Missing figures present on filing. Postcard receipt proves it.

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: E. Shirene Willis TITLE: Petitions Attny

SIGNATURE: E. Shirene Willis PHONE: 308-6712

OFFICE: Office of Petitions

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: [signature] DATE: 11/5/02

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)

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 9/9/08

DATE : 9/9/08

TO SPE OF : ART UNIT 2123

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/160,404 Patent No.: 7,412,358

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

RoChaun Johnson
Certificates of Correction Branch
703-308-9390 ext. 119

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: Correction of Priority not in accordance w/ MPEP 1481.03

PAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE

2123
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/16/08

TO SPE OF : ART UNIT 2100

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/160,404 Patent No.: 7,412,358

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**. **This is a reconsideration from 9/9/08**

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

RoChaun Johnson
Certificates of Correction Branch
703-308-9390 ext. 119

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 updated certificate dated 11/27/08 is accepted + approved.

PAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE

2123
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

MARTIN & FERRARO, LLP
1557 LAKE O'PINES STREET
NEHARTVILLE OH 44632

MAILED

MAY 12 2010

OFFICE OF PETITIONS

In re Application of
Gary K. Michelson et al.
Application No.
10/160,408
Filed: June 4, 2002
Attorney Docket No.
101.0115-00000

:
:DECISION ON
:APPLICATION
:FOR PATENT TERM
:ADJUSTMENT
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed June 1, 2009. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 939 days to 1093 days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one thousand ninety-three **(1093)** days. A copy of the updated PTA calculation, showing the correct determination, is enclosed.

On April 3, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is nine hundred thirty-nine days. On June 1, 2009, applicants timely[1] submitted the instant application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one thousand ninety-three **(1093)** days. Applicants dispute the reduction of one hundred eleven (111) days attributed to applicant for failing to respond within three months to the non-Final Office Action mailed April 25, 2008.

The Office initially determined a patent term adjustment of nine hundred thirty-nine (939) days based on an adjustment for PTO delay of one thousand ninety-eight (1098) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) and (a)(2) reduced by applicants' delay of one hundred forty-two (142) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 1098 days has been reviewed and found to be correct. The reduction of one hundred eleven (111) days of

[1] PALM records indicate that the Issue Fee was received in the Office on July 2, 2009.

applicant delay is at issue.

Applicants dispute the reduction of one hundred eleven (111) days attributed to applicant for failing to respond within three months to the Restriction Requirement mailed March 22, 2005 and as a result, applicant argues that 43 days of delay should be attributable to the PTO from August 23, 2005 to October 4, 2005.

Applicants argue that on April 22, 2005, an Amendment was timely filed including an election of species in response to the Examiner's Election/Restriction Requirement set forth in the Office Action mailed on March 22, 2005. Applicants further argue that on July 29, 2005, an improper Notice of Informal or Non-Responsive Amendment was mailed incorrectly.

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

Pursuant to 37 CFR 1.704(c), Reduction of Period of Adjustment of Patent Term;

> (7) Submission of a reply having an omission (§1.135(c)), 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 reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;
>
> (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;

A review of the application history reveals that applicants are correct. The record supports a conclusion that there is no basis for a reduction in patent term adjustment as the response was filed April 22, 2009, as stated by applicant, and there is no response filed August 11, 2005. As applicant's response was received within three months of the Restriction Requirement mailed March 22, 2005, there was no applicant delay within the meaning of 37 CFR § 1.704(b). Further,

In view thereof, it is concluded that applicants did not fail to engage in reasonable efforts to conclude processing or examination of the application by delaying in replying to the Restriction Requirement by 111 days. Accordingly, the period of reduction of 111 days is being removed.

Additionally, applicants argue that the Office failed to take action in response to applicant's response within the time provided for in 37 CFR 1.702(a)(2) and thus an adjustment of 43 days should be accorded for PTO delay for the period August 22,

2005 to October 4, 2005. Applicant is advised that even in view of the Interview between the Examiner and the applicant (See Interview Summary dated August 18, 2005), wherein the Notice of Informal or Non-Responsive Amendment mailed July 29, 2005 was withdrawn, the fact that the Office subsequently withdrew the July 29, 2005 Office action does not negate the fact that the Office took action within the meaning of 37 CFR 1.702(a)(2) on July 29, 2005 which was within four months of the response filed by the applicant on April 22, 2005. Accordingly, entry of a period of adjustment of 43 days for examination delay pursuant to 37 CFR 1.702(a)(2) is not warranted

The correct patent term adjustment at the time of the mailing of the Notice of Allowance is one thousand fifty days.

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

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management 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 decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of Revised PALM Screen

Day : Tuesday
Date: 5/11/2010

PALM INTRANET

Time: 09:34:38

PTA Calculations for Application: 10/160408			
Application Filing Date:	06/04/2002	PTO Delay (PTO):	1081
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	142
Post-Issue Petitions:	0	Total PTA (days):	1050
PTO Delay Adjustment:	111		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
104	05/11/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	111		
93	04/03/2009	MAIL NOTICE OF ALLOWANCE	399		76
92	03/31/2009	ISSUE REVISION COMPLETED			
91	03/23/2009	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
89	03/23/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
88	03/23/2009	DOCUMENT VERIFICATION			
87	03/16/2009	NOTICE OF ALLOWABILITY			
86	09/21/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
85	10/31/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
84	10/07/2008	CASE DOCKETED TO EXAMINER IN GAU			
83	09/30/2008	CASE DOCKETED TO EXAMINER IN GAU			
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81	11/15/2007	DATE FORWARDED TO EXAMINER			
80	11/09/2007	SUPPLEMENTAL RESPONSE			
79	10/31/2007	REFERENCE CAPTURE ON IDS			
78	10/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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76	10/31/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
75	11/08/2007	DISPOSAL FOR A RCE / CPA / R129			
74	10/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
73	10/31/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			

72	09/21/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
71	09/21/2007	MAIL FINAL REJECTION (PTOL - 326)			
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57.7	08/14/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
57	08/14/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
56	12/09/2006	DATE FORWARDED TO EXAMINER			
55	08/14/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
54	12/09/2006	DISPOSAL FOR A RCE / CPA / R129			
48	12/09/2006	CASE DOCKETED TO EXAMINER IN GAU			
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38	01/03/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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11	02/27/2004	REFERENCE CAPTURE ON IDS			
10.7	02/02/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
		INFORMATION DISCLOSURE STATEMENT (IDS)			

10	02/02/2004	FILED			
9.7	05/12/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	05/12/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8.7	12/17/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	12/17/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7.7	11/04/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	11/04/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6.7	09/04/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	09/04/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	11/07/2002	CASE DOCKETED TO EXAMINER IN GAU			
4	07/15/2002	APPLICATION DISPATCHED FROM OIPE			
3	07/12/2002	APPLICATION IS NOW COMPLETE			
2	06/21/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/04/2002	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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RATNER & PRESTIA
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VALLEY FORGE PA 19482-0980

JUL 11 2003

In re Application of
Hiroyuki Nakamura et al
Application No. 10/160,311
Filed: May 30, 2002
Attorney Docket No. MTS-3331US

DECISION ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.102, filed May 2, 2003 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 the Manual of Patent Examining Procedure (M.P.E.P.), Section 708.02, Item VIII: Accelerated Examination.

The petition complies with M.P.E.P. § 708.02, Item VIII: Accelerated Examination, in that it is accompanied by (a) a check covering the required petition fee of $130.00, (b) a statement that all claims are directed a single invention or an offer to make an oral election without traverse should the Patent and Trademark Office hold that the claims are not directed to a single invention, (c) a statement that a pre-examination search has been made by the inventor, attorney, agent, or professional searchers, etc., the field of search was also provided, (d) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims, and (e) a detailed description of the submitted references and discussions pointing out how the claimed subject matter distinguishes over these references.

For the above stated reasons, the petition is GRANTED.

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

If the examiner can make this application special without prejudice to any possible interfering applications, and he/she should make a rigid search for such, he/she is authorized to do so for the next action. Should the application be rejected, the application will not be considered special for the subsequent action unless the applicant promptly makes a bona fide effort to place the

application in condition for allowance, even if it is necessary to have an interview with the examiner to accomplish this purpose.

If the examiner finds any interfering application for the same subject matter, he/she should consider such application simultaneously with this application and should state in the official letter of such application that he/she is taking it out of its turn because of possible interference.

Should an appeal be taken in this application or should this application becomes involved in an interference, consideration of the appeal and the interference will be expedited by all Patent and Trademark Office officials concerned, contingent likewise upon diligent prosecution by the applicant.

After allowance, this application will be given priority for printing. See M.P.E.P. § 1309.

The petition is granted to the extent indicated.

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

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ON PETITION

RATNERPRESTIA
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VALLEY FORGE PA 19482-0980

In re Application of
Hiroyuki Nakamura et al
Application No. 10/160,411
Filed: May 30, 2002
Attorney Docket No. MTS-3331US

This is a decision on the 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 November 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) 305-8859.

After receipt of the file in the Office of Petitions, the application will be forwarded to Technology Center AU 2817 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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436 SEVENTH AVENUE
PITTSBURGH PA 15219

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OFFICE OF PETITIONS

In re Application of	:	
Laramee et al.	:	
Application No. 10/160,435	:	DECISION ON PETITION
Filed: 05/31/2002	:	
Attorney Docket No. 3487-021050	:	

This is decision on the petition filed October 23, 2006, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

On January 9, 2006, the Office mailed a Notification of Non-Compliant Appeal Brief, which indicated that the appeal brief filed on October 13, 2005,was defective for failure to comply with one or more provisions of 37 CFR 41.37. The Notification further stated that to avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within ONE MONTH or THIRTY DAYS from the mailing date of the Notification, whichever was longer. Extensions of this time period were permitted under 37 CFR 1.136. In the apparent absence of a timely filed response, the application became abandoned on February 10, 2006. On September 27, 2006, the Office mailed a Notice of Abandonment.

Petitioners asserted that they submitted a Response to the Notification of Non-Compliant Appeal Brief, an Amended Appeal Brief, and an Evidence Appendix on January 27, 2006. In support of their assertion, petitioners provided a copy of a return receipt postcard, bearing a Southern Maryland postmark dated January 31, 2006. Furthermore, petitioners stated that the Deposit Account No. 23-0650 was charged an additional $500.00 for the filing of an appeal brief on February 6, 2006. Copies of these documents accompanied the petition. Specifically, the copy of the response contained a certificate of mailing dated January 27, 2006.

The record does not show that the USPTO received the response on January 27, 2006. Additionally, the return postcard receipt does not contain a USPTO date-stamp thereon. Accordingly, the postcard receipt cannot serve as prima facie evidence of receipt in the USPTO of all the items listed on the postcard on January 27, 2006. See MPEP 503. Therefore, petitioners must rely on the certificate of mailing as evidence of the timely filing of the response on January 27, 2006.

Pursuant to Section 711.03(c)(I)(B) of the Manual of Patent Examining Procedure:

> Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application).

Petitioners did not provide a statement under 37 CFR 1.8(b)(3), attesting to a personal knowledge of the mailing of the original response on the date indicated on the certificate **by the person who signed the certificate (i.e. Lori A. Fratangelo).**

Accordingly, the petition to withdraw the holding of abandonment is **dismissed**. Before the Office can withdraw the holding of abandonment, petitioners must submit a request for reconsideration and a statement in compliance with 37 CFR 1.8(b)(3). A request for reconsideration of this decision must be submitted with TWO (2) MONTHS of the mailing date of this decision. Extensions of this time period may be granted under 37 CFR 1.136. The request for reconsideration should include a cover sheet entitled "Renewed Petition Under 37 CFR 1.181."

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

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By FAX:	(571) 273-8300 Attn: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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In re Application of	:	
Laramee et al.	:	
Application No. 10/160,435	:	DECISION ON PETITION
Filed: 05/31/2002	:	
Attorney Docket No. 3487-021050	:	

This is decision on the renewed petition under 37 CFR 1.181, filed January 26, 2007, to withdraw the holding of abandonment.

On January 9, 2006, the Office mailed a Notification of Non-Compliant Appeal Brief, which indicated that the appeal brief filed on October 13, 2005,was defective for failure to comply with one or more provisions of 37 CFR 41.37. The Notification further stated that to avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within ONE MONTH or THIRTY DAYS from the mailing date of the Notification, whichever was longer. Extensions of this time period were permitted under 37 CFR 1.136. In the apparent absence of a timely filed response, the application became abandoned on February 10, 2006. On September 27, 2006, the Office mailed a Notice of Abandonment.

Petitioners asserted that they submitted a Response to the Notification of Non-Compliant Appeal Brief, an Amended Appeal Brief, and an Evidence Appendix on January 27, 2006. In support of their assertion, petitioners provided a copy of a return receipt postcard, bearing a Southern Maryland postmark dated January 31, 2006. Furthermore, petitioners stated that the Deposit Account No. 23-0650 was charged an additional $500.00 for the filing of an appeal brief on February 6, 2006. Copies of these documents accompanied the petition. Specifically, the copy of the response contained a certificate of mailing dated January 27, 2006.

The record does not show that the USPTO received the response on January 27, 2006. Additionally, the return postcard receipt does not contain a USPTO date-stamp thereon. Accordingly, the postcard receipt cannot serve as prima facie evidence of receipt in the USPTO of all the items listed on the postcard on January 27, 2006. See MPEP 503. Therefore, petitioners must rely on the certificate of mailing as evidence of the timely filing of the response on January 27, 2006.

Pursuant to 37 CFR 1.8(b):

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:
>
> (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
>
> (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
>
> (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Petitioners have met the requirements above. Specifically, petitioners provided a statement by Lori A. Fratangelo, the person who signed the certificate, attesting to a personal knowledge of the mailing of the original response on the date indicated on the certificate of mailing. Accordingly, the petition to withdraw the holding of abandonment is **granted**.

This matter is being referred to the Technology Center AU 2914.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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March 3, 2004

Alan W. Young
Young Law Firm
4370 Alpine Rd., Ste. 106
Portola Valley, CA 94028

In re application of:
Derek J. Harper, et al DECISION ON PETITION
Serial No.: 10/160,451
Filed: May 29, 2002
For: METHODS AND IMPLANTABLE DEVICES AND SYSTEMS FOR LONG TERM DELIVERY OF A PHARMACEUTICAL AGENT

This is a decision on the petition received January 30, 2004, to withdraw the holding of abandonment in the above-identified application.

The Notice to File Missing Parts of Nonprovisional Application was mailed on July 3, 2002. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned September 4, 2002. The notice of abandonment was mailed on January 16, 2004.

On January 30, 2004, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney responded to the Notice to File Missing Parts of Nonprovisional Application on September 3, 2002.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Parts of Nonprovisional Application on September 3, 2002.

The petition is hereby Granted.

The application has been completed for release to Technology Center 3763.

The office regrets any inconvenience this may have caused the client.

Telephone inquiries concerning this matter may be directed to Doshie E. Day (703) 308-3640.

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

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Paper No. 9

AT&T Corporation
PO Box 4110
Middletown, NJ 07748-4110

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OFFICE OF PETITIONS

In re Application of	:	
Hiyan Alshawi et al.	:	
Application No. 10/160,461	:	DECISION GRANTING PETITION
Filed: May 31, 2002	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. Ahshawi 2001-0320	:	

This is a decision on the petition, filed May 14, 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 July 16, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

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

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

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

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

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

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

This application is being forwarded to Technology Center AU 2644 for appropriate consideration of the Information Disclosure Statement filed on January 22, 2003.

Latrice Bond

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

Marianne C. Morgan for

Frances Hicks
Lead Petitions Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

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September 15, 2004

Henry T. Brendzel
AT&T Corp.
P. O. Box 4110
Middletown, NJ 07748-4110

In re application of:
Hiyan Alshawi, et al.
Serial No.: 10/160,461
Filed: May 31, 2002
For: Spoken Language Understanding that Incorporates Prior Knowledge into Boosting

In response to the petition received on April 2, 2004, to withdraw the holding of abandonment in the above application.

The decision is moot in reference to the Abandonment Withdrawal Notice issued on July 6, 2004.

Telephone inquiries concerning this application may be directed to Doshie E. Day (703) 308-3640.

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

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OFFICE OF PETITIONS

In re Application of :
Hung et al. :
Application No. 10/160,468 :
Filed: May 1, 2002 :
Attorney Docket Number: S160-USA :

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

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed September 28, 2004. 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 December 29, 2004. A Notice of Abandonment was mailed on April 12, 2005.

With the instant petition, Petitioner has filed an Amendment in response to the Office action. Accordingly, the petition is granted.

This application is being forwarded to Technology Center Art Unit 3762 for processing of the Amendment in due course.

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

Derek L. Woods
Attorney
Office of Petitions

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COLUMBIA SC 29201

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OFFICE OF PETITIONS

Applicant: Michael Shutt
Appl. No.: 10/160,478
Filing Date: May 31, 2002
U.S. Patent No.: 7,146,367
Title: DOCUMENT MANAGEMENT SYSTEM AND METHOD
Attorney Docket No.: 20103/09000-RCE
Pub. No.: US 2003/0217034
Pub. Date: November 20, 2003

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), received on August 10, 2006, for the above-identified application

The request is DISMISSED as moot and untimely.

Applicant requests that the application be republished because the patent application publication did not contain copyright notices.

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 August 10, 2006, was not timely filed under 37 CFR 1.221(b).

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709 (voice).

Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

[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).

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ATLANTA, GA 30339-5948

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OFFICE OF PETITIONS

In re Application of
Dennis Mueller
Application No. 10/160,493
Filed: May 31, 2002
Attorney Docket No. 191314-1050

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 4, 2004, to revive the above-identified application. This is also a decision on the petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee and the 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 set forth in the concurrently filed amendment filed November 29, 2004.

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

The application became abandoned for failure to pay the issue fee on or before September 28, 2004. Receipt is acknowledged of the requisite issue fee on October 4, 2004, using a Certificate of Mailing or Transmission dated September 30, 2004.

The petition under 37 CFR 1.313(c)(2) is **GRANTED**.

Since petitioner has complied with 37 CFR 1.137(b), the application may be returned to a pending status. However, in view of petitioner's request to withdraw the application from issue, the application is hereby withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2),

Petitioner is advised that the issue fee paid on October 4, 2004, using a Certificate of Mailing or Transmission dated September 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]

[1] The request to apply the issue fee to the new Notice must be made in writing and should be accompanied by the new Issue Fee Transmittal Form PTOL-85(b), along with a copy of this decision. Additionally, if the issue fee has increased from the previously paid issue fee, the balance due must be submitted. **Failure to request *in writing* that the previously paid issue fee be applied towards the new Notice and payment of any balance due will result in the abandonment of the application.**

The petition under 37 CFR 1.78(a)(6) 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 May 31, 2002, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/378,450, which was filed on May 7, 2002, 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 for Application No. 60/378,450, along with a renewed petition under 37 CFR 1.78(a)(6), is required.

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

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

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop PETITION
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306**.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

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

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

[1] *Note* 37 CFR 1.121

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THOMAS, KAYDEN, HORSTEMEYER & RISLEY
100 GALLERIA PARKWAY, NW
STE 1750
ATLANTA, GA 30339-5948

COPY MAILED
APR 20 2005
OFFICE OF PETITIONS

In re Application of	:
Dennis W. Mueller	:
Application No. 10/160,493	: DECISION ON PETITION
Filed: May 31, 2002	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 191314-1050	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed February 10, 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 amendment filed February 10, 2005.

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 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-fiiled 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, Application No. 60/378,450, which was filed on May 7, 2002, 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 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 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 the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being referred to Technology Center AU 2856 for appropriate action on the amendment submitted February 10, 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. 60/378,450, filed May 7, 2002.

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
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THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
100 GALLERIA PARKWAY, NW
STE 1750
ATLANTA, GA 30339-5948

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AUG 1 5 2005

OFFICE OF PETITIONS

In re Application of :
Dennis William Mueller :
Application No. 10/160,493 : ON PETITION
Filed: May 31, 2002 :
Attorney Docket No. 191314-1050 :

This is a decision on the petition under 37 CFR 1.137(b), filed June 21, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed January 27, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on April 28, 2005.

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

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

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

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	REQUEST DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
10/160,496	2/27/03	BENJAMIN B. JAMES, ET AL.	18296

Title: **LOW PROFILE PROTECTIVE SHEATH WITH CORRUGATIONS AND A HINGE AND APPARATUS AND METHOD OF MANUFACTURE THEREFOR**

Art Unit	Paper Number

Correspondence Address:
John Chionchio
Synnestvedt & Lechner
1101 Market Street, Suite 2600
Philadelphia PA 19107-2950

PATENT & TRADEMARK OFFICE
MAILED

JUL 18 2003

LICENSING & REVIEW

Licensee under 35 U.S.C. 184 is hereby granted to file in any foreign country a patent application and any amendments thereto corresponding to the subject matter of this U.S. application identified above and/or any material accompanying the petition. This license is conditioned upon modification of any applicable secrecy order and is subject to revocation without notice.

License Number: 540,007

Grant Date: 18-Jul-03

This license is granted retroactively to the date(s) and the country(s) indicated on the attached decision.

Approved

for Commissioner of Patents and Trademar

This license empowers the filing, the causation and the authorization of the filing of a foreign application or applications on the subject matter identified above, subsequent forwarding of all duplicate and formal papers and the prosecution of such aplication or applications.

This license is granted under 37 CFR 5.15(a).

This license is to be retained by the licensee and may be used at anytime on or after the date thereof. This license is not retroactive unless specifically indicated.

The grant of this license does not in any way lesson the responsibility of the 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 respecct to certain countries, of other agencies, particularly the Department of the Treasury; Office of Munitions Control, Department of State (with respect to Arms, Munitions and Implements of War); the Bureau of Trade Regulation, Office of Export Adminstration, Department of Commerce; and the Department of Energy.

LICENSE FOR FOREIGN FILING

[Title 35, United States Code (1952) Sections 184, 185, 186]

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re:	JAMES et al.	:DECISION ON REQUEST
Petition No.:	10/160,496	:UNDER 37 CFR 5.25
Petition Filing Date:	27 February 2003	

Title: LOW PROFILE PROTECTIVE SHEATH WITH CORRUGATIONS AND A HINGE AND APPARATUS AND METHOD OF MANUFACTURE THEREFOR

This is a decision on the petition for retroactive foreign filing license.

It has been determined that a retroactive license for foreign filing under 35 U.S.C. 184 be granted with respect to the filing(s) listed below. The petition complies with 37 C.F.R. 5.25 in that there is an adequate showing that the subject matter in question was not under secrecy order, that the license was diligently sought, and that the material was filed abroad without the required license under 37 C.F.R 5.11 through error and without deceptive intent.

Country	Date
China	15 July 2002
Japan	23 July 2002

Yvonne R. Abbott
Patent Examiner
(703) 308-2866

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE ~~1647~~ 8-2-07 **Paper No.:** _____

TO SPE OF : ART UNIT 1647

SUBJECT : Request for Certificate of Correction for Appl. No 7220835 62/10/160502

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 response A/S/A/Pr Attorney wants to know the status

E M James

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: _____

Manjunath

SPE (MANJUNATH RAO) 1647 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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MAY 1 0 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

AKERMAN SENTERFITT
P.O. Box 3188
West Palm Beach, FL 33402-3188

In re Application of:
KANDLUR, et al.
Application No. 10/160,517
Filed: May 31, 2002
For: ENABLING LEGACY INTERACTIVE VOICE RESPONSE UNITS TO ACCEPT MULTIPLE FORMS OF INPUT

DECISION ON PETITION

This is a response to the petition to withdraw holding of abandonment, filed January 11, 2005.

*The petition is **granted**.*

This application became abandoned for failure to timely file a response to the Office action mailed May 5, 2004 which set a shortened statutory period of three (3) months to reply. A Notice of Abandonment was mailed on January 4, 2005.

Petitioner alleges to have timely filed a response to the Office action on August 17, 2004. To support this position, Petitioner has included with the instant petition a copy of the response bearing a proper certificate of facsimile transmission with a transmission date of August 17, 2004. Also included with the petition is a copy of an Auto-Reply Facsimile Transmission indicating that a 19 page document from Petitioner was received in the U.S. Patent and Trademark Office on August 17, 2004.

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

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

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

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

Petitioner has met the requirements above. Accordingly, the Notice of Abandonment is vacated and the holding of abandonment withdrawn.

The application will be forwarded to the Technology Center's technical support staff for entry of the response and the petition for one month extension of time. From there, the file will be forwarded to the examiner for consideration 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
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Mr. Mervyn J Murdoch
96 Rialannah Road
Mt Nelson 7007 AU AUSTRALIA

In re Application of	:
Murdoch	: DECISION ON PETITION
Application No. 10/160,520	:
For: June 12, 2002	:
For: APPARATUS AND METHOD FOR	:
GRIPPING AND MANIPULATING A	:
SURGICAL NEEDLE	:

COPY MAILED
JUL 0 6 2006
OFFICE OF PETITIONS

This is a decision on the petition under 37 CFR 1.137(a), May 29, 2006, to revive the above-identified application.

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

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

This application became abandoned November 3, 2005 for failure to timely reply to timely submit the issue fee in response to the Notice of Allowance (Notice) mailed August 2, 2005. The Notice set a three statutory period of time for reply. Notice of Abandonment was mailed April 21, 2006.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition fails to satisfy requirement (3) set forth above. Petitioner has failed to present 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.

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 or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). 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).

Petitioner attributes the abandonment of the instant application to the fact that he was traveling on or about the time the issue fee payment was due; he entrusted his housekeeper to submit the issue fee to the Office via facsimile on or before October 30, 2005; and the fact that upon return from travel, petitioner discovered, unbeknownst to his housekeeper, that the facsimile was not properly submitted.

Petitioner's failure to diligently attend to the payment of the issue fee because he was traveling is not unavoidable within the meaning of 37 CFR 1.137(a). Petitioner indicates he was traveling mid-October to early November. The issue fee could have been submitted at any time from August 2, 2005 to November 2, 2005. A reasonably prudent person would have ensured that the issue fee had been submitted and received prior to embarking on extended travels. Furthermore, a reasonably prudent would not have entrusted a matter as important as the timely submission of the issue fee to one's housekeeper. Be that as it may, the actions of petitioner's housekeeper in failing to ensure that the issue fee had been properly submitted is attributed to

petitioner. Thus, petitioner has failed to establish that the failure to timely submit the issue fee was unavoidable.

ALTERNATE VENUE

Petitioner is strongly urged to consider filing a petition stating that the entire delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

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

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

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

By facsimile: (571) 273-8300

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

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosures

PTO/SB/64 (10-05)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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

Docket Number (Optional)

First named inventor:

Application No.: Art Unit:

Filed: Examiner:

Title:

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

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

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

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

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

1.Petition fee

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

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

2. Reply and/or fee

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

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

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

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

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

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

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

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

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

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

WARNING:

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

Signature	Date
Typed or printed name	Registration Number, if applicable
Address	Telephone Number
Address	

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

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

I hereby certify that this correspondence is being:

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

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

Date	Signature
	Typed or printed name of person signing certificate

Privacy Act Statement

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

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

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

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Mr. Mervyn J Murdoch
96 Rialannah Road
Mt Nelson 7007 AU AUSTRALIA

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NOV 1 3 2006
OFFICE OF PETITIONS

In re Application of Murdoch Application No. 10/160,520 Filed: June 12, 2002 For: APPARATUS AND METHOD FOR GRIPPING AND MANIPULATING A SURGICAL NEEDLE	DECISION ON PETITION

This is a decision on the petition renewed under 37 CFR 1.137(b), filed September 4, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

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

This application became abandoned for failure to timely reply to the Notice of Allowance (Notice) mailed August 2, 2005. The Notice set a three month statutory period of time for reply. Notice of Abandonment was mailed April 21, 2006. A petition under 37 CFR 1.137(a) was filed May 29, 2006 and dismissed July 6, 2006.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition fails to satisfy requirement (2) set forth above. Petitioner has failed to submit the issue fee in total to wit petitioner has submitted $500 and the required small entity fee is currently $750.00. The previously submitted fee was submitted separate and apart of the instant petition.

Any renewed petition must include the required petition fee.

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: (51) 273-8300

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

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
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Mr. Mervyn J Murdoch
96 Rialannah Road
Mt Nelson 7007 AU AUSTRALIA

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MAR 19 2007

OFFICE OF PETITIONS

In re Application of :
Murdoch : DECISION ON PETITION
Application No. 10/160,520 :
Filed: June 12, 2002 :
For: APPARATUS AND METHOD FOR :
GRIPPING AND MANIPULATING A :
SURGICAL NEEDLE :

This is a decision on the petition renewed under 37 CFR 1.137(b), filed January 11, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Notice of Allowance (Notice) mailed August 2, 2005. The Notice set a three month statutory period of time for reply. Notice of Abandonment was mailed April 21, 2006. A petition under 37 CFR 1.137(a) was filed May 29, 2006 and dismissed July 6, 2006.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 CFR 1.137(b). Accordingly, the delay in timely submission of a proper reply to the Notice is deemed unintentional.

This application is being forwarded to the Office of Patent Publication 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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WASHINGTON, D.C. 20231
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Paper No. 05

Bernard L. Kleinke
FOLEY & LARDNER
402 WEST BROADWAY
23RD FLOOR
SAN DIEGO, CA 92101

MAR 5 2003

In re Application of:	:	
Smith, et al.	:	
Application No. 10/160,526	:	DECISION ON PETITION
Filed: May 31, 2002	:	TO MAKE SPECIAL
Attorney Docket No.: 035734-2001	:	

This is a decision on the petition under 37 C.F.R. § 1.102, filed December 13, 2002, refiled via facsimile transmission, on January 09, 2003 and supplemented on February 04, 2003 , to make the above-identified application special.

Petitioner requests that the above-identified application be made special under the accelerated examination procedure set forth in the Manual of Patent Examining Procedure (M.P.E.P.), Section 708.02, Item VIII: Accelerated Examination.

A grantable petition to make special under 37 C.F.R. § 1.102, and in accordance with M.P.E.P., Section 708.02, Item VIII, must be accompanied by (a) the fee set forth in 37 C.F.R. § 1.17(I), (b) a statement that all claims are directed a single invention or an offer to make an oral election without traverse should the Patent and Trademark Office hold that the claims are not directed to a single invention, (c) a statement that a pre-examination search has been made by the inventor, attorney, agent, professional searcher, etc., and a listing of the field of search by class and subclass, (d) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims, and (e) a detailed description of the submitted references and discussions pointing out how the claimed subject matter is distinguishable over these references.

The petition of February 04, 2003, contains items (a)-(e) in accordance with M.P.E.P., Section 708.02, Item VIII.

Accordingly, the petition is granted.

The application is being forwarded to the examiner for examination under the accelerated examination procedure.

If the examiner determines that restriction is necessary, he/she will follow the established telephone practice to resolve the restriction. If applicant elects with traverse the application will be forwarded to the Special Programs Examination unit to vacate this decision, and the application will be taken up by the examiner for action in its regular turn.

If the examiner can make this application special without prejudice to any possible interfering applications, and he/she should make a rigid search for such, he/she is authorized to do so for the next action. Should the application be rejected, the application will not be considered special for the subsequent action unless the applicant promptly makes a bona fide effort to place the application in condition for allowance, even if it is necessary to have an interview with the examiner to accomplish this purpose.

If the examiner finds any interfering application for the same subject matter, he/she should consider such application simultaneously with this application and should state in the official letter of such application that she/he is taking it out of its turn because of possible interference.

Should an appeal be taken in this application or should this application becomes involved in an interference, consideration of the appeal and the interference will be expedited by all Patent and Trademark Office officials concerned, contingent likewise upon diligent prosecution by the applicant.

After allowance, this application will be given priority for printing. See M.P.E.P. Section 1309.

The petition is granted to the extent indicated.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (703) 308-2260.

Lissi Mojica Marquis, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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DUCKOR SPRADLING METZGER
401 WEST A STREET, SUITE 2400
SAN DIEGO CA 92101-7015

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OFFICE OF PETITIONS
ON PETITION

In re Application of :
John V. Smith et al :
Application No. 10/160,526 :
Filed: May 31, 2002 :
Attorney Docket No. 035734-2001 :

This is a decision on the petition, filed June 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 March 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 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 2835 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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OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
P.O. Box 1022
MINNEAPOLIS MN 55440-1022

In re Application of	:
Peterson	: DECISION ON APPLICATION
Application No. 10/160,574	: FOR PATENT TERM ADJUSTMENT
Filed: May 30, 2002	:
Atty. Dkt. No.: 07844-537001	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(B)," filed March 13, 2008.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby GRANTED.

The correct determination of PTA at the time of the mailing of the Notice of Allowance is 58 days.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b), mailed December 13, 2007, indicated a patent term adjustment (PTA) to date of zero days. The instant application for PTA was timely filed March 13, 2008.

Applicant does not contest the adjustment of 253 days. Applicant does not contest the reductions totaling 193 days.

Applicant contests the reduction of 83 days assessed in connection with the filing of the request for continued examination (RCE) filed September 24, 2007. Applicant argues that the correct adjustment in connection with this matter is two days.

A review of the records reveals that applicant is correct. The correct reduction in connection with the filing of the RCE is two days. The reduction began September 23, 2007 and ended September 24, 2007. *See*, 37 CFR 1.704(b).

In view thereof, at the time of allowance, the application is entitled to an overall adjustment of 58 days (adjustments totaling 253 days less reductions totaling 195 days).

Receipt is hereby acknowledged of the required PTA application fee of $200.00.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

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

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

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

Enclosure: Adjusted PAIR Calculation

Day : Wednesday

PALM INTRANET

Date: 4/30/2008
Time: 15:38:09

PTA Calculations for Application: 10/160574			
Application Filing Date:	05/30/2002	PTO Delay (PTO):	253
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	276
Post-Issue Petitions:	0	Total PTA (days):	58
PTO Delay Adjustment:	81		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
88	04/30/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	81		
80	12/13/2007	MAIL NOTICE OF ALLOWANCE			
79	12/13/2007	MAIL EXAMINER'S AMENDMENT			
78	12/12/2007	ISSUE REVISION COMPLETED			
77	12/12/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
76	12/12/2007	CASE DOCKETED TO EXAMINER IN GAU			
75	12/12/2007	DOCUMENT VERIFICATION			
74	12/10/2007	EXAMINER'S AMENDMENT COMMUNICATION			
73	12/10/2007	NOTICE OF ALLOWABILITY			
71	11/29/2007	FILING RECEIPT - CORRECTED			
70	10/11/2007	DATE FORWARDED TO EXAMINER			
69	09/24/2007	RCE- AF PROCESSED			
68	10/11/2007	DATE FORWARDED TO EXAMINER			
67	09/24/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		83	58
66	10/11/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
65	09/24/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
64	09/05/2007	MAIL ADVISORY ACTION (PTOL - 303)			
63	09/04/2007	ADVISORY ACTION (PTOL-303)			
62	08/29/2007	DATE FORWARDED TO EXAMINER			
61	08/22/2007	AMENDMENT AFTER FINAL REJECTION			
60	06/22/2007	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
59	06/19/2007	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			

58	04/03/2007	MAIL FINAL REJECTION (PTOL - 326)			
57	04/01/2007	FINAL REJECTION			
56	02/27/2007	DATE FORWARDED TO EXAMINER			
55	02/16/2007	RESPONSE AFTER NON-FINAL ACTION		31	53
54	02/16/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
53	10/16/2006	MAIL NON-FINAL REJECTION			
52	10/13/2006	NON-FINAL REJECTION			
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50	09/05/2006	RESPONSE AFTER NON-FINAL ACTION		63	49
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47	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
46	03/01/2006	DATE FORWARDED TO EXAMINER			
45	02/16/2006	RESPONSE AFTER NON-FINAL ACTION			
44	11/16/2005	MAIL NON-FINAL REJECTION			
43	11/14/2005	NON-FINAL REJECTION			
42	09/16/2005	DATE FORWARDED TO EXAMINER			
41	09/09/2005	RESPONSE AFTER NON-FINAL ACTION		37	39
40	09/09/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
39	05/03/2005	MAIL NON-FINAL REJECTION			
38	04/29/2005	NON-FINAL REJECTION			
37	02/04/2005	REFERENCE CAPTURE ON IDS			
36.7	02/04/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	34
36	02/04/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	03/11/2005	DATE FORWARDED TO EXAMINER			
34	02/04/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		29	19
33	03/11/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
32	02/04/2005	WORKFLOW INCOMING AMENDMENT IFW			
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30	01/20/2005	MISCELLANEOUS INCOMING LETTER			
29	01/27/2005	MAIL ADVISORY ACTION (PTOL - 303)			
28	01/24/2005	ADVISORY ACTION (PTOL-303)			
27	12/23/2004	MAIL ADVISORY ACTION (PTOL - 303)			

26	12/22/2004	ADVISORY ACTION (PTOL-303)			
25	12/11/2004	DATE FORWARDED TO EXAMINER			
24	12/02/2004	AMENDMENT AFTER FINAL REJECTION			
23	12/09/2004	DATE FORWARDED TO EXAMINER			
22	12/02/2004	AMENDMENT AFTER FINAL REJECTION			
21	08/10/2004	REFERENCE CAPTURE ON IDS			
20.7	08/10/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		33	12
20	08/10/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	10/06/2004	MAIL FINAL REJECTION (PTOL - 326)			
18	10/01/2004	FINAL REJECTION			
17	08/28/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	07/27/2004	REFERENCE CAPTURE ON IDS			
15.7	07/27/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	07/27/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	06/24/2002	REFERENCE CAPTURE ON IDS			
13	08/02/2004	DATE FORWARDED TO EXAMINER			
12	07/08/2004	RESPONSE AFTER NON-FINAL ACTION			
11	07/08/2004	WORKFLOW INCOMING AMENDMENT IFW			
10	04/08/2004	MAIL NON-FINAL REJECTION	253		-1
9	04/05/2004	NON-FINAL REJECTION			
8	12/01/2003	CASE DOCKETED TO EXAMINER IN GAU			
7.7	09/08/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	09/08/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6.7	05/30/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	05/30/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	08/28/2002	CASE DOCKETED TO EXAMINER IN GAU			
4	07/15/2002	APPLICATION DISPATCHED FROM OIPE			
3	07/11/2002	APPLICATION IS NOW COMPLETE			
2	06/20/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/30/2002	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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Paper No. 7

RAY K. SHAHANI, ESQ.
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477 NINTH AVENUE, SUITE 112
TWIN OAKS OFFICE PLAZA
SAN MATEO CA 94402-1854

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JUN 0 5 2003

OFFICE OF PETITIONS

In re Application of	:
Koop, Baumgardner, and Weiss	:
Application No. 10/160,579	: DECISION ACCORDING STATUS
Filed: 31 May, 2002	: UNDER 37 CFR 1.47(a)
Attorney Docket No. 100698.0034US2	:

This is in response to the renewed petition filed under 37 CFR 1.47(a) on 29 May, 2003 (certificate of mailing 28 May, 2003).

The petition is **GRANTED**.

Petitioner has shown that non-signing inventor Koop has refused to join in the filing of the above-identified application after having been mailed a copy of the application papers. Specifically, the declaration of facts of petitioners' registered patent attorney, Ray K. Shahani, establishes that a copy of the application was both sent and hand-delivered to the non-signing inventor, Dale E. Koop, but that failed to sign and return the declaration. Additionally, an executed declaration was received from previously non-signing joint inventor Baumgardner.

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.

Receipt of the new power of attorney changing the correspondence address is acknowledged.

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

After this decision is mailed, the application will be forwarded to Technology Center 3700 for examination in due course.

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

DIWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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Paper No. 5

ROBERT D. FISH; RUTAN & TUCKER, LLP
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COSTA MESA CA 92628-1950

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MAR 2 8 2003

OFFICE OF PETITIONS

In re Application of :
Koop, Baumgardner, and Weiss :
Application No. 10/160,579 : DECISION REFUSING STATUS
Filed: 31 May, 2002 : UNDER 37 CFR 1.47(a)
Attorney Docket No. 100698.0034US2 :

This is in response to the petition filed under 37 CFR 1.47(a) on 6 December, 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 application was filed on 31 May, 2002, without a signed oath or declaration. Accordingly, on 5 July, 2002, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application requiring a signed oath or declaration and a surcharge for its late filing. A two (2) month period for reply was set.

In reply, on 27 August, 2001, petitioners submitted a (a) a three (3) month extension of time and fee therefore; (b) a declaration naming Dale E. Koop, Jonathan M. Baumgardner, and Robert A. Weiss as joint inventors and signed by joint inventor Weiss on behalf of himself and joint inventors Koop and Baumgardner; (c) the present petition, and (d) the late filing surcharge.

The present petition asserts that joint inventor Koop was sent a copy of the declaration, but has failed to sign and return the

declaration. The petition further asserts that joint inventor Baumgardner cannot be reached, as the declaration sent to him was returned as undeliverable.

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

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

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

(3) the petition fee;

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

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

The petition lacks item (1).

In regards to item (1), with regard to non-signing joint inventor Koop, before a refusal to sign can be alleged, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers (specification, including claims, drawings, if any, and the declaration).[1] The showing of record is that only the declaration, and not the application-as-filed was sent to non-signing inventor. Petitioners may present a copy of the cover letter transmitting the application papers to the non-signing inventor or details in an affidavit or declaration of facts by a person with first-hand knowledge of the details.

With regard to joint inventor Baumgardner, whom petitioners assert cannot be found, petitioners must provide proof that diligent efforts have been made to locate the non-signing inventor.[2] A copy of an envelope showing that a letter sent to the last known address of the non-signing inventor was returned as undeliverable by the post office. Details of the efforts made to locate the non-signing inventor should be set forth in an affidavit or declaration of facts by a person having first hand knowledge of the details.

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[1] MPEP 409.03(d).

[2] Id.

Likewise, before a *bona fide* refusal to sign can be alleged, petitioners must show that the application papers were sent or given to the non-signing inventor. If the inventor refuses to sign the declaration in writing after being sent or given the application, a copy of that written refusal should be supplied 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.

Counsel's deposit account, No. 50-2191, has been charged the petition fee of $130.00 in accordance with the cover sheet filed on 31 May, 2003.

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

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

OR (after 1 May, 2003)[3]

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

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

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

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Petitions Attorney
Office of Petitions

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[3]Effective 1 May, 2003, the U.S. Patent and Trademark Office is changing its address for some mail in preparation for its move to new office space in Alexandria, Virginia beginning at the end of 2003. See 68 Fed. Reg. 14332 (March 25, 2003).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Motorola Inc
600 North US Highway 45
AS437
Libertyville IL 60196

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APR 0 4 2007
OFFICE OF PETITIONS

In re Application of	:	DECISION ON
Rollins et al.	:	PETITION
Application No.: 10/160590	:	
Filing or 371(c) Date: 05/31/2002	:	
Attorney Docket Number: PT03357U	:	

This is a decision in response to the Petition to Withdraw Holding of Abandonment Under 37 C..FR. § 1.181, filed January 11, 2007. The delay in treating this petition is regretted.

This Petition to withdraw the holding of abandonment is hereby **granted**.

Background

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed March 8, 2006. The Office action indicated that no claims were allowed. Extensions of time under 37 CFR 1.136(a) were available.

Applicant filed an Amendment in response to the Office action on May 7, 2006. The Amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action mailed May 23, 2006. The Advisory action set a reply period of one (1) month from the mail date of the Advisory Action, or within the reply period as set forth in the final Office action, whichever was later. (Emphasis supplied.)

No complete and proper reply having been received, the application became abandoned on June 9, 2006. A Notice of Abandonment was mailed December 15, 2006.

The present petition

Applicant files the present petition and asserts that a timely reply to the Office action, to wit – a Notice of Appeal; Pre-Appeal Brief Request for Review and Remarks for Pre-Appeal Brief Request for Review, were filed on June 5, 2006. In support of this assertion, Applicant files a copy of an Electronic Acknowledgment Receipt, acknowledging receipt by this Office of Notice of Appeal; Pre-Appeal Brief Request for Review and Remarks for Pre-Appeal Brief Request for Review, on June 5, 2006.

A review of Office records reveals that this office received the Notice of Appeal; Pre-Appeal Brief Request for Review and Remarks for Pre-Appeal Brief Request for Review, on June 5, 2006.

In view of the above, the holding of abandonment for failure to timely and properly reply to the final Office action is hereby withdrawn.

The application is being referred to Technology Center Art Unit 2612 for processing of the Notice of Appeal; Pre-Appeal Brief Request for Review and Remarks for Pre-Appeal Brief Request for Review, in due course.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

Paper No. 08

Norman R. Klivans
SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE, CA 95110

JUN - 2 2003

In re Application of:
Roy, *et al.*
Application No. 10/160,606
Filed: May 30, 2002
For: METHOD AND APPARATUS FOR FORMING A TRENCH THROUGH A SEMICONDUCTOR SUBSTRATE

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 December 23, 2002 and refiled December 31, 2002.

A grantable request to withdraw as attorney of record must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of others. A request to withdraw will not be approved unless at least thirty (30) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period that can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above requirements. The request was signed by Norman R. Klivans, an attorney of record in the above identified application. On May 21, 2003, the Office mailed a non-final Office Action setting forth a three-month shortened statutory period for reply that is extendable by petition under 37 C.F.R. § 1.136(a) through November 21, 2003. As such, there is at least thirty (30) days remaining between the date of this decision and the expiration date of the maximum time period that can be extended under 37 C.F.R. § 1.136(a).

The request is approved.

The application currently has no attorney of record.

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

Inquiries related to this decision should be directed to Lissi Mojica Marquis at (703) 308-2260.

Lissi Mojica Marquis, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Deborah Winocur
4057 Amaranta Avenue
Palo Alto, CA 94306

UNITED STATES PATENT AND TRADEMARK OFFICE

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

AUG 2 2005

FINNEGAN HENDERSON FARABOW
GARRETT AND DUNNER LLP
55 CAMBRIDGE PKWY STE 700
CAMBRIDGE, MA 02142

In re Application of	:
Rebecca H. Li et al	:
Serial No.: 10/160,607	: PETITION DECISION
Filed: May 31, 2002	:
Attorney Docket No.: 08702.0117	:

This is in response to the petition under 37 CFR 1.181, filed June 29, 2005, requesting withdrawal of abandonment based non-receipt of an Office action.

A review of the file history shows that the examiner mailed an Office action to applicants on September 13, 2004, setting a one month shortened statutory period for reply. Upon failure to receive a reply a Notice of Abandonment was mailed to applicants on April 28, 2005. Applicants state that the Office action was never received and provide statements and copies of docket records establishing that the Office action was not received. In view of the evidence and statements presented it is concluded that the Office action was not received. As a consequence the Notice of Abandonment is withdrawn and the application restored to pending status with the mailing of this decision.

The petition is **GRANTED**.

The application will be forwarded to the examiner for mailing of a new Office action.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Bruce M. Kisliuk
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

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

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SEP 02 2009

OFFICE OF PETITIONS

In re Patent No. 7,413,753	:	
Li et al.	:	ON PETITIONS
Application No. 10/160,607	:	under 37 CFR 1.183
Issue Date: August 19, 2008	:	and
Filed: May 31, 2002	:	ON REQUEST FOR RECONSIDERATION
Attorney Docket No.	:	OF PATENT TERM ADJUSTMENT
08702.0117-00000	:	

This is a decision on the 1) Petition under 37 C.F.R. 1.183, requesting that the Office suspend the rules and consider on the merits an Application for Patent Term Adjustment under 37 C.F.R. 1.705(d) filed more than two months from the date the above-referenced patent issued; and on the 2) Application for Patent Term Adjustment, both filed on February 12, 2009.

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

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **dismissed as untimely filed**.

Any request for reconsideration, whether directed to the decision on petition under 37 CFR 1.183 or to the decision on application for patent term adjustment under 37 CFR 1.705(d), must be filed within two months of the mailing date of this

decision. Extensions of time under 37 CFR 1.136 are not permitted. See § 1.181(f).

BACKGROUND

On August 19, 2008, the above-identified application matured into U.S. Patent No. 7,413,753 with a revised patent term adjustment of 735 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months of the date the patent issued. Patentee now petitions under 37 C.F.R. § 1.183 to (i) suspend or waive the requirement of 37 C.F.R. § 1.705(d) that an Application for Patent Term Adjustment be filed within two months of the date the patent issued; and (ii) consider the enclosed Request for Reconsideration of Patent Term Adjustment. Patentee references the recent decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. Sept. 30, 2008) as the basis for the petition.

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

The above-referenced patent issued on August 19, 2008. A request for reconsideration of the patent term adjustment indicated in the patent was not filed until February 12, 2009. Petitioner requests that the Office suspend the rules and consider on the merits the Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) even though it was untimely filed more than two months from the date the patent issued.

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

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

By the express provisions of 37 CFR 1.705(d), a request for reconsideration of patent term adjustment must be filed within two months of the date the patent issued. It is undisputed that no such request for reconsideration was filed by October 19, 2008, the date two months from the date this patent issued, August 19, 2008. Rather, on February 12, 2009, over four (4) months after the issuance of a decision in Wyeth v. Dudas on September 30, 2008, petitioner filed the instant request for waiver of the two-month requirement.

37 CFR 1.183 provides that:

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

35 U.S.C. 154, requires the Office to provide the applicant one opportunity to request reconsideration of any patent term adjustment determination made by the Director, authorizes the Director to establish the procedures for requesting such reconsideration. Those procedures[1] include pursuant to 37 CFR

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

1.705(d) setting a two-month period for filing a request for reconsideration of the revised patent term adjustment indicated in the patent.

Having considered petitioner's arguments, it is concluded that waiver of the two-month requirement is not warranted. The primary basis for requesting waiver set forth by petitioner is "the extraordinary situation presented by the recent decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. Sept. 30, 2008)." Specifically, petitioner states that in Wyeth, the U.S. District Court for the District of Columbia held that contrary to USPTO practice, a patentee is entitled to Patent Term Adjustment credit for examination delay under 37 CFR 1.702(b) in addition to any examination delay under 37 CFR 1.702(a), to the extent that the two periods of delay "do not occur on the same calendar day or days."

Petitioner has not explained why it could not have filed a Request for Reconsideration of Patent Term Adjustment within two months of the date the above-referenced patent issued. Apparently, petitioner's argument is that the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth decision, which was entered over one (1) month after the issuance of their patent.

The fact that any relief ultimately granted in Wyeth would benefit patentee had they timely filed a request for reconsideration does not make the situation extraordinary. Wyeth followed the procedure set forth in 37 CFR 1.705 for requesting reconsideration of the patent term adjustment determination. Then, pursuant to 35 U.S.C. 154(b)(4)(A), Wyeth timely filed a complaint in District Court seeking judicial review of the Office's decision. A Memorandum Opinion and Order, the Wyeth decision of September 30, 2008, directed to the parties involved was issued.

Petitioner chose not to challenge their revised patent term adjustment within the two-month period. Petitioner's argument that they could not have filed a Request for Reconsideration of Patent Term Adjustment within two months of the date the above-referenced patent issued because the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth decision,

which was entered more than one month after the issuance of their patent, is not persuasive.

Petitioner could have filed a Request for Reconsideration of Patent Term Adjustment as Wyeth did. It is acknowledged that petitioner may have chosen not to file a request for reconsideration based on a conclusion that the Office's interpretation of 35 U.S.C. § 154(b)(2)(A) was correct. Nonetheless, the fact that the District Court has now issued an Opinion contrary to the Office's interpretation does not make the situation extraordinary. This is not unlike any other situation where a patentee (or applicant) challenges a final agency decision and the decision upon judicial review could have had applicability to another patentee (or applicant) had they taken such action. In fact, many patentees may be in the same situation as petitioner with respect to the Wyeth decision. In addition, given that the law only allows 180 days for both the filing of a petition and for the Office's consideration of that petition, petitioner's unexplained nearly four (4)-month delay in filing the petition weighs against them.

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

The contention that a decision is in error is a basis for a timely request for review of the decision but does not justify a delay in seeking review of such decision.

The Office provided notice that petitions under 37 CFR 1.182 and 1.183 or requests for certificate of corrections under 35 USC 354 and 37 CFR 1.323 or 35 U.S.C. 255 and 37 CFR 1.324 are not substitute *fora* to obtain reconsideration of a patent term adjustment determination indicated in a notice of allowance if applicant fails to submit a request for reconsideration within the time period specified in §1.705(b) or to obtain reconsideration of a patent term adjustment determination indicated in a patent if a patentee fails to submit a request for reconsideration within the time period specified in §1.705(d). See 69 Fed. Reg. 21704, 21707 (April, 22, 2004).

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

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

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

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed February 12, 2009. Therein, patentee requests correction of the patent term adjustment (PTA) indicated in the patent to one thousand one hundred forty-five (1145) days.

On August 19, 2008, the above-identified application matured into U.S. Patent No. 7,413,753 with a revised patent term adjustment of 735 days. The instant request for reconsideration was filed more than five months after the issuance of the patent, on February 12, 2009.

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

CONCLUSION

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

Receipt of the fees required for the petition under 37 CFR 1.183 and the application for patent term adjustment is acknowledged.

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

Christina Tartera Donnell for

Kery A. Fries
Senior 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)
6991645	2006-01-31	10160611	2002-05-30	014452US2

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	/Todd A. Holmbo/	Date (YYYY-MM-DD)	2010-04-20
Name	Todd A. Holmbo	Registration Number	42665

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6991645
Issue Date: January 31,2006
Application No. 10160611
Filed: May 30,2002
Attorney Docket No. 041003

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

This is a decision on the electronic petition, filed April 20,2010 ,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 April 20,2010 .
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
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DEC 10 2004

In re Application of	:	
Robert E. Sears, Jr.	:	
Serial No. 10/160,633	:	DECISION ON PETITION
Filed: May 31, 2002	:	TO WITHDRAW AS ATTORNEY
For: PAINT MASKING	:	

By papers filed on October 14, 2004, counsel has petitioned to withdraw as attorney of record in this application.

The petition is GRANTED.

Applicant is advised that the correspondence address for this application is:

Robert E. Sears, Jr.
11740 Church Lane
Cordova, MD 21625

E. Rollins-Cross, Director
Technology Center 3700

Thomas E. Beall, Jr.
12445 Mill Creek Lane
Wye Mills, MD 21679

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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CASELLA & HESPOS
274 MADISON AVENUE
NEW YORK NY 10016

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OFFICE OF PETITIONS

In re Application of	:	
Makoto Matsuoka	:	
Application No. 10/160,635	:	ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. M 4629	:	

This is a decision on the petition, filed March 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 January 21, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 3764 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

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

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Paper No. _____

Date : March 3, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Makoto Matsuoka
Application No. :10/160,635
Filed :May 31, 2002

The above-identified application has been assigned Patent No. 6,863,643 and an issue date of March 8, 2005.

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

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of March 8, 2005:

"All reference to Patent No. 6,863,643 to Makoto Matsuoka of Japan for EXPANDER FOR THE LOWER PART OF THE BODY appearing in the Official Gazette of March 8, 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

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FEB 21 2007

Technology Center 2100

Michael G. Savage, Esquire
Burns, Doane, Swecker & Mathis, L.L.P.
P.O. Box 1404
Alexandria, VA 22313-1404

In re Application of:
Michael A. Mullins, et al.
Application No. 10/160,640
Filed: May 31, 2002
For: Methods and Apparatus for Storing Memory Test Information

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed September 21, 2005 under 37 CFR § 1.181 to invoke Supervisory Authority of the Commissioner and require the Examiner to either identify any issues that would require further consideration and search or the finality of the April 8th, 2005 office action should be withdrawn thus the amendment would be entered.

The petition is **DISMISSED AS MOOT**.

On September 21, 2005, applicant's counsel filed a petition to the Director under 37 CFR § 1.181 to seek relief from actions of the examiner in relation to the Final Office action mailed April 8th, 2005. In the petition, applicant's counsel ask for an explanation of the new issues that would require further consideration therefore justifying non entry of the after final amendment or withdrawing the finality and entry of the amendment.

On September 8th 2005, a request for a pre appeal conference was filed which resulted in the finality of the September 21st office action being withdrawn, entry of the July 8th 2005 after final amendment and allowance of the application.

Accordingly, the petition is **DISMISSED AS MOOT.**

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3612.

Tod Swann
Workgroup Quality Assurance Specialist
Technology Center 2100
Computer Architecture, Software, and Information Security

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Timothy N. Trop
TROP, PRUNER & HU, P.C.
STE 100
8554 KATY FWY
HOUSTON TX 77024-1841

NOV 0 9 2005

In re Application of: Ebrahim Andideh et al
Application No. 10/160,641
Filed: May 31, 2002
Attorney Docket No. ITL.0760US (P14412)

Decision on Petition

This is a decision on the petition filed under 37 C.F.R. § 1.144 on October 3, 2005 to withdraw the restriction requirement of claims 19-21, 23-25, 31 and 33-56.

The petition is GRANTED.

Title 37 C.F.R. § 1.144 sets forth the requirements for a Petition from the requirement for restriction.

> § 1.144 Petition from requirement for restriction.
> After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Commissioner 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).

Petitioner asserts that the holding of claims 33-56 as withdrawn from consideration, is improper because the examiner has failed to provide reasoning as set forth in 37 C.F.R § 1.145.

Title 37 C.F.R § 1.145. States:

> If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in § 1.143 and 1.144.

According to MPEP 806.04(e) Claims Restricted to Species

Claims are definitions of inventions. Claims are never species. Claims may be restricted to a single disclosed embodiment (i.e., a single species, and thus be designated a specific species claim), or a claim may include two or more of the disclosed embodiments within the breadth and scope of definition (and thus be designated a generic or genus claim). Species are always the specifically different embodiments.

Species are usually but not always independent as disclosed (see MPEP § 806.04(b))

since there is usually no disclosure of relationship therebetween. The fact that a genus for two different embodiments is capable of being conceived and defined, does not affect the independence of the embodiments, where the case under consideration contains no disclosure of any commonality of operation, function or effect.

806.04(f) Claims Restricted to Species, by Mutually Exclusive characteristics

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

806.04(b) Species May Be Related Inventions

Species, while usually independent, may be related under the particular disclosure. Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those covered in MPEP § 806.05 - § 806.05(i). If restriction is improper under either practice, it should not be required.

The examiner has failed to demonstrate the mutual exclusivity of the disclosed species.

Therefore the examiner acted improperly as according to MPEP 821.03 in treating newly added claims 33-56 as being constructively elected by original presentation. The Final office action mailed on August 1, 2005 will be withdrawn and claims 33-56 will be rejoined.

The application file will be forwarded to the Technical Support staff for Technology Center 2800 for further processing.

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

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TROP PRUNER & HU,PC
1616 S. VOSS ROAD, SUITE 750
HOUSTON TX 77057-2631

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JUN 0 9 2008

OFFICE OF PETITIONS

In re Application of Ebrahim Andideh et al Application No. 10/160,641 Filed: May 31, 2002 Attorney Docket No. ITL.0760US(P14412)	DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed September 17, 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 Notice of Appeal and Appeal Brief; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Final Rejection mailed February 21, 2007, 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 $1,640 extension of time was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

This matter is being referred to Technology Center AU 2812.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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Paper No. None

CONFOR MIS, INC.
323 VINTAGE PARK DR.,
SUITE C
FOSTER CITY CA 94404

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MAR 03 2006

OFFICE OF PETITIONS

In re Application of	:	
Philipp Lang et al.	:	
Application No. 10/160,667	:	
Filed: May 28, 2002	:	DECISION ON PETITION
Attorney Docket No. 6750-0005	:	UNDER 37 C.F.R. §1.181(A)
Title: METHODS AND COMPOSITIONS	:	
FOR ARTICULAR RESURFACING	:	

This is a decision on the petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment, filed on August 4, 2005.

The Office regrets the delay in issuing this decision.

The above-identified application became abandoned for failure to file a proper response to the Restriction Requirement, mailed October 27, 2004, which set a shortened statutory period to reply for one month. An amendment was received on November 26, 2004, and a Notice of Non-compliant Amendment was mailed on February 24, 2005, indicating that the election was non-responsive and setting a period of reply for one month. No extensions of time under the provisions of 37 CFR 1.136(a) were requested, and no additional replies were received. Accordingly, the above-identified application became abandoned on March 25, 2005. A Notice of abandonment was mailed on June 6, 2005.

With the present petition, Petitioner included a response to the Notice of Non-compliant Amendment of February 24, 2005. It is noted that a duplicate of the same has been located in the

electronic file, and it is clear that a response was received on July 11, 2005[1].

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 response was timely submitted.

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

Technology Center 3700 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.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

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

cc: SMOLENSKI,ALEXANDER
Bromberg and Sunstein
125 Summer St
Boston, MA 02110

1 The submission contains a certificate of mailing dated July 7, 2005, is accompanied by a request for a four-month extension of time (which has already been charged to Petitioner's Deposit Account).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

BELL, BOYD & LLOYD LLC
P.O. BOX 1135
CHICAGO IL 60690

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OFFICE OF PETITIONS

In re Application of	:	
Anthony J. Baerlocher	:	
Application No. 10/160,694	:	ON PETITION
Filed: 31 May, 2002	:	
Attorney Docket No. 0112300-588	:	

This is a decision on the petition styled under 37 CFR 1.53(b) filed on 4 September, 2002, which is treated as a petition under 37 CFR 1.182 requesting that the above-identified application be amended to include Figures 10A through 10I described in the specification.

The application was filed on 31 May, 2002. However, on 5 July, 2002, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" stating that the application had been accorded a filing date of 31 May, 2002, and advising applicants that Figures 10A through 10I described in the specification appeared to have been omitted.

In response, the present petition was filed on 4 September, 2002, accompanied by five (5) sheets of drawings containing Figures 10A through 10I. Petitioners state that the omitted drawings do not contain new matter, and therefore request that the application, including Figures 10A through 10I, be accorded a filing date of 31 May, 2002. Upon receipt of the Figures, Initial Patent Examination Division accorded the application, including Figures 10A through 10I a filing date of 4 September, 2002.

The petition is <u>dismissed</u>.

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 page was deposited on 31 May, 2002, nor request the 4 October, 2002 (the date the missing page was supplied) filing date.

Instead, applicants seek to amend the application to include Figures 10A through 10I of the specification. However, no petition under 37 CFR 1.182 is necessary for that purpose. Amendments to the specification may be entered by the primary examiner without petition so long as the amendment contains no new matter.[1]

Accordingly, the petition is inappropriate and is subject to dismissal. Although petitioners state a check for $130.00 for the petition fee was enclosed, that fee was credited to the late filing fee or oath or declaration surcharge. As the petition was not due to an error on the part of the USPTO, the petition fee of $130.00 will be charged to counsel's deposit account, No. 02-1818.

The application will be reprocessed with a filing date of 31 May, 2002, using only the application papers filed on that date. The five (5) sheets of drawings containing Figures 10A-10I will not be considered part of the original disclosure, but will be treated as a preliminary amendment.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of 31 May, 2002, using only the application papers filed on that date.

---

[1] 37 CFR 1.121(b).

Thereafter, the application will be forwarded to Technology Center 3700 for consideration by the examiner of the petition filed 4 September, 2002, as a preliminary amendment requesting the entry of five (5) sheets of drawings containing Figures 10A through 10I.

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

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.
10/160,700	05/30/2002	Richard A. Jewell	WEYE119187/22827D	6289

28624 7590 10/08/2003

WEYERHAEUSER COMPANY
INTELLECTUAL PROPERTY DEPT., CH 1J27
P.O. BOX 9777
FEDERAL WAY, WA 98063

EXAMINER
FORTUNA, JOSE A

ART UNIT	PAPER NUMBER
1731	

DATE MAILED: 10/08/2003

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Mailed:

spg
Paper Number _____

In re application of	:	
Richard A. Jewell et al.	:	DECISION ON
Serial No. 10/160,700	:	PETITION
Filed: May 30, 2002	:	
For: MULTI-PLY CELLULOSIC PRODUCTS USING	:	
HIGH-BULK CELLULOSIC FIBERS	:	

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT: PROPER REPLY TO OUTSTANDING PATENT OFFICE REQUIREMENT WAS MAILED AND RETURN POSTCARD RECEIVED, filed April 4, 2003. The petition requests that the abandonment, as set forth in the Notice of Abandonment of March 26, 2003, for failure to timely file a proper reply to the Office letter mailed on August 2, 2002, be withdrawn since the applicants did timely file a reply on January 3, 2003. (Copies of the papers filed January 3, 2003 are attached to the instant petition, the copies include the AMENDMENT TRANSMITTAL LETTER/REQUEST FOR EXTENSION OF TIME, AMENDMENT A, DECLARATION OF JOHN A. WESTLAND UNDER 37 C.F.R. § 1.132, a copy of CHECK NO. 144655 in the amount of $930. 00 and the USPTO date-stamped return receipt postcard.)

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicant's response was properly filed on January 3, 2003 as evidenced by the properly completed Certificate of Mailing on the AMENDMENT TRANSMITTAL LETTER as well as the paper entitled AMENDMENT A and the copy of the USPTO date-stamped return receipt postcard indicating receipt of the papers at the USPTO on January 7, 2003. A review of the USPTO financial records relating to the instant application fail to indicate that the $930.00 submitted was ever credited to the instant application file. During a telephone conversation between Ms. Denton from the Law Offices of Christensen, O'Connor, Johnson, Kindness, PLLC, applicant's appointed representatives, and Supervisory Patent Examiner from USPTO Technology Center 1700, Mr. Steven Griffin, Mr. Griffin requested copies of the cancelled check as evidence indicating that the $930.00 submitted was credited to the USPTO, Ms. Denton indicated that they did not have copies of the cancelled check. Mr. Griffin indicated without payment and crediting of the fees to the instant application file that applicant's request for withdrawal of the abandonment could not be granted, therefore, in order to allow for applicant's request to be granted Mr. Griffin indicated that applicant's Deposit Account No. 03-1740 would be charged the $930.00 extension of time fee as is authorized in paragraph E. of the AMENDMENT TRANSMITTAL LETTER/REQUEST FOR EXTENSION OF TIME originally filed January 3, 2003.

Accordingly, in view of the charging of the fees due to Deposit Account 03-1740, any holding of abandonment for failure to timely file a proper reply to the Office letter mailed on August 2, 2002 is hereby vacated and the application is returned to pending status. The application shall be forwarded to the technical support staff for charging of the required fees due and processing and entry of the amendment originally filed January 3, 2003 and then to the examiner for consideration of the papers.

The Petition is **GRANTED**.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

WEYERHAEUSER COMPANY
INTELLECTUAL PROPERTY DEPT., CH 1J27
P.O. BOX 9777
FEDERAL WAY WA 98063

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spg
Paper Number

In re application of
Richard A. Jewell et al.
Serial No. 10/160,700
Filed: May 30, 2002
For: MULTI-PLY CELLULOSIC PRODUCTS USING HIGH-BULK CELLULOSIC FIBERS

DECISION ON PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT: PROPER REPLY TO OUTSTANDING PATENT OFFICE REQUIREMENT WAS MAILED AND RETURN POSTCARD RECEIVED, filed April 4, 2003. The petition requests that the abandonment, as set forth in the Notice of Abandonment of March 26, 2003, for failure to timely file a proper reply to the Office letter mailed on August 2, 2002, be withdrawn since the applicants did timely file a reply on January 3, 2003. (Copies of the papers filed January 3, 2003 are attached to the instant petition, the copies include the AMENDMENT TRANSMITTAL LETTER/REQUEST FOR EXTENSION OF TIME, AMENDMENT A, DECLARATION OF JOHN A. WESTLAND UNDER 37 C.F.R. § 1.132, a copy of CHECK NO. 144655 in the amount of $930. 00 and the USPTO date-stamped return receipt postcard.)

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicant's response was properly filed on January 3, 2003 as evidenced by the properly completed Certificate of Mailing on the AMENDMENT TRANSMITTAL LETTER as well as the paper entitled AMENDMENT A and the copy of the USPTO date-stamped return receipt postcard indicating receipt of the papers at the USPTO on January 7, 2003. A review of the USPTO financial records relating to the instant application fail to indicate that the $930.00 submitted was ever credited to the instant application file. During a telephone conversation between Ms. Denton from the Law Offices of Christensen, O'Connor, Johnson, Kindness, PLLC, applicant's appointed representatives, and Supervisory Patent Examiner from USPTO Technology Center 1700, Mr. Steven Griffin, Mr. Griffin requested copies of the cancelled check as evidence indicating that the $930.00 submitted was credited to the USPTO, Ms. Denton indicated that they did not have copies of the cancelled check. Mr. Griffin indicated without payment and crediting of the fees to the instant application file that applicant's request for withdrawal of the abandonment could not be granted, therefore, in order to allow for applicant's request to be granted Mr. Griffin indicated that applicant's Deposit Account No. 03-1740 would be charged the $930.00 extension of time fee as is authorized in paragraph E. of the AMENDMENT TRANSMITTAL LETTER/REQUEST FOR EXTENSION OF TIME originally filed January 3, 2003.

Accordingly, in view of the charging of the fees due to Deposit Account 03-1740, any holding of abandonment for failure to timely file a proper reply to the Office letter mailed on August 2, 2002 is hereby vacated and the application is returned to pending status. The application shall be forwarded to the technical support staff for charging of the required fees due and processing and entry of the amendment originally filed January 3, 2003 and then to the examiner for consideration of the papers.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

WEYERHAEUSER COMPANY
INTELLECTUAL PROPERTY DEPT., CH 1J27
P.O. BOX 9777
FEDERAL WAY WA 98063

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NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

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OFFICE OF PETITIONS

In re Application of

Alan Clingan

Application No. 10/160,721

Filed: June 3, 2002

Attorney Docket No. CAT-1

: DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 17, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a timely response to the final Office action mailed October 7, 2005. No response was received within the allowable period and the application became abandoned on January 8, 2006. A Notice of Abandonment was mailed on May 3, 2006

The Request for Continued Examination and amendment filed May 17, 2007, are noted.

The request to change power of attorney for the application, filed May 17, 2007, is noted and made of record.

The application file is being forwarded to Technology Center 3600, GAU 3654 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

Enclosures: "Notice Regarding Change of Power of Attorney"
"Notice of Acceptance of Power of Attorney"

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/160,721	06/03/2002	Alan Clingan	CAT-1

CONFIRMATION NO. 4354

OC000000025241731

23117
NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

Date Mailed: 08/08/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/17/2007.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
ATTORNEY/APPLICANT COPY

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/160,721	06/03/2002	Alan Clingan	CAT-1

CONFIRMATION NO. 4354

OC000000025241700

22855
RANDALL J. KNUTH P.C.
901 PIMLICO DRIVE , SUITE 1A
CENTERVILLE, OH 45459

Date Mailed: 08/08/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/17/2007.

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

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
NEW ATTORNEY/AGENT COPY

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/160,721	06/03/2002	Alan Clingan	CAT-1

CONFIRMATION NO. 4354

OC000000025241700

22855
RANDALL J. KNUTH P.C.
901 PIMLICO DRIVE , SUITE 1A
CENTERVILLE, OH 45459

Date Mailed: 08/08/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/17/2007.

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

Kenya A. S. Mayhew

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1700 S. Patterson Blvd.
Dayton OH 45479-0001

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In re Application of :
Korenevsky, et al. :
Application No.: 10/160,754 :
Filed: May 31, 2002 : ON PETITION
Attorney Docket No.: 10520 :
For: RESTARTABLE SCALABLE DATABASE SYSTEM UPDATES WITH USER DEFINED RULES

This is a decision on the petition under 37 CFR 1.137(b), filed February 1, 2006 (certificate of mailing date January 25, 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 May 18, 2005. An amendment, filed July 27, 2005 (certificate of mailing date July 21, 2005) failed to place this application in *prima facie* condition for allowance, as explained in the August 15, 2005 Advisory action. No extensions of time were obtained pursuant to 37 CFR 1.136(a). Therefore, this application became abandoned on August 19, 2005. A Notice of Abandonment was mailed on December 19, 2005.

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

The petition fee of $1,500.00 will be charged to deposit account no. 14-0225.

The Notice of Appeal filed February 1, 2006 (certificate of mailing date January 25, 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.**

After the mailing of this decision, the file will be forwarded to Technology Center AU 2165.

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

E. Shirene Willis

E. Shirene Willis
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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170 HARBOR WAY
P.O. BOX 511
SOUTH SAN FRANCISCO CA 94083-0511

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JUL 0 6 2005

OFFICE OF PETITIONS

In re Application of :
Lori Friedman et al. :
Application No. 10/160,758 : ON PETITION
Filed: June 3, 2002 :
Attorney Docket No. EX02-089C :

This is a decision on the petition filed May 2, 2005, to revive the above identified application under 37 CFR 1.137(b)[1].

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

This application became abandoned on October 21, 2005, for failure to file a timely response to a Restriction Requirement mailed September 20, 2005, which set a one month shortened statutory period for reply. No extensions of the time for reply under 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed April 1, 2005.

The petition fee in the amount of $1500.00 has been applied to the finance records for the instant patent application.

The response to the Restriction Requirement filed May 2, 2005 will be referred to Technology Center 1642 for further processing.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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

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

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

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

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

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Paper No.

MARCIA L. DOUBET LAW FIRM
PO BOX 422859
KISSIMMEE FL 34742

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MAR 3 1 2009
OFFICE OF PETITIONS

In re Application of	:	
Gary L. Macomber and Thyra L.	:	DECISION ON PETITION
Rauch	:	PURSUANT TO
Application No. 10/160,771	:	37 C.F.R. § 1.183
Filed: June 3, 2002	:	
Attorney Docket No.	:	
RSW920010231US1	:	
Title: INTEGRATED WIZARD USER	:	
INTERFACE	:	

This is in response to the petition filed pursuant to 37 C.F.R. § 1.183 on November 17, 2008. Petitioner has requested the waiver of the requirement present in 37 C.F.R. § 1.131 that each of the inventors sign the declaration of prior inventorship.[1]

This petition pursuant to 37 C.F.R. § 1.183 is **DISMISSED**.

BACKGROUND

The above-identified application was filed on June 3, 2002, with a 37 C.F.R. § 1.63 declaration signed by each joint inventor. On September 18, 2008, a non-final Office action was mailed. As part of the response to this Office communication, Applicants filed a "DECLARATION OF FACT UNDER 37 C.F.R. § 1.131," so as to

1 A petition pursuant to 37 C.F.R. § 1.47 is only applicable to an original oath or declaration pursuant to 37 C.F.R. § 1.63.

attempt to overcome certain rejections contained therein. Mr. Rauch has executed this Rule 1.131 declaration, but Mr. Macomber has not.

Petitioner has filed this petition, seeking the acceptance of the Rule 1.131 declaration without the signature of inventor Macomber. Petitioner has indicated that the signature of inventor Macomber cannot be obtained as he is deceased.[2]

RELEVANT REGULATIONS AND PORTION OF THE MPEP

37 C.F.R. § 1.183 sets forth, *in toto*:

> All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(f).

37 C.F.R. § 1.131(a) sets forth, *in pertinent part*:

> When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, MPEP § 715.04(I)(B) sets forth, *in toto*:

> An affidavit or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection. For example, one of two joint inventors is accepted where it is shown that one of the joint inventors is the sole inventor of the claim or claims under rejection.

ANALYSIS

Here, there has not been a party qualified under 37 C.F.R. §§ 1.42, 1.43, or 1.47. In addition, Petitioner does not contend that less than all of the named inventors of the

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2 See petition, page 2 and Rule 1.131 declaration, paragraph 2.

application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the revised Rule 1.131 declaration include all of the joint inventors.

This petition cannot be granted, as **Petitioner has not asserted, much less established, the existence of an extraordinary situation such that justice requires the waiver of the requirement that the Rule 1.131 declaration be executed by both joint inventors**.

On renewed petition, Petitioner will need to assert the existence of an extraordinary situation, such that justice requires the waiver of the requirement that both joint inventors must execute the Rule 1.131 declaration.

Moreover, it is noted that Petitioner has indicated that Mr. Macomber is deceased, however the petition is silent as to any efforts that might have been made to secure the signature of his legal representative.

Petitioner will note that Rule 1.47 is not applicable to the current set of facts, however it does involve a parallel set of circumstances - the unavailability of an inventor.

Prior to filing a renewed petition, Petitioner must attempt to identify the legal representative of the deceased inventor.

If Petitioner is able to secure the signature of this individual on the Rule 1.131 declaration, the submission of the same (along with the required assertions discussed above) would be considered fully responsive to this decision.

If Petitioner is not able to secure the signature of this individual on the Rule 1.131 declaration, Petitioner must then indicate the steps taken to obtain this individual's signature on the Rule 1.131 declaration.

- If Petitioner alleges a refusal to sign on the part of the legal representative of the deceased inventor, Petitioner must establish that a *bona fide* attempt was made to present a copy of the application papers to the legal representative of the deceased inventor[3] (which would require a known address). A refusal by a the legal representative of a deceased inventor to sign an oath or declaration when he/she has not been presented with the

3 See MPEP § 409.03(d).

application papers does not itself suggest that he/she is refusing to join the application unless it is clear that he/she understands exactly what he/she is being asked to sign and refuses to accept the application papers. It is reasonable to require that the legal representative of the deceased inventor be presented with the application papers before a petition such as this is granted, since such a procedure ensures that the legal representative of the deceased inventor is apprised of the application to which the oath or declaration is directed.[4]

- If the legal representative of the deceased inventor cannot be located, Petitioner is required to establish that a diligent effort was made to locate the same. Petitioner will need to verify the identity and address of the legal representative of the deceased inventor or to determine his/her forwarding address, and to send the complete application papers to that address for consideration by the same.[5] Petitioner must provide a showing detailing the attempts that were made to obtain a forwarding address or to locate the legal representative of the deceased inventor by means such as through E-mail, telephone, or the Internet. If this search is sufficiently broad so as to provide a reasonable opportunity to locate this individual, and it is then averred that such attempts failed, then Petitioner will have provided the necessary proof that the legal representative of the deceased inventor cannot be reached. Details of the efforts to locate the non-signing inventor are to be set forth in an affidavit or declaration of facts by a person having first hand knowledge of the details.

CONCLUSION

The time period for filing a renewed petition is governed by 37 C.F.R. § 1.181(f). Therefore, if reconsideration of this decision is desired, any response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision, and **extensions of time under 37 C.F.R. § 1.136(a) are not permitted**. The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.183." This is not a final agency action within the meaning of 5 U.S.C § 704.

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4 In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).
5 See MPEP 409.03(d).

Any subsequent filing pertaining to this matter should indicate that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[6] hand-delivery,[7] or facsimile.[8] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[9]

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

The general phone number for the Office of Petitions that should be used for status requests is (571) 272-3282. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.[10] All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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6 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
7 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
8 (571) 273-8300- please note this is a central facsimile number.
9 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
10 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any of Petitioner's further action(s).

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PO BOX 422859
KISSIMMEE FL 34742

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JUN 16 2009

OFFICE OF PETITIONS

In re Application of	:	
Gary L. Macomber and Thyra L.	:	DECISION ON RENEWED
Rauch	:	PETITION PURSUANT TO
Application No. 10/160,771	:	37 C.F.R. § 1.183
Filed: June 3, 2002	:	
Attorney Docket No.	:	
RSW920010231US1	:	
Title: INTEGRATED WIZARD USER	:	
INTERFACE	:	

This is in response to the renewed petition pursuant to 37 C.F.R. § 1.183, filed on June 1, 2009.[1] Petitioner has requested the waiver of the requirement present in 37 C.F.R. § 1.131 that each of the inventors sign the declaration of prior inventorship.[2]

This renewed petition pursuant to 37 C.F.R. § 1.183 is **GRANTED**.

BACKGROUND

The above-identified application was filed on June 3, 2002, with a 37 C.F.R. § 1.63 declaration signed by each joint inventor. On September 18, 2008, a non-final Office action was mailed. As part of the response to this Office communication, Applicants filed a "DECLARATION OF FACT UNDER 37 C.F.R. § 1.131," so as to attempt to overcome certain rejections contained therein. Mr. Rauch has executed this Rule 1.131 declaration, but Mr. Macomber has not.

1 It is noted that May 30, 2009 fell on a Saturday.
2 A petition pursuant to 37 C.F.R. § 1.47 is only applicable to an original oath or declaration pursuant to 37 C.F.R. § 1.63.

Petitioner filed an original petition, seeking the acceptance of the Rule 1.131 declaration without the signature of inventor Macomber. Petitioner has indicated that the signature of inventor Macomber cannot be obtained as he is deceased.[3]

RELEVANT REGULATIONS AND PORTION OF THE MPEP

37 C.F.R. § 1.183 sets forth, *in toto*:

> All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(f).

37 C.F.R. § 1.131(a) sets forth, *in pertinent part*:

> When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, MPEP § 715.04(I)(B) sets forth, *in toto*:

> An affidavit or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection. For example, one of two joint inventors is accepted where it is shown that one of the joint inventors is the sole inventor of the claim or claims under rejection.

PROCEDURAL HISTORY AND ANALYSIS

An original petition pursuant to 37 C.F.R. § 1.183 was filed on November 17, 2008, and was dismissed via the mailing of a decision on March 31, 2009.

With this renewed petition, Petitioner has asserted the existence of an extraordinary situation where justice requires waiver of the rules. Moreover, Petitioner has included a Rule

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3 See petition, page 2 and Rule 1.131 declaration, paragraph 2.

1.131 declaration that has been executed by the legal representative of the deceased inventor.

The renewed petition is granted to the extent that the Rule 1.131 declaration of June 1, 2009 may be entered, despite the fact that the requirement that all of the inventors sign the declaration has not been satisfied. **This is not a decision on the merits of the declaration.**

The Technology Center will be notified of this decision. It is noted that the Examiner has already rendered a decision on this Rule 1.131 declaration, prior to the entry of the same (see Final Office action, dated June 4, 2009).

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[4] 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

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

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JUL 2 7 2004

OFFICE OF PETITIONS

In re Application of	:	
Larry M. Miller et al	:	
Application No. 10/160,817	:	ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. 24818A	:	

This is a decision on the petition, filed July 23, 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 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 Wan Laymon at (703) 306-5685.

This matter is being referred to Technology Center AU 1711 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).

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OFFICE OF PETITIONS

In re Application of	:	
Miller et al.	:	DECISION ON PETITION
Application No. 10/160,817	:	
Filed: May 31, 2002	:	
Attorney Docket No. 24818A	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed August 22, 2008.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper reply to the final Office action mailed March 9, 2006. The Office action set a three (3) month shortened statutory period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No proper reply having been received and no extensions of time obtained, the above-identified application became abandoned on June 10, 2006. A courtesy Notice of Abandonment was mailed on October 30, 2006.

In response, applicants filed the instant petition. The petition states the reply was previously filed in the form of a continuation-in-part application on September 8, 2006, payment of the petition fee and the required statement of unintentional delay. Petitioner seeks revival solely for continuity purposes.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the application, the application is again abandoned in favor of continuation-in-part application (application No. 11/517,748) received September 8, 2006.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of

Terasawa et al.

Application No. 10/160,874

Filed: May 31, 2002

Attorney Docket No. 010405

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 4, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 3, 2006, which set a shortened statutory period for reply of three (3) months. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the statutory period. Accordingly, the application became abandoned on January 4, 2007.

The amendment filed April 4, 2007, is noted and made of record.

The request for extension of time within the third month, filed April 4, 2007, is noted but cannot be granted as the request was made outside the maximum statutory period for reply. The amount of $1020.00 will be refunded, in due course.

The application is being forwarded to Technology Center 2600, GAU 2616 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

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FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER
1300 I STREET N.W.
WASHINGTON, DC 20005-3315

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APR 27 2006

OFFICE OF PETITIONS

In re Application of Frederick J. McCarty Application No. 10/160,883 Filed: June 3, 2002 Attorney Docket No. 03804.0164-16000	: : : : : :	DECISION ON PETITION TO MAKE SPECIAL UNDER 37 CFR 1.102(c)(1)

This is a decision on the petition under 37 CFR 1.102(c)(1), filed March 23, 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 petition includes a declaration by Frederick J. McCarty attesting that he is over 65 years of age. Accordingly, the above-identified application has been accorded "special" status.

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

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

This matter is being referred to Technology Center AU 1625 for action on the merits commensurate with this decision.

Wan Laymon
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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JAN 3 1 2008

FINNEGAN,HENDERSON,FARABOW,GARRETT & DUNNER L.L.P
1300 I STREET N.W.
WASHINGTON, DC 20005-3315

In re Application of	:
Frederick J. McCarty	:
Serial No.: 10/160,883	: PETITION DECISION
Filed: June 3, 2002	:
Attorney Docket No.: 03804.0164-16000	:

This is in response to the petition under 37 CFR 1.59(b), filed January 14, 2008, to expunge Information from the above identified application.

Petitioner requests that nine pages, specifically pages 239-247, at the end of the 247 page Foreign Reference dated April 12, 2004, be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The information is described as nine pages having no relevance to this application, and, in fact, relate to another confidential matter. The nine pages to which applicant refers have been determined to have no bearing on the determination of patentability of this application. In view of this determination, expungement of the information is appropriate. The file entries for those documents have been closed and as such the documents are no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, applicant's petition is **GRANTED**.

Should there be any questions with respect to this decision, please contact Marianne C. Seidel by mail addressed to: Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0584 or by facsimile transmission at general Office facsimile number.

Marianne C. Seidel
Quality Assurance Specialist/Program Manager
Technology Center 1600

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APR 14 2006

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

FISH & RICHARDSON P.C.
P.O BOX 1022
Minneapolis MN 55440-1022

In re Application of:
HRASTAR, SCOTT, et al.
Application Serial No.: 10/160,904
Filed: June 3, 2002
For: **METHODS AND SYSTEMS FOR IDENTIFYING NODES AND MAPPING THEIR LOCATIONS**

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181 filed February 9, 2006 to prevent issuance of U.S. Patent No. 7,002,943.

The Petition is **DISMISSED**.

The patent issued on February 21, 2006. Therefor, the request is deemed moot. It is noted that applicant has requested interference with the aforementioned patent. In accordance with MPEP 708.01, this application is considered "special".

The application file will be forwarded to the examiner for special prosecution.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/160,906	05/30/2002	Lawrence James DeLucas	21085.0038U5	3255

21839 7590 01/26/2005
BURNS DOANE SWECKER & MATHIS L L P
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER
COLE, MONIQUE T

ART UNIT	PAPER NUMBER
1743	

DATE MAILED: 01/26/2005

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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JAN 2 6 2005

In re Application of	:	
DELUCAS, LAWRENCE JAMES	:	NOTICE OF WITHDRAWAL
Serial No. 10/160,906	:	FROM ISSUE
Filed: May 30, 2002	:	UNDER 37 CFR 1.313(b)
For: METHOD FOR SCREENING CRYSTAL-	:	
LIZATION CONDITIONS IN SOLUTION	:	
CRYSTAL GROWTH	:	

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 at Jill Warden (571) 272-1267.

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

BURNS DOANE SWECKER & MATHIS LLP
POST OFFICE BOX 1404
ALEXANDRIA VA 22313-1404

cc: Allowed Files—Pk3-910

UNITED STATES PATENT AND TRADEMARK OFFICE

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CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

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OFFICE OF PETITIONS

In re Patent No. 7,569,383	:
Kleanthous et al.	:
Issue Date: August 4, 2009	:
Application No. 10/160,939	: DECISION ON REQUEST FOR
Filed: May 31, 2002	: RECONSIDERATION OF
Attorney Dkt. No. 06132/063002	: PATENT TERM ADJUSTMENT
Title: CHIMERIC FLAVIVIRUS	:
VECTORS	:
	:

This is a decision on the "APLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed September 29, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from four hundred seventy-six (476) days to five hundred ninety-eighty (598) days. This matter is being properly treated under 37 CFR 1.705(d).

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

On August 4, 2009, the above-identified application matured into US Patent No. 7,569,383 with a patent term adjustment of 476 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

The Office acknowledges submission of the $200.00 fee set forth in 37 C.F.R. § 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 35 U.S.C. §154(b)(1)(A) overlaps with a delay under 35 U.S.C. §154(b)(1)(B) only if the delays occur on the same day. Patentees assert entitlement to an

additional 122 days of pursuant to 37 CFR § 1.703(b). Thus, patentees request that the determination of patent term adjustment be increased to a total of five hundred ninety-eight (598) days (the sum of the period of three-year delay (122 days) and the period of examination delay (650 days) minus applicants' delay (174 days). Patentees do not dispute the 174-day reduction for applicants' delay.

A request for continued examination was filed September 30, 2005. The Office finds that as of September 29, 2005, the day before the filing of the RCE, the application was pending three years and 122 days after its filing date (June 1, 2005 to September 29, 2005). At the time of filing of the RCE on September 30, 2008, a period of adjustment of 204 days was entered for Office delay pursuant to 37 CFR 1.702(a)(1) (subsequent to the filing of the RCE, an adjustment of 233 days was accorded pursuant to 37 1.702(a)(2) and an adjustment of 213 days was accorded pursuant to 37 CFR 1.702(a)(4)). At issue is whether patentee should accrue an additional 122 days of patent term adjustment for the Office taking in excess of three years to issue the patent as well as 204 days for Office failure to take a certain action within a specified time frame (or examination delay).

The Office contends that the entire 122-day period of delay in issuance of the patent overlaps with the period of 204 days of examination delay. 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. 56366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

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 date on which the application was filed overlap with the actual dates in the periods for failure of the Office to take action within specified time frames.

In this instance, 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 during which the application was pending before the Office, May 31, 2002 until the day before the filing of the RCE on September 29,

2005. 204 days of patent term adjustment were accorded prior to the filing of the RCE for the Office failing to respond within specified time frames during the pendency of the application. All of the 122 days for Office delay in issuing the patent overlap with the 204 days of Office delay accrued prior to submission of the RCE. Entry of both 122 days pursuant to 37 CFR §1.702(b) for the Office taking in excess of three years to issue the patent and 204 days pursuant to 37 CFR §1.702(a)(1) for Office examination delay is neither permitted nor warranted. The Office did not delay 204 days and also delay another 122 days. As of the filing of the RCE on September 30, 2005, the greater period, 204 days, is the actual number of days issuance of the patent was delayed by the Office.

Accordingly, at issuance, the Office properly entered no additional days of patent term adjustment for the Office taking in excess of 3 years to issue the patent, having considered the 204 days of examination delay under 37 CFR 1.702(a)(1) that occurred prior to the filing of the RCE as well as the 233 days of examination delay under 37 CFR 1.702(a)(2) and 213 days of examination pursuant to 37 CFR 1.702(a)(4) that occurred subsequent to the filing of the RCE, reduced 174 days under 37 CFR 1.704 for applicant delay.

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

Telephone inquiries specific to this matter should be directed to Charlema Grant, Petitions Attorney, at (571) 272-3215.

/ALESIA M. BROWN/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

Mail Date: 04/20/2010

Applicant	: Harold Kleanthous	: DECISION ON REQUEST FOR
Patent Number	: 7569383	: RECALCULATION of PATENT
Issue Date	: 08/04/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/160,939	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/31/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **597** 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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TIMOTHY P. O'HAGAN
8710 KILKENNY CT
FORT MYERS FL 33912

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OFFICE OF PETITIONS

In re Application of	:	
Robert M. Nebiker, et al.	:	
Application No. 10/160,949	:	DECISION ON PETITION
Filed: May 31, 2002	:	TO WITHDRAW
Attorney Docket No. 24831-023CIP	:	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 16, 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 remain 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 September 8, 2006.

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: ADAM MEYERSON, TELANTIS RESEARCH
791 WYE ROAD
AKRON, OH 44333

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Paper No. 4

CHRISTENSEN O'CONNOR JOHNSON KINDNESS
1420 FIFTH AVENUE, SUITE 2800
SEATTLE, WA 98101-2347

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OCT 2 4 2002

OFFICE OF PETITIONS

In re Application of :
Naofumi Takagi :
Application No. 10/160,966 : NOTICE
Filed: May 31, 2002 :
Attorney Docket No. SUSU119216 :

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 2124.

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

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695 KENMOOR, S.E.
P O BOX 2567
GRAND RAPIDS, MI 49501

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OFFICE OF PETITIONS

In re Application of :
William O. Gerold, et al. :
Application No. 10/160,970 :
Filed: May 31, 2002 :
Attorney Docket No. VAN66 P-300 :

ON PETITION

This is a decision on the petition, filed March 30, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on March 10, 2005, using a Certificate of Mailing or Transmission under 37 CFR 1.8 dated March 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 forwarded to Technology Center AU 3653 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).

#6

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
Washington, D.C. 20231

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AUG 16 2002

LICENSING & REVIEW

Gates & Cooper LLP
Howard Hughes Center.
6701 Center Drive West. Suite 1050
Los Angles, CA 90045

In re Application of:
John R. Subjeck et al:
For Serial No. 10/161,028

DECISION ON
REQUEST FOR
RECONSIDERATION

Filed: June 3, 2002
For: **STRESS PROTEIN COMPOSITIONS AND METHOD FOR PREVENTION AND TREATMENT OF CANCER AND INFECTIOUS DISEASE**

This is a decision on the REQUEST FOR RECONSIDERATION filed August 7, 2002, responding to the communication (FORM PTOL-456) mailed July 30, 2002.

The request has been **DENIED** to the extent indicated below.

42 U.S.C. 2182 states in part "**... useful in the production or utilization of special nuclear material or atomic energy**". A review of the application file history reveals among other things the use of a radioactive isotope "^{53}Cr " as disclosed in at least page 89 of the instant specification. Therefore under the directions from the Department of Energy (DOE) this application has been made available to them under 42 U.S.C. 2182 since the following subject matter relates to at least one of the following:

G. Materials, apparatus and methods concerning isotope and/or radioactive source technology including those utilizing (including responsive to) radioactive sources in:

a. Life Sciences such as medicine (diagnostic and therapeutic), ecology, disease and pest control, animal husbandry, etc.

b. Industrial processes such as food processing, sterilization, polymer production, etc.

c. Investigations of the environment or the earth

H. Instruments employing a radioactive source and/or radioactivity detector in the operation thereof.

Applicant is reminded that a response is due within forty-five days of the mailing date of the communication (FORM PTOL-456). The communication having been mailed July 30, 2002.

Joanne P. Hodge
Supervisory Legal Instruments Examiner
Licensing and Review
Patent Technology Center 3600

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JUN 2 2005

#7

Honeywell International, Inc.
Law Dept. AB2
PO Box 2245
Morristown, NJ 07962-2245

In re Application of	:	
Dennis W. Smith et al.	:	**DECISION ON PETITION**
Application No. 10/161,031	:	**TO WITHDRAW THE**
Filed: June 3, 2002	:	**HOLDING OF ABANDONMENT**

For: METHODS AND APPARATUS FOR TUNED AXIAL DAMPING IN ROTATING MACHINERY WITH FLOATING BEARING CARTRIDGE

This is a decision on applicant's Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181 filed in the United States Patent and Trademark Office on December 20, 2004.

The petition is **DISMISSED**.

A review of the file record indicates that the application was held abandoned for failure to timely file a response to the Office action mailed April 12, 2003, which set a three-month shortened statutory period. The application became abandoned at midnight on October 12, 2003, and a Notice to that effect was mailed on November 5, 2003.

Petitioner contends that a response was filed on May 28, 2003 by facsimile transmission. In support thereof, petitioner submits, a copy of a response bearing a Certificate of Transmission signed by Paul D. Amrozowicz and dated May 28, 2003.

Petitioner's evidence of a timely filing based on a Certificate of Transmission is considered to be insufficient. In this regard, any petition to withdraw the holding of abandonment based upon a Certificate of Transmission by facsimile must include the following requirements:

(1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and

(2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512), <u>by the person who signed the certificate</u>.

While meeting requirement (1) above the petition fails, under requirement (2), to also include a statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of sending the original

response by facsimile transmission on the date indicated on the certificate, by the person who signed the certificate, in this instance Paul D. Amrozowicz.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6587

KJD/js: 5/24/05

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AUG 29 2005

#9

Honeywell International, Inc.
Law Dept. AB2
101 Columbia Road
PO Box 2245
Morristown, NJ 07962-2245

In re Application of	:	
Dennis W. Smith et al.	:	**DECISION ON PETITION**
Application No. 10/161,031	:	**TO WITHDRAW THE**
Filed: June 3, 2002	:	**HOLDING OF ABANDONMENT**

For: METHODS AND APPARATUS FOR TUNED AXIAL DAMPING IN ROTATING MACHINERY WITH FLOATING BEARING CARTRIDGE

This is a decision on applicant's renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181 filed in the United States Patent and Trademark Office on July 27, 2005. The renewed petition being filed in response to the decision mailed June 02, 2005, on the petition filed December 20, 2004.

The petition is **GRANTED**.

A review of the file record indicates that the application was held abandoned for failure to timely file a response to the Office action mailed April 12, 2003, which set a three-month shortened statutory period. The application became abandoned at midnight on October 12, 2003, and a Notice to that effect was mailed on November 5, 2003.

Petitioner contends that a response was filed on May 28, 2003 by facsimile transmission. In support thereof, petitioner submits, a copy of a response bearing a Certificate of Transmission signed by Paul D. Amrozowicz and dated May 28, 2003.

Any petition to withdraw the holding of abandonment based upon a Certificate of Transmission by facsimile must include the following requirements:

(1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and

(2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512), by the person who signed the certificate.

While the petition filed December 20, 2004, met requirement (1) above it failed under requirement (2), to also include a statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of sending the original response by facsimile transmission on the date indicated on the certificate, by the person who signed the certificate, in this instance Paul D. Amrozowicz. As the instant petition has provided a statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of sending the original response by facsimile transmission on the date indicated on the certificate, by the person who signed the certificate, in this instance Paul D. Amrozowicz, the petition is **GRANTED**.

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. The application will then be forwarded to the examiner for consideration of the May 28, 2003 amendment

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6611

SNM/rjc: 08/23/05

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LAHIVE & COCKFIELD
28 STATE STREET
BOSTON MA 02109

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Peter Deak et al.
Application No. 10/161,051
Filed: May 30, 2002
Attorney Docket No. :CCI-021CP

This is a decision on the petition filed March 24, 2003 by facsimile transmission under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior-filed provisional application.

The petition is **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). 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) of the prior-filed application, unless previously submitted;[1]

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application filed May 30, 2002, is a CIP of PCT/GB01/01297 which was filed on March 23, 2001 within twelve months of the filing date of the prior provisional application, Application No. 60/191,860, which was filed on March 24, 2000, and for which priority is claimed. A reference to the prior provisional application has been included in an amendment to the first sentience of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5).

---

[1]Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference (i.e., in an 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).

Also, the reference to the prior-filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. *See* 35 USC 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 USC 119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/191,860 is granted as of the date of filing the petition.

A corrected filing receipt which includes the priority claim to provisional Application No. 60/191,860, filed March 24, 2000, and the revised projected publication date of February 6, 2003 for the instant application accompanies this decision on petition.

As authorized, the $1300 fee required by 37 CFR 1.78(a)(6) will be charged to petitioner's Deposit Account No. 12-0080.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Patricia Faison-Ball in the Office of Petitions at (703) 305-4497.

This application is being forwarded to Technology Center AU 1642 for processing the amendment filed March 24, 2003 and for consideration by the examiner of the claim under 35 USC § 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior provisional application, Application No. 60/191,860, filed March 24, 2000.

Beverly Flanagan
Supervisory Petitions Examiner
Office of Petitions

ATTACHMENT: CORRECTED FILING RECEIPT

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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FOLEY & LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

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OFFICE OF PETITIONS

In re Application of	:	
Cindy Orser et al	:	
Application No. 10/161,061	:	DECISION ON PETITION
Filed: May 30, 2002	:	TO MAKE SPECIAL UNDER
Attorney Docket No. ADL-100	:	37 CFR 1.102(c)(1)

This is a decision on the petition under 37 CFR 1.102(c)(1), filed May 17, 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 petition includes a statement by Eugene A. Davidson attesting that he is over 65 years of age. Accordingly, the above-identified application has been accorded "special" status.

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

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

This application is being referred to Technology Center AU 1743 for action on the merits commensurate with this decision.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Paper No. 8

ZAGORIN O'BRIEN & GRAHAM LLP
401 W 15th Street
Suite 870
Austin, TX 78701

MAILED

JUL 2 2 2003

Technology Center 2100

In re Application of: Satish N. Anand	)	
Application No. 10/161,070	)	
Filed: May 31, 2002	)	**DECISION ON REQUEST FOR**
For: DATA ENCRYPTION AND	)	**WITHDRAWAL AS ATTORNEY**
DECRYPTION SYSTEM AND	)	
METHOD USING MERGED	)	
CIPHERS	)	

This is a decision on the Request To Withdraw from Representation filed May 6, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

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

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

cc: GAMMAGE & BURNHAM
Two North Central Ave.
18th Floor
Phoenix, AZ 85004

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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INGRASSIA FISHER & LORENZ, P.C.
7150 E. CAMELBACK, STE. 325
SCOTTSDALE, AZ 85251

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FEB 14 2007

OFFICE OF PETITIONS

In re Application of	:	
ANAND	:	
Application No.: 10/161,070	:	DECISION ON PETITION
Filing Date: May 31, 2002	:	UNDER 37 CFR 1.137(B)
Attorney Docket No.: 044.0023 (1504.007US1)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 30, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 27, 2006, which set a three (3) month shortened statutory period for response. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, by operation of law, the above-identified application became abandoned on June 28, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of arguments; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action mailed March 27, 2006 is accepted as having been unintentionally delayed.

This application is being referred to Technology Center AU 2136 for appropriate action on the reply in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3303.

Bryan Lin

Bryan Lin
Legal Examiner
Office of the Deputy Commissioner
for Patent Examination Policy

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DANN, DORFMAN, HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 2400
PHILADELPHIA, PA 19103-2307

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OCT 20 2009

OFFICE OF PETITIONS

In re Application of	:	
Argenta et al.	:	
Application No. 10/161,076	:	ON PETITION
Filing: June 3, 2002	:	
Attorney Docket No. 0101-P02915US0	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed August 17, 2009, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

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

The instant petition includes a statement (PTO/SB/130 form) by the applicant that he is 65 years of age. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-6059. All other inquiries 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 3771 for action on the merits commensurate with this decision.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

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WASHINGTON, D.C. 20231
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Paper No. 7

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APR 16 2003

OFFICE OF PETITIONS

MUNSCH, HARDT, KOPF & HARR, P.C.
INTELLECTUAL PROPERTY DOCKET CLERK
1445 ROSS AVENUE, SUITE 4000
DALLAS, TX 75202-2790

In re Application of Elias Application No. 10/161,089 Filed: May 31, 2002 Atty. Dkt. No.: 5022.24-1 For: SYSTEM AND METHOD OF MULTIPLEXING TDM AND PACKET DATA	DECISION GRANTING PETITION UNDER 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed March 24, 2003.

The petition is **GRANTED**.

Petitioner has shown that inventor Paul Elias has refused to join in the filing of the above-identified application after having been presented with the application papers.

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

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

After this decision is mailed, the above-identified application will be returned to the Office of Initial Patent Examination for further processing.

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

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

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APR 1 6 2003

OFFICE OF PETITIONS

PAUL ELIAS
3519 WILLOWBROOK DR.
RICHARDSON, TX 75082

In re Application of
Elias
Application No. 10/161,089
Filed: May 31, 2002
Atty. Dkt. No.: 5022.24-1
For: SYSTEM AND METHOD OF
MULTIPLEXING TDM AND PACKET DATA

LETTER

Dear Sir:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0310. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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GARDERE WYNNE SEWELL LLP
INTELLECTUAL PROPERTY SECTION
3000 THANKSGIVING TOWER
1601 ELM ST
DALLAS, TX 75201-4761

Mail Date: 04/21/2010

Applicant	: Paul Elias	: DECISION ON REQUEST FOR
Patent Number	: 7609729	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/161,089	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/31/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1761** 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.

#2

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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/161,101	05/31/2002	Alex Chenchik	018651-000510US

OIPE JC04
OCT 0 7 2002
PATENT & TRADEMARK OFFICE

CONFIRMATION NO. 9570

FORMALITIES LETTER

OC000000008423835

20350
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

Date Mailed: 07/10/2002

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

Items Required To Avoid Abandonment:

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

- The statutory basic filing fee is missing.
  Applicant must submit $ **740** *to complete the basic filing fee for a non-small entity. If appropriate, applicant may make a written assertion of entitlement to small entity status and pay the small entity filing fee (37 CFR 1.27).*
- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(l) of $130 for a non-small entity, must be submitted with the missing items identified in this letter.

The application is informal since it does not comply with the regulations for the reason(s) indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- Substitute drawings in compliance with 37 CFR 1.84 because:
  - drawings have a line quality that is too light to be reproduced (weight of all lines and letters must be heavy enough to permit adequate reproduction) or text that is illegible (reference characters, sheet numbers, and view numbers must be plain and legible) see 37 CFR 1.84(l) and (p)(1));

Items Required To Avoid Processing Delays:

The item(s) indicated below are also required and should be submitted with any reply to this notice to avoid further processing delays.

10/09/2002 WABDELR1 00000092 201430 10161101
01 FC:101 740.00 CH
02 FC:105 130.00 CH
03 FC:102 168.00 CH
04 FC:103 396.00 CH

10161101.100702

- Additional claim fees of **$564** as a non-small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **$1434** for a Large Entity

- **$740** Statutory basic filing fee.
- **$130** Late oath or declaration Surcharge.
- Total additional claim fee(s) for this application is **$564**
  - **$396** for **22** total claims over 20.
  - **$168** for **2** independent claims over 3.

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

Phuong Bui

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

10161101.100702

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#14

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JAN 27 2004

TECHNOLOGY CENTER 2100

Paper No. 14

David S. Kerven
Jones Day
3500 Suntrust Plaza
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3242

In re Application of: Scott Hrastar et al. Application No. 10/161,137 Filed: June 4, 2002 For: SYSTEMS AND METHODS FOR ENCRYPTED NETWORK MANAGEMENT ANDINTRUSION DETECTION	)))))))	**DECISION ON PETITION UNDER M.P.E.P. §708.02(II): INFRINGEMENT**

This is a decision on the petition, filed January 13, 2004, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement, to make the above-identified application special.

A grantable petition under 37 C.F.R. §1.102(c), 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. A fee under 37 C.F.R. for such a petition is required .

Applicant's submission meets all the criteria set out above, accordingly, the Petition is **GRANTED**. The application file is being forwarded to the Examiner of Record for expedited examination.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

#9

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JAN 27 2004

TECHNOLOGY CENTER 2100

Paper No. 9

David S. Kerven
Jones Day
3500 Suntrust Plaza
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3242

In re Application of: Scott Hrastar et al.	)	
Application No. 10/161,142	)	**DECISION ON PETITION**
Filed: June 4, 2002	)	**UNDER M.P.E.P. §708.02(II):**
For: SYSTEMS AND METHODS FOR	)	**INFRINGEMENT**
NETWORK SECURITY	)	

This is a decision on the petition, filed January 13, 2004, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement, to make the above-identified application special.

A grantable petition under 37 C.F.R. §1.102(c), 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. A fee under 37 C.F.R. for such a petition is required .

Applicant's submission meets all the criteria set out above, accordingly, the Petition is **GRANTED**. The application file is being forwarded to the Examiner of Record for expedited examination.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

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Paper No. 11

KATHLEEN WILLIAMS
PALMER & DODGE LLP
111 HUNTINGTON STREET
BOSTON, MA 02199

COPY MAILED

JUL 0 8 2003

OFFICE OF PETITIONS

In re Application of
Lucy Holt et al
Application No. 10/161,145
Filed: May 31, 2002
Attorney Docket No. 8039/2012

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 1600.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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FROM DIRECTORS OFFICE

FEB 13 2007

TECHNOLOGY CENTER 3600

FISH & NEAVE IP GROUP
ROPES & GRAY LLP
1211 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8704

In re application of	:	**DECISION ON PETITION**
Irving Dardik	:	**FOR SECOND SUSPENSION**
Application No. 10/161,158	:	**OF ACTION UNDER**
Filed: May 30, 2002	:	**37 CFR 1.103(a)**
For: PULSED ELECTROLYTIC CELL		

This letter is responsive to the petition for a second suspension of action under 37 CFR 1.103(a) received on December 20, 2006.

The petition is **GRANTED**.

A nonfinal Office action was entered into the record on December 20, 2005. Applicant timely responded to this action on June 20, 2006. This response was accompanied by a request for a six month suspension of action to allow applicant time to comply with examiner's request for independent laboratory verification of applicant's experimental findings. In a letter dated July 27, 2006 the examiner granted applicant's request and suspended action for six months. This period expired on January 27, 2007. On December 20, 2006 applicant submitted a request for a second six month suspension "...in order to more completely present the existing laboratory results obtained by applicant as well as to perform additional experiments in an independent laboratory in line with the Examiner's request."

In view of the complexity of the information requested by the examiner and the time needed to obtain this information, the request for an additional six month suspension of action is deemed to be appropriate and is hereby granted.

Action by the Office on this application is suspended under 37 CFR 1.103(a) for a period of **six months from the date of this letter**. At the end of this period applicant is **required** to notify the examiner and request commencement of prosecution or a further suspension. See MPEP 709. If applicant wishes to commence prosecution earlier than the expiration of the six month period, the examiner should be so notified.

This application will be forwarded to the Head Supervisory Legal Instruments Examiner for processing of the suspension after which the application will be retained until notification from applicant is received or expiration of the six month period whichever occurs first.

Donald T. Hajec, Director
Technology Center 3600
(571) 272-5150

DTH:rar:02/09/07

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AUG 01 2007

TECHNOLOGY CENTER 3600

Greenberg Traurig, LLP
1750 Tysons Boulevard, 12th Floor
McLean, VA 22102

In re application of	:	**DECISION ON PETITION**
Irving I. Dardik	:	**FOR THIRD SUSPENSION**
Application No. 10/161,158	:	**OF ACTION UNDER**
Filed: May 30, 2002	:	**37 CFR 1.103 (a)**
For: PULSED ELECTROLYTIC CELL		

This letter is responsive to the petition for a third suspension of action under 37 CFR 1.103(a) received on July 25, 2007.

The petition for suspension of action under 37 CFR 1.103(a) is **GRANTED**.

A grantable petition for suspension of action under 37 CFR 1.103(a) requires:

1) A showing of good and sufficient cause for suspension of action, and
2) The fee set forth in 37 CFR 1.17(g), unless such cause is the fault of the Office.

Applicant filed a petition on June 20, 2006 to suspend action by the examiner until an independent laboratory verification of applicant's experimental findings, as requested by the examiner of record in this case, could be obtained. A decision granting a 6 month suspension was mailed July 27, 2006. In a second petition filed December 20, 2006, the applicant requested an additional 6 month suspension "in order to more completely present the existing laboratory results obtained by applicant as well as perform additional experiments in an independent laboratory in line with the examiner's request". A decision granting a second 6 month suspension was mailed on February 20, 2007. In the latest petition filed July 25, 2007, the applicant requests an additional 6 month suspension because the independent laboratory verification the examiner requested has not yet been completed.

There being ongoing experimental verification of applicant's experimental findings which may materially impact a decision on the patentability of applicant's invention, it is deemed that the existence of these endeavors constitute a good and sufficient reason why a second suspension should be granted, and thus applicants' request for an additional period of suspension of six (6) months is reasonable and will be **GRANTED**. However, at the conclusion of this latest period of suspension, applicant will have had

18 months of time to complete the experimental testing. Suspensions of action cannot go on indefinitely. As a result, applicant should not expect to receive another suspension at the conclusion of this latest 6 month suspension period. Any such future request will need to go into specific detail as to what experimental procedures have taken place, when they occurred, and why they could not have been completed by the end of this suspension period. Specific evidence would need to be provided as to why non-completion of the required testing by the end of 18 months was unavoidable.

Action by the Office on this application is suspended under 37 CFR 1.103(a) for a period of six (6) months from the date of this letter. At the end of this period applicant is required to notify the examiner and request commencement of prosecution or a further suspension. See MPEP 709. If applicant wishes to commence prosecution earlier than the expiration of the 6 month period, the examiner should be so notified.

The period for suspension will be six (6) months from the date of this letter.

Any questions surrounding this decision should be directed to Quality Assurance Specialist Steven Meyers at (571) 272-6611.

Donald Hajec, Director
Technology Center 3600
(571) 272-5150

snm: 7/26/07

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MAILED
FROM DIRECTOR'S OFFICE

JAN 29 2008

TECHNOLOGY CENTER 3600

Greenberg Traurig, LLP
1750 Tysons Boulevard, 12th Floor
McLean, VA 22102

In re application of	:	**DECISION ON PETITION**
Irving I. Dardik	:	**FOR FOURTH SUSPENSION**
Application No. 10/161,158	:	**OF ACTION UNDER**
Filed: May 30, 2002	:	**37 CFR 1.103 (a)**
For: PULSED ELECTROLYTIC CELL		

This letter is responsive to the petition for a fourth suspension of action under 37 CFR 1.103(a) received on January 11, 2008.

The petition for suspension of action under 37 CFR 1.103(a) is **DENIED**.

A grantable petition for suspension of action under 37 CFR 1.103(a) requires:

1) A showing of good and sufficient cause for suspension of action, and
2) The fee set forth in 37 CFR 1.17(g), unless such cause is the fault of the Office.

Applicant filed a petition on June 20, 2006 to suspend action by the examiner until an independent laboratory verification of applicant's experimental findings, as requested by the examiner of record in this case, could be obtained. A decision granting a 6 month suspension was mailed July 27, 2006. In a second petition filed December 20, 2006, the applicant requested an additional 6 month suspension "in order to more completely present the existing laboratory results obtained by applicant as well as perform additional experiments in an independent laboratory in line with the examiner's request". A decision granting a second 6 month suspension was mailed on February 20, 2007. In a third petition filed July 25, 2007, the applicant requested an additional 6 month suspension because the independent laboratory verification the examiner requested has not yet been completed. A decision granting a third 6 month suspension was mailed August 1, 2007. In this last decision, applicant was put on notice regarding what would be required to receive any further suspensions. The decision stated "at the conclusion of this latest period of suspension, applicant will have had 18 months of time to complete the experimental testing. Suspensions of action cannot go on indefinitely. As a result, applicant should not expect to receive another suspension at the conclusion of this latest 6 month suspension period. Any such future request will need to go into specific detail as to what experimental procedures have taken place, when they occurred, and why they could not have been completed by the end of this suspension

period. Specific evidence would need to be provided as to why non-completion of the required testing by the end of 18 months was unavoidable".

In this latest petition applicant indicates that he is continuing to work to complete the laboratory verification of applicant's experimental findings. Applicant also indicates that attached reports are provided as a partial response under 37 CFR 1.105 which provide documentation of testing conducted which support the claimed invention. Applicant then explains what future testing is being planned.

However, in the last decision, applicant was required to specifically outline what experimental procedures have taken place, and when they occurred. It would appear that no actual testing has yet been completed by the applicant. The exhibits provided appear to be papers completed by 3rd parties related to the claimed subject matter, and are not the laboratory testing desired by the applicant that has been the reason for the numerous suspensions of prosecution. Applicant was also required to show specific evidence as to why, after 18 months, the non-completion of the desired laboratory testing was unavoidable. There does not appear to be any unavoidable justification for why the desired testing has not yet been completed.

Given that there appears to be no clear end in sight for completion of the desired testing, and that applicant has not supplied the necessary justification for why completion has not yet occurred, no further suspension is seen as being warranted at this time.

In view of the above facts, the petition for a fourth suspension of action is **DENIED.** The application will be forwarded to the examiner of record to treat applicant's June 20, 2006 response to the non-final Office action of December 20, 2005.

Any questions surrounding this decision should be directed to Quality Assurance Specialist Steven Meyers at (571) 272-6611.

Donald Hajec, Director
Technology Center 3600
(571) 272-5150

snm: 1/23/08
SM

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

SEP 21 2004

Mailed:_____

rvk
Paper No.____

In re application of:	:	
John S. Lang	:	
Serial No.: 10/161,171	:	DECISION ON
Filed: June 04, 2002	:	PETITION
For: SECOND EMBODIMENT	:	

This is a decision to the PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT UNDER 37 CFR 1.181 FOR APPLICATION No. 10/161,171, filed May 12, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of May 07, 2004, for failure to timely file a proper response to the Office letter mailed October 27, 2003 be withdrawn. The petitioner asserts that applicant was unable to properly respond to the Office letter of October 27, 2003 because he did not know of the disposition of the co-pending Application Ser. No. 10/147,210.

DECISION

A review of the instant application file indicates that the instant Application Ser. No. 10/161,171 is a Continuation-in-part of Application Ser. No. 09/399,390 (Now U.S.Pat. No. 6,422,735). The Examiner mailed a non-final Office action on October 27, 2003, setting a 3-month shortened statuory period for reply.

A review of the Application Ser. No. 10/141,270 indicates that the Application Ser. No.10/147,210 is a divisional application of Application Ser. No. 09/399,390. The Application Ser. No.10/147,210 was abandoned on October 30, 2002 during preexamination processing. The applicant filed petitions on December 23, 2003 and March 30, 2004 to withdraw the holding of abandonment of the Application

Ser. No.10/147,210. The petition to withdraw the holding of the abandonment of the Application Ser. No. 10/147,210 filed on March 30, 2004 was granted on April 05, 2004. Because the response time period for the Office letter mailed October 27, 2003 of the instant Application Ser.No.10/161,171 overlaps the time period of the petition for the co-pending Application Ser. No. 10/147,270, it may cause the delay of the response to the Office letter of October 27, 2003 of the instant Application Ser. No. 10/161,171 as asserted by the petitioner.

However, it is noted that MPEP 711.03(c)I states :

> Where there is no dispute as to whether an application is abandoned (e.g.. the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

In this case, since the petitioner merely contends the cause for not timely responding to the Office letter of October 27, 2003, the instant petition under 37 CFR 1.181 is not a proper means to revive the unintentionally abandoned application. Accordingly, this application stands abandoned. The applicant may file a new Petition to the Deputy Commissioner for Patent Examination policy under 37 CFR 1.137(b) to revive the instant abandoned application based on unintentional delay.

The Petition is **DENIED**.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

JOHN S. LANG
2209 S. ANCHOVY AVENUE
SAN PEDRO, CA 90732

UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
Commissioner of Patents
P.O. Box 1450
Alexandria, Va. 22313-1450
WWW.USPTO.GOV

Paula A. Borden
BOZICEVIC, FIELD, & FRANCIS LLP
1099 University Avenue, Suite 200
East Palo Alto, California 94303

Date: January 18, 2006
Application No. 10/161,194
Filed: May 28, 2002
Title: CATIONIC LIPOSOME DELIVERY OF TAXANES TO ANGIOGENIC BLOOD VESSELS

ON PETITION
37 CFR 1.84

Receipt is acknowledged of the petition January 11, 2006, under 37 CFR 1.84. The petition will be decided under 37 CFR 1.84(a)(2). The petition was accompanied by the appropriate fee set forth under 37 CFR 1.17(h), three sets of color photographs. The required amendment to the first paragraph of the brief description of the drawings section of the specification has been inserted. The petition is **GRANTED**.

THURMAN K. PAGE, M.A., J.D.
SUPERVISORY PATENT EXAMINER

Thurman K. Page

THURMAN K. PAGE, M.A., J.D.
United States Patent and Trademark Office
Technology Center 1600
SPE, ART UNIT 1615
571-272-0602
Remsem 4A81
571-272-0602

UNITED STATES PATENT AND TRADEMARK OFFICE

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3400 W. PLANO PARKWAY, MS LEGL2
PLANO TX 75075

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AUG 1 1 2008

In re Application of	:	
Soon Teck Gibson Ang et al.	:	
Application No. 10/161,210	:	DECISION ON PETITION
Filed: June 3, 2002	:	PURSUANT TO
Attorney Docket Number: 132812	:	37 C.F.R. § 1.137(B)
(A8774)	:	
Title: IMPLEMENTING AN	:	
INTELLIGENT NETWORK SERVICE	:	
FOR A PACKET-SWITCHED SERVICE	:	
USING A NODE INTERFACING A	:	
MOBILE COMMUNICATIONS NETWORK	:	
TO A PACKET DATA NETWORK	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed April 22, 2008, to revive the above-identified application.

This petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 22, 2007, 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 September 23, 2007. A notice of abandonment was mailed on January 24, 2008.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has submitted the petition fee, an amendment, and the proper statement of unintentional delay. A terminal disclaimer is not required. As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement is not applicable.

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 that was received on April 22, 2008 can be processed.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the

contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay[1]. 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 was intentional, Petitioner must notify the Office.

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

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

---

1 See 37 C.F.R. § 10.18(b); cf. Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).
2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC
P.O. BOX 1995
VIENNA, VA 22183

Mail Date: 04/30/2010

Applicant	: Soon Teck Gibson Ang	: DECISION ON REQUEST FOR
Patent Number	: 7609682	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/161,210	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/03/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1184** 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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RANDY J. PRITZKER
WOLF, GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON, MA 02210

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MAR 29 2007

OFFICE OF PETITIONS

In re Application of	:	
Tessho, Ishida, et al.	:	
Application No. 10/161,216	:	DECISION GRANTING PETITION
Filed: May 31, 2002	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. S01459/70005	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 23, 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 March 12, 2007 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to April Wise at (571) 272-1642.

This application is being referred to Technology Center AU 2621 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 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.*

SCAN! **Please forward case and paper to address shown below.**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 1/24/08 Paper No.: _____

TO SPE OF : ART UNIT 1654 Tsang Cecilia (spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/161233 Patent No.: 6989458

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

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

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

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

Thank You For Your Assistance

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

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

Comments: _____

Cecilia Tsang
SPE

1654
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12-7-06

TO SPE OF : ART UNIT 1654

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/161234 Patent No.: 7087600

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 Check Documents on 1050 form

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

E Young

Certificates of Correction Branch

703-308-9390 ext. 117

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

Cecilia J. Tsang
Supervisory Patent Examiner
Technology Center 1600

Cecilia Tsang — SPE

1654 — Art Unit

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COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Paper No. 6

GIFFORD, KRASS, GROH, SPRINKLE
ANDERSON & CITKOWSKI, PC
280 N OLD WOODARD AVE
SUITE 400
BIRMINGHAM MI 48009

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DEC 1 1 2002

OFFICE OF PETITIONS

In re Application of
James R. Mault et al.
Application No. 10/161,244
Filed: May 31, 2002
For: METABOLIC CALORIMETER
EMPLOYING RESPIRATORY GAS ANALYSIS

ON PETITION

This is a decision on the petition filed September 20, 2002, requesting that Figure 15, 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 September 4, 2002 stating that the application had been accorded a filing date of May 31, 2002 but that Figure 15 appeared to have been omitted.

Petitioners concede that sheet 10 of 16 drawings containing Figure 15 were not present upon filing adding however that the application when filed, included a statement incorporating by reference the prior application. Petitioner asserts that the instant application is a continuation of parent application no. 09/630,398 filed August 2, 2000, which included the drawing page of Figure 15, and that the instant application contained a statement incorporating the parent application, including Figure 15, 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 Figure 15 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 May 31, 2002, with an indication in Office records that Figure 15 while not included with the application papers upon filing, was 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

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Paper No. 6

Peter J. Manso
Edwards & Angell, LLP
350 East Las Olas Boulevard
Suite 1150
Fort Lauderdale, FL 33301-4215

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APR 2 2 2003

OFFICE OF PETITIONS

In re Application of
Wolfe et al.
Application No. 10/161,256
Filed: May 31, 2002
Attorney Docket No. 58217-US (48393)

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 25, 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 July 3, 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 timely obtained. Accordingly, the above-identified application became abandoned on September 4, 2002.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $985.00 extension of time fee submitted with the petition on March 25, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

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

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

Charles Steven Brantley
Petitions Attorney
Office of Petitions

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Paper No. 122104

Skjerven Morrill LLP
25 Metro Dr., Suite 700
San Jose, CA 95110

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TECHNOLOGY CENTER 2800
SPECIAL PROGRAM CENTER

In re Application of:	:	
Le Roy et al.	:	
Serial No.: 10/161,272	:	DECISION ON REQUEST TO WITHDRAW
Filed: May 30, 2002	:	FROM RECORD
Attorney Docket No.: **M-12496 US**	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed March 11, 2004.

A grantable request to withdraw as attorney of record must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of others. A request to withdraw will not be approved unless at least thirty (30) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period, which can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above stated requirements. The request was signed by Norman R. Klivans, on behalf of himself, and all the attorney of record. There is no outstanding Office action at this time.

The request is **APPROVED**.

All future communications from the Office will be directed to Deborah Winocur, at the below address, until otherwise notified by applicant.

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

Hien Phan, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Deborah Winocur
4057 Amaranta Ave.
Palo Alto, CA 94306

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E. THOMAS WHEELOCK
MORRISON & FOERSTER, LLP
755 PAGE MILL ROAD
PALO ALTO, CA 94304-1018

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OFFICE OF PETITIONS

In re Application of
James F. Gausling, et al.
Application No. 10/161,300
Filed: May 29, 2002
Attorney Docket No. 430672000102

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 December 1, 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 Charles D. Holland on behalf of all attorneys of record who are associated with this application.

All attorneys/agents associated with this application have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Office action mailed March 10, 2006 that requires a reply from the applicant.

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: JAMES F. GAUSLING
3016 SUSSEX GARDENS LANE
AUSTIN, TX 78748

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/161,300	05/29/2002	James F. Gausling	430672000102

CONFIRMATION NO. 5473

OC000000023187855

OC000000023187855

E. Thomas Wheelock
Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, CA 94304-1018

Date Mailed: 03/30/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/01/2006.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
FORMER ATTORNEY/AGENT COPY

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ATTN: PATENT GROUP DOCKETING DEPARTMENT
ONE MICROSOFT WAY
REDMOND WA 98052-6399

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OFFICE OF PETITIONS

In re Application of	:	
Chaudhuri et al.	:	DECISION ON
Application No. 10/161,308	:	PETITION
Filed: June 3, 2002	:	
Attorney Docket No. 177776.01	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b), filed November 15, 2006.

The petition is **GRANTED**.

The above-identified application was abandoned for failure to file a timely reply to the final Office action mailed January 3, 2006. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. No proper reply having been received and no extension of time obtained the application became abandoned effective April 4, 2006. The instant petition precedes the mailing of a courtesy Notice of Abandonment.

On petition, petitioner submitted a Request for Continued Examination (RCE) and submission under §1.114 (in the form of an amendment)(and RCE fee); paid the petition fee; and made the required statement of unintentional delay.

Technology Center AU 2161 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the RCE and submission submitted on petition filed January 3, 2007.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Paper No. 4

Steven J. Funk
Sprint Corporation
Mailstop: KSOPHT0101-Z2100
6931 Sprint Parkway
Overland Park, KS 66251

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OFFICE OF PETITIONS

In re Application of
Jones et al.
Application No. 10/161,313
Filed: June 3, 2002
Attorney Docket No. 1773
Title: Method and System for
Intersystem Wireless Communications
Session Hand-Off

DECISION GRANTING DECISION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the "Petition to Accept Unintentionally Delayed Priority Claim under 37 C.F.R. § 1.78(a)(3)," filed June 9, 2003.

The petition is **GRANTED**.

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

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

The instant application was filed on June 3, 2002, and was pending at the time of filing of the instant petition. The petition includes an application data sheet (ADS) containing a reference to the prior-filed nonprovisional application, as required by 37 CFR 1.78(a)(2)(iii); payment of the petition fee; and 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.

---

[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).

Also, 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). Further to this, 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 nonprovisional application, accompanies this decision on petition.

The petition, submitted by an attorney of record, is signed with an address different from the address of record. However, the petition does not include a request for a change of correspondence address. A courtesy copy of this decision is being mailed to the address on the petition. All future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

This application is being forwarded to Technology Center Art Unit 2681 for examination in due course, including 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. 09/595,595, filed June 15, 2000.

Telephone inquiries concerning this matter should be directed to Senior Petitions Attorney Nancy Johnson at (703) 305-0309.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

cc: McDonnell Boehnen Hulbert & Berghoff
300 South Wacker Drive
Chicago, IL 60606

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JJGJr: 06-06

Paper No: __

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

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JUN 19 2006

OFFICE OF PETITIONS

In re Patent No. 6,745,629	:	
Issue Date: 8 June, 2004	:	
Application No. 10/161,320	:	ON PETITION
Filed: 31 May, 2002	:	
Attorney Docket No.: MEISS72.001AUS	:	

This is a decision on the petition filed on 13 March, 2006, requesting issuance of duplicate Letters Patent for the above-identified patent/application under 37 C.F.R. §1.182.[1]

NOTICE:

Petitioner is reminded that Petitioner *must*, under the Rules of Practice, provide both the serial (application) number and patent number (with filing and issue dates) when addressing any matter regarding this issued patent.

The petition is **GRANTED.**

---

[1] The regulations at 37 C.F.R. §1.182 provide:
§ 1.182 Questions not specifically provided for.
All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Commissioner, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(h). [47 Fed. Reg. 41278, Sept. 17, 1982, effective date Oct. 1, 1982; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

The Publishing Division is directed to issue duplicate Letters Patent.

A copy of this decision is being forwarded to Publishing Division for issuance of duplicate Letters Patent.

The file is being released to the IFW Repository.

Any questions regarding the issuance of the duplicate Letters Patent should be directed to Ms. Krystal Paige, OPPD, South Tower 8C32, Phone (703) 308-9250, ext 139; FAX (571) 270-9937.

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

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

cc: Ms. Krystal Paige, ST/8C32 FAX: (571) 270-9937

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

Philip R. Warn
Warn, Burgess & Hoffmann, P.C.
P.O. Box 70098
Rochester Hills MI 48307

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FEB 27 2003

OFFICE OF PETITIONS

In re Application of Bade, Dumont and Duroux Application No. 10/161,321 Filed: May 31, 2002 Attorney Docket No. BRI-00045 For: Heated Mirror	DECISION GRANTING PETITION UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed November 7, 2002. Petitioner obtained a two-month extension of time to reply. Therefore, the petition is timely filed.

The petition is granted.

Petitioner has shown that Yves Bade, the non-signing inventor, has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the Statement of Facts of Bernard Duroux establishes that the inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that he sign the declaration.

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 present petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to Technology Center 2800 for examination in due course.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Yves Bade
16 Rue Condorcet
89001 Auxerre
FRANCE AIR MAIL

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FEB 27 2003

OFFICE OF PETITIONS

In re Application of :
Bade, Dumont and Duroux :
Application No. 10/161,321 :
Filed: May 31, 2002 : LETTER
Attorney Docket No. BRI-00045 :
For: Heated Mirror :

Dear Mr. Bade:

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 Christina Tartera Donnell at (703) 306-5589. 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).

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Philip R. Warn
Warn, Burgess & Hoffmann, P.C.
P.O. Box 70098
Rochester Hills MI 48307

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

December 10, 2002

Zoya V. Chernina
Gottlieb, Rackman & Reisman
270 Madison Avenue
New York, NY 10016-0601

In re application of:
Burkhard Raguse et al DECISION ON PETITION
Serial No.: 10/161,336
Filed: June 3, 2002

For: SELF ASSEMBLY OF SENSOR MEMBRANES

This is a decision on the petition received on September 17, 2002, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Missing Parts of Application mailed July 16, 2002. Which set a shortened statutory period for reply of two (2) months.

On September 17, 2002, the office received a communication from the attorney of record. Enclosed was an acknowledgment that Vijoleta Lucija Braach-Makavytie signature was on the original declaration filed June 3, 2002.

The evidence submitted is sufficient to establish that Vijoleta Lucija Braach-Makavytie signature was on the original document filed June 3, 2002.

The missing signature belonged to Ronald John Pace. The documents received on September 17, 2002, containing Mr. Pace signature will be used to complete application.

The petition is hereby GRANTED.

The application has been completed for release to Technology Center 1645.

Telephone inquiries concerning this matter may be directed to Dashier E. Day at (703) 308-3640.

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

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RICHARD ARON OSMAN
SCIENCE AND TECHNOLOGY LAW GROUP
242 AVE VISTA DEL OCEANO
SAN CLEMEMTE CA 92672

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NOV 0 1 2004

OFFICE OF PETITIONS

In re Application of :
Goeddel et al :
Application No. 10/161,346 :
Filed: May 30, 2002 :
Attorney Docket No. T98-013-3 :

NOTICE

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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LAW OFFICE OF GERALD MALISZEWSKI
P.O. BOX 270829
SAN DIEGO CA 92198-2829

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SEP 20 2007

OFFICE OF PETITIONS

In re Patent No. 7,136,095	:	
Issue Date: November 14, 2006	:	
Application No. 10/161,358	:	DECISION ON PETITION
Filed: June 3, 2002	:	
Attorney Docket No. SMA0101	:	

This is in response to the "Request for a Certificate of Correction," filed December 18, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **GRANTED**.

The patent file is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Frances Hicks
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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In re Patent No. 6927698
Issue Date: August 9,2005
Application No. 10161378
Filed: June 4,2002
Attorney Docket No. MLF 654-08

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

This is a decision on the electronic petition, filed September 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 September 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.

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)
6,927,698	2005-08-09	10/161,378	2002-06-04	MLF 654-08

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

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

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

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

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

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

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

◉ A sole patentee

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

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

○ The assignee of record of the entire interest

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	/Larry G. Stolarczyk/	Date (YYYY-MM-DD)	2009-09-15
Name	Larry G. Stolarczyk		

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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BROMBERG & SUNSTEIN LLP
125 SUMMER STREET
BOSTON, MA 02110-1618

MAILED

FEB 23 2006

TECHNOLOGY CENTER 2100

In re Application of: Gary Milo
Application No. 10/161,382
Filed: June 3, 2002
For: HEURISTIC PROFILER SOFTWARE FEATURES

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed September 6, 2005.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. 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 is the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 10.40(a) further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

All future communications from the U.S. Patent and Trademark Office (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 Office of any change in correspondence address to ensure receipt of all communications from the Office.

for

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

cc: THE P&A PARTNERSHIP
93 QUEEN STREET
SHEFFIELD, S1 1WF
UNITED KINGDOM

UNITED STATES PATENT AND TRADEMARK OFFICE

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BROMBERG & SUNSTEIN LLP
125 SUMMER STREET
BOSTON, MA 02110-1618

MAILED
MAR 14 2006
TECHNOLOGY CENTER 2100

In re Application of: Gary Milo
Application No. 10/161,382
Filed: June 3, 2002
For: HEURISTIC PROFILER SOFTWARE FEATURES

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

Previous decision mailed on February 23, 2006, has been vacated.

This is a decision on the Request To Withdraw from Representation filed September 6, 2005.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. 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 is the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 10.40(a) further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

All future communications from the U.S. Patent and Trademark Office (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 Office of any change in correspondence address to ensure receipt of all communications from the Office.

for

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

cc: THE P&A PARTNERSHIP
93 QUEEN STREET
SHEFFIELD, S1 1WF
UNITED KINGDOM

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 9

Madan Mossman & Sriram
2603 Augusta, Suite 700
Houston, TX 77057

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JAN 07 2004

OFFICE OF PETITIONS

In re Application of	:	
Jeffrey Reddoch	:	
Application No. 10/161,392	:	ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. 154-28956-US	:	

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

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 6, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on June 7, 2003.

The application file is being forwarded to Technology Center AU 3749 for further processing.

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

Latrice Bond

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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4350 LA JOLLA VILLAGE DRIVE
7TH FLOOR
SAN DIEGO, CA 92122-1246

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SEP 16 2003

OFFICE OF PETITIONS

In re Application of	:	
Edward Perkins et al	:	
Application No. 10/161,403	:	NOTICE
Filed: May 30, 2002	:	
Attorney Docket No. 24601-420	:	

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.

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

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SEP 2 0 2005

OFFICE OF PETITIONS

Applicant: Perez et al
Appl. No.: 10/161,408
Filing Date: May 30, 2002
Title: PLANT ARTIFICIAL CHROMOSOMES, USES THEREOF AND METHODS OF PREPARING PLANT ARTIFICIAL CHROMOSOMES
Attorney Docket No.: 17084-021001/419
Pub. No.: US 2004/0214290 A1
Pub. Date: October 28, 2004

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), filed on November 24, 2004, for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course, unless the patent issues before the application is republished.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709 (voice).

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

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Paper No. 7

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MAR 24 2004
OFFICE OF PETITIONS

In re Application of	:	
Shi-Kun Huang, et al.	:	
Application No. 10/161,420	:	ON PETITION
Filed: May 28, 2002	:	
Attorney Docket No. ARC 3158 R1	:	

This is a decision on the petition under 37 CFR 1.137(b), filed February 25, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers mailed July 10, 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 September 11, 2002.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-5594.

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

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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PHOENIX, AZ 85018

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OFFICE OF PETITIONS

In re Application of	:	
Steven J. Franson, et al.	:	
Application No. 10/161,423	:	ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. CR01-044	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 12, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office action mailed January 12, 2004. The application is revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the petition for extension of time submitted with the petition on August 12, 2004 was subsequent to the maximum extendable period for reply, it is unnecessary and no fee will be charged therefor.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-9220.

The application file is being referred to Technology Center AU 2814, for further processing of the request for continued examination under 37 CFR 1.114 filed August 12, 2004.

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

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INTELLECTUAL PROPERTY DIVISION
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6110 CENTER HILL AVENUE
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OFFICE OF PETITIONS

In re Application of	:
Mark Leslie Kacher et al	:
Application No. 10/161,445	: DECISION GRANTING PETITION
Filed: June 3, 2002	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 8604	:

This is a decision on the petition under 37 CFR 1.137(b), filed November 8, 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 March 10, 2005, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 1744.

Karen Creasy
Petitions Examiner
Office of Petitions

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Paper No. 6

Polly E. Ramstad
ICI Americas Inc.
Law Department
10 Finderne Avenue
Bridgewater NJ 08807

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OCT 0 9 2002

OFFICE OF PETITIONS

In re Application of
Gormley, et al.
Application No. 10/161,447
Filed: May 30, 2002
Attorney Docket No. 50968/US/1
For: SOLUTIONS OF ALKOXYLATED ALKANOL AMIDE SURFACTANTS AND ANTIMICROBIAL COMPOUNDS

DECISION ON PETITION

This is a decision on the petition, filed August 16, 2002 (certificate of mailing date August 13, 2002), requesting that page 3 of the specification be accorded a filing date of May 30, 2002.

The application was filed on May 30, 2002. On July 11, 2002, the Office of Initial Patent Examination mailed a " Notice of Omitted Items in a Nonprovisional Application" (Notice) informing petitioners that page 3 of the specification appeared to have been omitted.

In response to the Notice, petitioners timely filed the present petition. Petitioners request the May 30, 2002 filing date for page 3 on the basis that the allegedly omitted page was received in the Patent and Trademark Office (PTO) on May 30, 2002. In support, the petition is accompanied by (1) declarations of the administrative assistant, Ms. Barbara McHugh, who prepared the application filing and attests to the best of her knowledge that page 3 was present, and (2) a copy of applicant's postcard receipt showing an Office of Initial Patent Examination generated bar code listing May 30, 2002 as the date of receipt.

The declaration by Ms. McHugh submitted with the petition recites her routine in filing an application and attests that page 3 was present.

The Office file is the official record of what was mailed by Express Mail or filed on May 30, 2002. 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. In this regard, declarations by individuals involved in the preparation and mailing of the original application reciting their personal recollection or belief of what was contained in the application that they reviewed and/or mailed are no more persuasive of what was actually mailed than the contents of the official record. Such declarations, as in this case, are usually made months after the actual events recited. In this case, the declaration supplied on August 16, 2002, was made 2 ½ months after the application was actually mailed.

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

To reiterate, a properly itemized return postcard constitutes *prima facie* evidence that the items were filed on the date stamped thereon. However, a postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. MPEP 503. The itemized postcard in this case was not properly itemized. The return postcard in this case does not mention the number of pages in the specification. Therefore, the Office has no way of verifying what specifically was filed on May 30, 2002.

Since page 3 was not a part of the papers filed on May 30, 2002, the application cannot be accorded the May 30, 2002 filing date with page 3 as a part of the original disclosure of this application.

Regarding petitioners' no new matter argument, petitioners are reminded that the issue of new matter is one properly before the examiner of record.

The petition is **dismissed**. Pursuant to petitioners' authorization, deposit account no. 09-0011 will be charged the $130.00 petition fee.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 30, 2002. Page 3, submitted with the instant petition will **not** be considered part of the original filing.

Thereafter, the application will be forwarded to Technology Center 1600 where the examiner will determine whether or not new pages 2 and 3, submitted with the Contingent Amendment filed on August 16, 2002 (certificate of mailing date August 13, 2002) contain new matter.

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

E. Shirene Willis

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

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OFFICE OF PETITIONS

In re Application of
Lupton, et al.
Application No. 10/161,458
Filed: May 31, 2002
Attorney Docket No. 2001534-0018
For: NON-VISIBLE COMMUNICATION SYSTEMS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 11, 2004 (certificate of mailing date August 9, 2004), 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 May 3, 2004 Notice of Allowance and Fee(s) Due. Accordingly, this application became abandoned on August 4, 2004. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

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 May 3, 2004 Notice of Allowance and Fee(s) Due, and the petition fee.[1]

The petition is **granted**.

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

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

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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JOHN C. MORAN, ATTORNEY, P.C.
4120 EAST 115 PLACE
THORNTON, CO 80233-2623

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OFFICE OF PETITIONS

In re Application of	:	
Larry John Roybal	:	
Application No. 10/161,491	:	ON PETITION
Filed: May 31, 2002	:	
Attorney Docket No. L.J. Roybal 2	:	

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile transmission on June 21, 2005, to revive the above-identified application.

In response to the final Office action mailed October 22, 2004, petitioner hereby submits an authorization to charge $1,500 for the petition to revive fee, $1,590 for a four (4) month extension of time fee, a Request for Continued Examination, and the statement of unintentional delay.

As authorized, the above fees have been charged to petitioner's deposit account.

Since petitioner has met the requirements to revive this application, pursuant to 37 CFR 1.137(b), the petition is **GRANTED**.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, the $1,590 extension of time submitted with the petition on June 21, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The application file is being forwarded to Technology Center Art Unit 2646, for processing the Request for Continued Examination under 37 CFR 1.114, and for further review of the amendment filed December 12, 2004.

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

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

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Paper No. 6

GIFFORD, KRASS, GROH, SPRINKLE
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BIRMINGHAM MI 48009

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OFFICE OF PETITIONS

In re Application of :
James R. Mault et al. :
Application No. 10/161,505 : ON PETITION
Filed: May 31, 2002 :
For: METABOLIC CALORIMETER :
EMPLOYING RESPIRATORY GAS ANALYSIS

This is a decision on the petition filed September 20, 2002, requesting that Figure 15, included with the instant petition, be placed in the above identified application file, as having been filed with the original disclosure.

No notice was mailed to the applicants indicating that any item had been omitted but petitioners, on their own motion, filed the instant petition that the application had been accorded a filing date of May 31, 2002 but that Figure 15 was not present upon filing. Petitioners add however that the application when filed, included a statement incorporating by reference the prior application. Petitioners assert that the instant application is a continuation of parent application no. 09/630,398 filed August 2, 2000, which included the drawing page of Figure 15, and that the instant application contained a statement incorporating the parent application, including Figure 15, 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 Figure 15 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 Technology Center 3736 for further processing.

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

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MAY 0 6 2005

OFFICE OF PETITIONS

In re Application of
Lori Friedman et al.
Application No. 10/161,510
Filed: June 3, 2002
Attorney Docket No.: EX02-074C
Title: PIBS AS MODIFIERS OF THE P53 PATHWAY AND METHODS OF USE

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

This is a decision on the petition under 37 CFR §1.137(b)[1], filed April 11, 2005, to revive the above-identified application.

The above-identified application became abandoned for failure to file a proper response to the Restriction Requirement, mailed August 10, 2004, which set a shortened statutory period to reply for one (1) month. No extensions of time under the provisions of 37 CFR 1.136(a) were received. Accordingly, the above-identified application became abandoned on September 11, 2004. A Notice of abandonment was mailed on April 5, 2005.

With the petition, Petitioner has submitted the petition fee, a response to the restriction requirement, and the proper statement of unintentional delay. Petitioner has met all requirements for a grantable petition under 37 C.F.R. §1.137(b). As such, the petition is **GRANTED**.

The application file is being forwarded to Technology Center 1600 for further processing. The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

Paul Shanoski

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

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.

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Stephen H. Docter
McDonnell Boehnen Hulbert & Berghoff
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300 S. Wacker Drive
Chicago IL 60606

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FEB 04 2008

OFFICE OF PETITIONS

In re Application of :
Su :
Application No. 10/161,519 : ON PETITION
Filed: June 3, 2002 :
Attorney Docket No. 94-924-D :
For: REMOTE MONITORING SYSTEM
FOR DETECTING TERMITES

This is a decision on the petition under 37 CFR 1.181, filed September 4, 2007 (certificate of mailing date August 29, 2007) requesting that the Office withdraw the holding of abandonment of the above-identified application.

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

This application was held abandoned for failure to seek court review of the Board of Patent Appeals and Interferences Decision on Appeal within two months of the June 12, 2007 decision. No claims were allowed. The Office contended this application became abandoned on August 13, 2007. A Notice of Abandonment was mailed on August 17, 2007.

Petitioners argue that the application did not become abandoned because a request to reopen prosecution pursuant to 37 CFR 41.50(b)(1) was timely filed with a proper certificate of mailing under 37 CFR 1.8 on August 10, 2007 and received in the Office on August 16, 2007.

37 CFR 41.50(b) and (b)(i) states in pertinent part:

"...When the Board makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) Reopen prosecution . Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner...."

In the instant case, the Board of Patent Appeals and Interferences Decision on Appeal was issued on June 12, 2007. Applicant requested a proper request to reopen prosecution on certificate of mailing date August 10, 2007.

Therefore, the petition under 37 CFR 1.181 is **GRANTED** and the Notice of Abandonment is **vacated**. The $130.00 petition fee submitted with the present petition will be refunded to deposit account no. 13-2490.

Accordingly, the application file will be forwarded to Technology Center A.U. 3463 for consideration of the request to reopen prosecution pursuant to 37 CFR 41.50(b)(1), filed August 16, 2007 (certificate of mailing date August 10, 2007).

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

Shirene Willis Brantley

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

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Paper No. 5

ANDREW R. BASILE
YOUNG & BASILE, P.C.
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TROY MI 48084

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APR 1 0 2003

OFFICE OF PETITIONS

In re Application of	:
Nie and Sausner	:
Application No. 10/161,524	: DECISION ACCORDING STATUS
Filed: 3 June, 2002	: UNDER 37 CFR 1.47(a)
Attorney Docket No. ITT-466-A (AC	:
051)	:

This is in response to the petition filed under 37 CFR 1.47(a)[1] on 27 December, 2002.

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventor, Andreas Sausner, has refused to join in the filing of the above-identified application after having been sent a copy of the application papers. Specifically, the petitioners have established, via the declaration of Wolfgang Esser, that a copy of the application was sent to the non-signing inventor. The non-signing inventor, however, failed to return an executed declaration.

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

It is noted that the declaration filed with the present petition is not acceptable because it has been signed by petitioner's counsel on behalf of the nonsigning inventor. A declaration under 37 CFR 1.47(a) is acceptable only if all of the signing

[1]A petition under 37 CFR 1.47(b) is inappropriate in this instance since all but one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign. Accordingly, the petition will be treated as a petition under 37 CFR 1.47(a).

inventors signed in their respective signature blocks and the signature block of the nonsigning inventor is left blank, or all of the signing inventors sign a statement saying that they are signing on behalf of the non-signing inventor. There is no provision under 37 CFR 1.47(a) for someone other than the signing inventors, however, to sign on behalf of the non-signing inventor. Nevertheless, as an acceptable declaration was provided on filing, the declaration provided on filing will be accepted. The declaration filed with the present petition will not be accepted, but will be retained in the application file.

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, 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

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Andreas Sausner
Rothschildallee 9A
60389 Frankfurt
GERMANY

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APR 1 0 2003

OFFICE OF PETITIONS

In re Application of
Nie et al.
Application No. 10/161,524
Filed: 3 June, 2002
For: LOW COST, LOW PERMEATION MULTI-LAYER TUBING

Dear Mr. Sausner:

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).

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	10/161,529
Filing Date	06/03/2002
First Named Inventor	F. Mantz et al.
Group Art Unit	2811
Examiner Name	Unknown
Attorney Docket Number	DENSE-044A
Total Number of Pages in This Submission	8

ENCLOSURES *(check all that apply)*

- [x] Fee Transmittal Form
  - [x] Fee Attached
- [ ] Amendment / Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [x] Response to Missing Parts/ Incomplete Application
  - [x] Response to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Assignment Papers *(for an Application)*
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [x] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
- [ ] After Allowance Communication to Group
- [ ] Appeal Communication to Board of Appeals and Interferences
- [ ] Appeal Communication to Group *(Appeal Notice, Brief, Reply Brief)*
- [ ] Proprietary Information
- [ ] Status Letter
- [x] Other Enclosure(s) *(please identify below)*:
  - Cert. Under 37 CRF 3.73 (b)
  - Return postcard

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm *or* Individual name	Kit M. Stetina, Esq. STETINA BRUNDA GARRED & BRUCKER
Signature	
Date	08/13/2002

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 08/13/2002

Typed or printed name	Josephine I. Weissberger		
Signature		Date	08/13/2002

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FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT ($) 65.00

Complete if Known	
Application Number	10/161,529
Filing Date	06/03/2002
First Named Inventor	F. Mantz et al.
Examiner Name	Unknown
Group Art Unit	2811
Attorney Docket No.	DENSE-044A

METHOD OF PAYMENT

1. ☐ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number: 19-4330

Deposit Account Name: Stetina Brunda et al.

☑ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17

☑ Applicant claims small entity status. See 37 CFR 1.27

2. ☑ **Payment Enclosed:**

☑ Check ☐ Credit card ☐ Money Order ☐ Other

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description	Fee Paid
101	740	201	370	Utility filing fee	
106	330	206	165	Design filing fee	
107	510	207	255	Plant filing fee	
108	740	208	370	Reissue filing fee	
114	160	214	80	Provisional filing fee	

SUBTOTAL (1) ($) 0.00

2. EXTRA CLAIM FEES

	Extra Claims		Fee from below		Fee Paid
Total Claims		-20** =		X	=
Independent Claims		- 3** =		X	=
Multiple Dependent					=

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description
103	18	203	9	Claims in excess of 20
102	84	202	42	Independent claims in excess of 3
104	280	204	140	Multiple dependent claim, if not paid
109	84	209	42	** Reissue independent claims over original patent
110	18	210	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) ($) 0.00

**or number previously paid, if greater; For Reissues, see above*

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	65.00
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for *ex parte* reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	400	216	200	Extension for reply within second month	
117	920	217	460	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,960	228	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	460	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Processing fee under 37 CFR 1.17(q)	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) ($) 65.00

SUBMITTED BY				Complete (if applicable)	
Name (Print/Type)	Kit M. Stetina	Registration No. (Attorney/Agent)	29,445	Telephone	(949) 855-1246
Signature				Date	08/13/2002

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.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

COPY OF PAPERS ORIGINALLY FILED

AUG 1 9 2002 JC144

#3

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/161,529	06/03/2002	Frank E. Mantz	DENSE-044A

CONFIRMATION NO. 5856

FORMALITIES LETTER

OC000000008419755

007663
STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CA 92656

Date Mailed: 07/09/2002

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

Items Required To Avoid Abandonment:

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

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(l) of $65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.

Items Required To Avoid Processing Delays:

The item(s) indicated below are also required and should be submitted with any reply to this notice to avoid further processing delays.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **$65** for a Small Entity

- **$65** Late oath or declaration Surcharge.

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

08/21/2002 MBERHE 00000086 10161529
01 FC:205 65.00 OP

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3/31/08 Paper No.: ___

TO SPE OF : ART UNIT 2616

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/161532 Patent No: 7315555 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: _____

EDAN ORGAD
SUPERVISORY PATENT EXAMINER

SPE — Art Unit 2619

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HOWARD COHEN
1105 THE ALAMEDA
BERKELEY CA 94707

COPY MAILED

APR 1 0 2009

OFFICE OF PETITIONS

In re Patent No. 6,839,939	:	
Issue Date: January 11, 2005	:	
Application No. 10/161,535	:	ON PETITION
Filed: June 3, 2002	:	
Attorney Docket No. 6202	:	

This is a decision on the petition under 37 CFR 1.378(c), filed March 6, 2009, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight January 11, 2009, for failure to pay the 3½ 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.

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

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

RECEIVED
CENTRAL FAX CENTER
MAR 0 6 2009

2009 MAR 10 PM 3:34

IFW

PTO/SB/66 (08-08)
Approved for use through 04/30/2009. OMB 0651-0016
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

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

Docket Number (Optional)
6202

RECEIVED
MAR 1 2 2009
OFFICE OF PETITIONS

Mail to: 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.

Patent No. 6839939

Application Number 10161535

Issue Date 01/11/05

Filing Date 06/03/02

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue 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).

Also complete the following information, if applicable

The above – identified patent

☐ Is a reissue of original Patent No. original issue date

original application number

original filing date

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application

filed on

CERTIFICATE OF MAILING (37 CFR 1.89(a))

I hereby certify that this paper (*along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class main in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

03/06/2009
Date

Howard Cohen
Signature

Howard Cohen, Registration no. 27,118
Typed or Printed Name of Person Signing Certificate

03/12/2009 DALLEN 00000021 6839939
01 FC:1599 2130.00 OP

04/10/2009 CKHLOK 00000006 6839939
01 FC:2551 490.00 OP

Adjustment date: 04/10/2009 CKHLOK
03/12/2009 DALLEN 00000021 6839939
01 FC:1599 -2130.00 OP

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, Virginia 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, Virginia 22313-1450

Approved for use through 04/30/2009. OMB 0651-0016
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

7. OVERPAYMENT

As to any overpayment made please

☐ Credit to Deposit Account No.

OR

☐ Send refund check

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.

8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

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

Howard Cohen

Signature(s) of Petitioner(s)

March 6, 2009
Date

Howard Cohen
Typed or printed name(s)

27,118
Registration Number, if applicable

510-524-7733
Telephone Number

1105 The Alameda
Address

Berkeley, CA 94707-2501
Address

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."

ENCLOSURES

☒ Maintenance Fee Payment

☒ Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)

☐

PAGE 3/4 * RCVD AT 3/6/2009 6:23:38 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-6/9 * DNIS:2738300 * CSID:510-558-7260 * DURATION (mm-ss):03-24

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GENZYME CORPORATION
LEGAL DEPARTMENT
15 PLEASANT ST CONNECTOR
FRAMINGHAM, MA 01701-9322

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JAN 27 2005

OFFICE OF PETITIONS

In re Application of	:	
Gregory et al.	:	
Application No. 10/161,539	:	DECISION GRANTING PETITION
Filed: June 3, 2002	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. IG4-09.11.2-CON3	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 17, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications.

The petition is **DISMISSED**.

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

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

The instant petition does not comply with item (1) above. The amendment submitted concurrently with the instant petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the instant petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim, (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct submit must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

In view of the above, the amendment to add a priority claim to the first line of the specification, which is physically embedded in the instant petition, is not acceptable. Accordingly, a substitute

amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3), must be submitted.

As authorized, the $1370.00 fee required by 37 CFR 1.78(a)(3)(ii) was charged to petitioner's Deposit Account No. 07-1074.

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

Any questions concerning this matter may be directed to Paralegal Liana Chase at (571) 272-3206.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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GENZYME CORPORATION
LEGAL DEPARTMENT
15 PLEASANT ST CONNECTOR
FRAMINGHAM MA 01701-9322

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MAR 17 2005

OFFICE OF PETITIONS

In re Application of	:	
Gregory et al.	:	
Application No. 10/161,539	:	DECISION GRANTING PETITION
Filed: June 3, 2002	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. IG4-09.11.2CON3	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed February 17, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

The instant pending application was filed on June 3, 2002, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional applications was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed

claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

Any inquiries concerning this decision may be directed to Paralegal Liana Chase at (571) 272-3282.

This application is being forwarded to Technology Center Art Unit 1632 for appropriate action on the amendment filed February 17, 2005, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

AUG - 8 2007

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Alexandria, VA 22313-1450
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GENZYME CORPORATION
LEGAL DEPARTMENT
15 PLEASANT ST CONNECTOR
FRAMINGHAM MA 01701-9322

In re Application of	:
Richard J. Gregory et al	:
Serial No.: 10/161,539	: PETITION DECISION
Filed: June 3, 2002	:
Attorney Docket No.: IG4-09.11.2-CON3	:

This is in response to the petition under 37 CFR 1.182, filed June 27, 2007, requesting transfer of drawings.

Applicants request transfer of drawings from SN 08/136,742 which has issued as US Patent 5,670,488 (issued September 23, 1997). M.P.E.P. 608.02(i) provides guidance, as follows:

608.02(i) Transfer of Drawings From Prior Applications
Transfer of drawings from a **first pending application** to another will be made only upon the granting of a petition filed under 37 CFR 1.182 which must set forth a hardship situation requiring such transfer of drawings. (emphasis added)

Note that transfer of drawings from a first pending application to a second pending application is permitted. However, transfer of drawings from a patented application (no longer a pending application), as here requested, is not permitted. To do so would compromise the integrity of the patented file which is not permitted. Applicants may obtain copies of the patented file, including drawings, from Patent Maintenance Division in the usual manner.

The petition is **DENIED**.

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.

Christopher Low
Christopher Low
Director, Technology Center 1600
(acting)

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OFFICE OF PETITIONS

MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO
ONE FINANCIAL CENTER
BOSTON, MA 02111

In re Patent No. 6,796,303	:	
Issue Date: September 28, 2004	:	
Application No. 10/161,545	:	NOTICE
Filed: June 3, 2002	:	
Attorney Docket No. 35056-507-CON	:	

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**.

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

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) 272-6059.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

CC: BATTELLE MEMORIAL INSTITUTE
505 KING AVENUE
COLUMBUS, OH 43201

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Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 10

DARBY & DARBY P.C.
P. O. BOX 5257
NEW YORK, NY 10150-5257

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DEC 0 5 2002

OFFICE OF PETITIONS

In re Application of
Freile, et al.
Application No. 10/161,551
Filed: May 30, 2002
Attorney Docket No. 4305/1J405US1

DECISION ON PETITION

This is a decision on the "Petition under 37 CFR § 1.182," filed September 3, 2002, requesting that the above-identified application be accorded a filing date of May 30, 2002.

Application papers in the above-identified application were filed on May 30, 2002. However, on July 2, 2002, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application," notifying applicants *inter alia* that the application papers had not been accorded a filing date because the application was deposited without drawings.

In reply, petitioner filed the instant petition. Petitioner acknowledges that this application was filed without drawings. However, petitioner requests, in accordance with MPEP 201.06(c), that the drawings contained in prior application (provisional application No. 60/294,672 filed May 30, 2001), be included in the instant nonprovisional application based upon the incorporation by reference statement contained therein on page 1, lines 5-7. Included with the petition are an amendment submitting the drawings, a check for $130, and the three (3) sheets of drawings.

A review of the application-as-filed reveals that it contained the incorporation by reference statement, incorporating the entire disclosure of the prior application. MPEP 201.06 provides in, pertinent part, that:

> Material needed to accord an application a filing date may not be incorporated by reference. Therefore, if a continuation or divisional application as originally filed incorporates by reference material omitted from the application papers, which is needed to accord the application a filing date, the application will not be entitled to a filing date. A petition under 37 CFR 1.182 and the required petition fee, including an amendment submitting the necessary omitted material, requesting that the necessary omitted material contained in the prior application and submitted in the amendment, be included in the continuation or divisional application based upon the incorporation by reference statement, is required in order to accord the application a filing date as of the date of deposit of the continuation or divisional application. An amendment submitting the omitted material and relying upon the incorporation by reference will not be entered in the

continuation or divisional application unless a decision granting the petition states that the application is accorded a filing date and that the amendment will be entered.

In view thereof, the petition under § 1.182 is **GRANTED**. The amendment will be entered by the examiner in due course.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for according of a filing date of May 30, 2002, using the application papers received in the Office on that date and the drawings submitted on petition filed September 3, 2002, and for indication in the records of the Office that the application contains three (3) sheets of drawings.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.

Christina L. Donnell for

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LAW OFFICES OF CHARLES FAILS
POST OFFICE BOX 670806
MARIETTA GA 30066-0131

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OFFICE OF PETITIONS

In re Application of :
Rosen :
Application No. 10/161,552 : ON PETITION
Filed: June 3, 2002 :
Attorney Docket No. 20104.0005U2 :
For: TOPICAL COMPOSITIONS FOR VETERINARY USES

This is a decision on the petition, filed December 13, 2005, under 37 CFR 1.137(b) to revive the above-identified application.

The above-identified application became abandoned for failure to timely submit a reply within one month of the mailing of the Notice of Non-Compliant Amendment, dated May 11, 2005. No response being received and no extensions of time being obtained, this application became abandoned on June 12, 2005. A Notice of Abandonment was mailed on December 15, 2005.

Applicant has submitted an amendment in reply to the May 11, 2005 Notice of Non-Compliant Amendment, an acceptable statement of the unintentional nature of the delay in responding to the May 11, 2005 Notice of Non-Compliant Amendment, and the petition fee.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 1615 for consideration of the amendment filed on December 13, 2005.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

E. Shirene Willis

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HONEYWELL INTERNATIONAL INC.
15801 WOODS EDGE ROAD
COLONIAL HEIGHTS, VA 23834

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MAY 17 2004
OFFICE OF PETITIONS

In re Application of :
William B. Bedwell, et al. :
Application No. 10/161,561 :
Filed: June 3, 2002 :
Attorney Docket No. H0003420CIP3 :

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-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 21, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 22, 2003.

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Sandra P. Thompson appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party in whose behalf she acts. However, if Ms. Thompson 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 application file is being forwarded to Technology Center 1700, Art Unit 1712 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-5594.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Sandra P. Thompson
Bingham McCutchen
Three Embarcadero Center
San Francisco, CA 94111-4067

UNITED STATES 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.

Dean B. Watson, Esq.
5495 Botsford
Sterling Heights, MI 48310

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MAY 2 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Ewing et al.	:	
Application No. 10/161,580	:	DECISION GRANTING
Filed: June 3, 2002	:	PETITION
Attorney Docket No. EDL100B	:	

This is a decision on the petition under 37 CFR § 1.137(a), filed April 6, 2004, in the above-identified application.

The petition under § 1.137(a) is **DISMISSED**.

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

The above-identified application became abandoned for failure to file a timely and properly reply to the non-final Office action mailed August 7, 2003. This Office action set a three-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No reply or extension of time having been made of record, the above-identified application became abandoned effective November 8, 2003.

Petitioner asserts that the delay was unavoidable as a proper response and the required fee were submitted to the official fax number designated by the Office Action in the allotted time as required.

RELEVANT STATUTES, RULES, AND REGULATIONS

35 U.S.C. § 133 provides that the Commissioner may revive an application if the delay in replying to the outstanding Office action is shown to the satisfaction of the Commissioner to have been unavoidable. A grantable petition to revive an unavoidably abandoned application under 37 C.F.R. §1.137(a) must be

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

The burden of showing the cause of the delay is on the person seeking to revive the application. Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. 977, 982 (D.C. Cir. 1982). Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the "reasonably prudent person standard" in determining if the delay was unavoidable:

> The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(*quoting* Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

Delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP, however, does not constitute unavoidable delay. See Haines, 673 F. Supp. At 317, 5 U.S.P.Q.2d at 1132; Vincent v. Mossinghoff, 230 U.S.P.Q. 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 U.S.P.Q. 1091 (D.D.C. 1981); Potter v. Dann, 201 U.S.P.Q. 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891). As a "reasonably prudent person" would file papers or fees in compliance with 37 CFR 1.8 or 1.10 to ensure their timely filing in the USPTO, as well as preserve adequate evidence of such filing, a delay caused by an applicant's failure to file papers or fees in compliance with 37 CFR 1.8 or 1.10 does not constitute "unavoidable" delay. See Krahn v. Commissioner of PTO, 15 U.S.P.Q.2d 1823 (E.D. Va. 1990).

DISCUSSION

Petitioner's arguments and evidence have been considered, but not found adequate to show "unavoidable" delay within the meaning of § 1.137(a)(3). Petitioner is reminded that effective December 1, 2003, all patent application related correspondence transmitted by facsimile must be directed to the central facsimile number, (703) 872-9306, with a few exceptions. Nonetheless, petitioner has preserved evidence, which is submitted on petition, of submission of a reply, including a Petition for Extension of Time Request (for three months) by facsimile transmission to a Technology Center facsimile number on Monday, February 9, 2004.

However, in order for this response to be considered timely and abandonment to have been avoided, the response must have included an effective request for extension of time. Petitioner states that the required three-month extension of time and fee were included. Moreover, a review of the evidence reveals that the fee was submitted by authorization to charge a credit card. Yet, petitioner does not provide evidence that had the three-month extension of time charge been presented on the credit card on February 9, 2004 then it would have been successfully processed. Such a showing is necessary to conclude that a timely and proper reply should be considered filed in this application on Monday, February 9, 2004.

Accordingly, the petition under §1.137(a) must be dismissed.

CONCLUSION

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a request for reconsideration pursuant to 37 C.F.R. §1.137(b) on the basis of unintentional delay. 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).

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

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

By FAX: (703) 872-9306
ATTN: NANCY JOHNSON
SENIOR PETITIONS ATTORNEY

By hand: CUSTOMER SERVICE WINDOW[1]
2011 South Clark Place
Crystal Plaza Two Lobby
Arlington, VA 22202

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

---

[1] Effective June 5, 2004, patent correspondence delivered by hand or delivery services, other than the USPS, to the Customer Window must be addressed as follows:

U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop _____
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

Dean B. Watson, Esq.
5495 Botsford
Sterling Heights, MI 48310

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SEP 0 8 2004

OFFICE OF PETITIONS

In re Application of	:	
Ewing et al.	:	
Application No. 10/161,580	:	DECISION ON
Filed: June 3, 2002	:	PETITION
Attorney Docket No. EDL100B	:	

This is a decision on "REQUEST FOR RECONSIDERATION FOR DISMISSAL OF PETITION FOR UNAVOIDABLE ABANDONMENT," filed July 22, 2004.

The petition under § 1.137(a) is **GRANTED**.

The above-identified application became abandoned on November 8, 2003 for failure to timely and properly reply to the non-final Office action mailed August 7, 2003.

On April 6, 2004, applicants filed the initial petition, asserting that the delay was unavoidable as a proper response and the required fee were submitted to the official fax number designated by the Office Action in the allotted time as required. However, by decision mailed May 24, 2004, the petition was dismissed for failure to show that the response should be considered timely and proper.

On instant renewed petition, petitioner has submitted adequate evidence to show that had the three-month extension of time charge, necessary to make the response timely, been presented on the credit card on February 9, 2004 then it would have been successfully processed. The extension of time has now been charged to the credit card, as authorized.

Technology Center 3736 has been advised of this decision. The response after non-final Office action will be considered by the examiner in due course.

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MICHAEL E. MARION
C/O U.S. PHILIPS CORPORATION
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510-8001

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OCT 27 2005

OFFICE OF PETITIONS

In re Application of :
Van Der Vleuten, et al. :
Application No. 10/161,591 :
Filed: June 4, 2002 :
Attorney Docket No. NL 000093 :

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed March 16, 2005, 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 nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 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 Petitions Attorney Edward Tannouse at (571) 272-3228. 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 2819 for appropriate action on the amendment filed March 16, 2005, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON, DC 20005

Mail Date: 04/21/2010

Applicant	: Chisato Kato	: DECISION ON REQUEST FOR
Patent Number	: 7569298	: RECALCULATION of PATENT
Issue Date	: 08/04/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/161,617	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/05/2002	: 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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ALEXANDRIA, VA 22313-1450
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Paper No. 5
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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of:
Ando et al.
Application No. 10/161,623
Filed: June 5, 2002
For: **INFORMATION RECORDING MEDIUM, INFORMATION RECORDING METHOD AND APPARATUS, AND INFORMATION PLAYBACK METHOD AND APPARATUS**

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed August 22, 2002 (recently matched with the application) under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination (paper No. 2).

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111(b) and (c), how the claimed subject matter is patentable over the references.

The petition lacks a statement that a pre-examination search was made with respect to the claim invention of the instant application. Petitioner states "A search was conducted by group art unit 2615 of the Patent and Trademark Office in a case related to the claimed subject matter of the present application (i.e., same patent family)...The search record indicates that the search of the Parent was conducted in the following U.S. classes/subclasses..". The parent application is not being considered for special status. It is the instant application and the corresponding claims which petitioner seeks special status. Therefore, the instant petition lacks a satisfactory statement which satisfies item (4) above.

For the above stated reasons, the petition is **DENIED**.

Should applicant desire reconsideration, he/she should supplement this petition by a declaration or statement under oath giving the information as outlined above. No further petition fee is required.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision.

The application is being forwarded to the group Central File and will await action in its regular turn.

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4778

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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MAIL

JAN 24 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of :
Hideo ANDO, et al. :
Application No. 10/161,623 :
Filed: June 5, 2002 :
For: **INFORMATION RECORDING MEDIUM, INFORMATION RECORDING METHOD AND APPARATUS, AND INFORMATION PLAYBACK METHOD AND APPARATUS** :

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed November 15, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

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

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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

WENDEROTH, LIND & PONACK, L.L.P.
2033 K STREET N.W.
SUITE 800
WASHINGTON DC 20006-1021

In re Application of	:	
Motoji Ohmori et al	:	
Application No. 10/161,675	:	ON PETITION
Filed: June 5, 2002	:	
Attorney Docket No. 2002_0748A	:	

This is a decision on the petition, filed October 5, 2007, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on August 9, 2007, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 3621 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

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JAN 2 3 2004

OFFICE OF PETITIONS

ON PETITION

STANLEY P. FISHER
REED SMITH LLP
3110 FAIRVIEW PARK DRIVE, SUITE 1400
FALLS CHURCH, VA 22042

In re Application of
Masami Ohnishi et al
Application No. 10/161,737
Filed: June 5, 2002
Attorney Docket No. NITT.0073

This is a decision on the petition, filed January 15, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 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 Irvin Dingle at (703) 306-5684.

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

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

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the Customer Window located at:

2011 South Clark Place
Crystal Plaza Two, Lobby
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306.**

After receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 2817 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22202

COPY MAILED

NOV 0 5 2002

OFFICE OF PETITIONS

In re Application of Suzuki, et al. Application No. 10/161,739 Filed: June 5, 2002 Attorney Docket No. 223922US0 For: PREVENTIVE OR REMEDY FOR HYPERTENSION	DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.53(e), filed September 16, 2002, requesting in effect, withdrawal of the Notice of Incomplete Nonprovisional Application, mailed July 15, 2002 and accordation of a June 5, 2002 filing date to the above-identified application.

The application was deposited on June 5, 2002. On July 15, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners that no filing date had been accorded to the application papers deposited on June 5, 2002 because no drawing was present, as is required by 35 USC 113.

In response to the Notice, petitioners timely filed, *inter alia*, the present petition.

It is noted that the above-identified application contains method claims. As stated in MPEP 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence.)

MPEP 601.01(f) also states that:

> A non provisional 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 figures in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims. Therefore, the above-identified 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 figures referred to in the specification, a "Notice of Omitted Items" is mailed indicating that the application has been accorded a filing date.

In view of the above, the "Notice" mailed July 15, 2002 was mailed in error and is hereby withdrawn. The petition is **granted**.

No petition fee has been or will be charged in connection with this matter.

The Office acknowledges receipt of a late filed declaration and a $130.00 surcharge for its late filing.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **June 5, 2002**.

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

E. Shirene Willis

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

WILLIAM C. STROBL
2906 VIA PEPITA
CARLSBAD CA 92009

COPY MAILED

MAR 0 1 2004

OFFICE OF PETITIONS

In re Application of
William Charles Strobl
Application No. 10/161,785
Filed: June 5, 2002
Attorney Docket Number: Strobl/Holland

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on February 9, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned August 29, 2002, for failure to timely reply to the Notice to File Missing Parts mailed on June 28, 2002, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed January 29, 2004.

The petition asserts that a reply to the Notice to File Missing Parts mailed June 28, 2002 was filed by USPS Priority Mail. Copies of the delivery confirmation on July 26, 2002, a copy of the reply (single page of ten (ten) claims, and a copy of the canceled check in the amount of $294.00 were submitted as proof of the timely reply.

A review of the application file reveals that a copy of the Notice to File Corrected Application Papers, mailed June 28, 2002 and the original Priority Mail envelope used to mail in the reply have located in the file. The finance records also reveals that the $294.00 in reply of the Notice was properly applied. Unfortunately, the single page of ten (10) claims alleged to have been included with that mailing has not been matched with the file.

The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired, be filed in the USPTO with a

---

[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)).

self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503).

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

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

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

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

In the future, petitioner might consider using a certificate of mail or an itemized post card receipt when mailing correspondence to the USPTO.

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

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

#4

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

RECEIVED
FEB 0 9 2004
OFFICE OF PETITIONS

February 6, 2004

Dear Commissioner,
On February 2, 2004 I received a notice of abandonment under 37 CFR 1.53 (f) or (g) for my application for a patent (application number 10/161,785) due to failure to reply to a request to file missing parts. There were 2 missing parts, 1. to submit the patent claims on a single page and 2. pay a fee of $294.00 for seven of the claims. I am filing a petition for revival of my patent application " Petition For Revival Of An Application for Patent Abandoned Unintentionally under 37 CFR 1.137 (b)" for reasons discussed in the following paragraph.

On July 23, 2002 I sent two letters your office for responses to two different patent applications. One of the letters was for a Provisional Patent and the second is the one I am petitioning for revival. I received conformation from the post office that both letters were delivered on July 26, 2002. On August 2, 2002 I received a letter from your patent office confirming receipt of my reply for the provisional patent. I waited about a month, and then I telephoned the patent office information number to inquire about my reply to the full patent application (application number 10/161,785). I stated that I had a copy of the check for $294.00 that was in the package I sent and it was cashed by the patent office on August 8, 2002. The person I spoke with told me that since the patent office cashed my check my reply must be in the system. I guess that my sending two replies on the same day could cause one of them to be unintentionally misplaced.

Please consider my petition for revival of my patent application.

First Named Inventor:	William Charles Strobl
Application Number:	10/161,785
Filed:	06/05/02
Title:	S & H Cycle Engine

Thank you.
William C Strobl

William C. Strobl
2906 Via Pepita
Carlsbad, CA 92009
Tel. (760) 942-2038
Email wcstrobl@adelphia.net

Enclosures:

1. Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137 (b)
2. Notice of Abandonment Under 37 CFR 1.53 (f) or (g)
3. Check for the petition fee of $665.00 as required by 37 CFR 1.17 (m)
4. Notice to File Corrected Application Papers
5. Reply to the Notice to File Corrected Application Papers
6. Copy of the cashed $294.00 check for the additional fee requested in the Notice to File Corrected Application Papers.
7. Copy of postal conformation of delivery of two items.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CAPITOL PATENT & TRADEMARK
LAW FIRM, PLLC
ATTN: JOHN CURTIN
P.O. BOX 1995
VIENNA VA 22183

COPY MAILED

JUL 30 2007

OFFICE OF PETITIONS

In re Application of :
Ahmed et al. :
Application No. 10/161812 :
Filing or 371(c) Date: 06/04/2002 : ON PETITION
Title of Invention: :
SYSTEMS AND METHODS FOR :
ADAPTIVELY DECODING :
TRANSMITTED FRAMES :

This is a decision on the third petition to revive the application under 37 CFR 1.137(b), filed May 24, 2007, to revive the above-identified application. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

Background

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed December 27, 2005. The Office action set a three (3) month period for reply from the mail date of the Office action. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on March 28, 2006. A Notice of Abandonment was mailed August 7, 2006.

The present petition

Applicant files the present petition and includes an Amendment in response to the Office action. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that the petition includes (1) the reply in the form of an Amendment; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being referred to Technology Center Art Unit 2133 for processing of the Amendment filed with the petition in due course.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MACCORD MASON PLLC
300 N. GREENE STREET, SUITE 1600
P.O. BOX 2974
GREENSBORO, NC 27402

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APR 2 2 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
William C. Batten et al	:	
Application No. 10/161,814	:	
Filed: June 4, 2002	:	
Attorney Docket No. 2481-057	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure submit the issue 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 on February 5, 2004.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The application file is being forwarded to the Publishing Division.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

STANLEY H. KREMEN
4 LENAPE LANE
EAST BRUNSWICK NJ 08816

COPY MAILED
SEP 23 2008

In re Application of :
Wahi : DECISION ON PETITION
Application No. 10/161,821 :
Filed: June 4, 2002 :
For: ELECTROSTATICALLY CHARGED :
NASAL APPLICATION DIAGNOTIC
PRODUCT AND METHOD

This is a decision on the petition under 37 CFR 1.137(a), filed September 15, 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 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 decision.

This application became abandoned December 2, 2004 for failure to timely reply to the non-final Office action mailed September 1, 2004. The non-final Office action set a three (3) month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136(a) were timely requested. Notice of Abandonment was mailed March 21, 2005.

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(c).

The petition lacks requirement (3) set forth above. Petitioner has failed to present 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.

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 Director 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 or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). 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 petition attributes the delay in timely submitting a proper response to the non-final Office action to the actions of prior counsel Kenneth P. Glynn. The petition alleges that Attorney Glynn did not file a reply to the non-final Office action mailed September 1, 2004 nor he notify applicant of the non-final Office action. The petition alleges that Attorney Glynn did not notify applicant that the application was abandoned. The petition further alleges that Attorney Glynn was disbarred by the State of New Jersey and suspended from practicing before the UPSTO.

The date of the alleged disbarment has not been disclosed. Attorney Glynn was suspended from practicing before the USPTO effective August 19, 2007.

Applicant states that Attorney Glynn informed applicant on September 14, 2007 that Attorney Glynn was suspended from practice before the USPTO and could no longer represent applicant.

The petition fails to set forth the manner in which petitioner and applicant became aware that the application was abandoned

and what steps where taken to seek revival. Thus, petitioner has failed to establish that the entire period of delay from the time a reply to the non-final Office action was due until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable.

To the extent petitioner alleges the actions of counsel resulted in the abandonment of the instant application, petitioner is reminded that the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. See, Link v. Wabash, 370 U.S. 626, 633-34 (1962). Specifically, applicant's delay caused by mistakes or negligence of a voluntarily chosen representative does not constitute unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Douglas v. Manbeck, 21 USPQ2d (BNA)(1697)(E.D. PA Nov. 7, 1991). Thus, the delay allegedly caused by counsel does not constitute unavoidable delay. Moreover, that delay is imputed to applicant.

Further, while petitioner attributes the delay in timely responding to the non-final Office action to Attorney Glynn, petitioner fails to provide an explanation as to why Attorney Deirdra Meagher, who was also empowered to represent applicant, failed to timely submit a proper response to the non-final Office action.

As to applicant's contention that applicant was under the impression that the USPTO would change the correspondence address on applicant's behalf after Attorney Glynn was suspended, the non-final Office action was properly mailed to prior counsel as prior counsel was in good standing before the Office at the time the non-final Office action was mailed. Thus, petitioner has failed to establish a nexus between the correspondence address of record and the abandonment of the application.

Any renewed petition must be accompanied by evidence to sufficiently establish that the entire period of delay in responding to the non-final Office action was unavoidable. Petitioner should also detail when petitioner became aware of the abandonment and what steps were taken thereafter to seek revival. Applicant should explain applicant took to monitor prior counsel's prosecution of the application. For example, did applicant write status letters to prior counsel or receive status updates from prior counsel?

The change of correspondence address/power of attorney submitted herewith has been entered into the record.

ALTERNATE VENUE

Petitioner may wish to consider filing a petition stating that the entire delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

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

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

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

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

Best Available Copy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/161,821	06/04/2002	Ashok L. Wahi	ALW-105A

CONFIRMATION NO. 5725

POWER OF ATTORNEY NOTICE

KENNETH P. GLYNN, ESQ.
Glynn & Associates, P.C.
24 Mine Street
Flemington, NJ 08822

OC000000032176255

Date Mailed: 09/19/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/15/2008.

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

/ambrown/

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

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UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/161,821	06/04/2002	Ashok L. Wahi	ALW-105A

CONFIRMATION NO. 5725

POA ACCEPTANCE LETTER

34325
STANLEY H. KREMEN
4 LENAPE LANE
EAST BRUNSWICK, NJ 08816

OC000000032176261

Date Mailed: 09/19/2008

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/15/2008.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/ambrown/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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DEC 23 2008

OFFICE OF PETITIONS

STANLEY H. KREMEN
4 LENAPE LANE
EAST BRUNSWICK NJ 08816

In re Application of
Wahi
Application No. 10/161,821
Filed: June 4, 2002
For: ELECTROSTATICALLY CHARGED NASAL APPLICATION DIAGNOTIC PRODUCT AND METHOD

: DECISION ON PETITION

This is a decision on the renewed petition to revive under 37 CFR 1.137(a), filed November 2, 2008, and the petition to revive under 37 CFR 1.137(b), filed November 3, 2008.

This application became abandoned December 2, 2004 for failure to timely reply to the non-final Office action mailed September 1, 2004. The non-final Office action set a three (3) month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136(a) were timely requested. Notice of Abandonment was mailed March 21, 2005. A petition under 37 CFR 1.137(a) was filed September 15, 2008 and dismissed September 23, 2008.

DECISION UNDER 37 CFR 1.137(a)

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(c).

The petition lacks requirement (3) set forth above. Petitioner has failed to present 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.

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 Director 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 or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a

"case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). 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 petition continues to attribute the delay in timely submitting a proper response to the non-final Office action to the actions of prior counsel Kenneth P. Glynn. Petitioner argues that petitioner should not be bound by the actions of Mr. Glynn.

The Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. See, Link v. Wabash, 370 U.S. 626, 633-34 (1962). Applicant's delay caused by mistakes or negligence of a voluntarily chosen representative does not constitute unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Douglas v. Manbeck, 21 USPQ2d (BNA)(1697)(E.D. PA Nov. 7, 1991). Thus, the delay allegedly caused by former counsel does not constitute unavoidable delay and that delay is imputed to applicant.

Petitioner argues that because the matter does not involve a defendant, the matter falls outside the realm of Link v. Wabash, supra. Petitioner argues that because the USPTO did not act arbitrarily and capriciously in the instant matter, the matter falls outside the realm of Haines v. Quigg, supra. Petitioner argues that because applicant was not aware of the actions of prior counsel, the instant matter does not fall within the realm of Potter v. Dann, supra.

The arguments of petitioner have been carefully considered, but are not convincing. Delay resulting from a failure in communication between a party and his or her registered practitioner is a delay binding upon petitioner. See, In re Kim, 12 UPSQ2d 1595 (Comm'r Pat. 1988), Ray v. Lehman, 55 F.3d 606, 610, 34 USPQ2d 1786, 1789 (Fed. Cir. 1989).

As held by the Supreme Court:

> Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely chosen selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which 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.' Link, at 633-34.

Further, the Court of Appeals for the Federal Circuit expounded on the Link holding in Huston v. Ladner, 973 F.2d 1564, 23 USPQ2s 1910 (Fed. Cir. 1992) by stating:

> If we were to hold that an attorney's negligence constitutes good cause for failing to meet a PTO requirement, the PTO's rules could become meaningless and parties could regularly allege attorney negligence in order to avoid an unmet requirement. Huston, at 1567.

Thus, the facts and circumstances outlined by petitioner do not justify circumvention of the well-established precedent that a client is bound by the actions or inactions of his voluntarily chosen representative. As such, the entire period of delay at issue is not deemed "unavoidable" within the meaning of 37 CFR 1.137(a).

Accordingly, the petition under 37 CFR 1.137(a) is hereby **DISMISSED**.

DECISION UNDER 37 CFR 1.137(b)

A grantable petition pursuant to 37 CFR 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 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 set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 CFR 1.137(b). Accordingly, the failure to timely submit a proper reply to the non-final Office action is accepted as having been unintentionally delayed.

Accordingly, the petition under 37 CFR 1.137(b) is hereby **GRANTED**.

This application is being forwarded to Group Art Unit 1615.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

STANLEY H. KREMEN
4 LENAPE LANE
EAST BRUNSWICK NJ 08816

MAILED

JUN 01 2010

OFFICE OF PETITIONS

In re Application of	:	
Ashok L. WAHI	:	
Application No. 10/161,821	:	DECISION ON PETITION
Filed: June 4, 2002	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. **ALW-105A**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 30, 2010, to revive the above-identified application.

The petition is **GRANTED**.

THE TWO-MONTH PERIOD FOR FILING AN APPEAL BRIEF UNDER 37 CFR 41.37 (ACCOMPANIED BY THE FEE REQUIRED BY 37 CFR 41.20(b)(2)), RUNS FROM THE DATE OF THIS DECISION.

This 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 15, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is October 16, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal and fee of $270; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

This application is being referred to Technology Center AU 1615 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Thurman K. Page
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

DAFFER MCDANIEL LLP
P.O. BOX 684908
AUSTIN TX 78768

COPY MAILED

MAR 06 2008

OFFICE OF PETITIONS

In re Patent No. 7,012,100 :
Issue Date: March 14, 2006 :
Application No. 10/161,843 :
Filed: June 4, 2002 :
Attorney Docket No. 5766-00100 :

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed July 3, 2007, which is being treated as a petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification to the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen-months after filing. *See* 37 CFR 1.137(f).

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

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on June 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. Therefore, pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), petitioner failed to timely notify the USPTO of the filing of a counterpart application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification to the USPTO of the filing of a counterpart application in an eighteen-month publication country must be accompanied by:

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

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

This application matured into Patent No. 7,012,100 on March 14, 2006. Therefore, no further action being required, this patented file is being referred to Files Repository.

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

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL MN 55133-3427

COPY MAILED
FEB 24 2009
OFFICE OF PETITIONS

In re Application of :
Simmons, et al. :
Application No. 10/161,844 : DECISION
Filed/Deposited: 4 June, 2002 :
Attorney Docket No. 56964US008 :

This is a decision on the petition filed on 19 January, 2006, averring timely reply and considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition under 37 C.F.R. §1.181 is **GRANTED**.

As to the Request to Withdraw
the Holding of Abandonment

Petitioners always are directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181. Petitioners must, *inter alia*, aver timely reply with a statement and documentary support as set forth in the Commentary at MPEP §711.03(c)(I).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 25 March, 2005, with reply due absent extension of time on or before 25 June, 2005.

Petitioner filed an amendment after final, which the Examiner refused to enter and Petitioner–as one registered to practice before the Office—knows is not as of right and not a proper reply[1] if it

[1] A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

does not *prima facie* place the application in condition for allowance, and on 11 July, 2005, the Examiner mailed an Advisory Action.

The application went abandoned by operation of law after midnight 25 June, 2005.

The application went abandoned by operation of law after midnight 25 September, 2008.

The Office mailed the Notice of Abandonment on 30 December, 2005.

On 19 January, 2006, Petitioner filed, *inter alia*, a petition averring timely reply (in the form of a request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of the previously filed amendment) and provided in support of the averment a copy of the RCE bearing a certificate of FAX transmission pursuant to 37 C.F.R. §1.8) signed and dated by Petitioner on 19 July, 2005, with authorization for fees to be charged to Deposit Account 13-3723, which fees are now charged. Also noted are the following:

- Petitioner provides no Office FAX receipt acknowledgement (in lieu of a date-stamped receipt card), however, the certificate and the statement comply with the showing requirements for support set forth in the Commentary at MPEP §711.03(c)(I).

- Finally, Petitioner failed to request and pay the fee for the required extension of time to make timely the RCE. Nonetheless, a review of the record indicates that on filing of the application (4 June, 2002), Petitioner did include (Transmittal, at page 2 of 2) a general and continuing fee authorization, expressly including therein any required extension of time. These fees also are now charged to Deposit Account 13-3723.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)), and that those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

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). And 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.[3],[4]

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Allegations as to the Request to
Withdraw the Holding of Abandonment

The record evidences a satisfactory presentation of the showing requirements under the Rule.

CONCLUSION

The petition as considered under 37 C.F.R. §1.181 is **granted**, and the 30 December, 2005, Notice of Abandonment is **vacated**.

The instant application is released to the Technology Center/AU 2839 for further processing as necessary in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

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[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] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[5]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

[5] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

OIPE JC14
SEP 1 9 2002
PATENT & TRADEMARK OFFICE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Daphne Preuss and
Gregory Copenhaver

Serial No.: 10/161,849

Filed: June 4, 2002

For: PLANT ARTIFICIAL CHROMOSOME COMPOSITIONS AND METHODS

Group Art Unit: Unknown

Examiner: Unknown

Atty. Dkt. No.: ARCD:257USC3

CERTIFICATE OF MAILING
37 C.F.R 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on the date below:

September 16, 2002
Date

Robert E. Hanson

RESPONSE TO NOTICE TO FILE CORRECTED APPLICATION PAPERS

Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Notice to File Corrected Application Papers, dated July 16, 2002, there are enclosed herewith:

(a) Substitute specification;

(b) Submission of Formal Drawings;

(c) Formal Drawings Figures 1-7H on 40 sheets;

(d) Preliminary Amendment; and

(e) A copy of the Notice to File Corrected Application Papers.

The Notice to File Corrected Application Papers noted that Figure 6 was omitted. Applicants note that the drawing was submitted by way of the incorporation by reference of the parent application, which included Figure 6, into the instant application. Accordingly, the formal drawings submitted herewith include Figure 6. No new matter is entered in the case by the replacement of the drawings with the instantly submitted formal drawings.

No fee is believed to be due in connection with the filing of this document. However, should any fee under 37 C.F.R. §§ 1.16 to 1.21 be deemed necessary for any reason relating to this document, the Commissioner is hereby authorized to deduct said fee from Fulbright & Jaworski Deposit Account No.: 50-1212/10206107ARCD:257USC3.

Please date stamp and return the accompanying postcard to evidence receipt of these documents.

Respectfully submitted,

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

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201

Date: September 16, 2002

OIPE JC144
SEP 1 9 2002
PATENT & TRADEMARK OFFICE
COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/161,849	06/04/2002	Daphne Preuss	ARCD:257USC3

CONFIRMATION NO. 6319

FORMALITIES LETTER

OC000000008456305

Robert E. Hanson
FULBRIGHT & JAWORSKI L.L.P.
Suite 2400
600 Congress Avenue
Austin, TX 78701

Date Mailed: 07/16/2002

NOTICE TO FILE CORRECTED APPLICATION PAPERS

Filing Date Granted

This application has been accorded an Application Number and Filing Date. The application, however, is informal since it does not comply with the regulations for the reason(s) indicated below. Applicant is given **TWO MONTHS** from the date of this Notice within which to correct the informalities indicated below. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a)

The required item(s) identified below must be timely submitted to avoid abandonment:

- A substitute specification in compliance with 37 CFR 1.52 because:
  - Papers contain improper margins. *Each sheet must have a left margin of at least 2.5 cm (1") and top, bottom and right margins of at least 2.0 cm (3/4")*
- Substitute drawings in compliance with 37 CFR 1.84 because:
  - drawing sheets do not have the appropriate margin(s) (see 37 CFR 1.84(g)). Each sheet must include a top margin of at least 2.5 cm. (1 inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 1.5 cm. (5/8 inch), and a bottom margin of at least 1.0 cm. (3/8 inch);

The following item(s) appear to have been **omitted** from the application:

- Figure(s) **6** described in the specification.

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and $130.00 petition fee *(37 CFR 1.17(h))*) with evidence of such deposit **must** be filed within **TWO MONTHS** of the date of this Notice. The petition fee will be refunded if is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the $130.00 petition fee *(37 CFR 1.17(h))* requesting the later filing date **must** be filed

within **TWO MONTHS** of the date of this Notice.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within **TWO MONTHS** of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b)**. In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (*i.e.*, the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the references in the specification to the drawing figures to correspond with any relabelled drawing figures, is required. Any drawing changes should be accompanied by a copy of the drawing figures showing the proposed changes in red ink. Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.

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

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

OIPE JC144
SEP 1 9 2002
PATENT & TRADEMARK OFFICE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Daphne Preuss and
Gregory Copenhaver

Serial No.: 10/161,849

Filed: June 4, 2002

For: PLANT ARTIFICIAL CHROMOSOME COMPOSITIONS AND METHODS

Group Art Unit: Unknown

Examiner: Unknown

Atty. Dkt. No.: ARCD:257USC3

CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on the date below.

September 16, 2002
Date

Robert E. Hanson

SUBMISSION OF FORMAL DRAWINGS

ATTN OFFICIAL DRAFTSMAN
Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicants hereby submit formal drawings, 40 pages, Figures 1-7H, for the above-referenced application and request that these drawings be accepted for filing.

Respectfully submitted,

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

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 536-3085
Date: September 16, 2002

25209499.1

OIPE JC144
SEP 1 9 2002
PATENT & TRADEMARK OFFICE

10/161849 .091902

FULBRIGHT & JAWORSKI L.L.P.
A REGISTERED LIMITED LIABILITY PARTNERSHIP
600 CONGRESS AVENUE, SUITE 2400
AUSTIN, TEXAS 78701-3271
WWW.FULBRIGHT.COM

RHANSON@FULBRIGHT.COM
DIRECT DIAL: (512) 536-3085

TELEPHONE: (512) 474-5201
FACSIMILE: (512) 536-4598

September 16, 2002

CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on the date below:

September 16, 2002
Date

Robert E. Hanson

Commissioner for Patents
Washington, DC 20231

Re: *U.S. Patent Application No. 10/161, 849 entitled "PLANT ARTIFICIAL CHROMOSOME COMPOSITIONS AND METHODS" by Preuss, et al..*
Matter No. 10102107/ARCD:257USC3

Dear Sir:

Please find enclosed:

(1) A Response to Notice to File Corrected Application Papers mailed July 16, 2002;

(2) A Submission of Formal Drawings;

(3) Formal Figures 1-7H on 40 sheets;

(4) Preliminary Amendment;

(5) A substitute specification;

25209527.1

(6) Copy of the Notice to File Corrected Application Papers; and

(7) A return postcard to acknowledge receipt of these materials. Please date stamp and mail this postcard.

If the check is inadvertently omitted, or the amount is insufficient, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Commissioner is authorized to deduct or credit said fees from or to Fulbright & Jaworski L.L.P. Account No.: 50-1212/10206107/ARCD:257USC3.

Respectfully submitted,

Robert E. Hanson
Reg. 42,628
Attorney for Applicants

REH/jmh
Encl. As noted

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606

COPY MAILED

FEB 2 2 2006

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Preuss, et al.	:	
Application No. 10/161,849	:	
Filed: June 4, 2002	:	
Attorney Docket No. 30880/30000D	:	

This is a decision on the petition filed on September 21, 2005, which has been treated as a Petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of June 4, 2002. The petition was recently forwarded to this office for consideration.

A review of the application file finds no basis for the August 6, 2002 filing date.

In view of the above, the petition is granted.

The petition fee has not been charged.

This application will be returned to OIPE for processing with a filing date of June 4, 2002, and the mailing of a corrected filing receipt.

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

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
10/161,849	06/04/2002	1637	433	30880/30000D	40	27	1

CONFIRMATION NO. 6319

CORRECTED FILING RECEIPT

OC000000018151761

04743
MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606

Date Mailed: 02/28/2006

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)

Daphne Preuss, Chicago, IL;
Gregory Paul Copenhaver, Oak Park, IL;

Assignment For Published Patent Application

THE UNIVERSITY OF CHICAGO

Power of Attorney: The patent practitioners associated with Customer Number **04743**.

Domestic Priority data as claimed by applicant

This application is a CON of 09/553,231 04/19/2000 PAT 6,900,012
which is a CON of 09/090,051 06/03/1998 PAT 6,156,953
which claims benefit of 60/048,451 06/03/1997
and claims benefit of 60/073,741 02/05/1998

Foreign Applications

If Required, Foreign Filing License Granted: 02/28/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/161,849

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

PLANT ARTIFICIAL CHROMOSOME COMPOSITIONS AND METHODS

Preliminary Class

800

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier

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

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

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign 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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233 SOUTH WACKER DRIVE
6300 SEARS TOWER
CHICAGO IL 60606-6357

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NOV 1 6 2009

OFFICE OF PETITIONS

In re Patent No. 7,015,372	:	
Issue Date: March 21, 2006	:	
Application No. 10/161,849	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. 30880/30000D	:	

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 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.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/161,859	06/04/2002	Michael Redtenbacher	REDTENBACHER-4	4856

20151 .7590 02/22/2006

HENRY M FEIEREISEN, LLC
350 FIFTH AVENUE
SUITE 4714
NEW YORK, NY 10118

EXAMINER
VRETTAKOS, PETER J

ART UNIT	PAPER NUMBER
3739	

DATE MAILED: 02/22/2006

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

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10-161-859			

EXAMINER

ART UNIT	PAPER

20060215

DATE MAILED:

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

Commissioner for Patents

UNITED STATES 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. REDTENBACHER ET AL.	:	
Issue Date: February 22, 2005	:	**DECISION GRANTING**
Appl No.: 10/161,859	:	**PETITION**
Filed: June 04, 2002	:	*37 CFR 1.324*
For: Vein Stripping Instrument	:	
	:	
	:	
	:	

This is a decision on the petition filed August 6, 2004 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.

Linda Dvorak
Supervisory Patent Examiner
Art Unit 3739
Technology Center 3700

HENRY M FEIEREISEN, LLC
350 FIFTH AVENUE
SUITE 4714
NEW YORK, NY 10118

UNITED STATES 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: February 15, 2006
TO: Certificates of Correction Branch
FROM: Linda Dvorak
SPE, Art Unit 2
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 6,858,027 as specified on the attached Certificate.

Linda Dvorak, SPE
Art Unit 3739

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 6,858,027
Patented: February 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:

Michael Redtenbacher, Vienna (AT)

Linda Dvorak
Supervisory Patent Examiner
Art Unit 3739

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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COWAN LIEBOWITZ & LATMAN PC
JOHN J. TORRENTE
1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

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NOV 16 2005

OFFICE OF PETITIONS

In re Application of	:
Tyuichi Kobayashi	:
Application No. 10/161,861	: DECISION GRANTING PETITION
Filed: June 4, 2002	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. B422-186	:

This is a decision on the petition, filed November 14, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 31, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2612 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

Frances Hicks
Petitions Examiner
Office of Petitions

---

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

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March 23, 2004

Mark Montague
Cowan, Liebowitz & Latman
1133 Avenue of the Americas
New York, NY 10036-6799

In re application of:
Hideaki Nakajima DECISION ON PETITION
Serial No.: 10/161,864
Filed: June 4, 2002

For: BINOCULAR DEVICE

This is a decision on the petition received by fax on February 6, 2004, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Corrected Application Papers mailed July 8, 2002. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned September 10, 2002. A notice of abandonment was mailed on January 28, 2004.

On February 6, 2004, the office received a communication from the attorney of record. Enclosed was an acknowledgment that the attorney responded to the Notice to File Corrected Application Papers on August 9, 2002.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Corrected Application Papers on August 9, 2002.

The petition is hereby GRANTED.

The application has been completed for release to Technology Center 2872.

Telephone inquiries concerning this matter may be directed to Doshie E. Day at (703) 308-3640.

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Gerard De Montesquieux
1882 Gamay Terrace
Chual Vista CA 91913

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Demontesquieux :
Application No. 10/161,880 :
Filed: June 3, 2002 :
Title: Flexible Multiple-Positional Net-Like Strap Assembly/Resilient Shape Configurations

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

This above-identified application became abandoned for failure to timely file a reply to the non-final Office Action of June 2, 2004. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on September 3, 2004. A Notice of Abandonment was mailed on January 11, 2005.

This petition is hereby **Granted**.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

application. If the person signing the present petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted.

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

This application is being forwarded to Technology Center 3700 for further processing.

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

Charlema R. Grant

Charlema R. Grant

Petitions Attorney

Office of Petitions

cc: GARY L. EASTMAN
707 BROADWAY STREET, SUITE 1800
SAN DIEGO, CA 92101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 7

ALBERT WAI-KIT CHAN, J.D., PH.D.
WORLD PLAZA, SUITE 604
141-07 20TH STREET
WHITESTONE, NY 11357

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OCT 15 2004

OFFICE OF PETITIONS

In re Application of	:	
Tong, Shen	:	
Application No. 10/161,920	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. 943-US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 29, 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 July 8, 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 September 9, 2002. A Notice of Abandonment was mailed on January 12, 2004.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LAW OFFICES OF ALBERT WAI-KIT CHAN, LLC
WORLD PLAZA, SUITE 604
141-07 20TH STREET
WHITESTONE NY 11357

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APR 19 2005

OFFICE OF PETITIONS

In re Application of	:	
Shen, Tong	:	
Application No. 10/161,920	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. 943-US	:	

This is a decision on the petition filed January 19, 2005, requesting that the above-identified application be accorded a filing date of June 3, 2002, rather than the presently accorded date of June 4, 2002. The petition is properly treated as a petition under 37 CFR 1.10(d).

37 CFR 1.10(d) states,

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

As to (3), the true copy of the "Express Mail" mailing label which petitioner submitted shows the "date-in" as June 4, 2002. Petitioner has failed to include any evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence that the correspondence was deposited in the "Express Mail Post Office to Addressee" service on June 3, 2002.

According, the petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.10." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

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

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed Paralegal Liana Chase at (571) 272-3206.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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GENE SCOTT
PATENT LAW & VENTURE GROUP
3140 RED HILL AVENUE, SUITE 150
COSTA MESA CA 92626-3440

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OFFICE OF PETITIONS

In re Application of	:	
Shen, Tong	:	
Application No. 10/161,920	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. 943-US	:	

This is a decision on the renewed petition filed June 23, 2005, requesting that the above-identified application be accorded a filing date of June 3, 2002, rather than the presently accorded date of June 4, 2002. The petition is properly treated as a petition under 37 CFR 1.10(d).

The petition is **DISMISSED.**

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.10." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

37 CFR 1.10(d) states,

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

As to (3), petitioner has not made an adequate showing that the requested filing date is the date the correspondence was deposited in the Express Mail service. No evidence from the USPS has been submitted which would corroborate petitioner's assertion and there is no indication in the instant petition that any of the evidence submitted came into being after deposit and within one business day of the deposit of the correspondence. Evidence that came into being after deposit and within one day after the deposit of the correspondence as "Express Mail" may be in the form of a log book which contains information such as the "Express Mail" number, the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up

for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log. Evidence from the USPS may be, for example, the Express Mail Corporate Account Mailing Statement or a statement by an appropriate official of the USPS that according to a USPS record the "date-in" on petitioner's Express Mail receipt is erroneous, accompanied by a copy of the relevant USPS record. The petition is not accompanied by the corroborating evidence required by 37 CFR 1.10(d)(3). Further, the statements by Gene Scott marked Exhibit A and B seeking to establish the date of deposit by Express Mail cannot take the place of corroborating evidence lacking in the record. Therefore, since the petition is not accompanied by the corroborating evidence required by 37 CFR 1.10(d)(3), the petition must again be dismissed.

Further, it is stated in the Affidavit that the correspondence in question was deposited in an Express Mail drop box rather than directly with USPS employees. Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.[1]

The file indicates a change of address was submitted on March 22, 2005. The address given on the petition differs from the current 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.

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

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

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

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

Telephone inquiries concerning this matter may be directed Paralegal Liana Chase at (571) 272-3206.

Frances Hicks
Petitions Examiner
Office of Petitions

Cc: LAW OFFICES OF ALBERT WAI-KIT CHAN, LLC
WORLD PLAZA, SUITE 604
141-07 20TH AVENUE
WHITESTONE, NY 11357

[1] 37 CFR 1.10(b).

UNITED STATES PATENT AND TRADEMARK OFFICE

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JACQUE WILSON, ESQ.
ZIMMER, INC.
150 NORTH WACKER DRIVE
SUITE 1200
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of	:	
Adam Sanford et al	:	
Application No. 10/161,946	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. ZM0474	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed May 14, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on August 16, 2004.

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

This matter is being referred to Patent Publication.

Karen Creasy

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

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AUG 2 2005

MASTERMIND IP LAW PC
421-A SANTA MARINA COURT
ESCONDIDO CA 92029

In re Application of	:
Rosa Maria Solis et al	:
Serial No.: 10/161,969	: PETITION DECISION
Filed: May 31, 2002	:
Attorney Docket No.: 0001-080001	:

This is in response to the petition under 37 CFR 1.181, filed June 28, 2005, requesting withdrawal of abandonment based non-receipt of an Office action.

A review of the file history shows that the examiner mailed an Office action to applicants' former attorneys on June 24, 2004, setting a one month shortened statutory period for reply. Upon failure to receive a reply a Notice of Abandonment was mailed to applicants' new attorneys on May 6, 2005. Applicants current attorneys state that the Office action was never received and provide statements and copies of docket records establishing that the Office action was not received. However, it is noted that applicants' current attorneys were not appointed until September 2, 2004 and notification of acceptance was not mailed until December 9, 2004. Therefore, applicants' former attorneys were responsible for responding to the Office action and are presumed to have received it. No evidence of non-receipt for applicants' former attorneys has been provided. In the absence of such evidence and statements it cannot be concluded that the Office action was not received. As a consequence the Notice of Abandonment cannot be withdrawn at this time.

The petition is **DISMISSED**.

Applicants may file a renewed petition supplying the missing information and evidence noted above. Any such renewed petition must be filed within TWO MONTHS in order to be considered timely.

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

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DEC 19 2005

MASTERMIND IP LAW PC
421-A SANTA MARINA COURT
ESCONDIDO, CA 92029

In re Application of	:
Rosa Maria solis et al	:
Serial No.: 10/161,969	: PETITION DECISION
Filed: May 31, 2002	:
Attorney Docket No.: 0001-080001	:

This is in response to the renewed petition under 37 CFR 1.181, filed September 29, 2005, requesting withdrawal of abandonment based on failure to receive an Office action.

A review of the file history is given in the previous petition decision. That decision dismissed applicants' petition to withdraw the Notice of Abandonment issued in this application for failure to provide proper and sufficient evidence of non-receipt of the Office action. As noted therein, applicants' present attorneys were not appointed according to Office records until September 2, 2004. Applicants provide evidence of transfer of responsibility for this application from applicants' former counsel to present counsel effective May 21, 2004. However, no evidence is presented that the Office was notified of such transfer until September 2, 2004. Thus the Office action mailed June 24, 2004, was mailed to the correct address according to Office records. Applicants further provide a copy of a (redacted) letter listing files transferred, dated June 2, 2004, from applicants' former counsel to present counsel. The letter includes a listing of files transferred by docket number (former attorney) and country and Serial Number. The instant application file is not listed (unless by a parent Serial Number). A number of files listed by former docket number are appended at the end of the letter of transfer, but contain no Serial Numbers. Thus there is no conclusive evidence that the instant file was transferred.

Former counsel also indicate that their office records (mail received log) indicates receipt of the Office action dated June 24, 2004, but fail to indicate that it was docketed or what was done with it. Applicants' former counsel make the statement that "it is presumed that standard operating procedure was followed" which included determining that the file had been transferred to another firm and then forwarding the Office action to the new firm. Applicants' present counsel states that the forwarded mail was not received, but provide no evidence thereof from their own records or evidence that other forwarded mail from related files was received. As a consequence of the insufficiency of evidence provided the Notice of Abandonment cannot be withdrawn at this time

The petition is **DISMISSED**. Applicant's may again file a renewed petition supplying the missing requirements or explain their absence. Any renewed petition must be filed within TWO MONTHS in order to be considered timely.

The application will be retained in storage.

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

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Alexandria, VA 22313-1450
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JUN - 1 2006

MASTERMIND IP LAW, PC
421-A SANTA MARINA COURT
ESCONDIDO, CA 92029

In re Application of	:
Rosa Maria Solis et al	:
Serial No.: 10/161,969	: PETITION DECISION
Filed: May 31, 2002	:
Attorney Docket No.: 0001-080001	:

This is in response to the second renewed petition under 37 CFR 1.181, filed February 10, 2006, requesting withdrawal of abandonment based on failure to receive an Office action.

A review of the file history is set forth in the first petition decision and not included herein. That petition decision dismissed applicants' petition for lack of required evidence of non-receipt. Applicants' renewed petition attempted to supply such evidence, but due an error in redaction the required evidence was not presented. In addition evidence of routine forwarding of correspondence from previous counsel to present counsel was requested to establish that routine procedures for forwarding of correspondence received after transfer of files and responsibility were followed. Applicants have now supplied such evidence. Based on the new evidence, it is concluded that the Office action mailed June 24, 2004, was not received as forwarded mail by applicants' present counsel. In view of the new evidence the Notice of Abandonment is withdrawn and the application is restored to pending status with the mailing of this decision.

The petition is **GRANTED**.

The application will be forwarded to the examiner for mailing of a new Office action.

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

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OIPE JC106
OCT 1 8 2004
PATENT & TRADEMARK OFFICE

Paper No. 8

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DEC 0 8 2003

OFFICE OF PETITIONS

Daniel Robert Izzo
512 Onondaga Avenue
Syracuse, New York 13207

In re Application of
Daniel Robert Izzo
Application No. 10/161,974
Filed: January 22, 1999
For: A Resurrection Burial Tomb

: Decision
: On
: Notice of Incomplete
: Reply

The above referenced application was referred to this Office by the Office of Initial Patent Examination (OIPE) for review of the notices to file corrected application papers due to the failure to include a notice of omitted items.

The notices to file corrected application papers mailed July 12, 2002 and October 29, 2002 are hereby **VACATED,** and OIPE is directed to mail a new notice that adds a notice of omitted items to the existing notice of items requiring correction. Also OIPE should identify if any drawings in applicant's response are of publishable quality.

Notices to file corrected application papers were mailed July 12, 2002 and October 29, 2002. In response thereto applicant filed responses September 16, 2002 and December 3, 2002. A request for a corrected filing receipt was also filed November 25, 2002. On January 23, 2003, a Notice of Incomplete Reply was mailed. None of the notices nor any of applicant's responses is considered to adequately address a matter of omitted items.

As originally filed, there was no Figure 57, but a figure 57 is described in the body of the specification. The notices sent by OIPE should have stated that Figure 57 was missing and that the application received a filing date of January 22, 1999, without Figure 57. Applicant may accept the filing date of January 22, 1999, or provide the missing drawing and the filing will be date accorded will be the date on which Figure 57 was received. The response filed September 16, 2002, contains a drawing labeled Figure 57, which is different than the Figure 57 filed with the response filed March 24, 2003. The response filed March 24, 2003, noted that Figure 57 was missing as originally filed. If applicant wishes to accept the original filing date without a Figure 57 , he should so state in the response to this letter. If the Figure 57 filed is simply a renumbering of the figures, applicant should so state and the original filing date will be retained. If the Figure 57 is a new drawing, and applicant wishes the newly added subject matter, then the date of receipt of the Figure 57 will be accorded this application.

Applicant expressed orally to Michael Lewis of this office some concern with respect to the calculation of claim fees and the drawing requirements.

Cancellation of claims in a preamendment is an acceptable method of reducing claim fees. Applicant filed a reduced number of claims with each response with claim numbers that overlap the claim numbers already present in the application. The newly filed claims were not simply a typed version of the handwritten claims but either an amended version of the prior claims or

completely new claims using existing claim numbers. The new claims were presented with no clear directions for cancelling any previously filed claims. The response did not follow any recognized procedure for amending claims existing claims. When new different claims are presented numbered as existing claims, the office will ordinarily renumber the new claims starting with the next higher number after the highest claim number previously used.

The originally filed claims included independent claims: 1, 5, 8, 9, 10, 12, 13, 15, 16, 20, 21, 22, 23, 24, 25, 26; and at the bottom of page 61 two more independent claims with numbered as claims 4 and 5 (duplicating the claim numbers but not the claims on pages 42-43). No claim numbers were included in the dependency language of claim 14, so it could be treated as an independent claim. Dependent originally filed claims are: 2, 3 (3 dependencies), 4, 6, 7, 11, 17, 18 (2 dependencies), 19 (3 dependencies including claim 3), 27 and 28. The original notice of insufficient fees was calculated based upon all these claims. The response filed March 24, 2003, presented a new different claim numbered as claim 1, directed the cancellation of original claim originals 2-10; and presents new independent claims 2 and 3. The latest response is silent as to claims: 11 to 28 the additional claims presented in the response filed September 16, 2002. so they remain in the application. In view of applicant's failure to properly cancel previously submitted claims, the prior notices concerning fees if they contain any error, only understate the fee that is due.

The Office no longer holds drawing requirements in abeyance. A request to hold the drawing requirements in abeyance is not an acceptable response to this requirement. While the drawings need not be of the highest professional quality, they must be of sufficient quality to be publishable. Even a cursory review of the latest drawings reveals that the margin requirements have not been met for example on the bottom of figure 48, nor are they of sufficient clarity such as the text in figure 58 to be publishable. If OIPE determines that any of the drawings are of publishable quality they should identify them in the next notice mailed to applicant.

In view of applicant's unfamiliarity with the rules concerning filing patent applications, it is suggested that applicant get the assistance of a competent patent practitioner to assist with these matters.

This application is being returned the Office of Initial Patent Examination Division to mail a new notice with a new period for response that includes: 1) a notice of omitted parts and 2) repeats as appropriate the additional requirements from the previous notices to correct application papers.

Any questions concerning this decision should be directed to Michael L. Lewis at 703-306-5585.

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

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Paper No. 8

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DEC 0 8 2003

OFFICE OF PETITIONS

Daniel Robert Izzo
512 Onondaga Avenue
Syracuse, New York 13207

In re Application of
Daniel Robert Izzo
Application No. 10/161,974
Filed: January 22, 1999
For: A Resurrection Burial Tomb

: Decision
: On
: Notice of Incomplete
: Reply

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completely new claims using existing claim numbers. The new claims were presented with no clear directions for cancelling any previously filed claims. The response did not follow any recognized procedure for amending claims existing claims. When new different claims are presented numbered as existing claims, the office will ordinarily renumber the new claims starting with the next higher number after the highest claim number previously used.

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In view of applicant's unfamiliarity with the rules concerning filing patent applications, it is suggested that applicant get the assistance of a competent patent practitioner to assist with these matters.

This application is being returned the Office of Initial Patent Examination Division to mail a new notice with a new period for response that includes: 1) a notice of omitted parts and 2) repeats as appropriate the additional requirements from the previous notices to correct application papers.

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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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Mr. Chakri Charoenchit
6/77 Moo 5 Boromrajchonnee Road
Bangkok 10170, Thailand
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OCT 24 2006
OFFICE OF PETITIONS

In re Patent No. 6,893,386
Issued: May 17, 2005
Application No. 10/161,977
Filed: June 4, 2002
Attorney Docket No. CHAK01-2002

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed February 13, 2006, and supplemented on July 31, 2006, requesting a duplicate Letters Patent. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience to petitioners.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.182."

Initially, the Office notes that petitioners requested the issuance of duplicate Letters Patent for two separate patents, Nos. 6,892,665 and 6,893,386, but filed only **one** petition for both patents. Pursuant to 37 CFR 1.4,

> (b) Since each file must be complete in itself, **a separate copy of every paper** to be filed in a patent, patent file, or other proceeding must be furnished **for each file to which the paper pertains,** even though the contents of the papers filed in two or more files may be identical. The filing of duplicate copies of correspondence in the file of an application, patent, or other proceeding should be avoided, except in situations in which the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence in the file of an application, patent, or other proceeding.
>
> (c) Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, **each distinct subject, inquiry or**

order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

Therefore, the Office will consider each request separately and on its own merits, and thereafter, will issue two decisions (*i.e.*, one decision in the file of Patent No. 6,892,665 and another decision in the file of Patent No. 6,893,386).

Next, the Office notes that a request for a duplicate Letters Patent may be granted in two situations: 1) due to the loss of the original Letters Patent either by the law firm, applicant or assignee, or the destruction of the Letters Patent (petition fee required); or 2) due to non-receipt of the Letters Patent (no petition fee required).

In the first situation, a petitioner must provide a statement from a person with first-hand knowledge of the events, attesting to the fact that the original Letters Patent was either lost or destroyed. Additionally, a $400.00 petition fee is required.

In the second situation, the showing required for issuance of a duplicate Letters Patent with no fee due to non-receipt is the same as that set forth in the Manual for Patent Examining Procedure, Section 711.03(c), under the subheading "Petitions to Withdraw the Holding of Abandonment." The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner or patentee, attesting to the fact that the practitioner or patentee did not receive the original Letters Patent and that a search of the file jacket and docket records indicates that the original Letters Patent was not received.

2. A copy of the docket records, where the non-received original Letters Patent would have been entered had it been received and docketed, must be attached to and referenced in the statement of the practitioner or patentee.

In this instance, it appears that petitioners are asserting that they never received the original Letters Patent. Unfortunately, petitioners did not comply with the requirements set forth in MPEP 711.03(c). Specifically, petitioners did not provide a statement attesting to that fact that a search of their records indicated that the original Letters Patent was not received. Moreover, petitioners did not submit any documentary evidence such as a copy of their records or a mail log to establish non-receipt. Accordingly, 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 FAX: (571) 273-8300
Attn: Office of Petitions

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

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Mr. Chakri Charoenchit
6/77 Moo 5 Boromrajchonnee Road
Bangkok 10170, Thailand
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OFFICE OF PETITIONS

In re Patent No. 6,893,386 :
Issued: May 17, 2005 :
Application No. 10/161,977 : DECISION ON PETITION
Filed: June 4, 2002 :
Attorney Docket No. CHAK01-2002 :

This is a decision on the renewed petition under 37 CFR 1.182, filed December 8, 2006, requesting the issuance of a duplicate Letters Patent without payment of a fee.

As stated in the previous decision, a request for a duplicate Letters Patent may be granted in two situations: (1) establishment of non-receipt of the Letters Patent (no fee required); or, (2) loss or the destruction of the original Letters Patent (fee required).

In the first situation (no fee required), the Office follows the guidelines set forth in MPEP 711.03(c) (*see also* "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993), which sets forth that, in the absence of any irregularity in the mailing of an Office action (in this case, the Letters Patent), there is a strong presumption that the Office action (Letters Patent) was properly mailed to the address of record. This presumption may be overcome by a showing that the Letters Patent was not in fact received.

In the present petition, petitioner states that the original Letters Patent was never received. Furthermore, petitioner asserted that he was unable to track the mailing of the original Letters Patent. Petitioner argued that he should not be required to pay a fee for the issuance of a duplicate Letters Patent because it was not the fault of petitioner.

Unfortunately, petitioner did not meet the requirements set forth in MPEP 711.03(c). The evidence required to establish non-receipt of the original Letters Patent did not accompany the petition. Therefore, the renewed petition requesting issuance of a duplicate Letters Patent for the above-identified patent without payment of a fee must be **DISMISSED**.

Since petitioner is unable to provide the required evidence to establish non-receipt of the original Letters Patent, petitioner may wish to consider filing a renewed petition under 37 CFR 1.182, requesting issuance of a duplicate Letters Patent, and pay the required fee of $400.00.

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 1.182."

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

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Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 20 2007

OFFICE OF PETITIONS

In re Patent No. 6,893,386	:	
Issued: May 17, 2005	:	
Application No. 10/161,977	:	DECISION ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. CHAK01-2002	:	

This is a decision on the second renewed petition under 37 CFR 1.182, filed May 29, 2007, requesting the issuance of a duplicate Letters Patent without payment of a fee.

Again, petitioner asserted that the original Letters Patent was never received. Petitioner argued that he should not be required to pay a fee for the issuance of duplicate Letters Patent because it was not the fault of petitioner. As stated in the previous two decisions, a request for a duplicate Letters Patent may be granted in two situations: (1) establishment of non-receipt of the Letters Patent (no fee required); or, (2) loss or the destruction of the original Letters Patent (fee required).

In the first situation (no fee required), the Office follows the guidelines set forth in MPEP 711.03(c) (*see also* "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993), which sets forth that, in the absence of any irregularity in the mailing of an Office action (in this case, the Letters Patent), there is a strong presumption that the Office action (Letters Patent) was properly mailed to the address of record. This presumption may be overcome by a showing that the Letters Patent was not in fact received. The burden of proof of non-receipt is on the petitioner and not on the USPTO. A review of the record indicates no irregularity in the mailing of the Letters Patent, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record.

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence,

petitioner must show that the Letters Patent was not received as evidence by petitioner's records. Petitioner should include any available documentary evidence of any type of log showing correspondence mailed to and received from the USPTO, covering a reasonable period (approximately two months) from May 17, 2005, the mailing date of the Letters Patent, to demonstrate non-receipt.

Petitioner must include a statement from petitioner, or any other person at the address of record, who handles correspondence from the USPTO, indicating that a search was conducted of the location where correspondence from the USPTO is kept; however, the Letters Patent was not found. Lastly, petitioner must state that the correspondence address of record was a current address for a reasonable time after May 17, 2005; the period when he would have received the Letters Patent.

Unfortunately, petitioner did not meet the requirements set forth in MPEP 711.03(c). The evidence required to establish non-receipt of the original Letters Patent did not accompany the petition. Therefore, the renewed petition requesting issuance of duplicate Letters Patent for the above-identified patent without payment of a fee must be **DISMISSED**.

Since petitioner is unable to provide the required evidence to establish non-receipt of the original Letters Patent, petitioner may wish to consider filing a renewed petition under 37 CFR 1.182, requesting issuance of a duplicate Letters Patent, and pay the required fee of $400.00.

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 1.182."

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

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C. T. Donnell

Christina Tartera Donnell
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Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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JJGJR.: 12-03

Paper No: 6

COASTAL SYSTEMS STATION,
DAHLGREN DIVISION
NAVAL SURFACE WARFARE CENTER
6703 W HWY 98 CODE CP2L
PANAMA CITY FL 32407-7001

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JAN 2 9 2004
OFFICE OF PETITIONS

In re Application of
Courson, et al :
Application No. 10/161,992 : ON PETITION
Filed: 31 May, 2002 :
Attorney Docket No. NC 82,696 :

This is a decision on the petition filed on 25 November, 2003, to revive the above-identified application under 37 C.F.R. §1.137(a)

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

NOTES:

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(a) (as to unavoidable delay) or an alternative request for relief under 37 C.F.R. §1.137(b) (as to unintentional delay) 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(a)"; and/or "Petition under 37 C.F.R. §1.137(b)";

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 6 March, 2003, with a reply due (absent a request and fee for extension of time) on or before Friday, 6 June, 2003;
- a result, the application was deemed abandoned after midnight 6 June, 2003;
- Notice of Abandonment was mailed on 20 October, 2003;
- Petitioner and Counsel (Harvey A. Gilbert (Reg. No. 27,331) filed the instant petition under 37 C.F.R. §1.137(a) stating only an allegation of non-receipt, but offering no documentary support for the allegation.

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

---

[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).

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]))

Petitioner has failed to make a showing of unavoidable delay, the required showing under the regulation.

Accordingly, in view of the record, the petition as considered under 37 C.F.R. §1.137(a) hereby is **dismissed** for failing to satisfy the "showing" requirement.

ALTERNATIVE VENUE

It appears that Petitioner is unable to make a showing of unavoidable delay surpassing that tendered heretofore, and, therefore, Petitioner's only alternative to irretrievable abandonment likely is to file a petition and fee as set forth at NOTE 1, above at page 1, under 37 C.F.R. §1.137(b), and state therein that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional."

Thus, Petitioner may wish to supplement his petition to plead alternatively under 37 C.F.R. §1.137(b) wherein the "showing " burden is much less onerous.

Petitioner is cautioned that failure to submit such a petition 37 C.F.R. §1.137(b) timely may be viewed as intentional delay and an absolute bar to revival.

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

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[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 and/or deposited for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely prepared and/or deposited for shipment.

By mail: (Effective 1 May, 2003)[7]
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

[7] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

UNITED STATES PATENT AND TRADEMARK OFFICE

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JJGJR.: 04-04

Paper No: 9

COASTAL SYSTEMS STATION,
DAHLGREN DIVISION
NAVAL SURFACE WARFARE CENTER
6703 W HWY 98 CODE CP2L
PANAMA CITY FL 32407-7001

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APR 3 0 2004
OFFICE OF PETITIONS

In re Application of
Courson, et al :
Application No. 10/161,992 : ON PETITION
Filed: 31 May, 2002 :
Attorney Docket No. NC 82,696 :

This is a decision on the petition filed on 24 March, 2004, and considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.

For the reasons set forth below, the petition as considered under 37 C.F.R.§1.181 is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 6 March, 2003, with a reply due (absent a request and fee for extension of time) on or before Friday, 6 June, 2003;
- a result, the application was deemed abandoned after midnight 6 June, 2003;
- Notice of Abandonment was mailed on 20 October, 2003;
- on 25 November, 2003, Petitioner and Counsel (Harvey A. Gilbert (Reg. No. 27,331) filed the instant petition under 37 C.F.R. §1.137(a) stating only an allegation of non-

receipt, but offering no documentary support for the allegation, and the petition was dismissed on 29 January, 2004;

- the instant petition was accompanied by: (a) a statement by the person alleged to be responsible for receiving and logging Office actions, and (b) a copy of the file cover indicating non-receipt of the Office action in question.

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

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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.

regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[6]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[7]

Petitioner fails to make any showing as to non-receipt of or proper/timely reply to the Notice of Allowance and Issue Fee Due as discussed above.

Moreover a delay is not "unavoidable" when an applicant simply fails to file properly and timely the required reply and so permits the maximum extendable statutory period for reply to expire.[8]

In determining if a delay was unavoidable, decisions on reviving abandoned applications have adopted the standard of the reasonably prudent person acting in their most important business matters.[9]

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."[10]

Petitioner has evidenced non-receipt of the Office action, and so satisfies the showing as required under 37 C.F.R. §1.181.

CONCLUSION

Because Petitioner satisfied the burdens set forth in Delgar v. Schulyer, the petition under 37 C.F.R. §1.181 hereby is **granted**.

---

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

[7] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

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

[9] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

[10] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[6]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[7]

Petitioner has evidenced non-receipt of the Office action, and so satisfies the showing as required under 37 C.F.R. §1.181.

CONCLUSION

Because Petitioner satisfied the burdens set forth in Delgar v. Schulyer, the petition under 37 C.F.R. §1.181 hereby is **granted**, and Petitioner is given three months from the date of the mailing of this decision within which to file a reply to the Office action of 6 March, 2003. Extensions of time are available under the provisions of 37 C.F.R. §1.136.81.

The file will be retained in the Office of Petitions to address another matter.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

Encl.: Copy of the 6 March, 2003, Non-Final Office Action

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

[7] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

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JJGJR.: 05-04

Paper No: 10

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DAHLGREN DIVISION
NAVAL SURFACE WARFARE CENTER
6703 W HWY 98 CODE CP2L
PANAMA CITY FL 32407-7001

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MAY 1 1 2004
OFFICE OF PETITIONS

In re Application of
Courson, et al :
Application No. 10/161,992 : ON PETITION
Filed: 31 May, 2002 :
Attorney Docket No. NC 82,696 :

This is a decision on the petition filed on 24 March, 2004, to revive the application under 37 C.F.R. §1.137(b).

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 6 March, 2003, with a reply due (absent a request and fee for extension of time) on or before Friday, 6 June, 2003;
- a result, the application was deemed abandoned after midnight 6 June, 2003;
- Notice of Abandonment was mailed on 20 October, 2003;
- on 25 November, 2003, Petitioner and Counsel (Harvey A. Gilbert (Reg. No. 27,331)

filed the instant petition under 37 C.F.R. §1.137(a) stating only an allegation of non-receipt, but offering no documentary support for the allegation, and the petition was dismissed on 29 January, 2004;

- the instant petition was accompanied by: (a) a statement by the person alleged to be responsible for receiving and logging Office actions, and (b) a copy of the file cover indicating non-receipt of the Office action in question, thus satisfying the requirements set forth in Delgar v. Schulyer,[1] and the matter was treated as a request to withdraw the holding of abandonment, which was granted on 30 April, 2004.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5]

---

[1] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

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

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

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

And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

CONCLUSION

Therefore, the instant petition under 37 C.F.R. §1.137(b) hereby is **dismissed as moot**, and no fees are charged.

Petitioner is reminded that a copy of the 6 March, 2003, Office action was mailed with the Decision on Petition of 30 April, 2004, and a reply is due (absent request and fees for extension(s) of time) within three 3 months of the mail date of that decision.

The file is being returned to Technology Center 3600 to await Petitioner's timely and proper reply and further processing in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

---

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

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

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ROPES & GRAY LLP
1251 AVENUE OF THE
AMERICAS FL C3
NEW YORK, NY 10020-1105

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JUN 13 2005
OFFICE OF PETITIONS

In re Application of

Fried, et al. :

Application No. 10/162,009

: DECISION ON PETITION

Filed: June 4, 2002

:

Attorney Docket No. 525/4

This is a decision on the petition under 37 CFR 1.137(b), filed May 23, 2005, to revive the above-identified application. The petition will be treated as a petition to withdraw the holding of abandonment pursuant to 37 CFR 1.181.

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

A final Office action was issued in the subject application on September 22, 2004, allowing a shortened statutory period for reply of three-months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). Applicant filed an amendment on January 24, 2005, along with a request for an extension of time within the first month. An Advisory Action mailed February 11, 2005 advised applicant advised that the amendment of January 24, 2005, failed to place the application in condition for allowance. The application was held abandoned as of January 24, 2005, as it was determined that a timely and proper response to the final Office action was not filed.

The record reflects that the "Petition Under 37 CFR 1.136(a) for Extension of Time" filed January 24, 2005, contained the following language:

> The Director is authorized to charge <u>any</u> additional fees that may be due, or to credit overpayment of the same, to Deposit Account 06-1075.

The record further reflects that a continuing application, application serial number 11/087,389, was filed on March 25, 2005. Although no request for an extension of time filed concurrently with the continuing application was found, the *Manual of Patent Examining Procedure* (MPEPP) supports the contention that the authorization filed January 24, 2005, to charge any additional fees may have been used to charge the two-month extension of time fee that was necessary to make the continuing application timely and avoid abandonment of the application. Section 509.01(I) of the MPEP states, in pertinent part:

> A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application either for the entire pendency of the application or with respect to a particular paper filed.
>
> Many application contain broad language authorizing <u>any</u> additional fees which might have been due to be charged to a deposit account. The U.S. patent and Trademark Office will interpret such broad authorizations to include authorization to charge to a deposit account fees set forth in 37 CFR 1.16, and 1.17.

The fees for an extension of time are authorized pursuant to 37 CFR 1.17(a). The language found in the petition for extension of time filed January 24, 2005, clearly indicates that "any" additional fees should be charged to the designated deposit account. Given the guidance provided by the MPEP section cited previously, it is concluded that the continuing application filed March 22, 2005, was timely filed as a standing authorization to charge deposit account 06-1075 for the necessary extension of time fee was present at the time the continuing application was filed. **The holding of abandonment is, therefore, withdrawn as a timely and proper response to the final Office action was filed on March 22, 2005.**

The amount of $225.00 for the extension of time within the second month will be taken from the $750.00 fee charged for the instant petition and deposit account 06-1075 will be credited $525.00, in due course.

The application is being forwarded to Technology Center 1600, GAU 1651 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

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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ROSS J. OEHLER
AVENTIS PHARMACEUTICALS INC
ROUTE 202-206
MAIL CODE : D303A
BRIDGEWATER, NJ 08807

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DEC 1 4 2005

OFFICE OF PETITIONS

In re Application of	:	
Daniel R. Henton et al	:	DECISION ON PETITION
Application No. 10/162,011	:	TO MAKE SPECIAL UNDER
Filed: June 3, 2002	:	37 CFR 1.102(c)(1)
Attorney Docket No. M01730USCNT17	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed November 14, 2005, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

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

The instant petition includes a declaration by Dr. Frederick J. McCarty attesting that he is over 65 years of age. Accordingly, the above-identified application has been accorded "special" status.

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

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

This matter is being referred to Technology Center AU 1625 for action on the merits commensurate with this decision.

David Bucci
Petitions Examiner
Office of Petitions

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DEC 14 2005

ROSS J. OEHLER
AVENTIS PHARMACEUTICALS INC.
ROUTE 202-206
MAIL CODE: D303A
BRIDGEWATER NJ 08807

In re Application of	:
Daniel R. Henton et al	:
Serial No.: 10/162,011	: PETITION TO MAKE SPECIAL
Filed: June 3, 2002	:
Attorney Docket No.: 03804.0164-17000	:

This is in response to applicants' petition filed November 14, 2005, to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the age of the applicant.

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

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

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission to the general Office facsimile number 571-273-8300.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FROM DIRECTORS OFFICE

OCT 13 2005

TECHNOLOGY CENTER 3600

John Wiley Horton
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 S. Monroe Street, 2nd Floor
Tallahassee, FL 32301

In re Application of
Timothy Skipper
Application No. 10/162,022
Filed: June 4, 2002

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

For: MODIFIED MODULAR LADDER WITH REMOVABLE RUNGS

This is a decision on the Petition to Withdraw the Holding of Abandonment filed in the United States Patent and Trademark Office on July 14, 2005.

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

☐ Postcard receipt being dated_____.

☐ USPTO return facsimile receipt dated _____.

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

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

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

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

☒ Originally sent response, filed July 15, 2004.

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/js: 9/20/05

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

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ANTHONY NIEWYK, ESQ.
BAKER & DANIELS LLP
SUITE 800
111 EAST WAYNE STREET
FORT WAYNE, IN 46802

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NOV 16 2007

OFFICE OF PETITIONS

In re Application of	:	
Dave Dodson	:	
Application No. 10/162,026	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. HER0108	:	

This is a decision on the petition, filed July 17, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to a non-final Office action mailed December 13, 2005. No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on March 14, 2006. A Notice of Abandonment was mailed on July 26, 2006. On July 17, 2007, the present petition was filed.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While it is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Since this application is being revived for purposes of continuity with Application No. 11/879,432, and continuity having been established by this decision reviving the above-captioned application, the above-captioned application is again abandoned in favor of the continuing application.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

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APR 1 1 2007

OFFICE OF PETITIONS

In re Application of
HAYASHI et al.
Application No. 10/162040
Filed: 06/03/2002
Attorney Docket No. SAEG116.001AUS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed December 20, 2006, requesting that the Office withdraw the holding of abandonment in the above-identified application.

On May 16, 2006, the Office mailed a final Office action, which set a three (3) month shortened statutory period for reply. On November 20, 2006 (certificate of mailing dated November 16, 2006), petitioner filed a Request for Continued Examination (RCE) (and fee), a submission in the form of an amendment, and request for an extension of time for response within the third month (and fee). Despite the filing of the reply and the request for an extension of time, the Office mailed a Notice of Abandonment on December 1, 2006.

The final Office Action of May 16, 2006, set a three-month shortened statutory period for reply. As the period for response was extended by three months, a timely reply was due on or before November 16, 2006. The record indicates that petitioner submitted a reply in the form of an RCE and a submission within the six-month statutory period. Specifically, the reply is considered as being timely filed on November 16, 2006, because petitioner followed the certificate of mailing procedures described in 37 CFR 1.8(a). Accordingly, the petition is **granted**. The Notice of Abandonment was sent in error and is hereby withdrawn.

This matter will be referred to Technology Center Art Unit 1621.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. All other questions regarding the status of the application or the examination process should be directed to the Technology Center.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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JUL 14 2004

Paper No. 6

In re Application of
David Carpenter *et al*
Application No. 10/162,041
Filed: June 3, 2002
Attorney Docket No. 200-094

: DECISION ON PETITION

This is a decision on the petition filed on May 10, 2004 by which petitioners request withdrawal of the examiner's holding that this application stands abandoned for failure to file a timely and proper reply to the Office letter dated September 12, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioners allege that the application is not abandoned because a reply to the Office letter in question was actually filed on December 8, 2003. Petitioners have supported this allegation by furnishing a copy of the reply and a copy of a post card filing receipt for the reply which shows that the reply was in fact received in the Office on December 8, 2003, a date within the period for filing a reply to the Office letter in question. Based upon this evidence, it is clear that this application is not abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner for entry of the reply filed on December 8, 2003. Thereafter, the application will be forwarded to the examiner for action on the reply.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Melvin I. Stoltz
51 Cherry Street
Milford, CT 06460

UNITED STATES PATENT AND TRADEMARK OFFICE

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WHYTE HIRSCHBOECK DUDEK S.C.
ONE EAST MAIN STREET
SUITE 300
MADISON WI 53703-3300

COPY MAILED
JUL 25 2006
OFFICE OF PETITIONS

In re Application of
David Carpenter et al.
Application No. 10/162,041
Filed: June 3, 2002
Attorney Docket No. AUC-33051

: DECISION ON APPLICATION
:FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM PURSUANT TO 37 CFR § 1.705(d)," filed May 15, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to seven hundred nineteen (716) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is seven hundred sixteen **(716)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 13, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is zero days. On May 15, 2006, applicants timely[1] submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is seven hundred nineteen (719) days. Applicants dispute the reduction of seven hundred sixty three (763) days attributed to applicant for failing to respond within three months to the non-Final Office Action mailed September 12, 2003.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of forty (40) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) reduced by applicants' delay of seven hundred sixty-three days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 40 days has been reviewed and found to be correct. The reduction of seven hundred sixty-three (763) days of applicant delay is at issue.

Applicants dispute the entry of a period of reduction of 763 days for applicants taking in excess of three months to respond to the non-Final Office Action mailed September 12, 2003. Applicants submit evidence to show that the holding of abandonment for failure to timely respond to the non-Final Office Action was withdrawn based on their showing

[1] PALM records indicate that the Issue Fee was received in the Office on May 15, 2006.

that a response had been timely filed on December 5, 2003. In support of a showing that the response was received December 5, 2003, applicants submitted a copy of their date-stamped postcard.

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

A review of the application history reveals that no response to the non-Final Office Action mailed September 12, 2003 was considered timely filed by the Office and the application became abandoned. Applicants were advised of the abandonment by notice mailed May 4, 2004. In response, on May 10, 2004, applicants filed a petition to withdraw the holding of abandonment. It is specifically noted that the petition to withdraw the holding of abandonment was filed within two months from the mailing date of a notice of abandonment. See § 1.704(c)(4). Moreover, by decision mailed July 14, 2004, the petition was granted on the basis that applicants had shown that a proper response was filed on December 8, 2003 with a certificate of mail dated December 5, 2003.

While applicants begin the calculation for PTO delay on the certificate of mail date, December 5, 2003, applicants are reminded that the response was actually received on December 8, 2003 and that they are not entitled to the calculation based on the certificate of mail date. Thus, four months from the filing of the response, April 8, 2004 to the mailing of the Notice of Allowance, February 13, 2006, is 676 days, not 679 days as is indicated by applicants.

In view thereof, it is concluded that applicants did not fail to engage in reasonable efforts to conclude processing or examination of the application by delaying in replying to the Notice of Allowance by 763 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is seven hundred sixteen days

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Day : Monday
Date: 7/24/2006

PALM INTRANET

Time: 16:20:49

PTA Calculations for Application: 10/162041			
Application Filing Date:	06/03/2002	PTO Delay (PTO):	40
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	763
Post-Issue Petitions:	0	Total PTA (days):	716
PTO Delay Adjustment:	1439		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
39	06/07/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	676		
38	06/07/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	763		
29	02/13/2006	MAIL NOTICE OF ALLOWANCE			
28	02/09/2006	ISSUE REVISION COMPLETED			
27	02/09/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
26	02/09/2006	CASE DOCKETED TO EXAMINER IN GAU			
25	02/06/2006	NOTICE OF ALLOWABILITY			
24	07/14/2004	MAIL NOTICE OF RESCINDED ABANDONMENT			
23	01/26/2006	DATE FORWARDED TO EXAMINER			
22	01/13/2006	RESPONSE AFTER NON-FINAL ACTION		763	8
21	01/09/2006	CASE DOCKETED TO EXAMINER IN GAU			
20	10/03/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
19	08/19/2002	REFERENCE CAPTURE ON IDS			
18	09/27/2005	CORRESPONDENCE ADDRESS CHANGE			
17	08/11/2005	CORRESPONDENCE ADDRESS CHANGE			
16	08/11/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
15	07/29/2004	NOTICE OF RESCINDED ABANDONMENT IN TCS			
14	07/14/2004	PETITION TO REVIVE APPLICATION - GRANTED			
13	05/10/2004	PETITION ENTERED			
12	05/28/2004	CORRESPONDENCE ADDRESS CHANGE			
11	05/10/2004	WORKFLOW INCOMING PETITION IFW			
10	05/04/2004	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			

9	05/03/2004	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
8	09/12/2003	MAIL NON-FINAL REJECTION	40		-1
7	09/05/2003	NON-FINAL REJECTION			
6	08/19/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	07/24/2002	CASE DOCKETED TO EXAMINER IN GAU			
4	07/11/2002	APPLICATION DISPATCHED FROM OIPE			
3	07/09/2002	APPLICATION IS NOW COMPLETE			
2	06/20/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/03/2002	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back use Back button on your browser toolbar.

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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

1/10/08

Patent No. : 7096586
Inventor(s) : David Carpenter
Issued : 8/29/06
Title : COMBINED SCISSORS AND BOX CUTTER
Atty.doc./File No.

Request for Certificates 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 CFR 1.322.

Inspection of the application for the patent reveals ther is no 1050 to make the correction. Therefore being no fault on the Patent and Trademark Office, It has no authority to issue a certificate of correction under the provision of 1.322.

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

Future written correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Henry Randall
Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 Ext. 108

WHTE HIRSCHBOECK DUDEK S.C.
ONE EAST M,AIN STREET, SUITE 300
MADISON, WI 53703-3300

HR/CBN

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ANTHONY NIEWYK
BAKER & DANIELS LLP
SUITE 800
111 EAST WAYNE STREET
FORT WAYNE, IN 46802

COPY MAILED

JUL 10 2007

OFFICE OF PETITIONS

In re Application of	:	
Dave Dodson	:	
Application No. 10/162,050	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. HER0103	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 23, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $1500; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 11/710,640.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

NOV 0 3 2004 PATENT & TRADEMARK OFFICE

AF/3643

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT

Application Number	10/162,114
Filing Date	June 3, 2002
First Named Inventor	Harold D. Thompson
Confirmation Number	2982
Group Art Unit	3643
Examiner Name	David J. Parsley
Attorney Docket Number	3246.1000-001

Title CRUSTACEAN ATTRACTANT

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

APPROVED JUN 2 2005

I hereby apply to withdraw as attorney or agent for the above identified patent application.

The reason for this request is Applicant (Somate Corp.) failed to pay the Firm's bills after due notification. Further, the Firm has been diligent in trying to locate Applicant, but to no avail. Accordingly, the Firm respectfully requests a withdrawal from the above identified patent application.

Notice of this Request for Withdrawal as Attorney or Agent is being simultaneously sent to the Applicant, and files will be forwarded upon notification of approval of this Request. In addition, no action is currently due for the above identified patent application.

[X] Change the correspondence address and direct all future correspondence to:

Customer Number _____

OR

Firm *or* Individual Name	Mr. Harold D. Thompson, c/o Ms. M.W. Thompson, Registered Agent				
Address					
Address	4010 Lupin Drive				
City	Kenai	State	Alaska	Zip	99611
Country	U.S.A.				
Telephone		Fax			

[X] This request is made on my behalf and on behalf of

[X] all the attorneys/agents of record,

[ ] the attorneys/agents (with registration numbers) listed on the attached paper(s), or

[X] the attorneys/agents associated with Customer Number 021005

This request is enclosed in triplicate (including any attachments).

Name	Joseph M. Maraia	Reg. No.	55,926
Signature			
Date	10/27/04		

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.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
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COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. BOX 1450
Alexandria, Va 22313- 1450
www.uspto.gov.

DATE: October 27,2004

Terryence F. Chapman
FLYNN, THIEL, BOUTELL & TRANIS, P.C.
2026 Rambling Road
Kalamazoo, MI 49008-1631

Patent No: **6736967 B2**
Inventor: **Atsushi Ohnishi, et al.**
Issued : **May 18, 2004**
Title: **SEPARATING AGENT FOR ENANTIOMERIC ISOMERS**

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 Rules 1.322.

Respecting the alleged error on the Title page (*) Notice and comparison of the printed patent with the corresponding location in the application reveals that there is no discrepancy.

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

Virginia Tolbert
For Cecelia Newman, Supervisor
Decisions and Certificates of Correction
(703) 305-8309 or 305-1882

vt

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United States Patent and Trademark Office
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Killworth, Gottman, Hagan & Schaeff, L.L.P.
Suite 500
One Dayton Centre
Dayton OH 45402-2023

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JAN 05 2009

OFFICE OF PETITIONS

In re Application of
Yung Chii Liang et al.
Application No. 10/162,137
Filed: June 4, 2002
Attorney Docket No. 92706-26

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Matthew Zischka appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Mr. Matthew Zischka desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Mr. Matthew Zischka, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

Inquiries related to this communication should be directed to JoAnne Burke at (571) 272-4594.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: Smart & Biggar
Intellectual Property & Technology Law
438 University Avenue
Suite 1500
Box 111
Toronto, Ontario M%G 2K8

IFW

SMART & BIGGAR

Intellectual Property & Technology Law

438 University Avenue
Suite 1500
Box 111
Toronto, Ontario
M5G 2K8

Tel.: (416) 593-5514
Fax: (416) 591-1690

To Fax no.: (571) 273-6500

Page 1 of: 1

Attention: Maintenance Fees Branch
Arlington, VA 22313-1450

From: Matthew Zischka (Reg. No. 41575)

Your file no.: Liang YC 03-US

Date: Nov 7, 2008

Reply to Toronto file no.: 92706-26

Time:

RECEIVED
NOV 1 8 2008
OFFICE OF PETITIONS

Pat. No.: 6853033

Title: POWER MOSFET HAVING ENHANCED BREAKDOWN VOLTAGE

Present Owner: YUNG CHIH LIANG, GANESH SHANKAR SAMUDRA, KIAN PAAU GAN AND XIN YANG

Inventor: LIANG, YUNG CHIH; ET AL

Further to our small entity Maintenance Fee Payment of August 5, 2008 in the amount of $465.00, we have been instructed by the Applicant to pay fees at a large entity level. Accordingly, please change the entity status from Small to Large and charge the difference, to our US Deposit Account, 192548. Since rates have changed effective October 2, 2008, and this additional payment is made during the grace period, please also charge our deposit account the difference ($515.00 to change to large entity and $130.00 for the late surcharge) if required. Thank you for your assistance in this matter.

Yours very truly,
SMART & BIGGAR

Matthew Zischka (Reg. No. 41575)

11/13/2008 TCOATES 00000003 192548 6853033
01 FC:1559 645.00 DA
MZ/vll

If there are any transmission problems, please call (416) 593-5514.

Original copy and any enclosures ☐ will ☒ will not be sent by ☒ mail ☐ courier

The information contained in this transmission is confidential and only for the intended recipient identified above. If you are not the intended recipient, you are hereby notified that any dissemination or use of this communication is unlawful. If you have received this transmission in error, please immediately notify us by telephone (collect). Return the original message to us and retain no copy.

RAM Fee History Query

Revenue Accounting and Management

Name/Number: 6853033 Total Records Found: 2

Start Date: Any Date End Date: Any Date

Accounting Date	Sequence Num.	Fee Type	Fee Code	Fee Amount	Mailroom Date	Payment Method
11/13/2008	00000003	2	1559	$645.00	11/07/2008	DA 192548
08/05/2008	00010224	2	2551	$465.00	08/05/2008	DA 192548

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LISA A. HAILE, J.D., PH.D.
GRAY CARY WARE & FREIDENRICH
SUITE 1100
4365 EXECUTIVE DRIVE
SAN DIEGO CA 92121-2133

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AUG 25 2004

OFFICE OF PETITIONS

In re Application of	:	
Karin et al	:	
Application No. 10/162,141	:	NOTICE
Filed: June 3, 2002	:	
Attorney Docket No. REGEN1130-4	:	

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) 305-8859.

This file is being referred to Technology Center AU 1642.

Karen Creasy

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

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No. 5

William F. Esser
Jenkens & Gilchrist, P.C.
3200 Fountain Place
1445 Ross Avenue
Dallas TX 75202-2799

MAIL

MAR 1 5 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Sussman et al. :

Application No. 10/162,161 :
Filed: June 3, 2002 :
For: ALL-OPTICAL REGENERATOR FOR RETIMING, RESHAPING AND RETRANSMITTING AN OPTICAL SIGNAL :

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the Request for Withdrawal as agent of record received on November 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.

Petitioner has met all of the above. Accordingly, the request is GRANTED.

Attorneys/agents listed in the Request to withdraw are withdrawn.

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

The file is being returned to TC 2600 Central Files to await examination in appropriate turn.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4778

Cc: Paul Harris
Digital Lightwave
20 Research Place
North Chelmsford, Massachusetts 01863-2312

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Michael A. Sanzo
Fitch, Even, Tabin & Flannery
Suite 401L
1801 K Street
Washington DC 20006-1201

COPY MAILED
AUG 25 2006
OFFICE OF PETITIONS

In re Application of	:	
Ye, et al.	:	
Application No. 10/162,221	:	DECISION ON APPLICATION
Filed: June 5, 2002	:	FOR
Attorney Docket No.7570/73314	:	PATENT TERM ADJUSTMENT
	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT CALCULATION," filed May 10, 2006. Applicants request correction of the patent term adjustment from four hundred twenty-nine (429) days to add at least 338 days solely on the basis of the Office taking in excess of three years to issue the patent.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date. A decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. 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.

Petitioners are reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application 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).

The $200.00 fee set forth in 37 CFR 1.18(e) is required and will be charged to deposit account no. 06-1135. No additional fees are required.

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

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

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

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MORRISON & FOERSTER, LLP
2000 PENNSYLVANIA AVENUE NW, SUITE 5500
WASHINGTON, DC 20006-1888

COPY MAILED
MAR 3 1 2008

In re Application of :
BOEHMER, et al. :
Application No. 10/162,224 : DECISION ON PETITION
Filed: June 5, 2002 : TO WITHDRAW
Attorney Docket No. **449122034600** : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 4, 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 Kevin R. Spivak 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: **BERNHARD BOEHMER**
KURLAENDER ALLEE 14
BERLIN, GERMANY 14055

cc: **BELL, BOYD & LLOYD LLC**
P.O. BOX 1135
CHICAGO, IL 60690-1135

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COMMISSIONER FOR PATENTS
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Paper No.

Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago IL 60610

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APR 06 2007

OFFICE OF PETITIONS

In re Application of	:	
Akihisa Itoh	:	
Application No. 10/162,241	:	DECISION ON APPLICATION
Filed: June 4, 2002	:	FOR
Attorney Docket No. 9281-4350	:	PATENT TERM ADJUSTMENT

This is in response to the PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT filed January 10, 2007. Applicants request correction of the patent term adjustment to add at least a period of delay of five hundred (500) days solely on the basis of the Office taking in excess of three years to issue the patent.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date. A decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. 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.

Petitioner is reminded that § 1.703(b)(1) provides, in pertinent part, that:

> 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) … 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;

Thus, the filing of a request for continued examination (RCE) cuts-off the applicants' ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment.

In this instance, a RCE was filed on December 14, 2005. Thus, the ability to accumulate additional patent term adjustment against the three-year pendency provision ended December 14, 2005.

Moreover, if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004).

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

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Paper No. 8

STANLEY R. MOORE
JENKENS & GILCHRIST, P.C.
SUITE 3200
1445 ROSS AVENUE
DALLAS, TX 75202-2799

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JAN 1 0 2003

OFFICE OF PETITIONS

In re Application of :
Jorgen Holmen :
Application No. 10/162,268 : NOTICE
Filed: June 3, 2002 :
Attorney Docket No. 45687-00089 :

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to the Office of Initial Patent Examination.

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

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Paper No. 9

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

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OFFICE OF PETITIONS

In re Application of
Wiechecki, et al.
Application No. 10/162,293
Filed: June 4, 2002
Attorney Docket No. KIM0397-01
Title: FLOOR-TO-CEILING WALL PANEL SYSTEM

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed December 30, 2002.

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

The above-identified application was filed on June 4, 2002, without an executed oath or declaration. Accordingly, on July 1, 2002, applicant was mailed a Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted, requiring, *inter alia*, an executed oath or declaration and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a four month extension of time. Accompanying the petition was a declaration executed by joint inventor Michael F. Cifelli. In addition, Cifelli signed a statement that he was signing the declaration on behalf of Robert W. Wiechecki.

However, even though applicant filed the 37 CFR 1.47(a) petition with a 37 CFR 1.63 declaration on December 30, 2002, a Notice of Incomplete Reply was mailed on January 17, 2003. This Notice appears to have been mailed in error and is hereby **VACATED**.

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, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

On petition, Rule 47 applicant included, *inter alia*: (1) a copy of a cover letter to the last known address of Wiechecki, dated October 21, 2002, transmitting the application papers, and (2) a statement of facts from George Manz, attesting that Wiechecki made an oral refusal to sign the declaration.

The instant petition has been reviewed and determined to be in compliance with 37 CFR 1.47(a). The declaration submitted with the petition has been determined to be in compliance with 37 CFR 1.63. Accordingly, the above-identified application is hereby accorded Rule 1.47(a) status.

Pursuant to 37 CFR 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the last known address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to Technology Center 3600, Group Art Unit 3635, for docketing.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0272.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

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In re Patent No. NORVILLE ET AL.	:	
Issue Date: May 11, 2004	:	**DECISION GRANTING**
Appl No.: 10/162,294	:	**PETITION**
Filed: June 04, 2002	:	*37 CFR 1.324*
For: 360 DEGREE ROTTAIONALDIRECTIONAL	:	
NOZZLE FOR TRIGGER SPRAYERS	:	
	:	
	:	

This is a decision on the petition filed 2/23/06 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.

Justine R. Yu
Supervisory Patent Examiner
Art Unit 3771
Technology Center 3700

JOHN M. NORVILLE
101 CORY STREET
MADISON, WI 53704

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ALEXANDRIA, VA 22313-1450
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DATE: January 31, 2007
TO: Certificates of Correction Branch
FROM: Justine R. Yu
SPE, Art Unit 3771
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 6,732,958 as specified on the attached Certificate.

Justine R. Yu, SPE
Art Unit 3771

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 6,732,958
Patented: May 11, 2004

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

John M. Norville, Madison, WI (US)

Justine R. Yu
Supervisory Patent Examiner
Art Unit 3771

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OFFICE OF PETITIONS

Fleisler Meyer LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156

In re Application of	:
Dahlistedt	:
Application No. 10/162,308	: DECISION GRANTING PETITION
Filed: June 4, 2002	:
Attorney Docket No. BEAS-01246US1	:

This decision is in response to applicants' "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.704(d)" timely[1] filed on January 30, 2006 requesting that the office change the PTA determination at the time of the issuance of the patent from a determination of one hundred and ninety days (190) to a determination of three hundred and ten days (310) days.

Applicants' application for PTA is **GRANTED.** The Office will adjust the PAIR calculation from a period of 190-days to three hundred and ten (310) days. The Office will *sua sponte* issue a certificate of correction reflecting this decision.

Applicants argue that the Office erred in assessing a 120-day reduction for the submission of drawings after the mail date of the notice of allowance under 37 CFR 1.704(c)(10). Applicants assert that the improper date of submission of the drawings was entered into the PALM and accordingly reflected into the PTA decision. Applicants submit that the date of the drawings (7/29/05) actually was submitted on 7/8/2005. The applicants assert that the notice of allowances was mailed on 7/11/1005.

A review of the file reveals that applicants' arguments are persuasive. The file history reflects that the USPTO stamped July 8, 2005 as the actual date of receipt of the formal drawings, not July 29, 2005. Accordingly, the drawings were submitted prior to the mail date of the notice of allowance. Accordingly, the 120-day reduction is in error. The correct amount of PTA at the time of the issuance is 301 days. The Office awarded 290 days pursuant to 37 CFR 1.702(a)(1). The Office additionally awarded 54-days pursuant to 37 CFR 1.702(a)(2). Applicants delayed 34-days under 37 CFR 1.704(b). Overall the correct PTA is 310 (290+54-34=310).

The office has assessed the $200.00 fee required under 37 CFR 1.18(e). No additional fees are required by the Office.

After the mailing of this decision, the Office will forward this application to the Office of Patent Publications for a prompt issuance of a certificate of correction.

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[1]Issued on November 29, 2005.

Application No.10/162,308

Any questions concerning this application 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

PALM INTRANET

Day : Friday
Date: 8/4/2006
Time: 14:27:44

PTA Calculations for Application: 10/162308

Application Filing Date:	06/04/2002	PTO Delay (PTO):	344
Issue Date of Patent:	11/29/2005	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	154
Post-Issue Petitions:	0	Total PTA (days):	310
PTO Delay Adjustment:	120		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
65	08/04/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	120		
61	11/29/2005	PATENT ISSUE DATE USED IN PTA CALCULATION			
60	10/26/2005	WORKFLOW - QUERY REQUEST - FINISH			
59	10/25/2005	WORKFLOW - QUERY REQUEST - FINISH			
58	10/03/2005	WORKFLOW - QUERY REQUEST - BEGIN			
57	09/21/2005	RECEIPT INTO PUBS			
56	09/20/2005	DISPATCH TO FDC			
55	09/20/2005	APPLICATION IS CONSIDERED READY FOR ISSUE			
54	07/29/2005	WORKFLOW - DRAWINGS FINISHED		120	
53	07/29/2005	ISSUE FEE PAYMENT VERIFIED			
52	08/03/2005	RECEIPT INTO PUBS			
51	07/29/2005	ISSUE FEE PAYMENT RECEIVED			
50	07/13/2005	EXPORT TO INITIAL DATA CAPTURE			
49	07/11/2005	MAIL NOTICE OF ALLOWANCE			
48	07/11/2005	MAIL FORMAL DRAWINGS REQUIRED	54		36
47	07/08/2005	FORMAL DRAWINGS REQUIRED			
46	07/08/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
45	04/22/2005	MAIL EXAMINER'S AMENDMENT			
44	04/21/2005	EXAMINER'S AMENDMENT COMMUNICATION			
43	04/04/2005	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
42	04/01/2005	ISSUE REVISION COMPLETED			
41	12/20/2004	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
40	03/29/2005	NOTICE OF ALLOWABILITY			

39	01/18/2005	REFERENCE CAPTURE ON IDS			
38	01/18/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	03/22/2005	DATE FORWARDED TO EXAMINER			
36	01/18/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			
35	03/22/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
34	01/18/2005	WORKFLOW - REQUEST FOR RCE - FINISH			
33	02/10/2005	RECEIPT INTO PUBS			
32	11/30/2004	EXPORT TO INITIAL DATA CAPTURE			
31	01/18/2005	WORKFLOW INCOMING AMENDMENT IFW			
30	01/18/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
29	12/06/2004	WORKFLOW - FILE SENT TO CONTRACTOR			
28	11/19/2004	MAIL NOTICE OF ALLOWANCE			
27	11/19/2004	MAIL FORMAL DRAWINGS REQUIRED			
26	11/17/2004	ISSUE REVISION COMPLETED			
25	11/17/2004	FORMAL DRAWINGS REQUIRED			
24	11/17/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
23	11/17/2004	NOTICE OF ALLOWABILITY			
22	11/17/2004	DATE FORWARDED TO EXAMINER			
21	09/23/2004	RESPONSE AFTER NON-FINAL ACTION		34	16
20	09/23/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
18	10/13/2004	CASE DOCKETED TO EXAMINER IN GAU			
17	09/23/2004	WORKFLOW INCOMING AMENDMENT IFW			
16	05/20/2004	MAIL NON-FINAL REJECTION	290		-1
15	05/17/2004	NON-FINAL REJECTION			
14	11/18/2003	CASE DOCKETED TO EXAMINER IN GAU			
13	02/24/2003	CASE DOCKETED TO EXAMINER IN GAU			
12	10/28/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	01/31/2003	DECISION MADE BY CLASSIFICATION DIVISION			
10	01/09/2003	REQUEST FOR CLASSIFICATION DIVISION DECISION			
9	12/19/2002	TRANSFER INQUIRY TO GAU			
8	11/08/2002	APPLICATION DISPATCHED FROM OIPE			

7	11/07/2002	APPLICATION IS NOW COMPLETE			
6	10/18/2002	ADDITIONAL APPLICATION FILING FEES			
5	10/18/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	08/05/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
2	06/18/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/04/2002	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back use Back button on your browser toolbar.

Back to PALM | ASSIGNMENT | OASIS | Home page

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	6,970,893 B2
DATED	:	Nov. 29, 2005
INVENTOR(S)	:	Dahlstedt

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 (190) days

Delete the phrase "by 190 days" and insert – by 310 days--

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SEP 15 2009

OFFICE OF PETITIONS

TUROCY & WATSON, LLP
ATTENTION: HEATHER HOLMES
127 Public Square
57th Floor, Key Tower
Cleveland OH 44114

In re Application of Baier et al. Application No. 10/162,314 Filed: June 4, 2002 Attorney Docket No.: 02AB058/ALBRP290US Title: SYSTEM AND METHODOLOGY PROVIDING NAMESPACE AND PROTOCOL MANAGEMENT IN AN INDUSTRIAL CONTROLLER ENVIRONMENT	DECISION ON PETITION PURSUANT TO 37 C.F.R. § 1.137(B)

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed March 3, 2009, to revive the above-identified application.

This petition pursuant to 37 C.F.R. § 1.137(b) 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 and Issue Fee Due, mailed August 26, 2008, which set a shortened statutory period for reply of three months. No extensions of time are permitted for transmitting issue fees.[1] Accordingly, the above-identified application became abandoned on November 27, 2008. A Notice of Abandonment was mailed on December 23, 2008.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office

1 See MPEP § 710.02(e)(III).

action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

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

With this petition, Petitioner has submitted the petition and issue fees, along with a statement that is being construed as the proper statement of unintentional delay. As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[2]

Pursuant to this decision, the Office of Patent Publication will be notified of this decision so that the present application can be processed into a patent.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Office of Patent Publication in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Office of Patent Publication where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

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2 See Rule 1.137(d).

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[3] All other inquiries concerning the status of the application should be directed to the Office of Patent Publication at 571-272-4200.

Paul Shanoski
Senior Attorney
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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ROCKWELL AUTOMATION
for Turocy & Watson LLP
1201 SOUTH SECOND STREET
E-7F19
MILWAUKEE, WI 53204

Mail Date: 04/20/2010

Applicant	: John Joseph Baier	: DECISION ON REQUEST FOR
Patent Number	: 7606890	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/162,314	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/04/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **857** 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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LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO IL 60601-6780

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OFFICE OF PETITIONS

In re Application of
Kok Wai Chan et al. :
Application No. 10/162,322 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket No: 215776 :

This is a decision on the petition filed September 8, 2005, to withdraw the holding of abandonment under 37 CFR 1.181, or in the alternative, to revive the above identified application under 37 CFR 1.137(b). [1]

The petition to withdraw the holding of abandonment is **DISMISSED**.
The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

The application was held abandoned on April 5, 2005, for failure to file a timely response to the non-Final Office Action mailed January 4, 2005. The office action set a three month shortened statutory period. Accordingly, a Notice of Abandonment was mailed on July 14, 2005.

In the petition to withdraw the holding of abandonment under 37 CFR 1.181, petitioner asserts that a response to the non-Final Office Action was timely filed and includes a copy of the return post card receipt, date stamped as received by the USPTO on February 14, 2005. Petitioner argues and the post card receipt shows that an incorrect serial number was used in the communication of that response and thus was not

---

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

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

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

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

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

associated with the instant application in a timely manner.

However, the requirement for filing papers with the USPTO is that every paper bear an appropriate application no. or identifier and since the paper filed February 14, 2005 inadvertently identified the application for which the response was directed, the petition under 37 CFR 1.181 is not grantable.

In view thereof the misapplication of the serial no. or identified would appear to have been inadvertent. The petition under 37 CFR 1.137(b) is therefore granted. The petition fee in the amount of $1500.00 has been charged to petitioner's deposit account no. 19-1345.

This matter is being referred to Technology Center 2161 for consideration of the amendment filed September 8, 2005.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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GENERAL MILLS, INC.
P.O. BOX 1113
MINNEAPOLIS MN 55440

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OFFICE OF PETITIONS

In re Application of
Kolberg et al.
Application No. 10/162,323
Filed: June 3, 2002
Attorney Docket No. 6083USA

DECISION ON PETITION

This is a decision on the petition, filed February 27, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before December 2, 2008, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed September 2, 2008.

Petitioner asserts that the Notice of Allowance and Notice of Allowability dated September 2, 2008 was not received. Petitioner has provided a copy of the master docket.

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. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Notice of Allowance and Notice of Allowability was not received by the practitioner. The statement should also describe the system used for recording an Office action received at the correspondence address of record and establish that the docketing system was sufficiently reliable;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice of Allowance and Notice of Allowability was not received; and

3. a copy of the master docket for the firm docket record where the nonreceived Notice of Allowance and Notice of Allowability would have been entered had it been received must be attached to and referenced in the practitioner's statement. If no master docket exists, the practitioner should so state and provide other evidence such,

as but not limited: to the application file jacket, incoming mail log; calendar; reminder system or individual docket record for the application in question

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center AU 2162 technical support staff for **re-mailing** the Notice of Allowability and the Notice of Allowance and Fee(s) Due of September 2, 2008. The period for paying the issue and publication fees will be reset to expire three (3) months from the date the Notices are re-mailed. This period is not extendable under the provisions of 37 CFR 1.136.

Charlema Grant

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MATTHEW J. BOOTH & ASSOCIATES PLLC
P O BOX 50010
AUSTIN TX 78763-0010

COPY MAILED

NOV 13 2006

OFFICE OF PETITIONS

In re Application of
TAYLOR, et al.
Application No. 10/162,344
Filed: June 4, 2002
Attorney Docket No. 81250.0105

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 August 24, 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 Matthew J. Booth on behalf of all attorneys of record who are associated with customer No. 23309. All attorneys/agents associated with the Customer Number 23309 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 Rebecca Taylor at the address indicated below. There is an outstanding Office action mailed September 19, 2006 that requires a reply from the applicant. Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **Rebecca Taylor**
707 Terrace Mountain Drive
Austin, TX 78746

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/162,344	06/04/2002	Rebecca S. Taylor	81250.0105

CONFIRMATION NO. 8531

OC000000021191602

23309
Matthew J. Booth & Associates, PLLC
P O BOX 50010
AUSTIN, TX 78763-0010

Date Mailed: 11/13/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/24/2006.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

UNITED STATES 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 : 05/01/09

Patent No. : 7336799 B2
Patent Issued : 02/26/08
Docket No. : **SONYJP 3.0-927**

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 02/17/09; 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

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

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD NJ 07090

LMN

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/04/09

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No.: 10162368 Patent No.: 7336799 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
[redacted]

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.
XDenied	State the reasons for denial below.

Comments: In their certificate of correction filed on 02/17/2009, applicants request two corrections to be made. First, applicants request foreign application P2001-169111 to be added under the "Foreign Application Priority Data" section of the issued patent. This request is denied because applicants have not claimed priority to the P2001-169111 application in their oath/declaration filed 09/03/2002. Since P2001-169111 is not a priority document, it would be inappropriate to include it in the foreign priority section.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Second, applicants request a correction to the abstract. Given that this correction appears to correct errors that are clerical in nature and not errors made by the Office (as applicants contend), the second request is also denied.

/Bhavesh Mehta/ SPE, TC 2600

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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STANLEY H. KREMEN
4 LENAPE LANE
EAST BRUNSWICK, NJ 08816

COPY MAILED

JUL 27 2005

OFFICE OF PETITIONS

In re Application of :
Metz, et al. :
Application No. 10/162,412 :
Filed: June 3, 2002 :
Attorney Docket No. 139-001USANA0 :

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 6, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is DISMISSED.

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

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

The instant petition does not comply with item (1) above.

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

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

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. See In re deSeversky, supra. Note also MPEP 201.06(c). Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

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

By mail: Mail Stop Petition
Commissioner for Patents
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

Any inquiries concerning this decision may be directed to the Petitions Attorney Edward Tannouse at (571) 272-3228.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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STANLEY H. KREMEN
4 LENAPE LANE
EAST BRUNSWICK, NJ 08816

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AUG 2 4 2005

OFFICE OF PETITIONS

In re Application of :
Metz, et al. :
Application No. 10/162,412 :
Filed: June 3, 2002 :
Attorney Docket No. 139-001USANA0 :

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

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed August 4, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

Any inquiries concerning this decision may be directed to the Petitions Attorney Edward Tannouse at (571) 272-3228. 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 2872 for appropriate action on the amendment filed August 4, 2005, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

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

ATTACHMENT: Corrected Filing Receipt

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United States Patent and Trademark Office
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OCT 16 2006
OFFICE OF PETITIONS

STANLEY H. KREMEN
4 LENAPE LANE
EAST BRUNSWICK NJ 08816

In re Application of	:	
METZ, et al.	:	
Application No. 10/162,412	:	DECISION ON PETITION
Filed: June 3, 2002	:	TO MAKE SPECIAL UNDER
Attorney Docket No. 139-001USANA0	:	37 CFR 1.102(c)(1)
	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed August 29, 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 a copy of the first page of inventor John Caulfield's passport, attesting to his age. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Monica A. Graves 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 2872 for action on the merits commensurate with this decision.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WILMER CUTLER PICKERING HALE AND DORR LLP
60 STATE STREET
BOSTON MA 02109

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JAN 13 2006

OFFICE OF PETITIONS

In re Application of :
Robert F. Thompson et al. :
Application No. 10/162,417 :
Filed: June 4, 2002 :
Attorney Docket No. 20339.12 :

ON PETITION

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

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office Action mailed May 25, 2005. A response was filed August 25, 2005, but by Advisory Action of September 2, 2005, petitioner was advised that the response did not place the application in condition for allowance. This application became abandoned on August 26, 2005. The instant petition and this decision precede the mailing of the Notice of Abandonment.

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

The application is being forwarded to Technology Center 3728 for processing of the RCE. Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

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

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

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

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

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P. O. Box 1450
Alexandria, VA 22313-1450
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JAN 28 2005

OFFICE OF PETITIONS

ROBERT W STROZIER, P.L.L.C
PO BOX 429
BELLAIRE, TX 77402-0429

In re Application of :
Billy J. Hatcher :
Application No. 10/162,425 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket No. 01015/01UTL :

This is a decision on the petition, filed November 4, 2004, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 3, 2004, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extension of time under the provisions of 37 CFR 1.136(a) was obtained. A Notice of Abandonment was mailed on October 29, 2004. In response, on November 4, 2004, the present petition was filed.

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 is being referred to Technology Center AU 3752 for consideration of the response filed November 4, 2004.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : February 1, 2007

TO SPE OF : ART UNIT 2851

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/162429 Patent No.: 6983106 B2

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

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

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

Elisha Evans

Certificates of Correction Branch

703-308-9390 ext. 110

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: It appears the printer should have printed the references listed in the Request for Certificate of Correction, on the Patent

M B Perkey — **SPE**

2851 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

BROMBERG & SUNSTEIN LLP
125 SUMMER STREET
BOSTON MA 02110-1618

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APR 2 4 2003

OFFICE OF PETITIONS

In re Application of Brown, et al. Application No. 10/162,432 Filed: June 4, 2002 Attorney Docket No. 2354/137 Title: HORIZONTAL FUEL CELL TUBE SYSTEM AND METHODS	:	DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

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

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

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on June 4, 2002, without an executed oath or declaration. Accordingly, on June 26, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring, *inter alia,* an executed oath or declaration in compliance with 37 CFR 1.63 and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a three month extension of time and included a Certificate of Mailing dated November 26, 2002. Accompanying the petition was a declaration executed by joint inventors Michael Brown, Basil Fenton, Neil Fernandes, Gary A. Mook, Hugh L. Smith, Geoffrey Tompsett, Anthony F. Litka, Virginie Bouvier, and Kevin H. Negrotti, but with the signature blocks for joint inventors Kevin Gaw and Caine Finnerty left blank. Also included with the petition were copies of cover letters to the last known addresses of Gaw and Finnerty, dated November 11, 2002, transmitting the application papers. According to attorney Keith J. Wood, no executed declaration from Gaw or Finnerty has been received.

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 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor(s). The instant petition does not satisfy requirement (2).

Applicant has failed to submit an oath or declaration in compliance with 37 CFR 1.63. The declaration is not acceptable because the alteration to the citizenship of Virginie Bouvier is not **initialed.**[1] Regarding this, the Manual of Patent Examining Procedure states that it is "improper for anyone, including counsel, to alter, rewrite, or partly fill in any part of the application, including the oath or declaration, after execution of the oath or declaration by the applicant." Furthermore, the Office "will not consider whether noninitialed and/or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration."[2]

On renewed petition, applicant must submit a declaration in compliance with 37 CFR 1.63.

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

By mail[3]: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0272.

Cliff Congo
Petitions Attorney
Office of Petitions

---

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

[2] MPEP 605.04(a).

[3] Effective May 1, 2003, the mailing address for the Office of Petitions will be changed to "Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450".

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

BROMBERG & SUNSTEIN LLP
125 SUMMER STREET
BOSTON MA 02110-1618

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MAY 29 2003

OFFICE OF PETITIONS

In re Application of Brown, et al. Application No. 10/162,432 Filed: June 4, 2002 Attorney Docket No. 2354/137 Title: HORIZONTAL FUEL CELL TUBE SYSTEM AND METHODS	:	DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the renewed petition under 37 CFR 1.47(a), filed May 22, 2003 (Certificate of Mailing dated May 20, 2003).

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

The above-identified application was filed on June 4, 2002, without an executed oath or declaration. Accordingly, on June 26, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring, *inter alia,* an executed oath or declaration in compliance with 37 CFR 1.63 and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the a petition under 37 CFR 1.47(a) on December 2, 2002 and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a three month extension of time and included a Certificate of Mailing dated November 26, 2002. Accompanying the petition was a declaration executed by joint inventors Michael Brown, Basil Fenton, Neil Fernandes, Gary A. Mook, Hugh L. Smith, Geoffrey Tompsett, Anthony F. Litka, Virginie Bouvier, and Kevin H. Negrotti, but with the signature blocks for joint inventors Kevin Gaw and Caine Finnerty left blank. Also included with the petition were copies of cover letters to the last known addresses of Gaw and Finnerty, dated November 11, 2002, transmitting the application papers. According to attorney Keith J. Wood, no executed declaration from Gaw or Finnerty has been received.

However, the petition was dismissed in a decision mailed on April 24, 2003. Applicant failed to submit an oath or declaration in compliance with 37 CFR 1.63 because the alteration to the citizenship of Virginie Bouvier was not initialed.[1]

---

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

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 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor(s).

On renewed petition, applicant has submitted a declaration in compliance with 37 CFR 1.63. The other requirements for a grantable petition were previously met with the petition filed on December 2, 2002. Accordingly, the above-identified application is hereby accorded Rule 47(a) status.

Pursuant to 37 CFR 1.47(c), this Office will forward notice of this application's filing to the non-signing inventors at the last known address given in the petition. 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 pre-examination processing.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0272.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Paper No. 16

Grant J. Scott
MYERS BIGEL SIBLEY & SAJOVEC
P.O. Box 37428
Raleigh, NC 27627

In re Application of:	)	
Ping Fu et al.	)	
Application No. 10/162,434	)	**DECISION ON REQUEST FOR**
Filed: June 3, 2002	)	**WITHDRAWAL AS ATTORNEY**
For: MANUFACTURING METHODS AND SYSTEMS FOR RAPID PRODUCTION OF HEARING-AID SHELLS	)	

This is a decision on the Request To Withdraw from Representation filed July 07, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed July 07, 2003 meets all the requirements. Accordingly the request is **GRANTED**.

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

James R. Matthews

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

cc: Gregg F. LoCascio
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, DC 2005-5793

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BOWDITCH & DEWEY, LLP
311 MAIN STREET
P.O. BOX 15156
WORCESTER, MA 01615-0156

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OFFICE OF PETITIONS

In re Application of :
Wei Chen :
Application No. 10/162,445 : ON PETITION
Filed: June 3, 2002 :
Attorney Docket No. 133063.4000-000 :

This is a decision on the petition under 37 CFR 1.137(b), filed October 6, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a proper reply to the non-final Office action mailed December 12, 2003, which set a one (1) month period for response. Accordingly, this application became abandoned on January 13, 2004. A Notice of Abandonment was mailed on August 4, 2005.

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 extension of time submitted with the petition on October 6, 2005 was subsequent to the maximum period obtainable for reply, the $510.00 extension of time fee will be refunded to deposit account no. 50-1935.

The file is being forwarded to Technology Center 1700 for review of the "Reply To Restriction Requirement" filed October 6, 2005, *in due course.*

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
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

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SEP 2 4 2002

OFFICE OF PETITIONS

TIMOTHY P. O'HAGAN
P.O. BOX 1054
PORTSMOUTH NH 03802

In re Application of
Meyerson, et al.
Application No. 10/162,449
Filed: August 12, 2002
Attorney Docket No.: Tel-029
FOR: MULTI-MEDIA COMMUNICATION SYSTEM WITH ADVANCED CONFERENCE CALL MANAGEMENT

DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.182, filed August 12, 2002, requesting that the above-identified application be accorded a filing date as of the date of submission of omitted figures 9h, 9i, and 9j.

The application was deposited on June 4, 2002. On July 11, 2002, the Office of Initial Patent Examination mailed a Notice of Omitted Items in a Nonprovisional Application (Notice) informing petitioners that figures 9h, 9i, and 9j appeared to have been omitted.

In response to the Notice, a petition under 37 CFR 1.182, including figures 9h, 9i, and 9j and a newly executed supplmental declaration referencing the omitted figures, was filed on August 12, 2002. The petition requests that the above-identified application be accorded a filing date as of the date of deposit of the items noted as omitted in the Notice mailed July 11, 2002.

The above-identified application should be accorded a filing date of August 12, 2002, which is the date that figures 9h, 9i, and 9j were received in the Office. Applicant is reminded that a certificate of mailing date cannot be relied upon for filing date purposes. 37 CFR 1.8(a)(2)(i)(A)

The petition is granted.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of **August 12, 2002**. The Office of Initial Patent Examination will mail a filing receipt in due course.

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

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7/25/08

Patent No. :7385107
Ser. No. : 10162464
Inventor(s) :Donovan et al.
Issued : 6/10/08
Title : INSECT-RESISTANT TRANSGENIC PLANTS TRANSFORMED WITH CRYET33 AND CRYET34-ENCODING NUCLEIC ACIDS

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

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

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

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

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

Henry Randall
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 Ext. 108

J. WENDY DAVIS, PHD.
HOWREY LLP
1111 LOUISIANA 25th Floor
HOUSTON, TX 77002

HR

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STANDLEY LAW GROUP
495 METRO PLACE SOUTH
SUITE 210
DUBLIN, OH 43017

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OFFICE OF PETITIONS

In re Application of
Lawrence A. Lynn al
Application No. 10/162,466
Filed: June 3, 2002
Attorney Docket No. LYN1965-003

: 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 October 12, 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 June 3, 2002, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after

expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional applications was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

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

This matter is being referred to Technology Center Art Unit 3736 for appropriate action on the amendment filed October 12, 2004, including consideration by the examiner of applicants' entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

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SUITE 210
DUBLIN, OH 43017

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OFFICE OF PETITIONS

In re Application of
Lawrence A. Lynn al
Application No. 10/162,466
Filed: June 3, 2002
Attorney Docket No. LYN1965-003

: 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 October 12, 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 June 3, 2002, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after

expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional applications was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

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

This matter is being referred to Technology Center Art Unit 3736 for appropriate action on the amendment filed October 12, 2004, including consideration by the examiner of applicants' entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

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THOMPSON COBURN, LLP
ONE US BANK PLAZA
SUITE 3500
ST LOUIS MO 63101

In re Application of	:	
Christopher I. Byrnes et al.	:	DECISION ON PETITION
Application No. 10/162,502	:	
Filed: June 4, 2002	:	
Attorney Docket No. **53047/33974**	:	

This is a decision on the petition filed September 18, 2006 under 37 C.F.R. § 1.181 & MPEP § 1002.02(c)(3)(c) TO OBTAIN WITHDRAWAL OF HOLDING OF ABANDONMENT.

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

Any request for reconsideration pursuant to § 1.181 must be filed within TWO (2) MONTHS of the date of this decision in order to be considered timely. See 37 CFR §1.181(f). Extensions of time under § 1.136(a) are not permitted.

Petitioner is not precluded from filing a petition to revive pursuant to 37 CFR 1.137.

The issue fee and publication were both paid June 6, 2005 in response to a Notice of Allowance mailed April 13, 2005. However, after payment of the issue fee, and while a petition to withdraw the application from issuance was not filed, on November 16, 2006, petitioners filed a Request for Continued Examination (RCE). A second Notice of Allowance was therefore mailed on December 20, 2005. The above-identified application became abandoned on March 21, 2006 however for failure to pay the issue fee and the publication fee in response to the Notice of Allowance mailed December 20, 2005. Accordingly, a Notice of Abandonment was mailed July 19, 2006.

Applicants filed the instant petition, asserting that the second Notice of Allowance mailed December 20, 2005 did not require the payment of the issue fee or the publication fee and, noting that a response was filed in the form a letter on February 3, 2006 confirming the fact that the Notice of Allowance mailed December 20, 2005 did not require the payment of an issue fee or publication fee.

Upon review of petitioner's arguments and the office record, the showing of record is insufficient to warrant withdrawal of the holding of abandonment.
Although the issue fee had been paid in response to the Notice of Allowance mailed April13, 2005 and although a letter was filed on February 3, 2006 in response to the

Notice of Allowance mailed December 20, 2005, a completed Issue Fee Transmittal, Form PTOL-85(b) was not filed in response to the Notice of Allowance mailed December 20, 2005.

Whether or not the Notice of Allowance indicated that a fee was due, the Issue Fee Transmittal Form PTOL-85(b) must be completed and timely submitted to avoid abandonment. Moreover, the Notice of Allowance mailed December 20, 2005 stated in bold language that the PTOL-85(b) (or an equivalent) **MUST** be returned within the period indicated, even if no fee is due, or the application will be regarded abandoned.

Additionally, the Office reminds petitioner of Section 1308 of the Manual for Patent Examining procedure which states: "[T]he Notice of Allowance will reflect an issue fee amount that is due that is the difference between the current issue fee amount and the issue fee that was previously paid." On the mail date of the Second Notice of Allowance which was mailed December 20, 2005, the amount due for the issue fee and the publication fee did not increase, and therefore, the Notice showed a difference owed of $0.

Under the circumstances, the holding of abandonment is proper and will not be withdrawn.

No fee is required on petition under § 1.181.

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

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

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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THOMPSON COBURN, LLP
ONE US BANK PLAZA
SUITE 3500
ST LOUIS MO 63101

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OFFICE OF PETITIONS

In re Application of
Christopher I. Byrnes et al.
Application No. 10/162,502
Filed: June 4, 2002
Attorney Docket No. **53047/33974**

DECISION ON PETITION

This is a decision on the petition filed December 27, 2006, under 37 CFR 1.137(b)[1], to revive the above-identified application.

The petition is **GRANTED**.

The issue fee and publication were both paid June 6, 2005 in response to a Notice of Allowance mailed April 13, 2005. However, after payment of the issue fee, and while a petition to withdraw the application from issuance was not filed, on November 16, 2006, petitioners filed a Request for Continued Examination (RCE). A second Notice of Allowance was therefore mailed on December 20, 2005. The above-identified application became abandoned on March 21, 2006 however for failure to pay the issue fee and the publication fee in response to the Notice of Allowance mailed December 20, 2005. Although the issue fee had been paid in response to the Notice of Allowance mailed April13, 2005 and although a letter was filed on February 3, 2006 in response to the Notice of Allowance mailed December 20, 2005, a completed Issue Fee Transmittal, Form PTOL-85(b), was not filed in response to the Notice of Allowance mailed December 20, 2005. Accordingly, a Notice of Abandonment was mailed July 19, 2006.

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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.

(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)).

Whether or not the Notice of Allowance indicated that a fee was due, the Issue Fee Transmittal Form PTOL-85(b) must be completed and timely submitted to avoid abandonment. Moreover, the Notice of Allowance mailed December 20, 2005 stated in bold language that the PTOL-85(b) (or an equivalent) **MUST** be returned within the period indicated, even if no fee is due, or the application will be regarded abandoned. [2]

Comes now petitioner with the instant petition and the Issue Fee Transmittal Form PTOL-85(b) requesting that the issue fee and publication fee paid on June 6, 2005 be applied to the Notice of Allowance mailed December 20, 2005.

The issue fee, publication fee and petition fee have all been applied. All other requirements of 37 CFR 1.137(b) having now been met, this application file is being forwarded to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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[2]Section 1308 of the Manual for Patent Examining procedure which states: "[T]he Notice of Allowance will reflect an issue fee amount that is due that is the difference between the current issue fee amount and the issue fee that was previously paid."

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225 FRANKLIN STREET
BOSTON, MA 02110

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OFFICE OF PETITIONS

In re Application of :
Masayuki Tobita et al :
Application No. 10/162,520 :
Filed: June 4, 2002 :
Attorney Docket No. 14157-004001

ON PETITION

This is a decision on the petition, filed April 19, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 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 Irvin Dingle at (703) 306-5684.

The file will be forwarded to Technology Center AU 1774 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date : April 19, 2004

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner for Patent Examination Policy

SUBJECT : Withdrawal from Issue of Application No. 10/162,520

Applicant(s) : Masayuki Tobita et al
Application No. : 10/162,520
Filed : June 4, 2002

The above-identified application has been assigned Patent No. 6,723,425 and an issue date of April 20, 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 : April 20, 2004.

> "All reference to Patent No. 6,723,425 to Masayuki Tobita et al of Japan for THERMALLY CONDUCTIVE MOLDED ARTICLE AND METHOD OF MAKING THE SAME appearing in the Official Gazette of April 20, 2004 should be deleted since no patent was granted."

Irvin Dingle
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 K. Greene, PK3-910

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 12/1/09

DATE : 11/30/09

TO SPE OF : ART UNIT ~~3994~~ 3723

SUBJECT : Request for Certificate of Correction for Appl. No.: 10162523 Patent No.: 6901626

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: The corrections to the claims are approved. However, the correction to the claim to priority under 35 USC 120 is not approved. See MPEP 1481.03.

Joseph J. Hail III 12/1/09 3723

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)
6860179	2005-03-01	10162528	2002-06-03	014881-000046

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	/dennis j. williamson/	Date (YYYY-MM-DD)	2009-11-25
Name	Dennis J. Williamson	Registration Number	32338

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6860179
Issue Date: March 1,2005
Application No. 10162528
Filed: June 3,2002
Attorney Docket No. 5658/802

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

This is a decision on the electronic petition, filed November 25,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 25,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,972,174	2005-12-06	10/162,530	2002-06-04	PGL-0001CIP

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	/T. Ling Chwang/	Date (YYYY-MM-DD)	2010-07-13
Name	T. Ling Chwang	Registration Number	33590

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 6972174 :
Issue Date: December 6,2005
Application No. 10162530 :DECISION GRANTING PETITION
Filed: June 4,2002 :UNDER 37 CFR 1.378(c)
Attorney Docket No. PGL-0001 CIP (122067.0000 :

This is a decision on the electronic petition, filed July 13,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of July 13,2010 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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JEFFREY L. BRANDT
C/O PORTFOLIO IP
P.O. BOX 52050
MINNEAPOLIS MN 55402

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OFFICE OF PETITIONS

In re Application of :
Carter M. Moursund et al :
Application No. 10/162,541 :
Filed: June 3, 2002 :
Attorney Docket No. JB2-02003 :

NOTICE

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WILLIAM C. ROWLAND
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

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SEP 13 2006
OFFICE OF PETITIONS

In re Application of	:	
Biglieri et al.	:	
Application No. 10/162,550	:	DECISION ON PETITION
Filed: June 6, 2002	:	
Attorney Docket No. 008788-041	:	

This is decision on the petition under 37 CFR. 1.183, filed January 30, 2006, to waive the requirements of 37 CFR 1.114(a) that the submission be filed with the Request for Continued Examination (RCE).[1] This is also a decision on the petition under 37 CFR 1.137(b), filed July 14, 2006, to revive the application.

On January 26, 2005, the Office mailed a final Office Action, which set a three-month shortened statutory period to reply. On April 26, 2005, applicants filed an amendment in response to the final Office Action. On May 19, 2005, the Examiner mailed an Advisory Action indicating that the amendment did not place the application in condition for allowance. On Monday, June 27, 2005, applicants submitted a "Request for Limited Suspension of Action under Rule 103(c), an RCE (without a submission), a request for an extension of time for response within the third month, and paid the requisite fees. Thereafter, applicants filed a reply in the form of an amendment on October 11, 2005.

---

[1] 37 CFR 1.114 states, in pertinent part:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

On October 19, 2005, the Examiner issued a final Office Action, which set a three-month shortened statutory period to reply. On October 25, 2005, applicants filed an RCE without a submission under § 1.114. On January 11, 2006, the Examiner issued a nonfinal Office, which set a three-month shortened statutory period for reply. On January 30, 2006, applicants filed the present petition under 37 CFR 1.183 to waive the requirement of 37 CFR 1.114(a) that the submission be filed with the Request for Continued Examination (RCE). On April 19, 2006, applicants filed a one-month extension of time and an amendment in response to the nonfinal Office Action. On July 14, 2006, applicants filed the present petition under 37 CFR 1.137(b) and paid the petition fee.

As to the petition under 37 CFR 1.183, applicants explain:

> On June 27, 2005, applicant filed a Request for Continued Examination, together with a Request for a Limited Suspension of Action under 37 CFR § 1.103(c) and the proper fees. At the time of filing, applicant's attorney assumed that the Request for a Limited Suspension of Action under Rule 103(c) qualified as the requisite "submission" of 37 CFR § 1.114. That assumption was based, in part, on the language in 37 CFR § 1.114(c), which states that the "submission" includes, *"but is not limited to"*, the documents recited in 37 CFR § 1.114(c). Subsequent to filing the Request for Continued Examination and the Request for a Limited Suspension of Action under Rule 103(c), applicant's attorney filed a submission, which was accepted and acted upon by the Patent Office.
>
> Applicant's attorney recently became aware of § 709, I, B, 1. (Requirements) of the Manual of Patent Examining Procedure (MPEP), wherein it states that the "request for suspension cannot substitute for the submission". In view of the statement in the MPEP, applicant hereby files a "submission" and petitions the Patent & Trademark Office to retroactively waive the requirement of 37 CFR 1.114(a) that the submission be filed *with* the Request for Continued Examination. It is important to note that in this case, a submission was eventually filed, and acted upon by the Patent Office. Thus, the only requirement that is requested to be waived is the *timing* of the submission.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part, which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. 37 CFR 1.183.

Initially, the Office notes that applicants filed a supplemental reply under § 1.111, in the form of an amendment on October 11, 2005. Pursuant to Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan, 69 FR 56481, 56516-56517 (Sep. 21, 2004), 1287 Off. Gaz. Pat. Office 67, _ (Oct. 12, 2004) (final rule), the Office stated:

> Section 1.111(a)(2) is amended to provide that a reply that is supplemental to a 1.111(b) compliant reply will not be entered as a matter of right, with the exception that a supplemental reply will be entered if it is filed within the period when action by the Office is suspended under § 1.103(a) or (c) (suspensions requested by the

> applicant). Section 1.111(a)(2) is also amended to provide that the Office may enter a supplemental reply if the supplemental reply is clearly limited to: (1) Cancellation of a claim(s); (2) adoption of the examiner suggestion(s); (3) placement of the application in condition for allowance; (4) reply to an Office requirement made after the first reply was filed; (5) correction of informalities (*e.g.,* typographical errors);or (6) simplification of issues for appeal. When a supplemental reply is filed in sufficient time to be entered into the application filed before the examiner considers the prior reply, the examiner may approve the entry of a supplemental reply if, after a cursory review, the examiner determines that the supplemental reply is limited to meeting one or more of the conditions set forth in §1.111(a)(2)(i).
>
> A supplemental reply which has not been approved for entry, and therefore, not entered, will not be entered when a reply to a subsequent Office action is filed, even if there is a specific request for its entry in the subsequent reply. If applicants wish to have the (not entered) supplemental reply considered by the examiner, applicants must include the contents of the (not entered) supplemental reply in a proper reply under § 1.111, 1.116, or 1.312 in response to the next Office action. If the reply under § 1.111, 1.116, or 1.312 includes any amendments to the specification including claims, or drawings, the reply must be filed in compliance with § 1.121. If the next Office action is a final rejection or a notice of allowance, applicants may file an RCE in compliance with § 1.114 (*i.e.,* having a submission and a fee) and include the contents of such (not entered) supplemental reply in the submission.
>
> * * *
>
> Furthermore, applicants cannot simply request the entry of a supplemental reply in a subsequent reply. If applicants wish to have a (not entered) supplemental reply considered by the examiner, applicants must include the contents of the (not entered) supplemental reply in a proper reply under § 1.111, 1.116, or 1.312, or an RCE submission under § 1.114[b].

In the present case, applicants did not include the contents of the supplemental reply (i.e., the amendment of October 11, 2005) in an RCE submission under § 1.114 upon filing the RCE on October 25, 2005. Accordingly, the RCE is improper for lack of a submission. See generally MPEP 706.07(h)(III)(A) (indicating if an RCE does not satisfy the requirements of 37 CFR 1.114 (e.g., lacks a submission under § 1.114(b), it will be considered an improper RCE, and the time period for reply will continue to run).

Circumstances resulting from applicants', or applicants' counsel's, failure to exercise due care or to properly apply the patent statutes or rules of practice are not extraordinary circumstances where the interests of justice require the granting of relief. See In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pat. 1990). There is no adequate showing of "an extraordinary situation" in which "justice requires" suspension of 37 CFR 1.114(a). See Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994)(circumstances are not extraordinary, and do not require waiver of the rules, when a party makes an avoidable mistake in filing papers). Accordingly, the petition under 37 CFR 1.183 is **dismissed**.

Furthermore, the Office notes that the remedy of invoking 37 CFR 1.183 is not necessary under the specific circumstance of this case. The Examiner issued a nonfinal Office Action on January 11, 2006, **within the three-month shortened statutory period for reply** set forth in the final Office Action of October 19, 2005. By issuing the nonfinal Office action, examiner effectively reopened prosecution and set a new shortened statutory time period of three months for reply from the mail date of January 11, 2006. Therefore, the application is not abandoned, as applicants filed a timely reply to the nonfinal Office Action with an extension of time on April 19, 2006. In other words, the application is currently pending, and the petition to revive is inappropriate. Accordingly, the petition under 37 CFR 1.137(b) is dismissed as involving a moot issue.

The $1,500.00 fee for filing the petition under 37 CFR 1.137(b) is unnecessary and will be refunded to the Deposit Account.

This matter is being referred to Technology Center Art Unit 3768.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES 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

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

In re Application of	:	
Rudolf Lucas et al	:	
Application No. 10/162,553	:	DECISION ON PETITION
Filed: June 6, 2002	:	
Attorney Docket No. BJS-5090-2	:	

This is a decision on the petition, filed, June 13, 2007, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) by way of a certificate of correction in the patent to be issued from the above-identified application.

The request is **GRANTED**.

Petitioner states that the correct assignee's name is Rudolf Lucas and that the incorrect assignee's name was included on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignee on the front page of the Letters Patent in the patent to be issued from the application.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed after issuance of this application into a patent.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3210. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

Irvin Dingle
Petition Examiner
Office of Petitions

12 MAY 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

In re Application of LUCAS et al.	:
Application No.: 10/162,553	: DECISION ON PETITION
Filing Date: 28 February 2002	:
Attorney Docket No.: BJS-5090-2	: UNDER 37 CFR 1.78(a)(3)
For: TNF-DERIVED PEPTIDES FOR USE	:
IN TREATING OEDEMA	:

This is a decision on Petitioner's "Rule 78(a)(3) Petition", filed 27 October 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the nonprovisional application identified in the concurrently filed amendment to the specification.

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

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

The instant petition does not comply with item (1).

MPEP 201.11, Section III. C., states in relevant part,

Sometimes a pending application is one of a series of applications wherein the pending application is not copending with the first filed application but is copending with an intermediate application entitled to the benefit of the filing date of the first application...Appropriate references must be made in each intermediate application in the chain of prior applications. If an applicant desires, for example, the following benefit claim: "this application is a continuation of Application No. C, file —, which is a continuation of Application No. B, filed —, which claims the benefit of provisional Application A, filed —," then Application No. C must have a reference to Application No. B and provisional application No. A, and Application No. B must have a reference to provisional Application No. A (Emphasis added.)

In the present case, although intermediate application 09/779,703 was amended to contain a reference to PCT/EP99/05806, such amendment was filed after the expiration of the period set forth in 37 CFR 1.78(a)(2)(ii). Thus, 09/779,703 is not presently entitled to the benefit of PCT/EP99/05806 absent a petition to revive along with a petition under 37 CFR 1.78(a)(3) to add the late claim.

Since the intermediate application 09/779,703 is not entitled to the benefit of the PCT case, then the grandchild case 10/162,553 is similarly not entitled.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, U.S. application 09/779,703 must be amended to include the necessary reference as discussed above.

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

By hand: Customer Window located at:
Mail Stop PCT
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: 571-273-0459
ATTN: Office of PCT Legal Administration

Any questions concerning this matter may be directed to Cynthia Kratz at (571) 272-3286.

/Bryan Lin/
Bryan Lin
PCT Legal Examiner
Office of PCT Legal Administration

UNITED STATES PATENT and TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

SEP 20 2002

UR
PAPER NO.3

In re Application of	:	
Gennadi Finkelshatin et al.	:	DECISION
Serial No. 10/162,564	:	ON
Filed June 06, 2002	:	PETITION
For: LIQUID FUEL COMPOSITIONS FOR	:	UNDER 708.02,V
ELECTROCHEMICAL FUEL CELLS	:	

This is in response to the petition filed July 29, 2002, requesting that the above-identified application be granted Special Status under Sections 708.02 (V) of the MPEP and 37 CFR 1.102(c).

The petition has been considered and found to comply with the requirements set forth under the above-noted section. Accordingly the petition is **GRANTED.**

Richard V. Fisher

Richard V. Fisher, Director
Technology Center 1700
Chemical and Materials Engineering

Dr. Mark Friedman Ltd.
C/O Mr. Bill Polkinghorn
Discovery Dispatch
9003 Florin Way
Upper Marlboro, MD 20772

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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON VA 20191

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SEP 30 2008

OFFICE OF PETITIONS

In re Application of
Atsushi Miyawaki, et al.
Application No. 10/162,593
Filed: June 6, 2002
Attorney Docket No. P22465

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b) filed March 28, 2008 to revive the above-identified application.

The petition is **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 s to timely pay the issue and publication fees on or before February 25, 2008 as required by the Notice of Allowance and Fee(s) Due mailed November 23, 2007, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on February 26, 2008. The Notice of Abandonment was mailed March 19, 2008.

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

The required reply was not filed with instant petition. 35 U.S.C. 41(a)(7) and 151 each require payment of the issue fee as a condition of reviving an application abandoned or patent lapsed for failure to pay the issue. The filing of a request for continued examination without payment of the issue fee or any outstanding balance thereof is not an acceptable reply in an application abandoned for failure to the pay the issue fee or any portion thereof.

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

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

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

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

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

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

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

Chris Bottorff
Petitions Examiner
Office of Petitions

cc: **James P. Krueger**
FITCH, EVEN, TABIN & FLANNERY
120 South LaSalle Street, Suite 1600
Chicago, IL 60603-3406

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LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO IL 60601-6731

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DEC 04 2008

In re Application of	:
Atsushi Miyawaki, et al.	:
Application No. 10/162,593	: DECISION GRANTING PETITIONS
Filed: June 6, 2002	: UNDER 37 CFR 1.137(b) AND
Attorney Docket No. 703872	: 37 CFR 1.313(c)(2)

This is a decision on the renewed petitions, filed November 26, 2008, under 37 CFR 1.137(b), to revive the above-identified unintentionally abandoned application and on the petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue.

The petitions are **GRANTED**.

As to the petition under 37 CFR 1.137(b):

This application became abandoned for failure to timely pay the issue and publication fees on or before February 25, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed November 23, 2007. The Notice of Abandonment was mailed March 19, 2008.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has submitted (1) payment of the $1,510 issue fee and the $300 publication fee, (2) the petition fee of $1,540, and (3) an adequate statement of unintentional delay.

As to the petition under 37 CFR 1.313(c)(2):

Petitioner requests withdrawal of this application from issue for consideration of a submission under 37 CFR 1.114.

The petition satisfies the requirements of 37 CFR 1.313(c)(2). Accordingly, this application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (RCE).

Petitioner is advised that the issue fee paid in this application 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 Terri Williams at (571) 272-2991.

This matter is being referred to Technology Center AU 1652 for processing the RCE and for consideration of the Information Disclosure Statement submitted on March 28, 2008.

Chris Bottorff
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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Alexandria, VA 22313-1450
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Paper No.

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON DC 20037

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APR 2 6 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Shoji Suenaga :
Application No. 10/162,664 :
Filed: June 6, 2002 :
Attorney Docket No. Q69764 :

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 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.

The examiner of Technology Center AU 2835 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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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. _____

Date :April 26, 2004

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Shoji Suenaga
Application No. :10/162,664
Filed :June 6, 2002

The above-identified application has been assigned Patent No. 6,727,796 and an issue date of April 27, 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 April 27, 2004:

"All reference to Patent No. 6,727,796 to Shoji Suenaga of Japan for ELECTRONIC EQUIPMENT appearing in the Official Gazette of April 27, 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

1632

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FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
1300 I Street, N.W.
Washington DC 20005-3315

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FEB 06 2004

OFFICE OF PETITIONS

In re Application of
Nicolas et al.
Application No. 10/162,688
Filed: June 6, 2002
For: ISOLATED POLYNUCLEOTIDES HAVING A REDUCED OR AN INCREASED CONTENT OF EPIGENETIC CONTROL MOTIFS AND USES THEREOF
Attorney Docket No: 03495-0231
Pub. No.: US 2003/0100528 A1
Pub. Date: May 29, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on July 29 2002 for the above-identified application.

The request is granted-in-part.

The corrected patent application publication will be published in due course and will only include corrections for errors made by the Office.

A patent application publication is based on the application papers as originally filed, according to 37 CFR 1.215(a), which says the following, in part:

> (a) . . . 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 . . . 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.

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

The errors not mentioned below will be corrected as requested by applicant. The following material errors alleged by applicant will not be corrected, as they are not apparent from the Office record:

Paragraph 0013, line 9; paragraph 0028, line 10; paragraph 0093, line 4; paragraph 0098, line 7;

---

[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).

paragraph 0114, line 1 (2 occurrences), line 6, line 8, line, 9, line 11, line 17; paragraph 017 line 1, line 2, line 3, line 4, line 5, line 7; paragraph 0121, line 2; paragraph 0184, line 1 and paragraph 0190, line 6.

The errors at paragraph 0114, line 6, line 18 and paragraph 0117, line 4, wherein "I" is mistyped as "i" will be corrected.

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 any question 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

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Mark O. Polutta

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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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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#8

Paper No. 8

ADE & COMPANY
1700-360 MAIN STREET
WINNIPEG, MANITOBA R3C3Z3
CANADA

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APR 23 2003

OFFICE OF PETITIONS

In re Application of :
Sabbadini, et al. :
Application No. 10/162,697 : ON PETITION
Filed: June 6, 2002 :
Attorney Docket No. 82402-4902 :

This is a decision on the petition under 37 CFR 1.137(b), filed January 22, 2003, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely and complete manner to the Notice to File Missing Parts of Application (Notice) mailed July 3, 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 for the required items not filed with the submission on December 3, 2002. Accordingly, the above-identified application became abandoned on September 4, 2002.

Since the application became abandoned on September 4, 2002, the (3) month extension of time, submitted December 3, 2002, is not necessary and will be refunded to deposit account no. 01-0310.

The file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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United States Patent and Trademark Office
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FROM DIRECTORS OFFICE

SEP 23 2004

TECHNOLOGY CENTER 3600

Peter J. Davis
Morrison & Foerster LLP
Suite 300
1650 Tysons Blvd.
Mclean, VA 22102

In re application of:
R. Martin Chavez et al.
Application No. 10/162,705 :
Filed: September 22, 2000 :
For: RISK MANAGEMENT SYSTEM AND TRADE ENGINE WITH AUTOMATIC TRADE FEED AND MARKET DATA FEED :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on July 21, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition B) above.

As to condition B), the reason "transfer to new counsel", is not appropriate since it is not clear that the client initiated the transfer, or that the client knowingly or freely assents to the transfer to new counsel. A proper reason for withdrawal is enumerated in 37 CFR 10.40(b) subsections (1)-(4) or subsections (1)-(6) of 37 CFR 10.40(c) must be provided.

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(703) 308-0866

RAR/slb: 09/09/04

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 5

Brian M. Buroker
Intellectual Property Department
Hunton & Williams, Suite 1200
1900 K Street, N.W.
Washington DC 20006-1109

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APR 0 8 2003

OFFICE OF PETITIONS

In re Application of
Scott Cappiello, Yi Du, Dyung Le, Benjamin Li, Wenfeng Li, Ramprasad Polana, Patrick Vinton
Application No.10/162,716
Filed: June 6, 2002
Attorney Docket No. 53470.003056
Title of Invention: TECHNIQUE FOR HANDLING SERVER SESSION REQUESTS IN A SYSTEM HAVING A PLURALITY OF SERVERS

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed December 16, 2002.

The petition is GRANTED.

Petitioner has shown that the non-signing inventor, Wenfeng Li, has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the petition indicates the application papers were given to Wenfeng Li's attorney Elizabeth Ferrell. Copies of correspondence between applicant's counsel and attorney Ferrell confirm the application papers were received. The non-signing inventor's failure to respond to the application papers sufficiently establishes that he refuses to execute the application papers.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

This application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

Charlema R. Grant
Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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OFFICE OF PETITIONS

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

In re Application of
Sang K. Cha, et al.
Application No. 10/162,731
Filed: June 4, 2002
Attorney Docket No. 2058.134US1

ON PETITION

This is a decision on the petition, filed September 6, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed December 2, 2005. A Notice of Abandonment was mailed on July 13, 2006. On September 6, 2006, petitioner submitted the present petition, an amendment and a petition for extension of time.

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; and (3) the required statement of unintentional delay.

Extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Since, no extension of time fees are due on a petition for revival, the $1,020 extension fees are being credited to counsel's deposit account.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries regarding this application should be directed to the Technology Center.

The application file is being forwarded to Technology Center AU 2164 for consideration of the amendment filed September 6, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3/13/09 Paper No.: _____

TO SPE OF : ART UNIT 2164

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/627,31 Patent No.: 7293028

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

Valerie Jackson
Certificates of Correction Branch
703-308-9390 ext. 114

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: Does not change the scope. The added formulas existed in the original disclosure

C. Rones
SPE

2164
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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Paper No. 7

Brian M. Hoffman
FENWICK & WEST L.L.P.
Silicon Valley Center
801 California Street
Mountain View, CA 94041

MAILED

JUN 18 2004

Technology Center 2100

In re Application of:
Peter Szor
Application No. 10/162,732
Filed: June 4, 2002
For: COUNTERING MALICIOUS CODE INFECTIONS TO COMPUTER FILES THAT HAVE BEEN INFECTED MORE THAN ONCE

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

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DARBY & DARBY
P.O. BOX 5257
NEW YORK NY 10150-5257

COPY MAILED

JUL 21 2005

OFFICE OF PETITIONS

In re Application of	:	
Sunil Kumar Dhuper et al	:	
Application No. 10/162,740	:	DECISION GRANTING PETITION
Filed: June 6, 2002	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. None	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 12, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an 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 February 3, 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 $510 extension of time submitted with the petition on May 12, 2005 was subsequent to the maximum extendable period for reply, a refund of this fee is being credited to deposit account no. 04-0100 as authorized.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This matter is being referred to Technology Center AU 3743.

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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DIW 03-05

MICHAEL D. ISOM
321 GAGE DR.
ST. LOUIS MO 63135

COPY MAILED

MAR 1 6 2005

OFFICE OF PETITIONS

In re Application of	:	
Michael D. Isom	:	
Application No. 10/162,779	:	ON PETITION
Filed: 6 June, 2002	:	
For: BETTER GOLFERS AIDE	:	
	:	

This is a decision on the petition requesting revival of the above-identified application, filed on 24 August, 2004, 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**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181" or as described within, under 37 CFR 1.137(a) or (b). This is not a final agency action.

This application became abandoned on 7 December, 2003, for failure to timely reply to the Office communication mailed on 6 November, 2003, which set a one (1) month shortened period for reply. No extensions in accordance with 37 CFR 1.136(a) were obtained. A reply was filed on 23 March, 2004, but did not include any extensions of time and was therefore untimely. The filing of the present petition precedes the mailing of Notice of Abandonment.

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)

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[1] In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

petition to withdraw the holding of abandonment.[2] The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.[3] As petitioner has not alleged circumstances which would warrant the withdrawal of the holding of abandonment, the petition will be dismissed.

Petitioner asserts that a reply was timely filed by Express Mail on 28 November, 2003. In support, petitioner has provided a copy of an Express Mail Track & Confirm printout for Express Mail Customer Number ER574523745US showing that the Express Mail envelope was accepted by the USPS on 28 November, 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.[4] (emphasis added)

37 CFR 1.10(e) provides that:

> Any person mailing correspondence properly addressed to the Office with sufficient postage utilizing "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
>
> (3) The petition includes a copy of the originally

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[2] See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

[3] MPEP 711.03(c); see 35 U.S.C. 41(a)(7).

[4] See 37 CFR 1.6(a).

deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Petitioner's evidence has been considered, but is not persuasive. While petitioners have indeed shown that Express Mail envelope No. ER574523745US was deposited with the USPS on 28 November, 2003, petitioners have not provided proof that the envelope marked with the above-referenced Express Mail contained the reply to the Office communication mailed on 6 November, 2003. In this regard, petitioners have not provided a copy of any transmittal letter or other documentation filed with the reply, containing the Express Mail number. Simply put, there is no evidence to link the Express Mail number to the reply petitioner asserts was timely filed on 28 November, 2003. Petitioner is cautioned to ensure that the correct Express Mail number appears on all papers as filed. If the Express Mail number does not appear on the papers as filed, the Office has no way to link the Express Mail number to the papers as filed. As such, the petition must be dismissed.

It is additionally noted that petitioner has failed to provide a copy of the Express Mail label itself, showing that Express Mail Post Office to Addressee service was utilized.

As the showing of record is that the required reply was not timely filed, the petition is dismissed.

ALTERNATIVE VENUE

Alternatively, petitioner may wish to consider filing a 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.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Should petitioner decide to file a petition under 37 CFR 1.137(b), the current small-entity fee for a petition under 37 CFR 1.137(b) is $750.00.

A copy of the form for filing a petition under 37 CFR 1.137(b) is enclosed for petitioner's reference.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cf: PTO/SB/64
Fee Schedule FY05
Privacy Act Stmt

UNITED STATES PATENT AND TRADEMARK OFFICE

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IBM CORPORATION
IPLAW SHCB/40-3
1701 NORTH STREET
ENDICOTT, NY 13760

Mail Date: 04/20/2010

Applicant	: Robert R. Clay	: DECISION ON REQUEST FOR
Patent Number	: 7624023	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/162,782	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/04/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1917** 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.

COOLEY GODWARD KRONISH LLP
ATTN: PATENT GROUP
SUITE 1100
777 - 6TH STREET, NW
WASHINGTON DC 20001

MAILED

MAY 12 2009

OFFICE OF PETITIONS

In re Application of	:	
Anversa et al.	:	
Application No. 10/162,796	:	ON APPLICATION FOR
Filed: June 5, 2002	:	PATENT TERM ADJUSTMENT
Atty Docket No. AUTL-001/09US	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705 filed on November 24, 2008. Applicant requests that the determination of patent term adjustment be corrected from zero (0) days to three hundred twenty-five (325) days. Applicant requests this correction, in part, on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008). Additionally, applicants request correction of the patent term adjustment by entry of a period of applicant delay of 546 days, rather than the 617 days entered by the Office.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment, as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date with regards to that request. 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). (This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.703(b) calculation until the actual date of issuance of the patent has been determined. Accordingly, it is still too soon to make a determination as to the correctness of any period of adjustment that will or will not be entered pursuant to § 1.703(b)).

Applicant is 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. Applicant 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.

Rather than file the request for reconsideration of Patent Term Adjustment 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 pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, 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.

It is acknowledged that applicant is correct that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is noted that a Request for Continued Examination (RCE) was first filed in this application on August 23, 2006.

To the extent that the instant application for patent term adjustment requests reconsideration of the PTA at the time of the mailing of the Notice of Allowance, the request 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 ZERO (0) days, including 547 days of applicant delay. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 31, 2008, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date was zero (0) days. The period of adjustment was 457 days of PTO delay and 617 days of applicant delay.

On November 24, 2008, the issue fee was paid. The subject application for term patent adjustment was filed concurrently with the issue fee, and was therefore timely filed.

Applicant requests removal of the period of reduction of 71 days under 37 CFR 1.704(c)(8) for the filing, on December 6, 2005, of a supplemental reply or other paper filed 71 days after the filing of a reply filed on September 26, 2005. Applicant asserts that the reply was expressly requested by the examiner.

37 CFR 1.704(c)(8) states 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: 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.

A review of the record supports a conclusion that the supplemental amendment filed on December 6, 2005 was expressly requested by the examiner within the meaning of 37 CFR 1.704(c)(8). As such, entry of a period of reduction of 71 days

for the filing of the supplemental reply or other paper is not warranted and will be removed.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is zero (0) days (457 days of office delay less 546 (617-71) days of applicant delay).

Applicants state that the patent is not subject to a terminal disclaimer.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management 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 decision should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Day : Monday
Date: 5/11/2009

PALM INTRANET

Time: 12:03:53

PTA Calculations for Application: 10/162796			
Application Filing Date:	06/05/2002	PTO Delay (PTO):	457
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	617
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	71		

File Contents History

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88	10/28/2008	MAIL-PETITION DECISION - GRANTED			
87	10/28/2008	PETITION DECISION - GRANTED			
86	07/03/2008	PETITION ENTERED			
85	10/22/2008	DOCUMENT VERIFICATION			
84	10/22/2008	ISSUE REVISION COMPLETED			
83	10/22/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
82	10/22/2008	CASE DOCKETED TO EXAMINER IN GAU			
81	09/15/2008	EXAMINER'S AMENDMENT COMMUNICATION			
80	09/15/2008	NOTICE OF ALLOWABILITY			
79	09/11/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
75	08/21/2008	DATE FORWARDED TO EXAMINER			
74	07/03/2008	AMENDMENT AFTER FINAL REJECTION			
72	06/25/2008	MAIL FINAL REJECTION (PTOL - 326)			
71	06/19/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
70	06/22/2008	FINAL REJECTION			
69	03/07/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
68	03/07/2008	REFERENCE CAPTURE ON IDS			
67	03/07/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	65
66	04/11/2008	DATE FORWARDED TO EXAMINER			
65	03/07/2008	RESPONSE AFTER NON-FINAL ACTION		31	59

64	03/07/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
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62	11/09/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
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60	11/07/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
59	11/05/2007	MAIL NON-FINAL REJECTION			
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57	10/22/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
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55	08/22/2007	RESPONSE AFTER NON-FINAL ACTION		97	50
54	08/09/2007	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
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48	11/17/2006	MAIL NON-FINAL REJECTION			
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41	08/23/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
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37	06/26/2006	AMENDMENT AFTER FINAL REJECTION			
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30	10/31/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
29	10/06/2005	MISCELLANEOUS INCOMING LETTER			
28	10/07/2005	DATE FORWARDED TO EXAMINER			
27	09/26/2005	RESPONSE AFTER NON-FINAL ACTION		122	23
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25	05/27/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
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23.1	05/27/2005	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
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21	11/29/2004	MAIL NON-FINAL REJECTION			
20	11/29/2004	NON-FINAL REJECTION			
19	11/14/2004	DATE FORWARDED TO EXAMINER			
18	11/08/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
17	10/06/2004	MAIL RESTRICTION REQUIREMENT	428		-1
16	10/01/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
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14	05/25/2004	CASE DOCKETED TO EXAMINER IN GAU			
13	11/25/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
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9	01/20/2003	CASE DOCKETED TO EXAMINER IN GAU			
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7	12/03/2002	APPLICATION IS NOW COMPLETE			

6	11/12/2002	ADDITIONAL APPLICATION FILING FEES		28	4
5	11/12/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	07/15/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	06/30/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	06/27/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/05/2002	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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JUL 25 2006
OFFICE OF PETITIONS

WINSTON & STRAWN
200 PARK AVENUE
NEW YORK NY 10166-4193

In re Patent No. 7,017,371 :
Issue Date: March 28, 2006 :
Application No. 10/162,798 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket Number: 81421-4012 :

This is a decision on the petition, filed May 25, 2006, requesting the issuance of a duplicate Letters Patent for the above-identified application.

The petition is **GRANTED**.

Since it is U.S. Patent and Trademark Office practice to assure mailing of all papers on the date indicated, there is a strong presumption that papers duly addressed and indicated as mailed, such as the Letters Patent in this application, are timely delivered to the addressee. To overcome this presumption, a verified statement with supporting evidence, such as any records which would disclose the receipt of other correspondence mailed from the U.S. Patent and Trademark Office on or about March 28, 2006, but fail to disclose receipt of the Letters Patent mailed on that date, should be promptly submitted. Further, copies of records on which receipt of the Letters Patent would have been entered had it been received are required.

However, if the loss of the Letters Patent was not the fault of the U.S. Patent and Trademark Office or if petitioner simply wishes to avoid overcoming the above-noted presumption, a petition may be filed under 37 CFR 1.182 accompanied by a petition fee of $400.00 requesting a duplicate Letters Patent.

Petitioners state that a search of their docket does not reveal that the Letters Patent have been received, however, petitioners have not presented any evidence to prove that the Letters Patent mailed March 28, 2006 were not received. In view thereof, the petition fee required is $400. Per the authorization to charge the petition fee, petitioner's deposit account no. 50-1814 has been charged in the amount of $400, not $130 as is indicated in the petition as effective December 8, 2004, the fee for a petition under 37 CFR 1.182 was set at $400.

A copy of this decision is being forwarded to Publishing Division for issuance of a

duplicate Letters Patent. The Publishing Division is directed to issue a duplicate Letters Patent.

Telephone inquiries concerning this decision may be directed to the undersigned Senior Petitions Attorney at (571) 272-3212. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to the Publishing Division at (703) 308-9250.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

cc: Krystal Paige, South Tower, 8th Floor (Fax – (571) 270-9937)

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In re Patent No. 6887154
Issue Date: May 3,2005
Application No. 10162819
Filed: June 4,2002
Attorney Docket No. PRO-02-001

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 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 June 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.

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)
6887154	2005-05-03	10162819	2002-06-04	PRO-02-001

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		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	/mhein/	Date (YYYY-MM-DD)	2009-06-15
Name	Marvin A. Hein	Registration Number	63376

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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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

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APR 21 2005

OFFICE OF PETITIONS

In re Application of
Allen B. REITZ et al.
Application No. 10/162,821
Filed: June 5, 2002
Attorney Docket No.ORT-1638

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed December 2, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 20, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on May 21, 2004. A Notice of Abandonment was mailed on September 15, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee of $1370; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of February 20, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Betsy Deppe at (571) 272-6052 or in her absence, the undersigned at (571) 272-3217.

This matter is being referred to Technology Center AU 1626 for appropriate action on the concurrently filed amendment.

Frances Hicks for
Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

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DEC 20 2007

OFFICE OF PETITIONS

In re Application of	:	
Moore, et al.	:	DECISION ON PETITION
Application No. 10/162,827	:	
Filed: June 3, 2002	:	
Atty. Dkt. No.: MSFT118683	:	

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed February 5, 2007.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned May 12, 2006 for failure to timely submit a proper appeal brief in connection with the Notice of Appeal filed January 11, 2006. A pre-brief appeal conference was requested January 11, 2006. A decision on the pre-appeal brief conference was mailed February 7, 2006. The decision indicated that applicants' reply brief was due one month from the mail date of the decision or two months from the date of the filing of Notice of Appeal, which ever being longer. As two months from the date of filing of the Notice of Appeal was longer than one month from the date of the decision, the appeal brief was due on or before March 11, 2006. An appeal brief and petition for a two month extension of time were filed May 11, 2006. A Notice of Non-Compliant Appeal Brief was mailed August 1, 2006. An amended appeal brief was filed September 6, 2006. A Notice concerning the appeal brief and abandonment of the application was mailed December 4, 2006.

Petitioners argue that the amended appeal brief filed September 6, 2006 was compliant and request withdrawal of the holding of abandonment.

The amended appeal brief submitted September 6, 2006 was untimely. The Notice of Appeal was filed January 11, 2006. The appeal brief was due March 11, 2006. The period of time for submission of the appeal brief was extendible to August 11, 2006. The amended appeal brief filed September 6, 2006, which was submitted after the maximum period of time allowed for reply. Accordingly, the application went abandoned as a matter of law for failure to timely submit a proper appeal brief.

ALTERNATE VENUE

Petitioners may wish to consider filing a petition stating that the delay was unintentional. Petitioners' attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:	**Mail Stop Petition** Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(571) 273-8300
By hand delivery:	U.S. Patent and Trademark Office Customer Window, **Mail Stop Petition** Randolph Building 401 Dulany Street

Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

In re Application of :
Moore, et al. :
Application No. 10/162,827 : DECISION ON PETITION
Filed: June 3, 2002 :
Attorney Docket No. MSFT118683 :

This is a decision on the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181 filed February 20, 2008

The petition is **GRANTED**

The Notice of Abandonment mailed March 26, 2008 indicated that the application is abandoned for failure to timely file a reply to the Office action mailed September 10, 2007.

Petitioners herein continue to argue that a reply to the Office action, including petition for extension of time, was timely filed December 10, 2007. Petitioners argue that the subject matter objected to by the September 10, 2007 Office action was deleted from the specification in the amendment submitted December 10, 2007.

Petitioners' arguments have been carefully reviewed and found to be convincing. Further consultation with the examiner of record seemingly establishes that the reply filed December 10, 2007 in response to the Ex Parte Quayle Action appears bona fida to satisfy the requirements of 37 CFR 1.111. Thus, the Notice of Abandonment was mailed in error. Petitioners are advised, however, that the actual sufficiency of the reply itself will be examined by the examiner of record in due course.

In view of the evidence presented, 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 Group Art Unit 2179 for further processing.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MORRIS MANNING & MARTIN LLP
1600 ATLANTA FINANCIAL CENTER
3343 PEACHTREE ROAD, NE
ATLANTA GA 30326-1044

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OFFICE OF PETITIONS

In re Application of	:	
Campbell et al	:	
Application No. 10/162,836	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. 12259-38053	:	

This is a decision on the petition, filed May 19, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 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 the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2162 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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B

AUG - 9 2004

In re Application of Virginia a. Stallings Serial No. 10/162,837 Filed: June 5, 2002 For: METHODS AND KITS FOR DIAGNOSING A PANCREATIC-BASED FAT MALABSORPTION DISORDER	: : : : : : : :	NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(b)

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR 1.313.

The application is being withdrawn to permit reopening of prosecution. The reasons therefore will be communicated to you by the examiner.

PTO records reveal that the issue fee has not been paid. If the issue fee has been submitted, the applicant may request a refund or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee 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.

Bruce M. Kisliuk, Director
Technology Center 1600

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OCT 29 2004
OIPE/JCWS

DANN, DORFMAN, HERRELL & SKILLMAN
saet
1601 MARKET STREET
PHILADELPHIA PA 19103-2307

cc: Allowed Files, PK3-910
Drafting Branch, PK3-910

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UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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AUG - 9 2004

In re Application of Virginia a. Stallings Serial No. 10/162,837 Filed: June 5, 2002 For: METHODS AND KITS FOR DIAGNOSING A PANCREATIC-BASED FAT MALABSORPTION DISORDER	: : : : : : : :	NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(b)

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR 1.313.

The application is being withdrawn to permit reopening of prosecution. The reasons therefore will be communicated to you by the examiner.

PTO records reveal that the issue fee has not been paid. If the issue fee has been submitted, the applicant may request a refund or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee 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.

Bruce M. Kisliuk, Director
Technology Center 1600

DANN, DORFMAN, HERRELL & SKILLMAN
saet
1601 MARKET STREET
PHILADELPHIA PA 19103-2307

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OCT 29 2004
OIPE/JCWS

cc: Allowed Files, PK3-910
Drafting Branch, PK3-910

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 3

KEITH KLINE
PRO-TECHTOR INTERNATIONAL SERVICES
20775 NORADA COURT
SARATOGA, CA 95070-3018

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OCT 0 2 2002

OFFICE OF PETITIONS

In re Application of	:	
Sway Chuang et al	:	
Application No. 10/162,842	:	NOTICE
Filed: June 4, 2002	:	
Attorney Docket No. 1291033	:	

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 1714.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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OFFICE OF PETITIONS

BIRCH STEWART KOLASCH & BIRCH
P.O. BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Dae Sik Hwang	:	
Application No. 10/162,874	:	ON PETITION
Filed: June 6, 2002	:	
Attorney Docket No. 0465-0934P-SP	:	

This is a decision on the petition, filed January 27, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 22, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2879 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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PO BOX 747
FALLS CHURCH VA 22040-0747

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DEC 20 2007

OFFICE OF PETITIONS

In re Application of	:	
Dae Sik Hwang	:	
Application No. 10/162874	:	DECISION
Filing or 371(c) Date: 06/06/2002	:	ON PETITION
Patent No.: 7045943	:	
Issue Date: 05/16/2006	:	
Attorney Docket No.: 0465-0934P-SP	:	

This is a decision on the correspondence entitled "Request for Certificate of Correction Pursuant to 37 CFR 1.322," filed November 1, 2006, to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction. The request is properly treated as a petition under 37 CFR 3.81(b)[1]. The delay in treating this petition is regretted.

The Petition is **granted**.

The petition was accompanied by a certificate of correction as required by 3.81(b), and the fee submitted with the present petition. Further, Office assignment records reflect that L.G. Philips Displays Korea Co., LTD., is the assignee of record. As the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

Derek L. Woods
Attorney
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	REQUEST DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
10/162,930	9/10/02	ALAN M. GIRARD, ET AL	27997-1(166078)

Title: **TOSS-GAME STRUCTURE FOR POOLSIDE USE**

Art Unit	Paper Number

Correspondence Address:
DANIEL A. MONACO
DRINKER BIDDLE & REATH, LLP
18TH & CHERRY STREETS
ONE LOGAN SQUARE
PHILADELPHIA, PA 19103-6996

Licensee under 35 U.S.C. 184 is hereby granted to file in any foreign country a patent application and any amendments thereto corresponding to the subject matter of this U.S. application identified above and/or any material accompanying the petition. This license is conditioned upon modification of any applicable secrecy order and is subject to revocation without notice.

License Number: 531,972

Grant Date: 06-Feb-04

This license is granted retroactively to the date(s) and the country(s) indicated on the attached decision.

Approved:
for Commissioner of Patents and Trademarks

This license empowers the filing, the causation and the authorization of the filing of a foreign application or applications on the subject matter identified above, subsequent forwarding of all duplicate and formal papers and the prosecution of such aplication or applications.

This license is granted under 37 CFR 5.15(a)

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LICENSE FOR FOREIGN FILING

[Title 35, United States Code (1952) Sections 184, 185, 186]

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

Daniel A. Monaco
Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

In re:	Girard et al	:	DECISION ON REQUEST
Serial No.:	10/162,930	:	UNDER 37 CFR 5.25
Filing date:	06 June 2002		
Docket No:	27997-1(16607)		

Title: TOSS-GAME STRUCTURE FOR POOL SIDE USE

In view of the communication(s) filed 11 August 2003, it has been determined that a retroactive license for foreign filing under 35 U.S.C. 184 be granted with respect to the filings listed below. The petition complies with 37 C.F.R. 5.25 in that there is an adequate showing that the subject matter in question was not under secrecy order, that the license was diligently sought after discovery of the proscribed foreign filing, and that the material was filed abroad without the required license under 37 C.F.R. 5.11 first having been obtained through error and without deceptive intent.

Country	Date
Canada	15 July 2002

Approved:

Andrea M. Valenti

Andrea M. Valenti
Patent Examiner
Group 3643
(703) 305-3010

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DAVIS & BUJOLD
FOURTH FLOOR
500 N. COMMERCIAL STREET
MANCHESTER NH 03101-1151

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OFFICE OF PETITIONS

In re Application :
Todd E. Lizotte et al :
Application No. 10/162,944 : LETTER
Filed: June 4, 2002 :
Attorney Docket No. VIANAN P02BUS:

This is in response to the paper filed September 27, 2004, which is being treated under 37 CFR 1.27(g)(2) requesting that status as a Small Entity be removed.

In accordance with the September 27, 2004 request, status as a Small Entity has been removed.

This matter is being forwarded to Files Repository.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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United States Patent and Trademark Office
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RAYTHEON COMPANY
BLDG. EO/ E01 /E150
2000 EAST E1 SEGUNDO BOULEVARD
P.O. BOX 902
EL SEGUNDO, CA 90245

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Ronnie G. Peterson	:	
Application No. 10/162,950	:	
Filed: June 4, 2002	:	
Attorney Docket No. 01W054	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 24, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed October 24, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 25, 2004.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The application file is being forwarded to Technology Center AU 2839 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:

Collin M. Raufer
12160 Sunrise Valley Drive
Reston, VA 20191

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JUL 24 2006
OFFICE OF PETITIONS

Schwegman, Lundberg, Woessner & Kluth
1600 TCF Tower
121 South Eight Street
Minneapolis, MN 55402

In re Application of	:	
John Alden	:	DECISION ON REQUEST
Application No. 10/163,011	:	TO WITHDRAW FROM
Filed: June 4, 2002	:	RECORD
Attorney Docket No. 776.005US1	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 CFR § 1.36(b) or 37 CFR § 10.40 filed by facsimile transmission on April 20, 2006.

The request is **NOT APPROVED**.

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, "Discontinuation of attorney/client relationship", does not meet any of the conditions set forth in 37 CFR 10.40.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Alston & Bird
Bank of America Plaza
101 South Tyron Street
Suite 4000
Charlotte, NC 28280-4000

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Schwegman, Lundberg, Woessner & Kluth
1600 TCF Tower
121 South Eight Street
Minneapolis, MN 55402

In re Application of	:	
John Alden	:	DECISION ON REQUEST
Application No. 10/163,011	:	TO WITHDRAW FROM
Filed: June 4, 2002	:	RECORD
Attorney Docket No. 776.005US1	:	

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed by facsimile transmission on October 20, 2006 and supplemented on December 5, 2006.

The request is **APPROVED**.

The request was signed by Bradley Forrest on behalf of himself and all the attorneys/agents of record.

Bradley Forrest and all the attorneys/agents of record have been withdrawn. Therefore, applicant is reminded that there are no attorneys/agents 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.

This application is being referred to Technology Center Art Unit 2191, for review of the amendment filed on November 14, 2006.

Telephone inquiries concerning this decision should be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: John Alden
6217 France Avenue South
Edina, MN 55410

Alston & Bird
Bank of America Plaza
101 South Tryon Street
Suite 4000
Charlotte, NC 28280-4000

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Paper No. 8

DANN DORFMAN HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 720
PHILADELPHIA, PA 19103-2307

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APR 25 2003

OFFICE OF PETITIONS

In re Application of	:	
Ramesh Pappu	:	
Application No. 10/163,021	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. AEHN.016	:	

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 timely pay the issue fee on or before December 27, 2002. Accordingly, this application became abandoned on December 28, 2002.

The terminal disclaimer, filed February 3, 2003, is not necessary. The $55.00 terminal disclaimer fee has been refunded to deposit account no. 04-1406.

This application is being forwarded to Publishing Division for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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Paper No. 22

Dann Dorfman Herrell & Skillman
Suite 720
1601 Market Street
Philadelphia, PA 19103-2307

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NOV 25 2003

OFFICE OF PETITIONS

In re Application of
Ramesh Pappu
Application No. 10/163,021
Filed: June 4, 2002
Attorney Docket No. AEHN.016

ON PETITION

This is a decision on the petition filed October 24, 2003, to revive the above-identified application under 37 CFR 1.137(b).

The petition is GRANTED.

The above-identified application became abandoned for failure submit the issue fee in a timely manner in reply to the Notice of Allowance mailed July 21, 2003, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on October 22, 2003.

The application file is being forwarded to Publishing Division.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

Latrice Bond

Latrice Bond
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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OFFICE OF PETITIONS

In re Application of	:	
Ramesh Pappu	:	
Application No. 10/163,021	:	DECISION ON PETITION
Filed: June 4, 2002	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. AEHN.016PAPPU	:	

This is a decision on the petition, filed August 2, 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 **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.

Upon payment of the issue fee, an application will not be withdrawn from issue upon petition except for the reasons enumerated in 37 CFR 1.313(c). The circumstances of the above-identified application do not fall within any of those exceptions. While the petition is labeled as a petition under 37 CFR 1.313(c)(2), there is no indication that a Request for Continued Examination under 37 CFR 1.114 accompanied the petition. Therefore, since the petition does not comply with any of the provisions of 37 CFR 1.313(c) for withdrawing the application from issue, the petition cannot be granted.

The petition states that the reason for withdrawal of the application from issue is "to obtain an opportunity to amend the Specification to include a recitation of the priority claim to United States Provisional Application 60/295,683 in the first sentence following the title."

In reviewing the file record for this application, it is noted that the claim for priority to provisional Application No. 60/295,683 appears in the oath/declaration. As a result thereof, the Office noted the claim for priority and published the application with this priority claim. Additionally, it is noted that the first line of the specification has been amended to include a reference to the above-noted provisional application (*see* attached copy of first page of specification). While a petition under 37 CFR 1.78(a)(6) (as well as a petition complying with the provisions of 37 CFR 1.313(c)(2)in view of the previous payment of the issue fee) would normally be the appropriate remedy for accepting a late claim for priority, the current procedure where a claim for priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6).[1] In the instant case, the Office noted the claim for priority of the prior-filed provisional application in the declaration filed with the application, as shown by its inclusion on the filing receipt and on United States Published Application No. 20020183823.

For these reasons, neither the filing of a petition to withdraw from issue for the purpose of amending the application to include a reference to the above-noted, prior-filed provisional application nor a petition under 37 CFR 1.78(a)(6) is necessary.

---

[1] *Note* MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

Accordingly, the petition to withdraw from issue is dismissed as involving a moot issue.

If petitioner still desires to withdraw this application from issue, a renewed petition to withdraw from issue must be submitted and compliance with one of the conditions of 37 CFR 1.313(c) must be satisfied.

Telephone inquiries should be directed to the undersigned at (703) 305-8680.

The matter is being referred to Publishing Division for processing into a patent with the issue fee payment of May 3, 2004.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Copy of first page of specification which includes amended claim for priority

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : August 8, 2007

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction for Appl. No./10/163029 patent no.6700022

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Magdalene Talley

Certificates of Correction Branch

703-308-9390 ext. 116

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

SPE **Art Unit** 1625

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0 8 FEB 2007

Robert E. Krebs
Thelen, Reid & Priest, LLP
P.O. Box 640640
San Jose, CA 95164-0640

In re Application of	:	
MARTROU, et al.	:	DECISION ON PETITION
Application No.: 10/163,035	:	
Filing Date: 04 June 2002	:	UNDER 37 CFR 1.181
Atty. Docket No.: 034299-420	:	

This is a decision on applicant's correspondence filed on 25 May 2006 in the United States Patent and Trademark Office (USPTO). The paper is being considered under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 01 October 2001, applicant filed international application PCT/FR01/03026, which claimed priority of an earlier British application filed 02 October 2000. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 02 April 2003.

On 04 June 2002, applicant filed a utility patent application transmittal letter (Form PTO/SB/05) in the United States, which was accompanied by payment of the $740 basic filing fee. The application was processed as a filing under 35 U.S.C. 111(a). The filed specification did not mention international application PCT/FR01/03026.

On 10 July 2002, applicant was mailed a "NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION FILED UNDER 37 CFR 1.53(b)."

On 26 September 2002, applicant filed a response including an executed declaration.

On 01 February 2006, applicant was mailed a non-final office action indicating that the application had been withdrawn from issue due to an issue with the priority claim. Specifically, the examiner noted that no relationship had been established between the international application cited above and the current application. The examiner noted that the current application was not filed under 35 U.S.C. 371.

On 25 May 2006, applicant responded with remarks indicating that a relationship did exist and that the requirements of 35 U.S.C. 371 had been met.

DISCUSSION

Applicant's transmittal letter filed 04 June 2002 did not request treatment under 35 U.S.C. 371 but rather was for a new nonprovisional application under 37 CFR 1.53(b). 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). (See 37 CFR 1.494(f) and 37 CFR 1.495(g)). In addition, section 1893.03(a), page 1800-114 of the MPEP states that "[i]f there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a)." As such, the application was properly treated as an application under 35 U.S.C. 111 and 37 CFR 1.53.

Regarding applicant's request for information to be provided in order for the application to be entitled to recognition that it was filed under 35 U.S.C. 371, U.S. statutes and regulations do not make specific provisions for converting an application filed under 35 U.S.C. 111 to a National stage application under 35 U.S.C. 371 and as such, the Office does not grant such petitions for conversion as a mere matter of course. The Office will only grant such petitions upon a showing by applicant of sufficient cause (i.e., the loss of patent rights) where no other remedy is available. Said petitions can be filed under 37 CFR 1.182.

Applicant is entitled to claim benefit under 35 U.S.C. 120 and 365(c) of the filing date of the international application for the common subject matter, if this application (Application No. 10/163,035) and the international application (PCT/FR01/03026) designating the United States were copending on 04 June 2002. In order to obtain benefit of the earlier international application, applicant must amend the beginning of the specification of this application by inserting a proper reference to the parent international application. An appropriate passage would be, "This is a continuation of international application PCT/FR01/03026), filed 01 October 2001 which designated the United States and is now abandoned."

Applicant is reminded that in order to perfect the claim for priority under 35 U.S.C. 119, applicant must submit a certified copy of the priority document. The certified copy of priority document submitted to the International Bureau for the national stage cannot be relied upon to perfect the claim for priority. See MPEP § 1896.

It is also noted that, should applicant desire the present application to be treated as a continuation of the PCT application, the claim of benefit to the international application must be in compliance with the requirements of 37 CFR 1.78.

In addition, applicant is advised that it is possible to revive the present international application in the National Stage in the United States pursuant to 37 CFR 1.137(b). This advice should not be construed as a statement as to whether said petition will be granted.

CONCLUSION

The petition to convert the application from a 35 U.S.C. 111 filing to a national stage application under 35 U.S.C. 371 is **DISMISSED** without prejudice.

This application is being returned to Group Art Unit 1756 for consideration of applicant's filing of 25 May 2006.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3294
Fax: (571) 273-0459

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RICHARD E. BEE
P.O. BOX 10544
COSTA MESA, CA 92627

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OFFICE OF PETITIONS

In re Application of :
Denny R. Dennis et al :
Application No. 10/163,040 : ON PETITION
Filed: June 5, 2002 :
Attorney Docket No. 20229 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 17, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

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

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[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.

the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s)(2).

The publication fee was not submitted as noted in the Notice of Allowance and Fee(s) Due mailed May 20, 2004.

Additionally, there is no indication that petitioner has submitted an Issue Fee Transmittal Form (PTOL-85(b). Accordingly, if petitioner desires to have the information normally found thereon printed on the patent, the attached blank Issue Fee Transmittal Form should be completed and returned to the Publishing Division.

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:

Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to Karen Creasy at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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RICHARD E. BEE
P.O. BOX 10544
COSTA MESA CA 92627

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OFFICE OF PETITIONS

In re Application of
Denny R. Dennis et al
Application No. 10/163,040
Filed: June 5, 2002
Attorney Docket No. 20229

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed May 13, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed May 20, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on August 21, 2004.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This matter is being referred to Patent Publication.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 8

PATTERSON THUENTE SKAAR CHRISTENSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MINNESOTA 55402-2100

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OFFICE OF PETITIONS

In re Application of :
Thomas James Dorsch et al :
Application No. 10/163,050 :
Filed: June 5, 2002 :
Attorney Docket No. 15-11850A :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 26, 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 July 8, 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 September 9, 2002.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The application is being forwarded to the Initial Patent Examination Unit.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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PHOENIX, AZ 85004-2202

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OFFICE OF PETITIONS

In re Application of :
Michael N. Kozicki :
Application No. 10/163,059 :
Filed: June 4, 2002 :
Attorney Docket No. 29089.2200 :

ON PETITION

This is a decision on the petition, filed August 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 August 12, 2004, using a Certificate of Mailing or Transmission under 37 CFR 1.8 dated August 4, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220.

The application is being forwarded to Technology Center AU 2824 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[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).

H·A

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ALLEN, DYER, DOPPELT,
MILBRATH & GILCHRIST P.A.
255 South Orange Avenue, Suite 1401
Orlando, FL 32802-3791

FEB 3 2005

In re Application of:
Paul G. Coombs et al.
Serial No.: 10/163,062
Filed: June 5, 2002
Attorney Docket No.: **78383**

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed January 13, 2004, to withdraw the holding of abandonment in the above-identified application under 37 C.F.R. § 1.181.

The petition is **DENIED**.

The application was held abandoned for failure to timely pay the issue fee in response to the Notice of Allowance and Fee(s) Due (Notice of Allowance) mailed on July 30, 2003. A Notice of Abandonment was mailed on December 19, 2003.

Petitioner asserts that the Notice of Allowance mailed on July 30, 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 Notice of Allowance was not received. A copy of the file docket where the Notice of Allowance would have been entered was also included. It is also stated that petitioner changed office locations on July 9, 2003 and filed a change of address with the Office on October 6, 2003.

M.P.E.P. § 711.03(c) states, in part, as follows

> For example, where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP§ 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address.

Petitioner's delay until October 6, 2003 to file the change of address constitutes a belated notification to the U.S. Patent and Trademark Office of the change in correspondence address. A belated notification does not constitute a proper notification. See M.P.E.P. § 711.03(c). The Notice of Allowance was mailed to a proper correspondence address at the time. Further, the written record indicates no irregularity in the mailing of the Notice of Allowance, 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 at that address and not at petitioner's new and current address.

Because the issue fee was not timely paid in response to a properly mailed Notice of Allowance, the application became abandoned by operation of law. The holding of abandonment may not be withdrawn.

Petitioner may wish to consider filing a petition under 37 C.F.R. § 1.137(a) or (b) to revive the application.

Inquiries regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.

Janice A. Falcone

Janice A. Falcone, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE
P O BOX 3791
ORLANDO, FL 32802-3791

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OFFICE OF PETITIONS

In re Application of	:
Paul G. Coombs et al	:
Application No. 10/163,062	: DECISION GRANTING PETITION
Filed: June 5, 2002	: UNDER 37 CFR 1.137(b)
Atty Docket No. 78383 18-27 US DIV	:

This is a decision on the petition under 37 CFR 1.137(b), filed February 18, 2005, 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 30, 2003,as required by the Notice of Allowance and Fee(s) Due, mailed July 30, 2003.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the $1,400 issue fee and $300 publication fee; (2) the $1,500 petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the issue and publication fees are accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Publishing Division.

Frances Hicks
Petitions Examiner
Office of Petitions

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Paper No.

SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

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OFFICE OF PETITIONS

In re Application of
Peter V. Schwartz
Application No. 10/163,068
Filed: June 4, 2002
Attorney Docket No. 4183-12

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 17, 2003, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;[1]
> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on June 4, 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).

---

[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 nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 2881 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. 10/087,295, filed March 1, 2002.

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

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OCT 23 2006

OFFICE OF PETITIONS

In re Application of :
ALAM :
Application No. 10/163,071 : DECISION ON PETITION
Filed: June 4, 2002 : TO WITHDRAW
Attorney Docket No. 1384.023US1 : 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 23, 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, "assignee/client has requested that file be transferred to another attorney" does not meet any of the conditions set forth in 37 CFR 10.40.

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). No 3.73(b) Statement has been filed and the power of attorney was given by the inventor/client Naveed Alam.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at 571-272-7253.

David Bucci
Petitions Examiner
Office of Petitions

cc: **Faegre & Benson LLP**
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203-4532

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MINNEAPOLIS, MN 55402

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OFFICE OF PETITIONS

In re Application of	:	
Zahid Hussain, et. al.	:	
Application No. 10/163,079	:	DECISION ON PETITION
Filed: June 4, 2002	:	TO WITHDRAW
Attorney Docket No. FORT-00240	:	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 23, 2006.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to SCHWEGMAN, LUNDBERG & WOESSNER, P.A. has been revoked by the assignee of the patent application on September 11, 2006. 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.

Telephone inquiries concerning this decision should be directed to Denise Williams at 571-272-8930.

Carl Friedman
Petitions Examiner
Office of Petitions

cc: MICHAEL A DESANCTIS
HAMILTON DESANCTIS & CHA LLP
FINANCIAL PLAZA AT UNION SQUARE
225 UNION BOULEVARD, SUITE 305
LAKEWOOD CO 80228

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OFFICE OF PETITIONS

HELLER EHRMAN, LLP
4350 LA JOLLA VILLAGE DRIVE #700
7TH FLOOR
SAN DIEGO, CA 92122

In re Application of	:	
Mukhtar, et. al.	:	DECISION ON REQUEST
Application No. 10/163,080	:	TO WITHDRAW FROM
Filed: June 3, 2002	:	RECORD
Attorney Docket No. 18021-6128	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed on March 16, 2006.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to all the attorneys or agents associated with Customer No. 33123 have been revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

This application file is being referred to Technology Center Art Unit 2616.

Telephone inquires concerning this decision should be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Conferee: Amelia Au

cc: TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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TRASKBRITT, PC
P.O. BOX 2550
SALT LAKE CITY UT 84110

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MAR 1 4 2005

OFFICE OF PETITIONS

In re Application of :
Moss et al :
Application No. 10/163,086 : ON PETITION
Filed: June 5, 2002 :
Attorney Docket No. 3052-5495US :

This is a decision on the petition, filed March 8, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 29, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 3611 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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TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY, UT 84110

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OFFICE OF PETITIONS

In re Application of :
Moss et al. :
Application No. 10/163,086 :
Filed: June 5, 2002 : ON PETITION
Attorney Docket No.: :
3196-5494US :

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed August 11, 2005[1].

The petition is **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed April 14, 2005. The Notice set a non-extendable three (3) month period for reply. Accordingly, the application became abandoned on July 15, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

The issue fee has been previously submitted on July 18, 2005[2].

This application is being referred to Publishing Division for processing into a patent.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Petitions Attorney
Office of Petitions

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[1] It is noted that the Certificate of Mailing is not properly executed in accordance with 37 CFR 1.8.
[2] It is again noted that the Certificate of Mailing is not properly executed in accordance with 37 CFR 1.8.

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BRIARCLIFF MANOR NY 10510

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OFFICE OF PETITIONS

In re Application of	:	
Mutsaers, et al.	:	
Application No. 10/163,104	:	ON PETITION
Filed: June 5, 2002	:	
Attorney Docket No. PHN 16502B	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 12, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." There is no fee for the renewed petition. This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed July 8, 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 9, 2003. A Notice of Abandonment was mailed on September 21, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The instant petition lacks item (1), the required reply.

With the instant petition, petitioner filed an amendment in reply to the final Office action. However, the examiner has determined that the amendment did not *prima facie* place the application in condition for allowance. On renewed petition, petitioner must submit a proper reply in response to the final Office action. The proposed reply to a final Office action required for consideration of a petition to revive must be either (1) a Notice of Appeal (and fee required by law); (2) an amendment that *prima facie* places the application in condition for allowance; (3) the filing of a continuing application under 37 CFR 1.53(b) or if applicable, 1.53(d); or (4) a request for a continuing examination (RCE) under 37 CFR 1.114.

The petition fee of $1,500 has been charged to Deposit Account No. 14-1270, as authorized.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571)273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Mutsaers, et al.	:	
Application No. 10/163,104	:	ON PETITION
Filed: June 5, 2002	:	
Attorney Docket No. PHN 16502B	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed April 30, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed July 8, 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 9, 2003. A Notice of Abandonment was mailed on September 21, 2004. Applicants filed a petition to revive under 37 CFR 1.137(b) on January 12, 2007. However, the petition was dismissed in a decision mailed on March 26, 2007.

With the instant petition, applicants submitted the required reply in the form of an RCE. The other requirements for a grantable petition were previously satisfied with the petition filed January 12, 2007.

With the instant renewed petition, applicants were mistakenly charged the petition fee of $1,500. As applicants previously paid the petition fee on January 12, 2007, $1,500 has been refunded to Deposit Account No. 14-1270.

The matter is being forwarded to Group Art Unit 2814 for consideration of the RCE, filed April 30, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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Paper No. 6

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

TESTA, HURWITZ & THIBEAULT, LLP
HIGH STREET TOWER
125 HIGH STREET
BOSTON MA 02110

In re Application of	)	
Edward HALLMAN, et al.	)	
Application No. 10/163,134	)	DECISION ON REQUEST TO
Filed: June 5, 2002	)	WITHDRAW FROM RECORD
For: ADAPTIVE TIMING RECOVERY OF	)	
SYNCHRONOUS TRANSPORT SIGNALS		

This is a decision on the Request for Withdrawal as attorney or agent and change of address filed on September 7, 2004.

A grantable request to withdraw as attorney/agent of record must:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above. Accordingly, the request is **GRANTED**.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

CC: Steve Watts
2021 Terri Creek Drive
Fuquay Varina, NC 27526

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STAMFORD, CT 06905

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OFFICE OF PETITIONS

In re Application of	:	
Hinchliffe, et al.	:	
Application No. 10/163,142	:	ON PETITION
Filed: June 5, 2002	:	
Attorney Docket No. 1254	:	

This is a decision on the petition under 37 CFR 1.181, filed February 22, 2005, to withdraw the holding of abandonment. The petition was recently forwarded to this office for review.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a proper reply to the Office action mailed June 23, 2004, which set a one (1) month period for response. Accordingly, this application became abandoned on July 24, 2004.

Petitioner asserts the Office action was never received and that the Office mailed the action to the wrong address. A review of the application file indicates that the Office action was mailed to an incorrect address. The Office sincerely apologizes for this error.

Accordingly, the petition is granted and the holding of abandonment is withdrawn.

This application is being forwarded to Technology Center 3700, for re-mailing of the June 23, 2004 Office action with a new period for response.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/163,148	06/03/2002	Bernhard H. Weigl	660D115.408C1	5352

500 7590 11/30/2004

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 6300
SEATTLE, WA 98104-7092

EXAMINER
HITESHEW, FELISA CARLA

ART UNIT	PAPER NUMBER
1765	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NOV 30 2004

In re Application of Bernhard H. Weigi Serial No. 10/163,148 Filed: June 03, 2002 For: PROTEIN CRYSTALLIZATION IN MICROFLUIDIC STRUCTURES	: : : : : : :	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 at Nadine Norton (571) 272-1465.

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

Jerrold J. Litzinger
2134 Madison Road
Cincinnati, OH 45208

cc: Allowed Files—Pk3-910

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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DIW 02-04

ZONG YUEN CAI
1207 HOGAN DR.
SOUTH PLAINFIELD NJ 07080

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FEB 17 2004

OFFICE OF PETITIONS

In re Application of
Zong Yuen Cai
Application No. 10/163,149
Filed: 4 June, 2002
For: METHOD AND APPARATUS FOR PULLING MULTIBARREL PIPETTES

In re Application of
Zong Yuen Cai
Application No. 10/402,008
Filed: 28 March, 2003
For: APPARATUS FOR PULLING MULTIBARREL PIPETTES

DECISION ON PETITION
AND
DECISION MERGING FILES

This is a decision in reference to the papers filed on 28 March, 2003, which have been forwarded to the Office of Petitions for review. The papers are being treated as a petition under 37 CFR 1.181 and 1.182, requesting that the holding of abandonment in Application No. 10/163,149, be withdrawn, and that Application No. 10/402,008 be merged into the file of Application No. 10/163,149.

The petition is **granted**.

A review of the record reveals that Application No. 10/163,149 was filed on 4 June, 2002. On 30 December, 2002, a non-final Office action was issued, setting forth a three (3) month shortened statutory period for reply. On 28 March, 2003, petitioners filed, *inter alia*, an amendment referencing Application No. 10/163,149 and the Office action mailed on 30 December, 2002. That amendment, however, was also accompanied by an oath or declaration in compliance with 37 CFR 1.63, a transmittal letter, a Utility Patent Application Transmittal form, and a Fee Transmittal form referencing Application No. 10/163,149. The Office then assigned Application No. 10/402,008 and a filing date of 28 March, 2003, to the papers filed on that date.

Application No. 10/163,149 was held abandoned on 1 April, 2003, for failure to timely reply to the non-final Office action mailed on 30 December, 2002. A Notice of Abandonment was mailed on 11 July, 2003.

It is clear from a review of the record that applicant intended the papers filed on 28 March, 2003, to be an amendment to the Office action mailed on 30 December, 2002, in Application No. 10/163,149, rather than a new application. Therefore, the papers filed on 28 March, 2003, were assigned Application No. 10/402,008 due to Office error.

Petitioner is advised, in future filings, to avoid confusion, that an application transmittal sheet should only be filed with a new application.

The petition merge the application files is **granted**.

Additionally, as the papers filed on 28 March, 2003, constitute a timely response to the non-final Office action mailed on 30 December, 2002, the holding of abandonment in Application No. 10/163,149 is **withdrawn**. The Notice of Abandonment mailed on 11 July, 2003, is **vacated**.

As this petition was necessitated by Office error, no petition fee is due and none has been charged.

The applications are being returned to the Office of Initial Patent Examination for merging the file of Application No. 10/402,008 into the file of Application No. 10/163,149. Application No. 10/402,008 will no longer be an active application number. All future correspondence concerning this application should be directed to application No. 10/163,149. Thereafter, Application No. 10/163,149 will be forwarded to Technology Center 1700 for further examination.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6918.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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MAR 19 2007

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

VAN PELT, YI & JAMES LLP
10050 N. FOOTHILL BLVD #200
CUPERTINO CA 95014

In re Application of
AVENDANO, CARLOS M., et al.
Application No. 10/163158
Filed: June 04, 2002
For: AMBIENCE GENERATION FOR STEREO SIGNALS

DECISION ON REQUEST TO ACCEPT MODEL OR EXHIBIT INTO THE RECORD

This is a decision on the petition filed December 15, 2006, pursuant to 37 C.F.R. §1.91, requesting acceptance of a Model or Exhibit

Petitioner states that in order to comply with the actual reduction to practice requirements of 37 C.F.R. §1.131 in an effort to swear behind a reference, applicants must submit evidence in the form of executable software modules on CD-ROM, which evidence demonstrates actual reduction to practice on or before the date on which the declaration states that a prototype that satisfies all the limitations of claim 1 was completed.

37 C.F.R.§1.91 Models or exhibits not generally admitted as part of application or patent, states in part:

(a) A model or exhibit will not be admitted as part of the record of an application unless it:
  (1) Substantially conforms to the requirements of § 1.52 or § 1.84;
  (2) Is specifically required by the Office; or
  (3) Is filed with a petition under this section including:
    (i) The fee set forth in § 1.17(h); and
    (ii) An explanation of why entry of the model or exhibit in the file record is necessary to demonstrate patentability.

(b) Notwithstanding the provisions of paragraph (a) of this section, a model, working model, or other physical exhibit may be required by the Office if deemed necessary for any purpose in examination of the application.

(c) Unless the model or exhibit substantially conforms to the requirements of § 1.52 or § 1.84 under paragraph (a)(1) of this section, it must be accompanied by photographs that show multiple views of the material features of the model or exhibit and that substantially conform to the requirements of § 1.84. [emphasis added]

Applicants have paid the required petition fee and provided an explanation of why entry is necessary. In addition, petitioner states that it is believed the requirement of 37 CFR 1.91(c) does not apply to the enclosed exhibits. Given that the evidence on the CD-ROM is executable software modules whereby executable modules do not lend themselves for depiction in a photograph, petitioner's statement will be treated as a request to waive the requirement of 37 C.F.R. §1.91, specifically 37 C.F.R. §1.91(c) wherein the model must be accompanied by photographs, is accepted.

Applicants have satisfied the requirements set forth in 37 C.F.R. §1.91 above for the inclusion of a model or exhibit as part of the application record.

Therefore, the petition is GRANTED.

Michael Horabik
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 8

LEARY & ASSOCIATES
3900 NEWPARK MALL ROAD
THIRD FLOOR, SUITE 317
NEWARK, CA 94560

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AUG 0 2 2004

OFFICE OF PETITIONS

In re Application of	:
Abel L. Robertson, Jr.	:
Application No. 10/163,159	: DECISION GRANTING PETITION
Filed: June 4, 2002	: UNDER 37 CFR 1.137(b)
Attorney Docket No. MAC1048U	:

This is a decision on the petition under 37 CFR 1.137(b), filed July 6, 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 July 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 September 3, 2002.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply to the Notice of July 5, 2002; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of July 5, 2002 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-8680.

The application file is being forwarded to the Office of Initial Patent Examination Division for preexamination processing.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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LEARY & ASSOCIATES
3900 NEWPARK MALL RD.
THIRD FLOOR, SUITE 317
NEWARK CA 94560

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OFFICE OF PETITIONS

In re Application of	:	
Abel L. Robertson, Jr.	:	
Application No. 10/163,159	:	DECISION ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. MAC1048U	:	

This is a decision on the petition under 37 CFR 1.137(b), filed March 16, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 10, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on June 13, 2006 (June 10, 2006, the due date, was a Saturday). A Notice of Abandonment was mailed on September 22, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) a reply in the form of an amendment, (2) the petition fee of $750, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the non-final Office action of March 10, 2006 is accepted as being unintentionally delayed.

This application is being referred to Technology Center AU 3735 for appropriate action in the normal course of business on the reply received March 16, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
PO BOX 2938
MINNEAPOLIS, MN 55402

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OFFICE OF PETITIONS

In re Application of	:	
Zahid Hussain, et..al.	:	
Application No. 10/163,162	:	DECISION ON PETITION
Filed: June 4, 2002	:	TO WITHDRAW
Attorney Docket No. FORT-001800	:	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 23, 2006.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to SCHWEGMAN, LUNDBERG & WOESSNER, P.A. has been revoked by the assignee of the patent application on August 28, 2006. 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.

Telephone inquiries concerning this decision should be directed to Denise Williams at 571-272-8930.

Carl Friedman
Petitions Examiner
Office of Petitions

cc: MICHAEL A DESANCTIS
HAMILTON DESANCTIS & CHA LLP
FINANCIAL PLAZA AT UNION SQUARE
225 UNION BOULEVARD, SUITE 305
LAKEWOOD CO 80228

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225 FRANKLIN ST
BOSTON, MA 02110

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JAN 12 2005

OFFICE OF PETITIONS

In re Application of :
Luis Parellada Armela, et al. :
Application No. 10/163,169 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket No. 05918-247001 :

This is a decision on the petition, filed January 11, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 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.

The application is being referred to Technology Center AU 1772 for further processing of the request for continued examination under 37 CFR 1.114 filed January 11, 2005.

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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YOUNG LAW FIRM, P.C.
ALAN W. YOUNG
4370 ALPINE ROAD
SUITE 106
PORTOLA VALLEY, CA 94028

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JAN 14 2009

In re Patent No. 6,916,244	:	
Issue Date: July 12, 2005	:	
Application No. 10/163,177	:	NOTICE
Filed: June 5, 2002	:	
Patentee(s): Jean-Marie Gatto, et. al.	:	

This is a Notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on November 14, 2008.

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 submitted 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
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ALEXANDRIA, VA 22313-1450
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Paper No. 12

DYKAS, SHAVER & NIPPER, LLP
P.O. BOX 877
BOISE, ID 83701-0877

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JUL 2 4 2003

OFFICE OF PETITIONS

In re Application of
Vais, George M.
Application No. 10/163,191
Filed: June 4, 2002
Attorney Docket No. VAIG101CIP

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 25, 2003, to revive the above-identified application.

The petition is **granted.**

This application became abandoned for failure to timely reply within three months to the non-final Office action mailed November 8, 2002. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, this application became abandoned on February 9, 2003. A Notice of Abandonment was mailed on June 20, 2003.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $465.00 extension of time fee submitted with the petition on June 25, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and a refund check will be mailed to petitioner.

The file is now being forwarded to Technology Center 3600 for further examination on the merits.

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

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JAMES Y GO
BLAKELY SOKOLOFF TAYLOR & ZAFMA
12400 WILSHIRE BLVD
SEVENTH FLOOR
LOS ANGELES CA

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OFFICE OF PETITIONS

In re Application of
Skurnik, et al.
Application No. 10/163,204
Filed: June 4, 2002
Attorney Docket No. TSP-101

NOTICE

This is a notice regarding the "Notice of Change of Small Entity Status Pursuant to 37 C.F.R. 1.27(g)(2)", filed August 9, 2004.

The Notice is **accepted**.

The change of status to a large entity has been entered and made of record.

The file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0272.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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RICHARD P. BERG, ESQ.
C/O LADAS & PARRY
SUITE 2100
5670 WILSHIRE BOULEVARD
LOS ANGELES CA 90036-5679

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OFFICE OF PETITIONS

In re Patent No. 10/163,240 :
Issue Date: March 9, 2004 :
Application No. 10/163,240 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket No. B-4630 619851-8 :

This is a decision on the petition filed May 3, 2004, which is being treated as a petition under 37 CFR 3.81(b)[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is granted.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3208. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1]See Official Gazette of June 22, 2004

Pet Sec.

PTO/SB/83 (08-03)
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	10/103,244
Filing Date	June 5, 2002
First Named Inventor	Jacob Owen Thompson
Art Unit	1731
Examiner Name	Not Yet Assigned
Attorney Docket Number	401603

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby apply to withdraw as attorney or agent for the above identified application.

The reasons for this request are: Files have been transferred

Approved
Jacqueline M. Stone, Director
Technology Center 1700
JUN 29 2004

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	Samuel Digirolamo, Esq.				
Address	BLACKWELL, SANDERS, PEPER, MARTIN LLP				
Address	720 Olive Street, Suite 2400				
City	St. Louis	State	Missouri	ZIP	63101
Country	United States				
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 30854

This request is enclosed in triplicate (including any attachments).

Name	Janette D. Strode
Signature	Janette D. Strode
Date	January 15, 2004

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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MATTHEW R. JENKINS, ESQ.
2310 FAR HILLS BUILDING
DAYTON OH 45419

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OFFICE OF PETITIONS

In re Application of :
Jens Peter Heidrich :
Application No. 10/163,252 : ON PETITION
Filed: June 5, 2004 :
Title: Device for Inserting the Distal End of a :
Hollow Needle in a Blood Vessel

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed August 14, 2006.

The petition to withdraw the holding of abandonment is **GRANTED**.

This application was held abandoned April 30, 2004 for failure to timely reply to the non-final Office Action mailed on January 29, 2004. The non-final Office Action set a three (3) month extendable time period for reply. A Notice of Abandonment was mailed August 10, 2006.

Petitioner asserts that a reply to the non-final Office Action was timely submitted on April 12, 2004. As evidence, petitioner has submitted a copy of the reply and a stamped postcard receipt. The reply also contains a certificate of mailing pursuant to 37 CFR 1.8. The post card receipt serves as prima facie evidence that a reply to the Office Action was received in the Office on April 12, 2004.

The response submitted April 12, 2004 has not been located in the Office, however, in view of the evidence submitted, the response is deemed timely.

The Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn.

The application file is being forwarded to Art Unit 3768 for further processing of the amendment.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

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OCT 25 2006
OFFICE OF PETITIONS

In re Application of	:	
HUSSAIN, et al.	:	
Application No. 10/163,260	:	DECISION ON PETITION
Filed: June 04, 2002	:	TO WITHDRAW
Attorney Docket No. 1384.027US1	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 24, 2006.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. has been revoked by the assignee of the patent application on July 20, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to PatriciaVolpe at (571) 272-6825.

David Bucci
Petitions Examiner
Office of Petitions

cc: MICHAEL A. DE SANCTIS
756 HARRISON ST.
DENVER, CO 80206

UNITED STATES PATENT AND TRADEMARK OFFICE

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JOSEPH P. MEHRLE
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPLOIS, MN 55402

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APR 2 9 2009

OFFICE OF PETITIONS

In re Application of	:	
Desai et al.	:	DECISION ON PETITION
Application No. 10/163,261	:	TO WITHDRAW
Filed: June 4, 2002	:	FROM RECORD
Attorney Docket No. 1384.019US1	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 26, 2006.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that on July 20, 2006 the power of attorney to Schwegman, Lundberg, Woessner & Kluth, P.A. was revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Petitions Examiner Joan Olszewski at 571-272- 3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

cc: Michael A Desanctis
Hamilton Desanctis & Cha LLP
Financial Plaza at Union Square
225 Union Boulevard, Suite 305
Lakewood CO 80228

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RANDALL J. KNUTH P.C.
1507 YUMA CT
MUFREESBORO TN 37129

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JUN 19 2006

OFFICE OF PETITIONS

In re Application of	:	
Daniel	:	
Application No. 10/163,278	:	ON PETITION
Filed: 5 June, 2002	:	
Attorney Docket No. M204	:	

This is a decision on a petition filed on 9 May, 2006, under 37 C.F.R. §1.137(b).

For the reasons set forth below, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record indicates:

- Petitioner failed to reply timely and properly to the Notice of Allowance/Allowability and Fees Due mailed on 14 November, 2005, with reply under a non-extendable deadline on or before 14 February, 2006;
- the instant application went abandoned by operation of law after midnight 14 February, 2006;
- the Office mailed a Notice of Abandonment on 26 April, 2006
- Petitioner filed the instant petition on 9 May, 2006, with fee, and, *inter alia*, reply in the form of the fees due, and made the statement of unintentional delay–thus, Petitioner appears to have satisfied the regulatory requirements under 37 C.F.R. §1.137(b).

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[1]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[2]

Delays in responding properly raise the question whether delays are unavoidable.[3] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[4] And the Petitioner must be diligent in attending to the matter.[5] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[6]))

Allegations as to Unintentional Delay

The requirements for relief under the provisions of 37 C.F.R. §1.137(b) are: petition, fee, reply,

---

[1] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[2] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[3] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[4] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[5] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[6] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

showing of unintentional delay, and–where appropriate–a terminal disclaimer and fee

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

Because Petitioner appears to have satisfied the regulatory requirements, regulation, the petition under 37 C.F.R. §1.137(b) is **granted**.

The application is released to Publications Branch to be processed into a patent in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : May 12, 2006

TO SPE OF : ART UNIT 2133

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/163284 Patent No.: 7,024,607

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Magdalene Talley

Certificates of Correction Branch

703-308-9390 ext. 116

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- [x] **Approved** — All changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: _____

JACQUES LOUIS-JACQUES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100
SPE

2117
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

JJGJr: 11-0

Paper No. 6

MARTINE & PENILLA, LLP
710 LAKEWAY DRIVE
SUITE 170
SUNNYVALE CA 94085

COPY MAILED

NOV 2 7 2002

OFFICE OF PETITIONS

In re Application of	:	
Ni, et al.	:	
Application No. 10/163,286	:	ON PETITION
Filed: 4 June, 2002	:	
Attorney Docket No.: LAM2P283D	:	

This is a response to the paper styled as a "Petition to the Commissioner to Corrected the Filing Date of an Application,"filed on 29 October, which is being treated as a submission under 37 C.F.R. §1.10(d) requesting that the above-identified application be accorded a filing date of 4 June, 2002, rather than the presently accorded filing date of 5 June, 2002.

The petition is **GRANTED**.

The record demonstrates that the application was deposited with and received by the US Postal Service (USPS) in its Express Mail service, under Express Mail label number EV132226312US, on 4 June, 2002, which is evidenced as described below.

Therefore, the application was and is entitled to a filing date of 4 June, 2002, under the provisions of 37 C.F.R. §1.10.

In support, Petitioner relies upon:

- a declaration, in which Counsel (Chester E. Martine Jr. (Reg. No. 19711) states that the application was deposited in Express Mail, Label number EV132226312US;

- copies of:

  --the USPS Express Mail Label No. EV132226312US evidencing a "Date In" of "6/4/02"; and

  --the date-stamped receipt card for the application filing indicating receipt by the Office of the application as transmitted with the same Express Mail Label No. EV132226312US.

As to the instant application, Application No. 10/163,286, the Office of Initial Patent Examination is specifically instructed to:

- assign a filing date of 4 June, 2002; and
- issue a corrected filing receipt specifying the filing date as that of 4 June, 2002.

Therefore, this application file is being forwarded to Office of Initial Patent Examination for assignment of the filing date of 4 June, 2002, and issuance of a corrected Filing Receipt reflecting that filing date for Application No. 10/163,286. Thereafter, the application file will then be forwarded for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

Mailed: JAN 6 2005 rvk

Paper Number: _____

In re application of :
Tuqiang Ni et al :

Serial No. 10/163,286 : DECISION ON PETITION
Filed: June 04, 2002 :
For: METHOD FOR DETECTING THE ENDPOINT OF A PHOTORESIST STRIPPING PROCESS :

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION, filed July 16, 2003. The petition requests that the abandonment, as set forth in the Notice of Abandonment of June 19, 2003 for failure to timely pay the issue fee as indicated in Notice of Allowability and Notice of Allowance and Issue Fee Due mailed February 06, 2003, be withdrawn. The petitioner asserts that the Notice of Allowability and Notice of Allowance and Issue Fee Due mailed February 06, 2003 were not received by applicants.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action. See MPEP 711.03(c)(II).

The evidence presented is sufficient to establish that the Notice of Allowability and Notice of Allowance and Issue Fee Due were not received by the petitioner. The evidence provided includes a statement by the petitioner that the Notice of Allowability and Notice of Allowance and Issue Fee Due were not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Notice of Allowability and Notice of Allowance and Issue Fee Due mailed February 06, 2003 were not received. Also provided are a

copy of the Case History Report (Attachment I) for the instant application, where the Notice of Allowability and Notice of Allowance and Issue Fee Due would have been posted had it been timely received; and a copy of the Reminder List With Completed Items listing docket items by due date (Attachments II and III), where the Due day 5/6/03 for the instant application would have been posted had the Notice of Allowability and Notice of Allowance and Issue Fee Due of February 06, 2003 been timely received.

Therefore, the Notice of Abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the above noted Notice of Allowability and Notice of Allowance and Issue Fee Due to the correspondence address and restarting of the statutory period of response from the remail date thereof.

The Petition is **GRANTED**.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

MARTINE & PENILLA, LLP
710 LAKEWAY DRIVE
SUITE 170
SUNNYVALE, CA 94085

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street, NW
Washington, DC 20037

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NOV 01 2005
OFFICE OF PETITIONS

In re Patent No. 6,780,115	:	
Issued: August 24, 2004	:	
Application No. 10/163,303	:	NOTICE
Filed: August 7, 2002	:	
Docket No.: A8130.0068/P068	:	

This is a notice regarding the "NOTIFICATION OF CHANGE IN ENTITY STATUS," filed September 29, 2005.

As set forth at 37 CFR 1.28(c), the deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full. Accordingly, the fee deficiency submission under 37 CFR 1.28 is hereby **accepted**.

The change of status to a large entity has been entered and made of record.

This file is being forwarded to the Files Repository.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 8

SUPERVISOR, PATENT PROSECUTION SERVICES
PIPER RUDNICK LLP
1200 NINETEENTH STREET, N.W.
WASHINGTON DC 20036-2412

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MAY 30 2003
OFFICE OF PETITIONS

In re Application of	:
Oren Ryngler et al.	:
Application No. 10/163,304	: DECISION ACCORDING STATUS
Filed: June 7, 2002	: UNDER 37 CFR 1.47(a)
Attorney Docket No. 9555-004-64	:

This is in response to the petition filed under 37 CFR 1.47(a) on February 10, 2003.

The petition is **GRANTED**.

Petitioner has shown that non-signing inventors Oren Ryngler, Ronny Ron Agam and Yuval Sinai Boger have refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of Wilburn L. Chesser , proof of mailing by United States Postal Service Certified Mail as well proof of delivery by FEDEX to each of the non-signing inventors establishes that the inventors were personally presented with copies of the application papers, but refuses to sign the declaration naming them as a joint inventors along with Michael Joseph Gaffney, Dinesh Harischandra Bhat and William Russell Fiste.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application is being forwarded to the Office of Initial Patent Examination to be processed in due course.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/13/2008

TO SPE OF : ART UNIT 3700 (3753)

SUBJECT : Request for Certificate of Correction on Patent No.:6,807,985

Attn: John Fox

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and forward within 7 days to: Scanning customer Support

Send copy also via PTO mail to:
Certificates of Correction Branch – 2900 South Tower 9A39A
Palm location 7580 - Tel. No. 308-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Ok to enter changes to claims as req. in C of C?

Ernest C. White, LIE - 308-9390x122
Certificates of Correction Branch

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X Approved	All changes apply.
❑ Approved in Part	Specify below which changes do not apply.
❑ Denied	State the reasons for denial below.

Comments: _____

The interview summary indicates that an amendment to original claim 25 was approved.

Gregory Huson

Digitally signed by Gregory Huson
DN: cn=Gregory Huson, c=US, o=TC-3700, ou=Art Unit 3751, email=gregory.huson@uspto.gov
Reason: I am approving this document
Date: 2008.08.26 10:02:04 -04'00'

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

_____/JF/_____ _____

SPE Art

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/13/2008

TO SPE OF : ART UNIT 3700 (3753)

SUBJECT : Request for Certificate of Correction on Patent No.:6,807,985

Attn: John Fox

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and forward within **7** days to: **Scanning customer Support**

Send copy also via PTO mail to:
Certificates of Correction Branch – 2900 South Tower 9A39A
Palm location **7580** - Tel. No. 308-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Ok to enter changes to claims as req. in C of C?

Thank You For Your Assistance

Ernest C. White, LIE - 308-9390x122
Certificates of Correction Branch

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X Approved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

The interview summary indicates that an amendment to original claim 25 was approved.

Gregory Huson

Digitally signed by Gregory Huson
DN: cn=Gregory Huson, c=US, o=TC-3700, ou=Art Unit 3751, email=gregory.huson@uspto.gov
Reason: I am approving this document
Date: 2008.08.26 10:22:04 -04'00'

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

Mail Date: 04/21/2010

Applicant	: Jes Thyssen	: DECISION ON REQUEST FOR
Patent Number	: 7610198	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/163,344	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/07/2002	: 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
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

COPY MAILED

AUG 27 2007

OFFICE OF PETITIONS

In re Application of	:	
Walter Etter	:	
Application No. 10/163,356	:	ON PETITION
Filed: June 7, 2002	:	
Attorney Docket No. Etter 5	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 17, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 7, 2006, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on June 8, 2006.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2626 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/163,356	06/07/2002	Walter Etter	Etter 5

CONFIRMATION NO. 8223

OC000000025563037

32498
CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC
ATTN: JOHN CURTIN
P.O. BOX 1995
VIENNA, VA 22183

Date Mailed: 08/27/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/17/2007.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
ATTORNEY/APPLICANT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/163,356	06/07/2002	Walter Etter	Etter 5

CONFIRMATION NO. 8223

OC000000025563035

Jone E. Curtin, Esq.
Troutman Sanders LLP
Suite 600
1660 International Drive
McLean, VA 22102

Date Mailed: 08/27/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/17/2007.

- 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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CAPITOL PATENT & TRADEMARK
LAW FIRM, PLLC
ATTN: JOHN CURTIN
P.O. BOX 1995
VIENNA VA 22183

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JUN 14 2007

OFFICE OF PETITIONS

In re Application of	:	
Walter Etter	:	
Application No. 10/163,359	:	DECISION ON
Filed: June 7, 2002	:	PETITION
Attorney Docket No. Etter 6	:	

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR §1.181(a) et seq. OR, IN THE ALTERNATIVE TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION UNDER 37 C.F.R. §1.137(b) filed March 15, 2007.

The petition under § 1.181 is **DISMISSED**.

The petition under § 1.137(b) is **GRANTED**.

The above-identified application was abandoned for failure to timely file a proper reply to the final Office action mailed September 27, 2005. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. No proper reply having been received and no extension of time obtained the application became abandoned effective December 28, 2005. A courtesy Notice of Abandonment was mailed on January 16, 2007.

Petitioner requests withdrawal of the holding of abandonment on the basis that the Office action was not received at the correspondence address of Harness, Dickey & Pierce. Petitioner states that, on March 4, 2005, prior to the mailing of this Office action on September 27, 2005, a change of address was

filed in this application. This changed the address from that of Troutman Sanders to Harness, Dickey & Pierce. However, petitioner acknowledges that the petition does not include a return postcard to evidence that the change of address was received in the USPTO. Nonetheless, to show non-receipt, petitioner submits the copy of docket records of Harness, Dickey & Pierce. In the alternative, petitioner requests that the application be revived based on unintentional delay.

A review of the record reveals that the final Office action was mailed to the correspondence address of record at Troutman Sanders. Furthermore, the record reveals no irregularity in this mailing.

Moreover, the change of address to Harness, Dickey & Pierce is not of record in the application. In addition, petitioner has not established that such a change of address was properly and timely filed. Accordingly, on September 27, 2005, the final Office action was mailed to the uncorrected correspondence address of record, but was not received by petitioner at the address he had intended to, but never did, make of record in the application.

In view thereof, abandonment for failure to timely respond to the final Office action mailed to the correspondence address of record is proper. Non-receipt of the Office action is properly attributed to the failure to file a change of correspondence address. Under the circumstances, withdrawal of the holding of abandonment is not warranted.

Nonetheless, petitioner has met the requirements for revival of the application. On petition, petitioner submitted a Request for Continued Examination (RCE) and submission under §1.114 (in the form of an amendment); paid the petition fee; and made the required statement of unintentional delay.

A review of the record confirms that the power of attorney and change of address to Customer Number 32498 filed with this petition has been made of record. Petitioner is reminded that the general appointment of attorneys with Lucent Technologies, to the extent that these attorneys are not under Customer Number 32498, has no effect. This is because the Office prohibits an appointment of a specified law firm (or corporation) because the Office cannot ascertain from its records whether a particular practitioner submitting a paper to the Office is associated

with the law firm (or corporation) specified in an appointment. More importantly, the attorneys of Lucent Technologies cannot be listed separately and appointed in conjunction with a customer number. As stated in the MPEP,

> Where an applicant appoints all of the practitioners associated with a Customer Number as well as a list of individually named practitioners, such action would be treated as only an appointment of all of the practitioners associated with a Customer Number due to the potential for confusion and data entry errors in entering registration numbers from plural sources. Furthermore, Office computer systems do not allow for entry of both a power of attorney to a list of practitioners associated with a Customer Number and a list of practitioners.

See MPEP 403 on Customer Number Practice.

Technology Center AU 2615 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the RCE and submission submitted on petition filed March 15, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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MAIL

SEP 05 2007

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

Robert E. Bushnell
Suite 300
1522 K Street, N.W.
Washington DC 20005

In re Application of
Gi-Soo KIM
Application No. 10/163,376
Filed: June 7, 2002
For: **APPARATUS AND METHOD FOR DISPLAYING OUT-OF-RANGE MODE**

DECISION ON ACCEPTANCE OF PAPERS

The duplicate copy of an amendment, response and one month extension of time filed on June 21, 2007 is being treated as a request for acceptance of papers.

The June 21, 2007 submission includes a copy of an original amendment and remarks filed April 16, 2007, including a transmittal letter and a petition for a one month extension of time. Applicant has also provided a copy of a post card receipt date-stamped as received by the U.S. Patent and Trademark Office (PTO) on April 16, 2007; wherein the post card receipt itemizes receipt of the above listed items. Furthermore, a review of the Revenue and Accounting Management (RAM) system finds that the necessary fees were received by the PTO on April 16, 2007 and applicant's check in the amount of $120.00 was processed on April 17, 2007.

The original amendment and response, including one month extension of time filed April 16, 2007 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 scanned into the application image file. It is presumed that the original submission was received by the Office, but lost. The Office sincerely apologizes for any inconvenience to applicant.

In view of the above stated reasons, the June 21, 2007 amendment and response have been considered as being timely filed on April 16, 2007. A review of the file finds that a Notice of Allowance and Issue Fee Due was mailed on August 23, 2007. Therefore, the application will be held to await response thereto.

Krista Zele
Quality Assurance Specialist
Technology Center 2600

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

Mail Date: 04/21/2010

Applicant	: Jes Thyssen	: DECISION ON REQUEST FOR
Patent Number	: 7617096	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/163,378	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/07/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **990** 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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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

Mail Date: 05/18/2010

Applicant : Jes Thyssen
Patent Number : 7617096
Issue Date : 11/10/2009
Application No : 10/163,378
Filed : 06/07/2002

: 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 **1024** 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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OFFICE OF PETITIONS

In re Application of	:	
Wu et al.	:	DECISION ON PETITION
Application No. 10/163,405	:	UNDER 37 CFR 1.137(b)
Filed: June 5, 2002	:	
Attorney Docket No. 2510P	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 17, 2005, to revive the above-identified application.

This application became abandoned for failure to reply timely to the Notice of Non-Compliant Amendment mailed March 15, 2005, which set a one-month extendable period to reply. Accordingly, this application became abandoned on April 16, 2005. A Notice of Abandonment was mailed on October 5, 2005.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of an amendment, paid the petition fee, and made the proper statement of unintentional delay.

The petition is **granted.**

This matter is being referred to Technology Center Art Unit 3632.

Telephone inquiries should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE, CA 94086

In re Application of
Johnston and Viala
Application No.: 10/163,409
Filed: June 5, 2002
Attorney Docket No: **WATT-00100**

ON PETITION

This is a decision on the petition under 37 CFR 1.28(c), filed November 8, 2004.

The petition is **GRANTED.**

The record reflects that the filing fee and claims fees for the above-cited application were paid at the small entity rate. Petitioner later discovered that the inventive entity did not qualify as a small entity and filed the instant petition, accordingly.

Petitioner has remitted the deficient amount of $1,992.00.

Pursuant to 37 CFR 1.28(d), the payment of the deficient amount will be treated under 37 CFR 1.27(g)(2) as a notification of a loss of entitlement to small entity status.

The application file will be directed to Technology Center 2600 for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 4

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FAIRFAX VA 22030

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OFFICE OF PETITIONS

In re Application of	:	
Fan et al.	:	
Application No. 10/163,425	:	ON PETITION
Filed: 7 June, 2002	:	
Attorney's Docket No. UNME-0129-1	:	

Receipt is acknowledged of the petition filed on 31 July, 2002, captioned "Response to Notice of Omitted Item(s) in a Nonprovisional Application" concerning the U.S. Patent and Trademark Office's handling of an application assigned application Serial No. 10/163,425.

The petition is dismissed.

The application was filed on 7 June, 2002. However, on 12 July, 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 7 June, 2002, and advising applicant that Figures 6A-B and 15A-C described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioners explain that Figures 6A-B were not missing on 7 June, 2002. Instead, the application contained two figures inadvertently labeled Figures 7A-B which were intended to be labeled Figures 6A-B, and that the one figure labeled Figure 6 should have been labeled Figure 7.

With regard to Figures 15A-C, petitioners concede that those figures were not included in the application as filed on 7 June, 2002. However, petitioners assert, the present application is a division of, and incorporated by referenced the disclosure of,

Application No. 09/838,153, filed on 20 April, 2001, which contained Figures 15A-C, and that, therefore, the omitted page does not constitute new matter.

It is obvious from the petition that Figures 6A-B were not actually missing on 7 June, 2002. Rather, the drawings of Figures 6A-B were simply mislabeled as a result of the applicant's filing error. However, the "Notice" mailed on 12 July, 2002, was correct in stating that Figures 6A-B described in the specification appeared to have been omitted.

With regards to Figures 15A-C, 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 7 June, 2002, nor request the 31 July, 2002 (the date the missing page was supplied) filing date.

Accordingly, the petition is inappropriate and is subject to dismissal. As the petition was not due to an error on the part of the USPTO, the petition fee will not be refunded.

It is noted that the application transmittal letter identified this application as a division of prior application No. 09/838,153 and specifically incorporated by reference the disclosure of the prior application. MPEP 201.06(c) states that:

> . . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior

> application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), <u>without the need for a petition</u>. (emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, Figures 15A-C are not new matter if they was a part of the disclosure of the prior application.

Petitioners should file the sheet of drawings containing Figures 15A-C as a preliminary amendment. Amendments to the specification may be entered by the primary examiner without petition so long as the amendment contains no new matter.[1]

The application will be processed and examined using only the application papers filed on 7 June, 2002. The one (1) sheet of drawings containing Figures 15A-C filed on 7 June, 2002, will not be used for processing, but will be retained in the application file.

In view of the above, the "Notice" was properly mailed and will not be withdrawn. The present petition was not necessitated by any error on the part of the Office and the $130.00 petition was required upon filing of the petition. Thus, the $130.00 petition fee will assessed to counsel's deposit account, No. 10-0233.

Receipt is acknowledged of the preliminary amendment filed on 31 July, 2002.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of 7 June, 2002, using the application papers filed on that date.

---

[1] 37 CFR 1.121(b).

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

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Paper No. 10

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OFFICE OF PETITIONS

In re Application of :
Muthiah Manoharan, et al. :
Application No. 10/163,439 :
Filed: June 4, 2002 :
Attorney Docket No. ISIS-5069 :

ON PETITION

This is a decision on the petition, filed March 30, 2004, which is being treated under 37 CFR(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on February 18, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220.

The application is being forwarded to Technology Center AU 1623 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1]The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicted as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language on bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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OFFICE OF PETITIONS

In re Patent No. 6,997,469 :
Issued: February 14, 2006 :
Application No. 10/163,446 : ON PETITION
Filed: June 4, 2002 :
Attorney Docket Number: 9555.132US01 :

This is a decision on the petition, filed may 2, 2006, under under 37 CFR 3.81(b)[1] to correct the assignee's name on the front of the Patent.

The petition is **GRANTED**.

Petitioner states that the name of a second assignee, IPL Inc., was erroneously no included on the Fee(s) Transmittal form PTOL-85(b) December 1, 2005. Accordingly, petitioner requests that a certificate of correction be issued to reflect the name of the second assignee on the front page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Further, the copy of the recorded assignment reflects that IPL Inc. is an assignee of an undivided one half interest in the patent identified above. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to issue.

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[1] *See* Official Gazette of June 22, 2004

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3212. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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OFFICE OF PETITIONS

In re Application of

Thompson, et al.

Application No. 10/163,473

Filed: June 5, 2002

Attorney Docket No. 16489-51320

DECISION ON PETITION

This is a decision on petition under 37 CFR 1.137(b), filed April 11, 2006, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned for failure to respond in a timely manner to the Notice of Allowance and Issue Fee Due mailed November 2, 2005. The notice allowed a statutory period for reply of three months from its mailing date. No reply was received within the allowable period, and the application became abandoned on February 3, 2006. A Notice of Abandonment was mailed on June 23, 2006.

Form PTOL-85B, the issue fee payment and publication fee were received on April 11, 2006.

The application is being forwarded to the Office of Patent Publications for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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CLEVELAND, OH 44115-1414

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OFFICE OF PETITIONS

In re Application of	
James Huang et al	
Application No. 10/163,478	DECISION ON PETITION
Filed: June 5, 2002	TO WITHDRAW
Attorney Docket No. 71795/22559	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 24, 2005.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by John Garred on behalf of all attorneys of record who are associated with customer No. 23380.

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 or the assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

Denise Pothier
Petitions Examiner
Office of Petitions

cc: James Huang
14 Faith
Irvine, CA 92612

cc: Richard Mitchell Marks & Clerk
280 Slater Street, Suite 1800
Ottawa, Ontario K1P 1C2

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Chantal Morgan D'Apuzzo
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Boston, MA 02210

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OFFICE OF PETITIONS

In re Application of

Moss, et al.

Application No. 10/163,482

Filed: June 5, 2002

Attorney Docket No. P00453/70109
(ERG/CSMID)

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 20, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to file a proper response in a timely manner to the final Office action mailed November 16, 2005, which set a shortened statutory period for reply of three (3) months. An amendment was filed on May 19, 2005, with a request for an extension of time within the third month. An Advisory Action mailed June 12, 2006, informed applicant that the amendment failed to place the application in condition for allowance. No further responses were received within the allowable period. The application became abandoned on May 17, 2006. A Notice of Abandonment was mailed on November 16, 2007.

The Request for Continued Examination filed February 20, 2007, is noted and made of record.

The application is being forwarded to Technology Center 1600, GAU 1617 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 3

KENYON & KENYON
1500 K STREET, N.W., SUITE 700
WASHINGTON DC 20005

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OFFICE OF PETITIONS

In re Application of Chow, Huang, Kim, and Ying Application No. 10/163,500 Filed: June 7, 2002 Attorney Docket No. 2685/5935 For: PROVIDING MOBILITY IN A DISTRIBUTED END-TO-END PACKET/CELL/FRAME NETWORK	DECISION GRANTING PETITION UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed June 7, 2002.

The petition is granted.

Petitioner has shown that Jinman Kim, the non-signing inventor, has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the Statement of Facts of B. Delano Jordan establishes that the inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that he sign the declaration.

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 present petition. Notice of the filing of this application will also be published in the Official Gazette.

The $130.00 petition fee has been charged to Deposit Account No. 11-0600, as authorized by petitioner.

The application file is being forwarded to the Office of Initial Patent Examination for further processing of the application.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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Jinman Kim
25 Hickory Place, #A22
Florham Park, NJ 07928

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OFFICE OF PETITIONS

In re Application of :
Chow, Huang, Kim, and Ying :
Application No. 10/163,500 : LETTER
Filed: June 7, 2002 :
Attorney Docket No. 2685/5935 :
For: PROVIDING MOBILITY IN A :
DISTRIBUTED END-TO-END :
PACKET/CELL/FRAME NETWORK :

Dear Jinman Kim:

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 Christina Tartera Donnell at (703) 306-5589. 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).

Christina Tartera Donnell

Christina Tartera Donnell
Petitions Attorney
Office of Petitions
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Paper No. 3

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OFFICE OF PETITIONS

In re Application of	:
Chow, Huang, Kim, and Ying	:
Application No. 10/163,501	: DECISION ACCORDING STATUS
Filed: 7 June, 2002	: UNDER 37 CFR 1.47(a)
Attorney Docket No. 2685/5917	:

This is in response to the petition under 37 CFR 1.47(a)[1] filed on 7 June, 2002.

The petition is **GRANTED**.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been mailed a copy of the application papers. Specifically, the declaration of facts of petitioners' registered patent attorney, B. Delano Jordan, establishes that a copy of the application was sent to the non-signing inventor, Jinman Kim, but that Kim failed to execute and return the declaration.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

---

[1]A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

Counsel's deposit account, No. 11-0600, will be charged the petition fee of $130.00 as authorized by the fee transmittal filed with the application papers on 7 June, 2002.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Declaration. Notice of the filing of this application will also be published in the Official Gazette. After this decision is mailed, the application will be forwarded to Technology Center 2600 for examination in due course.

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
Office of the Deputy Commissioner
for Patent Examination Policy

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OFFICE OF PETITIONS

In re Application of
Chow et al.
Application No. 10/163,501
Filed: 7 June, 2002
For: BROADBAND TELECOMMUNICATION SERVICE WITH PERSONALIZED SERVICE CAPABILITY FOR MOBILE TERMINALS

Dear Mr. Kim:

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).

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

KENYON & KENYON
1500 K STREET, N.W., SUITE 700
WASHINGTON DC 20005

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIW Jan-08

KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON DC 20005

COPY MAILED

JAN 24 2008

OFFICE OF PETITIONS

In re Application of	:	
Chow et al.	:	
Application Number: 10/163501	:	DECISION ON PETITION
Filing Date: 06/07/2002	:	
Attorney Docket Number:	:	
2685/5917	:	

This is a decision on the petition filed on December 17, 2007, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on June 7, 2007, for failure to timely submit a reply to the final Office action mailed on March 6, 2007, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on October 16, 2007.

Petitioners have filed a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

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[1] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The power of attorney and change of correspondence address filed on December 17, 2007, cannot be accepted because it is not properly signed. A power of attorney must be signed by all of the inventors, or by the assignee of record of the entire interest. See 37 CFR 3.71. A Statement Under 37 CFR 3.73(b) must also be provided if the power of attorney is made by the assignee of record of the entire interest. Petitioners should use the enclosed forms to file a proper power of attorney

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 mailed. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

This application is being referred to Technology Center Art Unit 2619 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: PTO/SB/82
PTO/SB/96

Cc:

AT&T CORP.
ROOM 2A-207
ONE AT&T WAY
BEDMINSTER NJ 07921

PTO/SB/96 (01-08)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: _____

Application No./Patent No.: _____ Filed/Issue Date: _____

Entitled:

_____, a _____
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☐ the assignee of the entire right, title, and interest; or

2. ☐ an assignee of less than the entire right, title and interest
(The extent (by percentage) of its ownership interest is _____%)

in the patent application/patent identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

2. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

3. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ As required by 37 CFR 3.73(b)(1)(i), 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 37 CFR 3.11.

[NOTE: A separate copy (*i.e.,* a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

_____	_____
Signature	Date
_____	_____
Printed or Typed Name	Telephone Number
_____	
Title	

This collection of information is required by 37 CFR 3.73(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 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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.

PTO/SB/82 (01-06)
Approved for use through 12/31/2008. 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.

REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	
Filing Date	
First Named Inventor	
Art Unit	
Examiner Name	
Attorney Docket Number	

I hereby revoke all previous powers of attorney given in the above-identified application.

☐ A Power of Attorney is submitted herewith.

OR

☐ I hereby appoint the practitioners associated with the Customer Number: ☐

☐ Please change the correspondence address for the above-identified application to:

☐ The address associated with Customer Number: ☐

OR

☐ Firm *or* Individual Name			
Address			
City		State	Zip
Country			
Telephone		Email	

I am the:

☐ Applicant/Inventor.

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

SIGNATURE of Applicant or Assignee of Record

Signature			
Name			
Date		Telephone	

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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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Richard A. Neifeld
Neifeld IP Law, P.C.
2001 Jefferson Davis Highway
Arlington, Virginia 22202

JUL 1 5 2005

In re Application of David Braddock :
Application no. 10/163,506 : DECISION ON PETITION
Filed: June 6, 2002 :
Attorney Docket No. OSEM-DB12 :

This is a decision on the petition filed under 37 C.F.R. §1.181 on June 18, 2004, to invoke the supervisory authority of the Director of the USPTO to review the restriction requirement set forth December 18, 2003. The petition is before the Director of Technology Center 2800 for review.

The petition is **MOOT** to the extent indicated below.

It is the Petitioner's position that claims 60 to 104 and 122 to 125 be reinstated (by having the restriction requirement withdrawn). Claims 60 to 104 and 122 to 125 have been rejoined by the examiner in the Ex Parte Quayle action mailed October 6, 2004.

James Dwyer

Sharon A. Gibson, Director
Technology Center 2800 – Semiconductors, Electrical and Optical Systems and Components

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OSEMI, INC.
250 Highway 19
Red Wing MN 55066

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JUN 08 2010

OFFICE OF PETITIONS

In re Patent No. 6,689,556
Issued: January 24, 2006
Application No: 10/163,506
Filed: June 6, 2002
Attorney Docket No. OSEM-DB12

This is a decision on the petition, filed March 22, 2010, under 37 CFR 1.378(c) to accept the unintentionally delayed payment of maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued January 24, 2006. The grace period for paying the 3.5-year maintenance fee expired at midnight January 24, 2010. Therefore, since the petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee of $490.00 and the surcharge of $1640.00 were received March 22, 2010. The above-identified patent is hereby reinstated as of the mail date of this decision.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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SEATTLE WA 98105

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MAR 16 2009

OFFICE OF PETITIONS

In re Application of	:	
Lawrence Farwell	:	
Application No.: 10/163525	:	ON PETITION
Filing or 371(c) Date: 06/07/2002	:	
Attorney Docket Number:	:	
10.218.003	:	

This is a decision on the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), filed February 9, 2009.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed June 27, 2008. The Office action set a three (3) period for reply. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the application became abandoned on September 28, 2008. A Notice of Abandonment was mailed January 22, 2009.

Applicant files the present petition and includes an Amendment in response to the Office action. 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/Remarks is filed with the present petition; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being referred to Technology Center Art Unit 3736 for processing of the Amendment/Remarks filed with the petition in the normal course of business.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

PET DEC

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

MFH
Paper Number _____

Mailed: JUN - 2 2004

In re application of	:	
SHIRAISHI, *et al.*	:	DECISION ON
Serial No. 10/163,530	:	PETITION
Filed: JUNE 7, 2002	:	
For: CHARGE CONTROL AGENT AND TONER	:	
USING SAME	:	

This decision is in response to the PETITION UNDER 37C.F.R. 1.181 filed December 31, 2003. Applicants are asking the examiner to consider the IDS filed October 22, 2003. The examiner had not considered the referenced application because the referenced application was not available to the examiner at the time of allowance. Applicants have submitted evidence, including a stamped post card receipt and copy of the papers filed, indicating that the USPTO received the documents prior to the Notice of Allowability.

From the evidence submitted, the petition has merit. Further, the evidence clearly indicates that the papers were filed in compliance with 37 CFR 1.97 and 1.98.

DECISION

The Petition is GRANTED

A copy of the referenced application and the IDS as filed with the instant petition has been forwarded to the examiner for consideration. The examiner has considered the copending application as indicated on the IDS attached hereto.

JMStone

Jacqueline Stone
Director, Technology Center 1700

OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

* See attachment to petition decision

PET DEC

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.

EXAMINER

ART UNIT	PAPER
	0404

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Pursuant to the decision to grant the Petition filed under 37 CFR 1.181, filed on Dec. 31, 2003, mailed concurrently with this communication, the information disclosure statement (IDS) submitted on Oct. 22, 2003, has been considered by the examiner. The examiner has considered only the material submitted by applicants, i.e., copies of the originally filed claims and abstract of copending US application 10/623,522, listed in the IDS. Please find attached a copy of the IDS initialed and dated by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janis L. Dote whose telephone number is (571) 272-1382. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Mark Huff, can be reached on (571) 272-1385. The central fax phone number is (703) 872-9306.

Any inquiry of papers not received regarding this communication or earlier communications should be directed to Supervisory Application Examiner Ms. Claudia Sullivan, whose telephone number is (571) 272-1052.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Janis L. Dote
JANIS L. DOTE
PRIMARY EXAMINER
GROUP ~~1500~~ 1700

JLD
May, 24, 2004

PET DEC

OIPE JC34
DEC 3 1 2003
PATENT & TRADEMARK OFFICE

LIST OF RELATED CASES

Docket Number	Serial or Patent Number	Filing or Issue Date	Inventor/ Applicant
224009US0X*	10/163,530	06/07/02	SHIRAISHI, et al.
240629US0	10/623,522	07/22/03	YAMASHITA, et al.

JD originally filed claims and abstract

DOTE, JANIS L 5/24/04

*Present Application; listed for information
NFO/wal

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Paper No. 5

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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

ALCOR MICRO, CORP.
P.O.BOX NO. 6-57
CHUNG-HO
TAIPEI 235 TAIWAN

In re Application of
Chi-Tung Chang
Application No. 10/163,551
Filed: June 7, 2002
For: PORTABLE STORAGE DEVICE WITH A STORAGE CAPACITY DISPLAY

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is in response to the Petition for Withdrawal of Abandonment filed June 22, 2005, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

On February 19, 2004, a non-final Office action was mailed (paper No. 2) in the subject application. A response from Applicants was not received. On September 8, 2004, a Notice of Abandonment was mailed (paper No. 3).

Petitioner alleges that the Office action of February 19, 2004 (paper No. 2) was not received. In support of this allegation, Petitioner provides docket record from February 9, 2004 to March 19, 2004 as evidence of non-receipt of the Office action mailed February 19, 2004.

In the absence of any irregularity in the mailing of an Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the records indicates that the Office action was properly mailed to the applicant at the correspondence address at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the U.S. patent and Trademark Office.

The petitioner has not made a sufficient showing of non-receipt of the non-final Office action (paper No. 2, mailed February 19, 2004) in accordance with the requirements set forth in MPEP §711.03(c), reproduced above. The instant petition lacks a statement ***from the practitioner*** of record (i.e. applicant in this case), indicating: (1) a statement attesting to the fact that a search of the file jacket and docket records indicates that the non-final Office action was not received and (2) reference to attached docketing records within practitioner's statement.

Therefore, for the above reasons, the petition is **DENIED.**

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and include the deficiencies outlined above.

Doris To
Technology Center 2600
Communications

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P.O. Box 1450
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Paper No. 7

NOV 1 8 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

ALCOR MICRO, CORP.
P.O.BOX NO. 6-57
CHUNG-HO
TAIPEI 235 TAIWAN

In re Application of
Chi-Tung Chang
Application No. 10/163,551
Filed: June 7, 2002
For: PORTABLE STORAGE DEVICE WITH A STORAGE CAPACITY DISPLAY

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is in response to the renewed petition filed September 22, 2005, pursuant to 37 C.F.R. § 1.181(a) which is treated as a request for reconsideration of petition decision mailed August 1, 2005. No fee is required.

On February 19, 2004, a non-final Office action was mailed (paper No. 2) in the subject application. A response from Applicants was not received. On September 8, 2004, a Notice of Abandonment was mailed (paper No. 3).

Petitioner alleges that the Office action of February 19, 2004 (paper No. 2) was not received. In support of this allegation, Petitioner provides docket record from February 9, 2004 to March 19, 2004 as evidence of non-receipt of the Office action mailed February 19, 2004.

In the absence of any irregularity in the mailing of an Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish the failure to receive an Office communication <u>must include a statement from the practitioner</u> (in this case, the pro-se inventor) <u>stating</u> that the Office communication was not received by the practitioner <u>and attesting</u> to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail. [emphasis added]

A review of the records indicates that the Office action was properly mailed to the applicant at the correspondence address at the time of mailing. Applicant confirms within the subject request for reconsideration, that the correspondence address of record was accurate. Thus, there was no irregularity in mailing the Office action on the part of the U.S. patent and Trademark Office.

The petitioner has not made a sufficient showing of non-receipt of the non-final Office action (paper No. 2, mailed February 19, 2004) in accordance with the requirements set forth in MPEP §711.03(c), reproduced above. The instant petition lacks a sufficient statement from the practitioner (pro-se applicant in this case), attesting to a search of the file jacket and docket records and indicating that the non-final Office action was not received.

In order for the practitioner of record (or in this case the pro-se applicant) to declare that a search of the file jacket and docket records did not reveal the Office communication, the practitioner of record (pro-se applicant) must have personally searched the file jacket and docket records. Applicant's petition of June 22, 2005 and the subject request for reconsideration, filed September 22, 2005, both suggest that someone else performed the search of the docket records and application file, i.e., "According to the local agent at applicant's correspondence address..", or "According to my local agent...a thorough search of the file jacket and docket records has been done..". In other words, a third party (i.e., the "local agent" who is neither the practitioner of record, or applicant for the subject application) can not execute the declaration on behalf of the practitioner/applicant.

Therefore, for the above reasons, the petition is **DENIED.**

If applicant is unable to personally search the file jacket and or docket records, applicant may wish to consider filing a petition to revive pursuant to 37 C.F.R. §1.137.

Leo Boudreau

Leo Boudreau, acting Director
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No.

Alcor Micro, Corp.
P. O. Box No. 6-57
Chung-Ho
Taipei 235
TAIWAN

COPY MAILED
DEC 14 2006
OFFICE OF PETITIONS

In re Application of	:	
Chi-Tung Chang	:	
Application No. 10/163,551	:	DECISION ON RENEWED PETITION
Filed: June 7, 2002	:	UNDER 37 C.F.R. §1.181(A)
Title: PORTABLE STORAGE DEVICE	:	
WITH A STORAGE CAPACITY DISPLAY	:	
INFLATING TOY	:	

This is a decision on the renewed petition filed on January 2, 2006, under 37 C.F.R. §1.181(a), to withdraw the holding of abandonment.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed February 19, 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 obtained. Accordingly, the above-identified application became abandoned on May 20, 2004. A notice of abandonment was mailed on September 8, 2004.

By decision mailed August 1, 2005, the initial petition filed June 22, 2005 was dismissed. By decision mailed November 18, 2005, the first renewed petition filed September 22, 2005 was dismissed. Petitioner alleges that the non-final Office action of February 19, 2004 was not received.

ANALYSIS

In prior decisions on petition, petitioner has been advised that:

> The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, 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.

However, it is noted that the Office has received many petitions directed to the address used in this application, where it is alleged that an Office action was not received. On renewed petition, Petitioner must state how many similar petitions he currently has pending before the Office and how frequently he encounters this problem in his practice (or that of his local agent), as it appears that he might have a history of not receiving Office actions.

The Delgar showing, described in the earlier decisions on petition, 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).

Office records indicate that the Petitioner and/or his local agent have a history of not receiving Office actions, and as such, the establishment of the failure to receive the Office communication is insufficient to justify the holding of abandonment. Consequently, the present petition cannot be granted.

CONCLUSION

For the reasons discussed above, the petition under 37 C.F.R. §1.181 must be **DISMISSED**.

Any request for reconsideration pursuant to § 1.181 must be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. See 37 CFR §1.181(f).

On the evidence submitted, petitioner is not be able to establish that the holding of abandonment should be withdrawn, and as such, Petitioner may wish to consider filing a petition under either 37 C.F.R. §1.137(a) and/or (b).

Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By fax: (571) 273-8300
ATTN: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No.

Alcor Micro, Corp.
P. O. Box No. 6-57
Chung-Ho
Taipei 235
TAIWAN

COPY MAILED

APR 18 2007

OFFICE OF PETITIONS

In re Application of	:	
Chi-Tung Chang	:	
Application No. 10/163,551	:	DECISION ON RENEWED PETITION
Filed: June 7, 2002	:	UNDER 37 C.F.R. §1.181(A)
Title: PORTABLE STORAGE DEVICE	:	
WITH A STORAGE CAPACITY DISPLAY	:	
INFLATING TOY	:	

This is a decision on the renewed petition filed on January 10, 2007, under 37 C.F.R. §1.181(a), to withdraw the holding of abandonment.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed February 19, 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 obtained. Accordingly, the above-identified application became abandoned on May 20, 2004. A notice of abandonment was mailed on September 8, 2004.

By decision mailed August 1, 2005, the initial petition filed June 22, 2005 was dismissed. By decision mailed November 18,

2005, the first renewed petition filed September 22, 2005 was dismissed. By decision mailed January 10, 2007, the second renewed petition filed January 2, 2006 was dismissed.

The previous petitions were dismissed for failure to make the showing required to establish non-receipt of an Office communication. In addition, on decision mailed December 14, 2006, the issue of petitioner's ability to meet this standard given evidence 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) was raised.

On instant renewed petition, petitioner submitted adequate evidence to support a conclusion that the Office action was not lost after receipt. On petition filed January 2, 2006, petitioner submitted a statement by his local agent as to non-receipt and a copy of the relevant docket records. On petition filed January 10, 2007, petitioner submitted additional details and evidence of non-receipt.

It is concluded that petitioner has now supported his claim of non-receipt.

In view thereof, the notice of abandonment mailed September 8, 2004 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 2674 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for re-mailing of the non-final Office action mailed February 19, 2004 and for restarting of the period for reply.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JJGJr: 07-06

Paper No: __

ALLEN, DYER, DOPPELT,
MILBRATH & GILCHRIST P.A.
1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE
P.O. BOX 3791
ORLANDO FL 32802-3791

COPY MAILED
JUL 1 7 2006
OFFICE OF PETITIONS

In re Application of		
McLaughlin, et al.	:	
Application No. 10/163,574	:	ON PETITION
Filed: 27 June, 20023 March, 2005	:	
Attorney Docket No.: 78174 (10-488 US)	:	

This is a decision on the petition filed (with fee) on17 April, 2006, under 37 C.F.R. §1.182 to correct the order of inventorship to be consistent with the signed oath/declaration.

The petition is **GRANTED**.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the order of inventorship as corrected consistent with that requested by Petitioner Char'es Wands (Reg. No. 25,649), as follows:

Sheldon McLaughlin
Valentine N,. Morozov
Thomas Ducellier

Petitioner is reminded to submit a corrected and supplemental Application Data Sheet (ADS), consistent with the commentary at MPEP §605.04(f), setting forth the corrected order of inventors and their respective residencies. Petitioner is given one (1) month, and not less than 30 days, to accomplish this task.

This application is being released to OIPE for handling consistent with the decision above.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

UR

PAPER NO. 3

In re Application of Van Miller Serial Number: 10/163,575 Filed: June 07, 2002 For: RECOMBINATION CREAM FORMULATION FOR FROZEN CREAM-BASED SWEET CONFECTIONS	: : : : : : :	DECISION ON PETITION UNDER M.P.E.P. 708.02(IV)

This is in response to the petition filed June 07, 2002, requesting that the above-identified application be granted Special Status under Section 708.02 (IV) of the MPEP and 37 CFR 1.102(c)
The petition has been considered and found to comply with the requirements set forth under the above-noted section. Accordingly, the petition is granted.

The petition is GRANTED.

Richard V. Fisher

Richard V. Fisher, Director
Technology Center 1700
Chemical and Materials Engineering

Marks & Clerk
350 Burnhamthorpe Road West, Suite 402
Mississauga, ON L5B 3J1
CANADA

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : **NOVEMBER 29, 2004**

TO SPE OF : ART UNIT **2875**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10163589** Patent No.: **6779914**

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** *M.T.* — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800

SPE — 2875 **Art Unit**

OR to Enter 8/14/2007 M.T.

OIPE JC25 SEP 2 0 2004 PATENT & TRADEMARK OFFICE

PATENT

IN THE UNITED STATE PATENT AND TRADEMARK OFFICE

In re patent of:	:	Katsuo Arai, et al.
For:	:	LICENSE PLATE ADAPTED FOR INTERNAL ILLUMINATION
Patent No.	:	6,779,914 B2
Dated	:	August 24, 2004
Art Unit	:	N/A
Examiner	:	N/A
Attorney Docket No.	:	BAE 3041

REQUEST FOR CERTIFICATE OF CORRECTION

Mail Stop Post Issue
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Applicant respectfully requests that the changes indicated on the attached Certificate of Correction be made to the above-identified patent.

Since these errors occurred on the part of the U.S. Patent and Trademark Office, Applicant believes that there are no fees associated with this request.

SEP 2 7 2004

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

SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

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APR 0 7 2003

OFFICE OF PETITIONS

In re Application of:
Marco Giuda, Linda Benson and
Penelope Hopkins
Application No. 10/163,598
Filed: June 5, 2002
Title of Invention: METHOD OF IDENTIFYING A POLYMORPHISM IN CYP2D6

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to the Petition filed September 15, 2002, under 37 C.F.R. 1.47(a), 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 **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, Marco Giuda, 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
Washington, D.C. 20231
www.uspto.gov

Dr. Marco Giuda
3899 Nobel Drive
San Diego, CA 92122

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APR 0 7 2003

OFFICE OF PETITIONS

In re Application of:
Marco Giuda, Linda Benson and Penelope Hopkins
Application No. 10/163,598
Filed: June 5, 2002
Title of Invention: METHOD OF IDENTIFYING A POLYMORPHISM IN CYP2D6

LETTER

Dear Dr. Giuda:

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: SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

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

#6

MAILED

APR 25 2003

Office of the Director
Group 3600

John W. Ryan
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

In re application of
Jose V. Travez et al.
Application No. 10/163,610
Filed: June 7, 2002
For: STRUCTURE HAVING PREINSTALLED UTILITIES AND AMENITIES

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on March 11, 2003, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks conditions A) and B) above.

As to condition A), there is no indication that the attorney signing the request is signing on behalf of all the attorneys of record.

As to condition B), given the statements included in the request that the firm "is closing down the patent prosecution practice and all patent practitioners are leaving" and "the firm will no longer be handling any patent prosecution work"; it is not clear that the statements satisfy one of the valid reasons for withdrawal under 37 CFR 10.40 (b)(1)-(4) or (c)(1)-(6). Simply because the law firm will no longer be handling any patent prosecution work, that does not automatically meet one of the acceptable reasons for an attorney withdrawal. Condition B) can be met by clearly specifying one of the valid reasons for withdrawal under 37 CFR 10.40 (b)(1)-(4) or (c)(1)-(6).

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868
Facsimile No.: (703) 605-0586

KJD/tpl: 4/22/03

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

BANNER & WITCOFF
1001 G STREET NW
SUITE 1100
WASHINGTON, DC 20001

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SEP 26 2003

OFFICE OF PETITIONS

In re Application of :
Phillip W. Hurd et al :
Application No. 10/163,630 : ON PETITION
Filed: June 7, 2002 :
Attorney Docket No. 005242.00049 :

This is a decision on the petition under 37 CFR 1.182, filed September 17, 2003, to change the order of the names of the inventors.

The petition is granted.

The order of the names of the inventors will be changed as follows:

1. Phillip W. Hurd
2. Michael C. Bruner
3. Arnold Netzel

A corrected filing receipt with the desired order of inventorship is enclosed.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.

Wan Laymon
Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Corrected Filing Receipt

OIPE JC65
SEP 17 2003
PATENT & TRADEMARK OFFICE

RECEIVED
SEP 23 2003
OFFICE OF PETITIONS

DAC #

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:		Atty. Docket No.:	005242.00049
Michael C. Bruner, et al.			
Appln. No.:	10/163,630	Group Art Unit:	1751
Filed:	June 7, 2002	Examiner:	Unknown
For:	SULFATED DICARBOXYLIC ACIDS FOR LUBRICATION, EMULSIFICATION, AND CORROSION INHIBITION	Confirmation No.:	7474

PETITION UNDER 37 C.F.R. § 1.182 TO CHANGE ORDER OF NAMES IN PATENT APPLICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby petitions the Commissioner to change the order of the inventors' names associated with this patent application. The inventors' names in this application should be listed in the following order:

Phillip W. Hurd

Michael C. Bruner

Arnold Netzel.

A revised Application Data Sheet reflecting this change is attached.

The Petition fee of $130.00 associated with this request may be charged to the Deposit Account of the undersigned, Deposit Account No. 19-0733. A separate Fee Transmittal is

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attached. If any additional fees are required to proceed with this change, such as fees under 37 C.F.R. §§ 1.16 or 1.17, the additional fees also may be charged to Deposit Account No. 19-0733.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: September 17, 2003

By: William F. Rauchholz
Registration No. 34,701

1001 G Street, N.W.
Eleventh Floor
Washington, D.C. 20001-4597
(202) 508-9100 (Telephone)
(202) 508-9299 (Facsimile)

WFR:dah

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 2023

May 6, 2003

Jerome W. Massie
Nixon Peabody
8180 Greensboro Dr
Suite 880
McLean, VA 22102

In re application of:
Xin Wang, et al DECISION ON PETITION
Serial No.: 10/163,631
Filed: June 7, 2002
For: METHOD AND APPARATUS FOR TRACKING STATUS OF RESOURCE IN A SYSTEM FOR MANAGING USE OF THE RESOURCES

This is a decision on the petitions received on April 11, 2003, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Missing Parts of Application mailed July 11, 2002. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned September 12, 2002.

On April 11, 2003, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney never received the Notice of Missing Parts mailed July 11, 2002.

The evidence submitted is sufficient to establish that the petitioners never received the Notice of Missing Parts mailed July 11, 2002.

The petition is hereby Granted.

The application will be completed with the documents received April 11, 2003 and released to Technology Center 1722.

The office regrets any inconvenience this may have caused the client.

Telephone inquiries concerning this matter may be directed to Doshie E. Day (703) 308-3640.

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

OCT 31 2005

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MCDERMOTT, WILL & EMERY
600 13TH STREET, N.W.
WASHINGTON DC 20005-3096

In re Patent No. CROOKS ET AL.	
Issue Date: March 9, 2004	**DECISION GRANTING**
Appl No.: 10/163,633	**PETITION**
Filed: June 07, 2002	*37 CFR 1.324*
For: Correction of Inventorship	

This is a decision on the petition filed May 16, 2005 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.

William R. Dixon, Jr.
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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COATS & BENNETT, PLLC
P.O. BOX 5
RALEIGH, NC 27602

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APR 13 2005

OFFICE OF PETITIONS
ON PETITION

In re Application of :
Allan Hutton :
Application No. 10/163,656 :
Filed: June 5, 2002 :
Attorney Docket No. 4869-002 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 28, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure submit the Issue fee in a timely manner in reply to the Notice of Allowance mailed December 21, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on March 22, 2005.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matter is being forwarded to the Publishing Division.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:

Edward H. Green
1400 Crescent Green, Ste. 300
Cary, NC 27511

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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KERMIT D. LOPEZ/ LUIS M. ORTIZ
ORTIZ & LOPEZ, PLLC
PATENT ATTORNEYS
P.O. BOX 4484
ALBUQUERQUE, NM 87196-4484

COPY MAILED

APR 26 2006

OFFICE OF PETITIONS

In re Application of	:	
Narayanan, et. al.	:	DECISION ON PETITION
Application No. 10/163,659	:	TO WITHDRAW
Filed: June 5, 2002	:	FROM RECORD
Attorney Docket No. 1000-1072	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed by facsimile transmission on November 21, 2005.

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 17, 2005.

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 Andrea Smith at (571) 272- 3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Conferee: Denise Pother

cc: John M. Tuhey, General Counsel & Secretary
Click Commerce, Inc.
200 E. Randolph, 52nd Floor
Chicago, IL 60601

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No. 11

FRANK L. KUBLER
13261 S.W. 54TH COURT
MIRAMAR, FL 33027

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NOV 24 2004

OFFICE OF PETITIONS

In re Application of
Wallace D. Sanger
Application No. 10/163,665
Filed: June 6, 2002
For: METHOD OF ASSEMBLING CONCRETE PANEL BUILDING MODULE WITH CONNECTION PLATES AND RESULTING MODULE

:DECISION DISMISSING
: PETITION UNDER
: 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed September 24, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely pay the issue and publication fees on or before December 22, 2003 as required by the Notice of Allowance and Fee(s) Due mailed September 22, 2003. Accordingly, the date of abandonment of this application is December 23, 2003. A Notice of Abandonment was mailed on January 26, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1) above.

The total amount of fees submitted by petitioner herein is $1,615. The total amount of fees due at the time of submission of the petition was $1,630; i.e., $665 for the petition fee; $665 for the

issue fee; and $300 for the publication fee. The $1,615 fee submitted has been applied as follows: $665 for the petition fee; $665 for the issue fee; and the balance of $285 has been applied towards the $300 amount due for the publication fee, leaving a balance due of $15. Accordingly, before the petition can be granted, petitioner must submit the $15 balance due for the publication fee, accompanied by a renewed petition under 37 CFR 1.137(b).

The petition additionally lacks the statement required by 37 CFR 1.137(b)(3). 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3).

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
Mail Stop Petitions
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) 272-3218.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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FRANK L. KUBLER
13261 S.W. 54TH COURT
MIRAMIR, FL 33027

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APR 12 2005

OFFICE OF PETITIONS

In re Application of
Wallace D. Sanger
Application No. 10/163,665
Filed: June 6, 2002
For: METHOD OF ASSEMBLING CONCRETE PANEL BUILDING MODULE WITH CONNECTION PLATES AND RESULTING MODULE

DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the renewed petition under 37 CFR 1.137(b), filed January 31, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before December 22, 2003, as required by the Notice of Allowance and Fee(s) Due, mailed September 22, 2003. Accordingly, the date of abandonment of this application is December 23, 2003. A Notice of Abandonment was mailed on January 26, 2004.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue and publication fees; (2) the petition fee; and (3) and adequate statement of unintentional delay have been received.

Accordingly, the reply to Notice of September 22, 2003 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

The matter is being referred to Publishing Division.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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)
6,661,504	2003-12-09	10/163,669	2002-06-06	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			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	/Lawrence I. Wechsler/	Date (YYYY-MM-DD)	2009-11-30
Name	Lawrence I. Wechsler	Registration Number	36049

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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In re Patent No. 6661504
Issue Date: December 9,2003
Application No. 10163669
Filed: June 6,2002
Attorney Docket No. W 1011-1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 30,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 30,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIW Sep-07

MOORE LANDREY
1609 SHOAL CREEK BLVD
AUSTIN TX 78701

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SEP 2 5 2007

OFFICE OF PETITIONS

In re Application of	:	
David A. Monroe	:	DECISION ON PETITION
Application Number: 10/163679	:	TO WITHDRAW HOLDING OF
Filing Date: 06/05/2002	:	ABANDONMENT
Attorney Docket Number: 07-0164	:	

This is a decision on the petition, filed on 2 August, 2007, to withdraw the holding of abandonment in the above-identified application.

The application was held abandoned for failure to timely submit a reply to the non-final Office action mailed on 20 July, 2006. Notice of Abandonment was mailed on 28 February, 2007.

Petitioners assert that an amendment in response to the non-final Office action was in fact timely filed. In support of the petition, petitioner submitted a copy of a date-stamped post card receipt, dated 26 October, 2006, acknowledging receipt of a response to the Office action dated 20 July, 2006. Additionally, petitioner has submitted a copy of the response sent therewith.

Upon review, petitioner's reply filed on 26 October, 2006, has been located in the Official file. It is also noted that the response filed on 26 October, 2006, bears a Certificate of Mailing dated 20 October, 2006. As such, the showing of record is that a timely reply was filed in response to the Office action mailed on 20 July, 2006.

Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application file will be referred to Technology Center Art Unit 2621 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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www.uspto.gov

INSULET CORPORATION
9 Oak Park Drive
Bedford, MA 01730

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AUG 16 2006

OFFICE OF PETITIONS

In re Application of	:	
Christopher J. Flagherty	:	
Application No. 10/163,688	:	
Filed: June 6, 2002	:	ON PETITION
Title of Invention: PLUNGER	:	
ASSEMBLY FOR PATIENT INFUSION	:	
DEVICE	:	

This is a decision on the Petition for Withdrawal of Holding of Abandonment Based on Failure to Receive Response to Notice to File Missing Parts, filed June 28, 2006. The petition is properly treated under 37 CFR 1.181(a).

The petition is **granted.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts ("Notice"), mailed July 12, 2002. The Notice set a two (2) 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 September 13, 2002. A Notice of Abandonment was mailed June 4, 2004.

Applicant's Assertion

Applicant responds with the instant petition wherein Applicant avers that a timely reply was filed on August 15, 2002, and was received by this Office as evidenced by Applicant's return-receipt postcard. In support of this assertion, Applicant provides a copy of a return-receipt postcard. A review of the return-receipt postcard reveals that it acknowledges receipt of a Response to Notice to File Missing parts and a Declaration/Power of Attorney on August 20, 2002. Office finance records also reveal that the late filing oath or declaration surcharge was received on August 20, 2002. A review of the Response also reveals that applicant included a

Certificate of mailing under 37 CFR 1.8, certifying to the mailing of the Response to this office on August 15, 2002.

In view of the foregoing, the holding of abandonment is hereby withdrawn. Accord MPEP § 503 and 37 CFR § 1.8.

Accordingly, the petition is granted.

No petition fee has been charged and none is due.

The application file is being referred to the Office of Initial Patent Examination for continued processing in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

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MAR 0 4 2005

#6

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

In re Application of	:	
George A. Lopez, M.D. et al	:	
Serial No.: 10/163,719	:	DECISION ON PETITION
Filed: June 5, 2002	:	
For: Positive Flow Valve	:	

This is in response to applicants' petition filed June 5, 2002, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on infringement.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, II. Therefore the petition is **GRANTED**.

The application will be forwarded to the examiner for action on the merits commensurate with this decision.

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, P.O. Box 1450 Alexandria, VA 22313-1450or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle
Director
Technology Center 3700/2900

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/23/09

TO SPE OF : ART UNIT 2115

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/163746 Patent No.: 7028200 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 (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: A newly executed oath or declaration must be filed in any continuation-in-part application. Certificate of correction can not be accepted for filing a new oath or declaration.

SPE

2115
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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January 11, 2010

Chris C. Winslade
McAndrews, Held & Malloy. Ltd.
500 West Madison Street, 35th Floor
Chicago, IL 60661

Patent No: 7,028,200 B2
Application No: 10/163,746
Applicant: Kenneth Ma
Issued: April 11, 2006
Title: **METHOD AND APPARATUS FOR ADAPTIVE POWER MANAGEMENT OF MEMORY SUBSYSTEM**

Request for Certificate of Correction:

Consideration has been given to your request for the issuance of a certificate of correction for the above- identified patent under the provisions of Rule 1.322.

The error complained of on the Title Page and in column 1, cannot be corrected since: Per examiner "A new executed oath or declaration must be filed in any continuation-in-part application. Certificate of Correction cannot be accepted for filing a new oath or declaration".

In view of the foregoing your request in these matters is hereby **denied**.

Further correspondence concerning this matter should be filed and directed to Decisions & Certificate of Correction Branch.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions and Certificate of Correction
(571) 272-0460 (voice)
(571) 270-9892 (fax)

vt

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

JUN 01 2010

OFFICE OF PETITIONS

In re Patent No. 7,028,200	:
Issue Date: April 11, 2006	: DECISION ON PETITION
Application No. 10/163,746	: UNDER 37 CFR 1.78(a)(3)
Filed: June 5, 2002	:
Attorney Docket No. 13737US01	:

This is a decision on the petition filed March 18, 2010, under 37 CFR 1.78(a)(3) and 35 U.S.C. §120, to accept an unintentionally delayed claim, for the benefit of a prior-filed non-provisional application (Application No. 10/146,554), filed by way of a certificate of correction filed concurrently herewith.

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.

Application no. 10/163,746 which was filed after November 29, 2000, matured into Patent No. 7,028,200 on April 11, 2006. 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, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

Petitioner's deposit account no. 13-0017 has been charged for the petition fee and the certificate of correction fee.

This application is being forwarded to the Certificates of Corrections branch for an issuance of a certificate of correction noting the priority claim to prior filed application 10/146,554 filed May 15, 2002, which matured into Patent No. 7,010,708 on March 7, 2006.

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.

Anthony Knight
Director
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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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/163,746	06/05/2002	2115	1140	13737US01	18	2

CONFIRMATION NO. 1553

CORRECTED FILING RECEIPT

23446
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

OC000000041754115

Date Mailed: 05/24/2010

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Kenneth Ma, Cupertino, CA;

Power of Attorney: The patent practitioners associated with Customer Number 23446

Domestic Priority data as claimed by applicant

This application is a CIP of 10/146,554 05/15/2002 PAT 7,010,708

Foreign Applications

If Required, Foreign Filing License Granted: 07/10/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/163,746**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

METHOD AND APPARATUS FOR ADAPTIVE POWER MANAGEMENT OF MEMORY SUBSYSTEM

Preliminary Class

713

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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DW 02-03

Paper No. 24

J.F. BRYAN & ASSOCIATES, INC.
P.O. BOX 1987
PLANO TX 75086

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MAR 04 2003

OFFICE OF PETITIONS

In re Application of
Rick D. Prindle
Application No. 10/163,749
Filed: 5 June, 2002
For: METHOD AND APPARATUS FOR ILLUMINATING A KEYPAD

DECISION GRANTING PETITION

This is a decision on the petition filed under 37 CFR 1.53(e) on 30 August, 2002, which is being treated as a petition requesting that the FWC request under former 37 CFR 1.62 filed on 5 June, 2002, be treated as a continuation application filed under 37 CFR 1.53(b)[1] and be accorded a filing date of 5 June, 2002.

On 5 June, 2002, applicants filed a request for a continuation application under 37 CFR 1.62 based on prior Application No. 09/689,975 (*sic*). The request, accompanied by a preliminary amendment and the basic filing fee, was assigned Application No. 10/163,749. On 5 July, 2002, a Notice to File Missing Parts of Nonprovisional Application was mailed, requiring the oath or declaration, a surcharge for its late filing, and noting that Pages 2, and 4-13 of the specification appeared to have been omitted from the application.

On 30 August, 2002, the present petition styled under 37 CFR 1.53(e) was filed. Petitioners now state that the papers deposited on 5 June, 2002, incorrectly referenced Application No. 09/689,975 due to applicant's error, and that the correct parent application was Application No. 09/589,975.

Petitioner states the petition is accompanied by:

"1. The specification as originally filed 06/08/2000;
2. Preliminary amendment submitted 07/05/2000;

[1]Although the petition requests consideration under 37 CFR 1.53(d), treatment under Rule 53(d) is inappropriate because this application is a continuation-in-part of the prior application. MPEP 201.06(b).

3. 37 CFR 1.111 amendment submitted 01/08/2002;
4. Clean copy of the specification and claims as amended;
5. Declaration by inventor; and
5. Preliminary amendment to the continuation of 6/5/02."

A petition under 37 CFR 1.53(e) to accept and treat an improper application filed under former 37 CFR 1.62 as a proper application filed under 37 CFR 1.53(b) must include:

(1) the $130.00 petition fee;
(2) a true copy of the complete nonprovisional application, as filed, designated as the prior nonprovisional application in the application papers filed under former 37 CFR 1.62;
(3) any amendments entered in the prior nonprovisional application;
(4) any amendments submitted but not entered in the prior nonprovisional application and directed to be entered in the application papers filed under former 37 CFR 1.62; and
(5) an executed oath or declaration under 37 CFR 1.63, if one has not already been submitted with the application papers filed under former 37 CFR 1.62.

It is noted that although petitioners miscaptioned the application number as 09/689,975 on the papers filed under former 37 CFR 1.62 on 5 June, 2002, the inventor's name, invention title, filing date, and group art unit of the prior-filed application, No. 09/589,975, were correctly provided. As it is obvious that the application number was miscaptioned due to a clerical error, and that sufficient information was provided with the papers filed on 5 June, 2002, to identify the correct application, (i.e. 09/589,975), the papers filed on 5 June, 2002, will be treated as a petition under 37 CFR 1.53(e) to accept and treat an improper application filed under former 37 CFR 1.62 of Application No. 09/589,975.

Based on counsel's statements in the petition filed on 30 August, 2002, the Office is construing the specification and amendments filed with the present petition as a true copy of the complete nonprovisional application as filed, designated as the prior nonprovisional application in the application papers filed under former 37 CFR 1.62; any amendments entered in the prior nonprovisional application, and any amendments submitted but not entered in the prior nonprovisional application and directed to be entered in the application papers filed under former 37 CFR 1.62. In accepting this submission, the Office is relying on petitioner's duty of good faith and candor. Petitioner **must** notify the Office if this is an incorrect interpretation.

The application will be processed and examined with a filing date of 5 June, 2002, using the true copy of the prior-filed specification, claims, and drawings supplied on 30 August, 2002.

The application is being forwarded to OIPE for reprocessing with a filing date of 5 June, 2002, using the specification entitled "Method and Apparatus for an Illuminating a Keypad" and two (2) sheets of drawings containing Figs. 1-4.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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Paper No. 4

JENKENS & GILCHRIST, P.C.
225 WEST WASHINGTON
SUITE 2600
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of	:
Raterman et al.	:
Application No. 10/163,757	: DECISION DISMISSING
Filed: 6 June, 2002	: PETITION
Atty Docket No. 47171-00261USC2	:

This is a decision on the paper styled "Response to Notice to File Corrected Application Papers" filed on 27 September, 2002, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 6 June, 2002, with Pages 12, 14, 39, 42 & 49 as a part of the original disclosure.

On 6 June, 2002, the application was filed.

On 24 July, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Corrected Application Papers stating, *inter alia*, that the application had been accorded a filing date of 6 June, 2002, but that Pages 12, 14, 39, 42 & 49 described in the specification appeared to have been omitted from the application.

In response, on 27 September, 2002 (certificate of mailing date 20 September, 2002), the present petition was filed. Petitioners state that the above identified application is a continuation of, and incorporated by reference, Application No. 09/453,200, which incorporated by reference the disclosure of Application No. 08/841,203, and other prior-filed applications which contained the disclosure found in Pages 12, 14, 39, 42 & 49.

The petition is <u>dismissed</u>.

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, however, petitioner neither asserts that the missing pages were deposited on 6 June, 2002, nor request the 27 September, 2002 (the date the drawings were supplied), filing date.

MPEP 201.06(c) states that:

> . . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), <u>without the need for a petition</u>. (emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, the material contained in Pages 12, 14, 39, 42 & 49 is not new matter if it was a part of the disclosure of the prior application.

Petitioner should file Pages 12, 14, 39, 42 & 49 as a preliminary amendment. If Pages 12, 14, 39, 42 & 49 are filed as a preliminary amendment, the preliminary amendment will be reviewed by the examiner for new matter.

The application will be processed using only the application papers present on filing.

As this petition was necessitated by applicants' filing error rather than an error on the part of the Office, a petition fee of $130.00 will be charged to counsel's deposit account, No. 10-0447.

Receipt is acknowledged of the substitute specification filed to comply with 37 CFR 1.52 on 27 September, 2002. The substitute specification is not part of the original disclosure and must be reviewed by the examiner for new matter.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 6 June, 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

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Paper No. 15

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SEP 18 2006

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

CUMMINS-ALLISON CORP.
C/O JENKENS & GILCHRIST
225 WEST WASHINGTON STREET, SUITE 2600
CHICAGO IL 60606

In re Application of	:	
Donald Raterman, et al.	:	*SUA SPONTE* DECISION
Application No. 10/163,757	:	TO EXPUNGE
Filed: June 6, 2002	:	
For: **METHOD AND APPARATUS FOR CURRENCY DISCRIMINATION AND COUNTING**	:	

This is a *sua sponte* decision to expunge a paper improperly matched to the instant application; as well as a document improperly mailed in response to that document.

No petition to expunge under 37 CFR 1.59 is required inasmuch as the Office acknowledges that Paper No. 13, a petition filed May 8, 2003, for a related application was improperly matched to the instant application. That petition, therefore, has been expunged from the instant application and transferred to the correct application file.

Furthermore, a petition decision (Paper No. 14) was inadvertently mailed on January 24, 2004 in response to the mis-matched petition noted above. Accordingly, that decision is hereby vacated and has also been expunged from the instant application.

The corrected application file is being forwarded to the examiner for appropriate action in due course. Any inconvenience to applicant is sincerely regretted.

Krista Zele
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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SUITE 200, MAPLE ISLAND BUILDING
221 MAIN STREET NORTH
STILLWATER, MN 55082

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JAN 04 2005

OFFICE OF PETITIONS

In re Application of	:	
Michael W. Sterud et al	:	
Application No. 10/163,770	:	ON PETITION
Filed: June 5, 2002	:	
Attorney Docket No. BSC0006/US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 22, 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 August 13, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on November 15, 2004.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to the Publishing Division.

Wan Laymon

Wan Laymon
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	:	
Dale L. Kirkland et al.	:	
Application No. 10/163,793	:	ON PETITION
Filed: June 6, 2002	:	
Attorney Docket No. TDH-016	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 6, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 19, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on March 24, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (3).

The file record shows 3 years elapsed between the date of abandonment and the filing of the instant petition. Due to the extended delay in filing the petition to revive, further information as to the cause of the delay between the date the applicant was first notified that the application was abandoned and the date a 37 1.137(b) petition was filed is required, along with information as to how such delay was "unintentional." Petitioner should submit:

(A) further information as to when the applicant (or applicant's representative) 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 car or diligence on the part of the applicant (or applicant's representative). See MPEP 711.03(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 hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed to Terri Williams at (571) 272-2991.

T. Williams for

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

In re Application of	:	
Dale L. Kirkland, et al.	:	
Application No. 10/163,793	:	ON PETITION
Filed: June 6, 2002	:	
Attorney Docket No. TDH-016	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed April 1, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 19, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 20, 2004. The Notice of Abandonment was mailed August 8, 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 (previously filed on April 6, 2007); (2) the petition fee of $750; and (3) an adequate statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Williams at (571) 272-2991.

The application file is being referred to Technology Center AU 2628 for appropriate action on the previously filed amendment.

Chris Bottorff

Chris Bottorff
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

MICHAEL J. BELL
HOWREY SIMON ARNOLD & WHITE, LLP
BOX 34
1299 PENNSYLVANIA AVENUE, NW
WASHINGTON DC 20004-2402

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OFFICE OF PETITIONS

In re Application of
Pieter Van Dine et al. :
Application No. 10/163,800 : ON PETITION
Filed: June 6, 2002 :
Attorney Docket No. A35020 :

CORRECTED DECISION[1]

This is a decision on the petition under 37 CFR 1.137(b), filed August 6, 2004, to revive the above identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed September 24, 2003. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been filed, the application became abandoned December 25, 2003. Accordingly, a Notice of Abandonment was mailed April 29, 2004.

Petitioner files the instant petition and request for continued examination under 37 CFR 1.137(b). [2]

---

[1]The decision mailed September 8, 2004, indicated the wrong Application No. This decision replaces that decision only for the purposes of correcting the heading information..

[2]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In 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

The request for continued examination (RCE) of this application under 37 CFR 1.114 is improper since prosecution in the application had not been closed. However, the amendment filed August 6, 2004 will serve as the required reply. Accordingly, the RCE fee will be credited to deposit account no. 08-3038.
Additionally, petitioners have included with the petition a request for a three month extension of time. It should be noted that, pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $950.00 extension of time fee submitted with the petition on August 6, 2004, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and thus will be credited to deposit account no. 08-3038.

This application is being forwarded to Technology Center 3654 for appropriate action on the amendment filed August 6, 2004

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

(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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Paper No. 5

MARSHALL, GERSTEIN & BORUN
6300 SEARS TOWER
233 SOUTH WACKER
CHICAGO IL 60606-6357

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OCT 0 3 2002
OFFICE OF PETITIONS

In re Application of
MacCalman, et al.
Application No. 10/163,818
Filed: June 5, 2002
Attorney Docket No. 27866/38573
For: CADHERIN-11 AS AN INDICATOR OF VIABLE PREGNANCY

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.53(e), filed July 30, 2002 (certificate of mailing date July 24, 2002), requesting that pages 30, 35, 51 & 52 of the specification be accorded a filing date of June 5, 2002.

The application was deposited on June 5, 2002. On July 5, 2002, the Office of Initial Patent Examination mailed a " Notice of Omitted Items in a Nonprovisional Application" (Notice) informing petitioners that pages 30, 35, 38, 51 & 52 appeared to have been omitted.

In response to the Notice, petitioners timely filed the present petition. Petitioners request the June 5, 2002 filing date for pages 30, 35, 38, 51 & 52 on the basis that the allegedly omitted pages were received in the Patent and Trademark Office (PTO) on June 5, 2002. In support, the petition is accompanied by a copy of applicants' postcard receipt showing an Office of Initial Patent Examination generated bar code listing June 5, 2002 as the date of receipt.

A properly itemized return postcard constitutes *prima facie* evidence that the items were filed on the date stamped thereon. However, a postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. MPEP 503. The itemized postcard in this case was <u>not properly itemized</u>. The return postcard in this case references a parent application and states that the June 5, 2002 filing was a complete copy of the parent application. However, the reviewer who initially examined the June 5, 2002 filing did not have the parent before him/her. Therefore, the reviewer had no way of verifying what specifically was filed on June 5, 2002.

Since the postcard receipt was not properly itemized and the papers in the application file do not include pages 30, 35, 38, 51 & 52, the application cannot be accorded a June 5, 2002 filing date with any of the omitted pages as a part of the original disclosure of this application.

The petition under 37 CFR 1.53(e) is dismissed.

However, it is noted that the Utility Patent Application Transmittal, filed June 5, 2002, included an incorporation by reference statement.

MPEP 201.06(c) states that:

> . . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)

Additional pages of specification may be entered by the primary examiner without a petition so long as the pages contain no new matter. See MPEP § 608.02(a).

If applicants desire that pages 30, 35, 38, 51 & 52 be added to the application, the appropriate procedure is by way of amendment requesting the entry of the pages. Any such amendment should be filed prior to the first action on the merits and will be considered by the primary examiner.

The application is being returned to the Office of Initial Patent Examination for further processing. Pages 30, 35, 38, 51 & 52 submitted with the instant petition will **not** be considered part of the original filing.

Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 8

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233 SOUTH WACKER
CHICAGO IL 60606-6357

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DEC 0 9 2002

OFFICE OF PETITIONS

In re Application of
MacCalman, et al.
Application No. 10/163,818
Filed: June 5, 2002
Attorney Docket No. 27866/38573
For: CADHERIN-11 AS AN INDICATOR OF VIABLE PREGNANCY

DECISION ON PETITION

This is a decision on the reconsideration petition under 37 CFR 1.53(e), filed October 28, 2002 (certificate of mailing date October 24, 2002), requesting that pages 30, 35, 51 & 52 of the specification be accorded a filing date of June 5, 2002.

The application was deposited on June 5, 2002. On July 5, 2002, the Office of Initial Patent Examination mailed a " Notice of Omitted Items in a Nonprovisional Application" (Notice) informing petitioners that pages 30, 35, 38, 51 & 52 appeared to have been omitted.

Petitioners' additional arguments have been considered, but they are not persuasive. As stated in the October 3, 2002 decision, the itemized postcard in this case was not properly itemized. Petitioners assert that the initial reviewer had several bases for verifying what was filed. Petitioners are informed that initial reviewers do not search Office records for related applications or examine new filings for internal consistency. Instead, they compare/contrast the application papers before them to the postcard receipt. The postcard receipt in this case did not identify how many pages were in the specification. Therefore, the postcard receipt cannot be relied upon to prove missing pages of the specification were received.

The reconsideration petition under 37 CFR 1.53(e) is **dismissed**.

The application is being forwarded to Technology Center 1600 for consideration of the preliminary amendment, filed in the alternative with the instant petition, that requests entry of pages 30, 35, 38, 51 & 52 based on an incorporation by reference statement found in the application transmittal letter.

Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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MARSHALL, GERSTEIN & BORUN LLP
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233 S. WACKER DRIVE
CHICAGO, IL 60606

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APR 21 2005

OFFICE OF PETITIONS

In re Application of	:
Colin D. MacALMAN et al.	:
Application No. 10/163,818	: DECISION GRANTING PETITION
Filed: June 5, 2002	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 27866/38573	:

This is a decision on the petition under 37 CFR 1.137(b), filed October 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 March 15, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on June 16, 2004. A Notice of Abandonment was mailed on October 15, 2004.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 10/941,442.

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. See In re Application of S., USPQ2d 1630, 1631 (Comm'r Pats. 1988) Since the extension of time submitted with the petition on October 21, 2004 was subsequent to the maximum period obtainable for reply, this fee cannot be accepted to extend the period. Therefore, the $980 extension of time fee (and the authorization to charge this fee to the Deposit Account) is unnecessary and will not be charged to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Betsy L. Deppe at (571) 272-6052 or in her absence, the undersigned at (571) 272-3217.

This abandoned matter is being referred to Files Repository.

Frances Hicks for

Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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AUG 28 2007

OFFICE OF PETITIONS

BAKER BOTTS L.L.P.
30 ROCKEFELLER PLAZA
44TH FLOOR
NEW YORK, NY 10112-4498

In re Application of Toshifumi Mihashi, et al. Application No. 10/163,825 Filed: January 30, 2003 Attorney Docket No. A32099-07 1382.0163	: : : : :	ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed May 4, 2007.

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue fee on or before March 19, 2007. A Notice of Abandonment was mailed on April 11, 2007. In response, on May 4, 2007, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $1,400 issue fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Publications to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : February 9, 2006

TO SPE OF : ART UNIT 1621

SUBJECT : Request for Certificate of Correction on Patent No.: 6,911,561/Appl.10/163840

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:

THURMAN K. PAGE, M.A., J.D.
SUPERVISORY PATENT EXAMINER

Thurman K. Page — 1621

SPE — **Art Unit**

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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WASHINGTON, D.C. 2023
www.uspto.g

Paper No. 3

Elliot Furman
SKYMOON VENTURES
3045 Park Blvd.
Palo Alto, CA 94306

MAILED

JUL 2 4 2003

Technology Center 2100

In re Application of:	)	
Daniel Mark Kohn	)	
Application No. 10/163,842	)	**DECISION ON REQUEST FOR**
Filed: June 5, 2002	)	**WITHDRAWAL AS ATTORNEY**
For: ENFORCEABLE SPAM IDENTIFICATION AND REDUCTION SYSTEM, AND METHOD THEREOF	)	

This is a decision on the Request To Withdraw from Representation filed July 7, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed July 7, 2003 meets all the requirements. Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

James R. Matthews

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture and Software
(703) 305-9750

cc: SKYMOON VENTURES
3045 Park Blvd.
Palo Alto, CA 94306

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
1177 AVENUE OF THE AMERICAS
41ST FLOOR
NEW YORK, NY 10036-2714

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APR 27 2004

OFFICE OF PETITIONS

In re Application of	:
Masayuki Atokawa et al	:
Application No. 10/163,843	: DECISION GRANTING PETITION
Filed: June 5, 2002	: UNDER 37 CFR 313(c)(2)
Attorney Docket No. M1071.1730/P1730	:

This is a decision on the petition, filed April 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 February 20, 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 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
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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KEATING & BENNETT LLP
SUITE 312
10400 EATON PLACE
FAIRFAX VA 22030

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OFFICE OF PETITIONS

In re Application of
Yuichi Takamine
Application No. 10/163,846
Filed: June 6, 2002
Attorney Docket No. 36856.734

ON PETITION

This is a decision on the petition, filed May 6, 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 February 11, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

The examiner of Technology Center AU 2834 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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OFFICE OF PETITIONS

KEATING & BENNETT
8180 GREENSBORO DRIVE
SUITE 850
MCLEAN VA 22102

In re Application of	:	
Yuichi Takamine	:	
Application No. 10/163,846	:	ON PETITION
Filed: June 6, 2002	:	
Attorney Docket No. 36856.734	:	

This is a decision on the petition, filed September 19, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 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 2834 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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NE

Mailed: 6/16/05

In re application of Thompson et al. Serial No. 10/163,855 Filed: June 5, 2002 For: LIMITED PLAY OPTICAL DEVICE WITH INTERSTITIAL REACTIVE LAYER AND METHODS OF MAKING THE SAME	: : : : : : : :	DECISION ON PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT filed April 14, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of February 15, 2005, for failure to timely file a proper reply to the Office letter mailed July 13, 2004 be withdrawn since the applicants did timely file a reply on January 13, 2005.

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicant's response, the paper entitled RESPONSE AND AMEDMENT, was properly filed on January 13, 2005 as evidenced by the properly completed Certificate of Mailing thereon. Accordingly, any holding of abandonment for failure to timely file a proper reply to the Office letter mailed July 13, 2004 is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to the examiner for entry and processing of the Three Month Extension of time, Response, Amendment, and Small Entity Status Correction, originally filed January 13, 2005.

The Petition is **GRANTED**.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109

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DAVID W. HIGHET VP AND CHIEF IP COUNSEL
BECTON DICKINSON AND COMPANY
1 BECTON DRIVE, MC 110
FRANKLIN LAKES, NJ 07417-1880

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DEC 15 2004

OFFICE OF PETITIONS

In re Application of	:
James G. Nadeau et al	: DECISION ON PETITION
Application No. 10/163,862	: UNDER 37 CFR 1.78(a)(3)
Filed: June 5, 2002	:
Attorney Docket No. P-4531D1C1	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 1, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional Application No. 09/406,074, filed September 27, 1999.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The amendment submitted concurrently with the instant petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the instant petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent

section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

In view of the above, the amendment to add a priority claim to the first line of the specification, which is physically embedded in the instant petition, is not acceptable. Accordingly, a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3), must be submitted.

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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DAVID W. HIGHET VP AND CHIEF IP COUNSEL
BECTON DICKINSON AND COMPANY
1 BECTON DRIVE, MC 100
FRANKLIN LAKES, NJ 07417-1880

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SEP 1 2 2005

OFFICE OF PETITIONS

In re Application of	:
James G. Nadeau et al	:
Application No. 10/163,862	: DECISION ON PETITION
Filed: June 5, 2002	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. P-4531D1C1	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed July 1, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/406,074, filed September 27, 1999.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

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 an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, has been mailed under separate cover.

The duplicate fee charged on July 5, 2005 for the renewed petition will be credited to petitioner's deposit account in due course.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1634 for appropriate action on the amendment filed July 1, 2005, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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Paper No. 15

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
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SEATTLE WA 98104-7092

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OFFICE OF PETITIONS

In re Application of Benton, Bebbington, Henning, King, Crombie & Shao Application No.: 10/163,863 Filed: June 4, 2002 Attorney Docket No.:210121.583 For: COMPOSITIONS AND METHODS FOR HIGH-LEVEL, LARGE-SCALE PRODUCTION OF RECOMBINANT PROTEINS	DECISION GRANTING PETITION REGARDING POWER OF ATTORNEY & DECISION GRANTING CONSTRUCTIVE PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This decision addresses the petition under 37 CFR 1.182 to submit a power of attorney signed by less than all of the inventors, filed May 12, 2003. In addition, the petition will be treated as a constructive petition under 37 CFR 1.181 to withdraw the holding of abandonment in this application.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**.

The petition under 37 CFR 1.182 to submit a power of attorney signed by less than all of the inventors is **GRANTED**.

The Office mailed a Notice to File Missing Parts of Nonprovisional Application on October 10, 2002 that required petitioner to submit a declaration executed by Robert Crombie, a previously non-signing inventor.

Papers filed on May 12, 2003 in reply to the Notice to File Missing Parts of Nonprovisional Application, mailed on October 10, 2002, included a Declaration signed by the previously nonsigning inventor, Robert Crombie, in compliance with 37 CFR 1.63 and a request for a 5 month extension of time and required fee.

Apparently this response was not matched with the application file until recently. The Office mailed a Notice of Abandonment on February 18, 2004. The Office's position was that the application became abandoned on December 11, 2002 for failure to reply to the October 10, 2002 Notice. However, since the response is present in the application file and was filed timely on May 12, 2003 (May 10, 2003 was a Saturday), the application never went abandoned.

Therefore, the constructive petition under 37 CFR 1.181 to withdraw the holding of abandonment is **granted**.

The papers filed on May 12, 2003 included a Declaration signed by the previously nonsigning inventor, Robert Crombie, in compliance with 37 CFR 1.63, that granted power of attorney to practitioners associated with Customer Number 34139.

However, 5 of the 6 joint inventors have previously granted power of attorney to the practitioners associated with Customer Number 00500.

Petitioner states that the current assignee of 5 of the 6 joint inventors, Corixa Corporation, is going to assign their interest in the invention to the company by which Dr. Crombie is employed and that prosecution will thereafter be handled by the practitioners associated with Customer Number 34139. Petitioner requests that the Office accept a power of attorney signed by less than all of the inventors.

The petition under 37 CFR 1.182 for the Office to accept a power of attorney signed by less than all of the inventors is **granted** to the extent indicated below.

In order to assure that all interests are properly and effectively represented, all further correspondence to the Office must be signed by the representatives for the partial assignee and by the representatives for Dr. Crombie. Dual correspondence is not permitted. Therefore, the Office will conduct correspondence with the attorneys associated with Customer Number 00500, at the above address, who will be responsible for coordinating replies or submissions to the Office.

This application will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

cc: COZEN O'CONNOR, P.C.
1900 MARKET STREET, 6TH FLOOR
PHILADELPHIA, PA 19103-3508

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11/17/05

wak

In re Application of	:	
Gyula Vigh	:	
Serial Number: 10/163,885	:	DECISION
Filed: June 5, 2002	:	ON
For: Method For PH-BIASED Isoelectric Trapping Separation	:	PETITION

This is in response to the request filed January 26, 2005, requesting permission for withdrawal as attorney from the above-identified application.

The Commissioner of Patents and Trademarks requires that there be at least 30 days between approval of 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). This is so that the applicant will have sufficient time to obtain other representation or take other action. If a period has been set for reply and the period may be extended without a showing of cause pursuant to 37 CFR 1.136(a) by filing a petition for extension of time and fee, the practitioner will not be required to seek such extension of time for withdrawal to be approved. In such a situation, however, withdrawal will not be approved unless at least 30 days would remain between the date of approval and the last date on which such a petition for extension of time and fee could properly be filed.

In this case there is less than thirty days between approval of withdrawal of the current attorney of record and the expiration date of a time response period.

The Request is **Denied**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

James David Jacobs
Baker & McKenzie
805 Third Avenue
New York, NY 10022

UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov

Kristofer E. Elbing
187 Pelham Island Road
Wayland, MA 01778

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OFFICE OF PETITIONS

In re Patent No. 7,004,572 :

Issue Date: February 28, 2006 :

Application No. 10/163,909 : ON PETITION

Filed: July 3, 2003 :

Attorney Docket No. **I0001-002003**

This is a decision on the petition filed August 29, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee data on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **dismissed**.

A completed "Certificate of Correction" expressly specifying the desired correction did not accompany the request. Petitioner should complete the form PTO/SB/44, which is enclosed, and return it with any renewed request filed. Petitioner must also remit the certificate of correction of $100.00.

The renewed request may directed to the following:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

Questions regarding this decision may be directed to the undersigned at (571)272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/44

[1] See *Official Gazette* of June 22, 2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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LACKENBACH SIEGEL, LLP
LACKENBACH SIEGEL BUILDING
1 CHASE ROAD
SCARSDALE NY 10583

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OFFICE OF PETITIONS

In re Application of Shirish Bhagwanlal Mody et al Application No. 10/163,940 Filed: June 6, 2002 Attorney Docket No. JBCHE.P-9	DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed November 10, 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 RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Final Rejection of February 8, 2006, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This matter is being referred to Technology Center AU 1618.

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

Paul Huan Song
1229 S. Electric Ave.
Alhambra, CA 91803

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JUN 16 2003

Director's Office
Group 3700

Paper No. 3

In re Application of
SONG, PAUL HUAN
Application No.: 10/163,941
Filed: June 07, 2002

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed June 7, 2002 to make special under 37 CFR 1.102(c).

Since the requirements of 37 CFR 1.102(c) and MPEP 708.02, IV have been met, the petition is granted.

The application is being forwarded to the examiner for an action on the merits.

Linda J. Sholl
Special Program Examiner
Technology Center 3700
Phone: (703) 308-1288

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070814

DATE : August 14, 2007

TO SPE OF : ART UNIT 2811

SUBJECT : Request for Certificate of Correction on Patent No.: 6,949,774

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: Lynne Gurley **Art Unit** 2811

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

BASF AG
CARL-BOSCH-STRASSE 38
6700 LUDWIGSHAFEN
RHEINLAND-PFATZ D-67056
GERMANY

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JUL 25 2006
OFFICE OF PETITIONS

In re Patent No. 6,933,415	:	
Zhao et al.	:	DECISION ON APPLICATION
Issue Date: August 23, 2005	:	FOR
Application No. 10/163,953	:	PATENT TERM ADJUSTMENT
Filed: June 6, 2002	:	AND
Attorney Docket No. IN-9512	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. §1.705)," filed July 12, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to fifty (50) days. This request was recently forwarded to the undersigned for consideration.

The application for patent term adjustment is **GRANTED**.

Prior to a decision being rendered on this request, the above-identified application matured into U.S. Patent No. 6,933,415 with a revised patent term adjustment of one hundred fifty (150) days. For the reasons set forth herein, the revised patent term adjustment is being corrected to four hundred fifteen (415) days.

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 fifteen (415) days.

On July 2, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On July 12, 2004, patentees timely[1] submitted the instant application for patent term adjustment. Patentees dispute the reduction of 180 days associated with applicant delay in filing a response to the non-final Office action mailed September 25, 2003. Patentees state that their response was filed on December 8, 2003 (and a copy was transmitted at the request of the examiner on June 22, 2004) and thus, there was not failure to engage within the meaning of § 1.704(b).

A review of the record confirms that applicants did not fail to engage in reasonable efforts to conclude processing or examination within the meaning of § 1.704(b). Their response was received in the Office on June 22, 2004, with *prima facie* evidence in the form of a date-stamped return postcard, that the response was originally received in the Office on December 8, 2003. see MPEP 503. This was within the three-month period for response. Patentees are correct there was no delay within the meaning of § 1.704(b).

Moreover, given that the paper was received in the Office on December 8, 2003, but the Office did not take action in response until July 2, 2004, there is an additional basis for entry of a period of adjustment. Specifically, pursuant to §§ 1.702(a)(2) and 1.703(a)(3), a period of adjustment of 85 days is entered for the period of Office delay from April 3, 2004, the day after the date that is four months after the date a reply in compliance with 37 CFR 1.113(c) was filed to July 2, 2004, the date of mailing of an action under 35 U.S.C. 151.

After the mailing of the notice of allowance, an additional period of adjustment of 280 days was entered for Office delay pursuant to § 1.702(a)(4).

In view thereof, the patent should have issued with a revised patent term adjustment of 415 days (50 + 85 + 280).

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

---

[1] PALM records indicate that the Issue Fee payment was received on July 16, 2004.

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 FIFTEEN (415) 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 : 6,933,415 B2

DATED : August 23, 2005

INVENTOR(S) : Zhao 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 (150) days

Delete the phrase "by 150" and insert – by 415 days--

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Auzville Jackson, Jr.
8652 Rio Grande Road
Richmond VA 23229

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JAN 25 2006

OFFICE OF PETITIONS

In re Application of	:	
John A. Larson	:	DECISION ON PETITION
Application No. 10/163,978	:	UNDER 37 CFR 1.137(b)
Filed: June 6, 2002	:	
Attorney Docket No. 1581(ARL)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 7, 2005, to revive the above-identified application.

This application became abandoned for failure to reply timely to the Notice of Allowability mailed on March 31, 2005, which set a three-month statutory period to submit corrected drawings. Accordingly, this application became abandoned on July 1, 2005. A Notice of Abandonment was mailed on September 23, 2005.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of corrected drawings, paid the petition fee, and made the proper statement of unintentional delay.

The petition is **granted**.

This matter is being referred to the Office of Patent Publication.

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3211. Any questions regarding the status of the application or the issuance of a patent should be directed to the Office of Patent Publication.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Notice of Draftsperson's Patent Drawing Review

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

Mail Date: 04/21/2010

Applicant	: Jes Thyssen	: DECISION ON REQUEST FOR
Patent Number	: 7647223	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/163,995	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/07/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1272** 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 : 4-19-06

TO SPE OF : ART UNIT ~~2887~~ 2841

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/163998 Patent No.: 6818836

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.

Check claims

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Certificates of Correction Branch

703-308-9390 ext. _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: —

KAMAND CUNEO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

I.B. Patel
Primary Examiner AU: 2841

SPE

2841
Art Unit

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SUITE 1200
WASHINGTON DC 20005-4051

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OFFICE OF PETITIONS

In re Application of
Simon Richard Fox
Application No. 10/164,005
Filed: June 7, 2002
Attorney Docket Number: 006020.00020

ON PETITION

This is a decision on the petition filed May 14, 2007, to withdraw the holding of abandonment, which is treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

This application became abandoned on November 1, 2006 after the applicant failed to file a timely response to the non-Final Office Action mailed July 31, 2006. Accordingly, the Notice of Abandonment was mailed March 13, 2007.

Petitioner argues that the non-Final Office Action was not received and includes copies of the mail log from August 2006 to establish non-receipt and further argues that the non-Final Office Action was returned to the USPTO as "undelivered".

A review of the file reveals that the non-Final Office Action was mailed to the address of record on July 31, 2007, but was returned by the US Postal Service on August 7, 2006 as undeliverable. The review further reveals that there does not appear to have been a change of address filed prior to the mailing of the non-Final Office Action but that the address found in the petition is different from the address of record at the time the non-Final Office Action was mailed July 31, 2006. See MPEP sections 601.03 and 711.02(c).

As petitioner has not presented any evidence that the address of record had been changed with the USPTO at the time the non-Final Office Action was mailed, and in the absence of petitioner showing that they acted responsibly with respect to providing the USPTO with up to date addresses, the showing of record is therefore insufficient to warrant withdrawal of the holding of abandonment.

ALTERNATIVE VENUES

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(a)[1] or 37 CFR 1.137(b),[2] 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).

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

---

[1]A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(l);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

[2]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional 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)).

delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of
Simon Richard Fox
Application No. 10/164,005
Filed: June 7, 2002
Attorney Docket Number: 006020.00020

ON PETITION

This is a decision on the request for reconsideration filed June 12, 2007 under 37 CFR 1.181 to withdraw the holding of abandonment in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned on November 1, 2006 after the applicant failed to file a timely response to the non-Final Office Action mailed July 31, 2006. Accordingly, the Notice of Abandonment was mailed March 13, 2007. A petition filed May 14, 2007 under 37 CFR 1.181 was dismissed in a decision mailed May 24, 2007 because the office action was returned by the US Postal Service on August 7, 2006 as undeliverable and it appeared that the address had been changed although without notice to the USPTO.

With the renewed petition, petitioners provide proof that the address did not change until after the office action was mailed and no apparent reason can be determined since it appears that the address of record was placed on the correspondence.

In view of the facts set forth in the petition, it is concluded that the non-Final Office Action was never received. Accordingly, the holding of abandonment is withdrawn. No petition fee is due and none has been charged.

This matter is being referred to Technology Center 2624 for a re-mailing of the non-Final Office Action, previously mailed July 31, 2006 but not received.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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GARRETT & DUNNER LLP
1300 I STREET, N.W.
WASHINGTON, DC 20005-3315

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APR 1 6 2004

OFFICE OF PETITIONS

In re Application of :
Kentaro Tomioka et al :
Application No. 10/164,017 : ON PETITION
Filed: June 7, 2002 :
Attorney Docket No. 04329.2829

This is a decision on the petition, filed April 15, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 11, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (703) 306-5684.

The file will be forwarded to Technology Center AU 2835 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).

RUB / VAK / RID
4329.2829

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GARRETT & DUNNER LLP
1300 I STREET, N.W.
WASHINGTON, DC 20005-3315

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OFFICE OF PETITIONS

In re Application of :
Kentaro Tomioka et al :
Application No. 10/164,017 : ON PETITION
Filed: June 7, 2002 :
Attorney Docket No. 04329.2829

This is a decision on the petition, filed April 15, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 11, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (703) 306-5684.

The file will be forwarded to Technology Center AU 2835 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

RECEIVED
APR 1 9 2004
FINNEGAN HENDERSON, FARABOW, GARRETT AND DUNNER LLP

[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).

RTK
APR 2 0 2004

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PMB 955
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POTOMAC FALLS, VA 20165

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OFFICE OF PETITIONS

In re Application of :
Shunpei Yamazaki, et al. :
Application No. 10/164,019 : ON PETITION
Filed: June 7, 2002 :
Attorney Docket No. 0756-7004 :

This is a decision on the petition, filed August 1, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on May 19, 2005, using a Certificate of Mailing or Transmission under 37 CFR 1.8 dated May 17, 2005, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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 2813 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

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Lorusso, Loud & Kelly LLP
15 Rye Street
Suite 312
Portsmouth NH 03801

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FEB 01 2006

OFFICE OF PETITIONS

In re Application of :
Francesconi et al. :
Application No. 10/164,031 : DECISION ON PETITION
Filed: June 5, 2002 :
Attorney Docket No. TRG-306 :

This is a decision on the petition filed on June 23, 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.

The application became abandoned for failure to reply timely to the Notice of Allowance and Fee(s) Due mailed on January 8, 2004, which set a three-month statutory period for reply. In the absence of a timely filed response, the application became abandoned on April 9, 2004. A Notice of Abandonment was mailed on May 14, 2004.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to non-receipt of the Notice of Allowance mailed on December 29, 2003.[1] The practitioner asserts that a search of the file jacket and docket records by him and office personnel indicate that the Notice was not received. In support of his assertion, the practitioner submits a copy of the docket record (7 pages), where the non-received Notice would have been entered had it been received and docketed.

A review of the record indicates no irregularity in the mailing of the Notice of Allowance, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice of Allowance was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where

[1] The Office notes that the Notice of Allowance was mailed on January 8, 2004, not December 28, 2003, as petitioner states in the present petition.

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.[2] For example, if a three month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

The showing of record is insufficient to warrant withdrawal of the holding of abandonment at this time. Initially, the record indicates that petitioner submitted a change of correspondence address with the USPTO on March 4, 2004. The practitioner must submit a statement indicating the date that the law firm relocated to Portsmouth, New Hampshire. The showing outlined in the petition would not be sufficient if there were circumstances that pointed to a conclusion that the practitioner did not receive the Notice of Allowance because he did not timely submit a change of correspondence address with the USPTO. Additionally, the Office requests further clarification of the firm's practice for docketing communications from the USPTO. Unfortunately, the firm's docketing system is not apparent from the docket records submitted with this petition.

The petition to withdraw the holding of abandonment is **dismissed**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Extensions of time are permitted under 37 CFR 1.136(a). In the alternative, petitioner may wish to file a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell:**

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

[2] M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LORUSSO & ASSOCIATES
3 PINECREST TERRACE
PEASE INTERNATIONAL TRADEPORT
PORTSMOUTH NH 03801

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AUG 14 2006

OFFICE OF PETITIONS

In re Application of	:	
Francesconi et al.	:	
Application No. 10/164,031	:	DECISION ON PETITION
Filed: June 5, 2002	:	
Attorney Docket No. TRG-306	:	

This is a decision on the renewed petition filed on May 9, 2006, to withdraw the holding of abandonment. Petitioner obtained a one-month extension of time to file the present renewed petition. Thus, the renewed petition is filed timely.

The application became abandoned for failure to reply timely to the Notice of Allowance and Fee(s) Due ("Notice of Allowance") mailed on January 8, 2004, which set a three-month statutory period for reply. In the absence of a timely filed response, the application became abandoned on April 9, 2004. A Notice of Abandonment was mailed on May 14, 2004.

Petitioner requested that the Office withdraw the holding of abandonment due to non-receipt of the Notice of Allowance. The practitioner asserted that a search of the file jacket and docket records by him and office personnel indicated that the Notice was not received. In support of his assertion, the practitioner provided a copy of the docket record (7 pages), where the non-received Notice would have been entered had it been received and docketed. Additionally, petitioner submitted several declarations attesting to the fact that Marc A. Vivenzio, an associate with the law firm, collected the mail at least twice a week at the former Boston office, as well as checked for any firm mail at the U.S. Post Office branch in Boston at least once a week. The declarations stated that Mr. Vivenzio continued this practice through early February of 2004. The declarations further indicated that Mr. Vivenzio brought the mail he retrieved to the firm's Portsmouth office, and handed it unopened to Michele Bonenfant, who processed the mail for the firm's Portsmouth Office. Both Mr. Vivenzio and Ms. Bonenfant declared that they had no recollection of receiving the Notice of Allowance for this application.

A review of the record indicates no irregularity in the mailing of the Notice of Allowance, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly

mailed to the address of record. This presumption may be overcome by a showing that the Notice of Allowance was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[2] For example, if a three month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

Upon reviewing the evidence submitted on petition, the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The renewed petition under 37 CFR 1.181 is **GRANTED**. No petition fee is required.

Technology Center Art Unit 2875 has been advised of this decision. The matter is being referred to the Technology Center's technical support staff for mailing of a New Notice of Allowance and Issue Fee Due. The three (3) month statutory time period for responding to the Notice will be set to run from the mailing date of the new Notice of Allowance.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

[2] M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

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WENDEROTH, LIND & PONACK, L.L.P.
2033 K STREET N. W.
SUITE 800
WASHINGTON DC 20006-1021

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MAY 1 4 2008

OFFICE OF PETITIONS

In re Application of :
Francesconi et al. :
Application No. 10/164,031 : DECISION ON PETITION
Filed: June 5, 2002 :
Attorney Docket No. TRG-306 :

This is a decision on the petition filed on February 21, 2008, to withdraw the holding of abandonment.

The application became abandoned for failure to reply timely to the Notice of Allowance and Fee(s) Due ("Notice of Allowance") mailed on January 8, 2004, which set a three-month statutory period for reply. In the absence of a timely filed response, the application became abandoned on April 9, 2004. A Notice of Abandonment was mailed on May 14, 2004.

Petitioner requested that the Office withdraw the holding of abandonment due to non-receipt of the Notice of Allowance. A review of the record indicates no irregularity in the mailing of the Notice of Allowance, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice of Allowance was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[2] For example, if a three month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

[2] M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Upon reviewing the evidence submitted on petition, the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The renewed petition under 37 CFR 1.181 is **GRANTED**. No petition fee is required.

Technology Center Art Unit 2875 has been advised of this decision. The matter is being referred to the Technology Center's technical support staff for re-mailing of the Notice of Allowance and Issue Fee Due. The three (3) month statutory time period for responding to the Notice will be set to run from the date of re-mailing of the Notice of Allowance.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 3

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OCT 0 3 2002

OFFICE OF PETITIONS

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins CO 80527-2400

In re Application of
Baldwin, et al.
Application No 10/164,039
Filed: June 4, 2002
Attorney Docket No.30010976-2

DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.10(d), filed September 16, 2002, requesting that the above-identified application be accorded a filing date of June 4, 2002, rather than the presently accorded filing date of June 6, 2002.

The petition under 37 CFR 1.10(d) is **GRANTED**.

Petitioners request the earlier filing date on the basis that the application was deposited in Express Mail service on June 4, 2002, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by, *inter alia*, a mail log that shows a utility patent application with a client number of 50828-1270 was mailed on June 4, 2002, a docket record that shows a utility patent application with a client number of 50828-1270 was mailed on June 4, 2002, and a letter dated June 4, 2002 from Attorney Scott A. Horstemeyer to a client stating that a U.S. patent application with the client no. of 50828-1270 and docket no of 30010976-2 was filed on June 4, 2002. It is noted that Express Mail label No. EL924223903US is cited on the itemized patent application transmittal letter found in the application file and the docket no. referenced is 30010976-2. In addition, the exhibits have been authenticated by individuals who created the entries in the exhibits.

Paragraph (d) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
>
> (3) The petition includes a showing which establishes, to the satisfaction of

> the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

The petition filed September 16, 2002, is accompanied by the corroborating evidence required by the rule. Accordingly, the petition is granted.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The application is being returned to the Office of Initial Patent Examination for correction of the filing date to **June 4, 2002**.

Thereafter, the application will be forwarded to Technology Center Art Unit 2131 for examination in due course.

Any inquiries related to 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

cc: Scott A. Horstemeyer
Thomas, Kayden, Horstemeyer & Risley, LLP
100 Galleria Parkway, Suite 1750
Atlanta, GA 30339

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 5

LORUSSO & LOUD
440 COMMERCIAL STREET
BOSTON MA 02109

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JUL 22 2003

OFFICE OF PETITIONS

In re Application of :
Francesconi et al. :
Application No 10/164,045 :
Filed: June 5, 2002 :
Attorney Docket No. TRG-305 :

DECISION GRANTING PETITION

This is a decision on the Petition for Change of Filing Date, filed on July 17, 2002, requesting that the above-identified application be accorded a filing date of June 5, 2002, rather than the presently accorded filing date of June 6, 2002. The delay in treating this petition is regretted.

The Petition is **granted**.

Petitioner alleges the application was deposited in "Express Mail" service with the U.S. Postal Service, on June 5, 2002. In support, the petition is accompanied by a copy of the Express Mail mailing label, receipt no. EL571265557US, indicating a "date-in" of June 5, 2002. Additionally, the Application Transmittal Form identifies that the above-identified application, with attorney docket number TRG-305, was deposited via Express Mail with the same Express Mail mailing label, receipt no. EL571265557US.

The Office considers the date the correspondence is shown to have been deposited as "Express Mail" to be the "date-in" on the Express Mail mailing label. *See* MPEP §513. The date indicated on the "date-in" on the Express Mail mailing label verifies that the package was actually mailed. In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on June 5, 2002. Accordingly, the application is accepted as filed on June 5, 2002.

The application is being forwarded to Office of Initial Patent Examination for further processing, including the mailing of a corrected filing receipt with a filing date of June 5, 2002.

Telephone inquiries concerning this matter 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
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ALEXANDRIA, VA 22313-1450
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TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY, UT 84110

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MAR 0 8 2006

OFFICE OF PETITIONS

In re Patent No. 6,869,794	:	
Issue Date: March 22, 2005	:	
Application No. 10/164,085	:	NOTICE
Filed: June 4, 2002	:	
Attorney Docket No. 2578-4615.1US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed January 17, 2006. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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ALZA CORPORATION
P O BOX 7210
INTELLECTUAL PROPERTY DEPARTMENT
MOUNTAIN VIEW, CA 94039-7210

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MAY 2 3 2005

OFFICE OF PETITIONS

In re Application of :
Michel J.N. Cormier, et al. :
Application No. 10/164,095 :
Filed: June 4, 2002 :
Attorney Docket No. ARC 2589D :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 12, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (Notice) mailed July 15, 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 September 16, 2002.

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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

The application file is being forwarded to the Office of Initial Patent Examination for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Philip Yip
Alza Corporation
c/o Johnson & Johnson
One Johnson & Johnson Plaza, WH 3221
New Brunswick, NJ 08933

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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

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JUN 1 8 2008

In re Application of	:	
Cormier et al.	:	
Application No. 10/164,095	:	DECISION ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. ALZA-1056	:	

This is a decision on the petition, filed May 10, 2007, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of May 2, 2006, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before August 2, 2006.

Petitioner states that a timely reply was mailed via certificate of mailing on July 28, 2006, which included the following papers: amendment, copy of filing receipt, supplemental Information Disclosure Statement, form PTO/SB/08A, references 3-8, submission under MPEP 609D and Copy of International Search Reports from corresponding PCT Applications. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated July 28, 2006, which would have rendered the reply timely if received.

Further review of the record shows that the reply originally submitted on July 28, 2006 and received on July 31, 2006 has been located.

Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of May 2, 2006 is hereby withdrawn and the application restored to pending status.

This application is being referred to Technology Center AU 1639 for appropriate action in the normal course of business on the reply received with petition.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

Pet Dec.

PTO/SB/83 (08-03)
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	10/164,100
Filing Date	June 5, 2002
First Named Inventor	Jacob Owen Thompson
Art Unit	1731
Examiner Name	Not Yet Assigned
Attorney Docket Number	401607

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby apply to withdraw as attorney or agent for the above identified application.

The reasons for this request are: Files have been transferred

CORRESPONDENCE ADDRESS

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☒ Change the correspondence address and direct all future correspondence to:

Approved
Jacqueline M. Stone, Director
Technology Center 1700
JUN 29 2004

☐ Customer Number

OR

☒ Firm or Individual Name	Samuel Digirolamo, Esq.				
Address	BLACKWELL, SANDERS, PEPER, MARTIN LLP				
Address	720 Olive Street, Suite 2400				
City	St. Louis	State	Missouri	ZIP	63101
Country	United States				
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 30954

This request is enclosed in triplicate (including any attachments).

Name	Janelle D. Stone
Signature	Janelle D. Stone
Date	January 15, 2004

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/06/07

TO SPE OF : ART UNIT 1793

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/164131** Patent No.: **6942013**

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: _____

SPE

1793
Art Unit

PTO/SB/44 (04-05)
Approved for use through 04/30/2007. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,942,013

APPLICATION NO.: 10/164,131

ISSUE DATE : September 13, 2005

INVENTOR(S) : Lazar Strezov, et al.

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On title page, item (63) Related U.S. Application Data
add at end of paragraph
--, which is a U.S. National stage application of PCT/AU99/00641, filed August 6, 199!--.

Col. 1, line 6 - replace "which application claims priority to" with
--which application is a U.S. National stage application of--

Col. 4, line 61 - replace "measurements of 5 standard" with
--measurements of standard--

Col. 5, line 3 - replace "surface 15 of a" with
--surface of a--

Col. 5, line 14 - replace "the surface of 25 a shell" with
--the surface of a shell--

Col. 5, line 19 - replace "percentage melt 30 oxide" with
--percentage melt oxide--

Col. 7, line 14 - replace "obtained during 10 solidi-" with
--obtained during solidi- --

Col. 7, line 63 - replace "the surface of a 25 shell" with
--the surface of a shell--

Col. 8, line 39 - replace "showing 35 trans-" with
--showing trans- --

Col. 10, line 17 - replace "respective MOE steel exhibits" with
--respective M06 steel exhibits--

Col 13., claim 7, line 14 - replace "shoes in the exterior" with
--shows in the exterior--

MAILING ADDRESS OF SENDER (Please do not use customer number below): 6,942,013

Michael H. Minns
Hahn Loeser & Parks LLP
One GOJO Plaza
Suite 300
Akron, OH 44311

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.

Practitioner's Docket No. 201143.00022 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Number:	6,942,013
Issued:	September 13, 2005
Name of Patentee(s):	Lazar Strezov, Kannappar Mukunthan
Title of Invention:	CASTING STEEL STRIP

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR APPLICANT'S MISTAKE (37 C.F.R. section 1.323)

1. It is noted that an error appears in this patent of a minor nature or character, as more fully described below. It occurred in good faith. Correction thereof does not involve such changes in the patent as would constitute new matter or would require re-examination. A certificate of correction is requested.

2. Attached hereto is PTO/SB/44 (also FORM PTO/1050) in a form suitable for printing.

3. The exact page and line number where the error occurs in the application file are:

   On title page, item (63) Related U.S. Application Data
   add at end of paragraph
   --, which is a U.S. National stage application of PCT/AU99/00641, filed August 6, 1999,--.

   Col. 1, line 6 - replace "which application claims priority to" with
   --which application is a U.S. National stage application of--

   Col. 4, line 61 - replace "measurements of 5 standard" with
   --measurements of standard--

   Col. 5, line 3 - replace "surface 15 of a" with
   --surface of a--

   Col. 5, line 14 - replace "the surface of 25 a shell" with
   --the surface of a shell--

   Col. 5, line 19 - replace "percentage melt.30 oxide" with
   --percentage melt oxide--

   Col. 7, line 14 - replace "obtained during 10 solidi-" with
   --obtained during solidi- -

Col. 7, line 63 - replace "the surface of a 25 shell" with
--the surface of a shell--

Col. 8, line 39 - replace "showing 35 trans-" with
--showing trans- --

Col. 10, line 17 - replace "respective MOE steel exhibits" with
--respective M06 steel exhibits--

Col 13., Claim 7, line 14 - replace "shoes in the exterior" with
--shows in the exterior--

4. Please send the Certificate to:

   Michael H. Minns
   Hahn Loeser & Parks LLP
   One GOJO Plaza
   Suite 300
   Akron, OH 44311

5. Please pay the fee required by 37 C.F.R. § 1.20(a), as follows:

   Authorization is hereby made to charge the amount of $100.00 to Deposit Account No. 15-0450.

Date: September 4, 2007

/Michael H. Minns/
Signature of Practitioner
Michael H. Minns
Hahn Loeser & Parks LLP
One GOJO Plaza
Suite 300
Akron, OH 44311

Reg. No.: 31,985
Tel. No.: 330-864-5550
Customer No.: 021324

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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AVERY N. GOLDSTEIN
ANDERSON & CITKOWSKI, P.C.
280 N. OLD WOODWARD, SUITE 400
BIRMINGHAM, MI 48009-5394

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MAR 1 9 2004

OFFICE OF PETITIONS

In re Application of :
Hans Haas et al :
Application No. 10/164,158 :
Filed: June 6, 2002 :
Attorney Docket No. PIA-10003/04

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to the Technology Center AU 1751.

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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WARE FRESSOLA VAN DER
SLUYS & ADOLPHSON
BRADFORD GREEN BUILDING
755 MAIN STREET, PO BOX 224
MONROE, CT 06468

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DEC 28 2005

OFFICE OF PETITIONS

In re Application of	:	
Joseph Skarzenski et al	:	
Application No. 10/164,171	:	ON PETITION
Filed: June 5, 2002	:	
Attorney Docket No. 835054002	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 9, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue/publication fees in a timely manner in reply to the Notice of Allowance And Fee(s) Due mailed September 7, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on December 8, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue/publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the issue/publication fees are accepted as having been unintentional delayed.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Publishing Division.

Wan Laymon
Wan Laymon
Petitions Examiner
Office of Petitions

cc: THADDIUS J. CARVIS
102 NORTH KING STREET
LEESBURG, VA 20176

UNITED STATES PATENT AND TRADEMARK OFFICE

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STEPTOE & JOHNSON, LLP
1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

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MAY 09 2008

OFFICE OF PETITIONS

In re Application of	:	
Benjamin V. Booher	:	
Application No. 10/164,191	:	DECISION ON PETITION
Filed: June 5, 2002	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 88736.0009	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 20, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Since all of the above requirements have been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed 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 application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 1794, for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3226. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Andrea Smith
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/164,191	06/05/2002	1794	422	88736.0009	25	2

CONFIRMATION NO. 8981

CORRECTED FILING RECEIPT

27890
STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

OC000000029840847

Date Mailed: 05/08/2008

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Benjamin V. Booher, Scottsdale, AZ;

Power of Attorney: The patent practitioners associated with Customer Number 27890

Domestic Priority data as claimed by applicant

This application is a DIV of 09/651,802 08/30/2000 PAT 6,479,413

Foreign Applications

If Required, Foreign Filing License Granted: 07/05/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/164,191**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Pultrusion method of making composite friction members

Preliminary Class

442

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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SETH A. WATKINS
STEPTOE & JOHNSON LLP,
1330 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20036-1795

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JUL 23 2008

In re Application of	:	
Benjamin V. BOOHER	:	
Application No. 10/164,191	:	DECISION ON PETITION
Filed: June 5, 2002	:	TO WITHDRAW
Attorney Docket No. 88736.0009	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 3, 2008.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Seth A. Watkins on behalf of all practitioners of record.

All practitioners of record have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence of record has been changed and the new correspondence address is the address indicated below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-6735.

Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: ASCENZ FRICTION & BRAKE LLC
SCOTTSDALE INDUSTRIAL PARK
PO BOX 14664
SCOTTSDALE, AZ 85267-4664

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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FROST BROWN TODD, LLC
2200 PNC CENTER
201 E. FIFTH STREET
CINCINNATI, OH 45202

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DEC 0 4 2006
OFFICE OF PETITIONS

In re Patent No.: 6,912,700 :
Issued: June 28, 2005 :
Application No. 10/164,203 : NOTICE
Filed: June 6, 2002 :
Atty. Dkt. No. 91830/0485133 :

This is a notice regarding the request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 26, 2006. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED.**

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

ALESIA M. BROWN
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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VOLPE AND KOENIG, P.C.
DEPT. ICC
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA PA 19103

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JUN 15 2010

OFFICE OF PETITIONS

In re Patent No. 7,167,462 :
Issue Date: January 23, 2007 :
Application No. 10/164,209 : DECISION ON PETITION
Filed: June 7, 2002 :
Attorney Docket No. I-20055.8US :

This is a decision on the Request For Certificate of Correction, filed January 4, 2008, requesting correction on the Title Page of the subject patent, via issuance of a Certificate of Correction under 37 CFR 1.323, to identify the correct name of assignee. The Request is being treated as a Petition under 37 CFR 3.81. A completed Certificate of Correction Form (PTO/SB-44) accompanied the petition. This decision does not treat any other requested changes.

Petitioner's signature, as it appears on both the Transmittal Form and the Fee Transmittal, is accepted as the signature for the Petition Under 37 CFR 3.81.

The petition under 37 CFR 3.81 is **GRANTED**.

Petitioner requests, in effect, that the Title Page at section (73) of the above-identified patent be corrected, via issuance of a Certificate of Correction, to correct the name of the assignee identified thereon from "***InterDigital Technologies Corporation***" to --***InterDigital Technology Corporation***--.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811) as set forth under 37 CFR 1.20(a) and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), were submitted with the Petition. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content at section (73) on the Form PTO/SB/44 that accompanied the present Petition.

However, petitioner requests numerous corrections be made on the Title Page and In The Specification. Therefore, these corrections will be handled directly in the Certificate of Correction Branch.

Inquiries related this communication should be directed to undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,167,462.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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BAKER & DANIELS LLP
300 NORTH MERIDIAN STREET
SUITE 2700
INDIANAPOLIS, IN 46204

Mail Date: 04/20/2010

Applicant	: Steven E. Enochs	: DECISION ON REQUEST FOR
Patent Number	: 7631848	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/164,241	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/05/2002	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1220** 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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United States Patent and Trademark Office
P.O. Box 1450
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MERCHANT & GOULD (MICROSOFT)
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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MAR 1 5 2007

OFFICE OF PETITIONS

In re Application of	:	
REYNAR, Jeff et al.	:	
Application No.10/164,260	:	DECISION GRANTING PETITION
Filed: June 5, 2002	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 60001.0182US01	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March8, 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 February 26, 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 Graves at (571) 272-7253.

This application is being referred to Technology Center AU 2191 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

[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

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WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL RD
PALO ALTO CA 94304-1050

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APR 10 2006
OFFICE OF PETITIONS

In re Patent No. 6,982,253	:	
Joshi-Hangal, et al.	:	
Issue Date: January 3, 2006	:	DECISION ON
Application No. 10/164,276	:	PATENT TERM ADJUSTMENT
Filed: June 5, 2002	:	
Attorney Docket No. 12636-257	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT AND APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705", filed February 16, 2006. Patentee requests that the patent term adjustment indicated on the patent be corrected from one hundred thirty-six (136) days to one hundred forty-eight (148) days.

The application for patent term adjustment is **DISMISSED**.

On January 3, 2006, the above-identified application matured into U.S. Patent No. 6,982,253. The instant request for reconsideration filed February 16, 2006 was timely filed within two months of the date the patent issued. See §1.705(d). The Patent issued with a Patent Term Adjustment of one hundred thirty-six (136) days. Patentee states that he should not have been assessed applicant delay of twelve (12) days for the filing of a "Request for Refund".

The adjustment of twelve (12) days for the submission of a refund request after the Notice of Allowance has been determined to be correct. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing of certain papers after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). A refund request is listed as an example of a paper that is considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application.

In view thereof, the correct determination of PTA at the time of issuance is **one hundred thirty-six (136)** days.

The $200 fee set forth in 37 C.F.R. §1.18(e) has been charged to Deposit Account No. 23-2415, as authorized.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Kery A Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

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WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL RD
PALO ALTO CA 94304-1050

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JUL 26 2006
OFFICE OF PETITIONS

In re Patent No. 6,982,253	:	DECISION ON
Joshi-Hangal, et al.	:	PATENT TERM ADJUSTMENT
Issue Date: January 3, 2006	:	AND
Application No. 10/164,276	:	NOTICE OF INTENT
Filed: June 5, 2002	:	TO ISSUE
Attorney Docket No. 12636-257	:	CERTIFICATE OF CORRECTION

This is a decision on the "COMMUNICATION REGARDING DECISION ON PATENT TERM ADJUSTMENT", filed May 2, 2006. Patentee requests that the patent term adjustment indicated on the patent be corrected from one hundred thirty-six (136) days to one hundred forty-eight (148) days.

The application for patent term adjustment is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one hundred forty-eight (148)** days.

On January 3, 2006, the above-identified application matured into U.S. Patent No. 6,982,253. The Patent issued with a Patent Term Adjustment of one hundred thirty-six (136) days. Patentees filed an application for patent term adjustment on February 16, 2006, timely filed within two months of the date the patent issued. See §1.705(d). Patentees state that they should not have been assessed applicant delay of twelve (12) days for the filing of a "Request for Refund".

However, the application for patent term adjustment was dismissed in a decision mailed on April 10, 2006. The decision cited to the Official Gazette Notice dated June 26, 2001, in which the Director advised applicants and patentees that the filing of certain papers after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). A refund request is listed as an example of a paper that is considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application.

However, on request for reconsideration, patentees point out that the request for reconsideration was filed by another law firm (Morgan Lewis Bockus LLP), due to the fact that Morgan Lewis Bockus was mistakenly charged for an IDS that Applicants filed. Accordingly, it is concluded in this instance that Patentees should not be charged twelve (12) days for the refund request.

In view thereof, the correct determination of PTA at the time of issuance is **one hundred forty-eight (148)** days.

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 forty-eight (148)** days, subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Kery A Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enc: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 6,982,253 B2

DATED : January 3, 2006

INVENTOR(S) : Joshi-Hangal, 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 (136) days

Delete the phrase "by 136 days" and insert – by 148 days—

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Patent Department
Exelixis, Inc.
170 Harbor Way
P. O. Box 511
South San Francisco, CA 94083-0511

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AUG 24 2005

OFFICE OF PETITIONS

In re Application of :
Lori Friedman, et al. :
Application No. 10/164,278 : ON PETITION
Filed: June 5, 2002 :
Attorney Docket No. EX02-096C :

This is a decision on the petition under 37 CFR 1.137(b), filed March 21, 2005, to revive the above-identified application.

This is also a decision on the petition, filed on November 22, 2004 and supplemented on March 21, 2005, under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The petition under 37 CFR 1.78(a)(6) is **GRANTED**.

<u>In regard to the petition under 37 CFR 1.137(b):</u>

A final Office action was mailed to applicant on November 23, 2004, which set a 3 (three) month shortened statutory period for reply. As no reply was timely received and no extensions of time under the provisions of 37 CFR 1.136 were obtained, the application became abandoned on February 24, 2005.

Since the application became abandoned, applicant filed the instant petition and a proposed reply, namely, a Request for Continued Examination (RCE) under 37 CFR 1.114. Receipt of the RCE is acknowledged.

<u>In regard to the petition under 37 CFR 1.78(a)(6):</u>

A petition for acceptance of a claim for late priority under 37 CFR § 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR § 1.78(a)(5)(ii). In addition, the petition under 37 CFR § 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 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 complies with the requirements noted above.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) 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(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. §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(s) should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application(s) noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application(s), accompanies this decision on petition.

Telephone inquiries concerning this decision should be directed to Marianne Jenkins at (571) 272-3223.

The application is being referred to Technology Center AU 1652 for appropriate action on the amendment submitted November 23, 2004, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/384,348 and for processing the RCE filed March 21, 2005.

Frances Hicks

Frances M. Hicks
Lead Petitions Examiner
Office of Petitions

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APR 16 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

KATTEN MUCHIN ZAVIS ROSENMAN
575 MADISON AVENUE
NEW YORK NY 10022-2585

In re Application of
Masashi Muramori, et al.
Application No. 10/164,304
Filed: June 6, 2002
For: **IMAGE PROCESSING METHOD**

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the Petition to Withdraw the Holding of Abandonment filed March 7, 2005, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

This application became abandoned for failure to timely respond to the Non-Final Office Action mailed May 24, 2004. A Notice of Abandonment has not been mailed.

Petitioner alleges that the Non-Final Office Action mailed May 24, 2004was not received.

Based on M.P.E.P. § 711.03(c) *[See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)]*, in absence of any irregularity in the mailing of an Office Action, 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 communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) 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,

(c) 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 showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the records indicate that the Non-Final Office Action was properly mailed to the practitioner of record at the correspondence address at the time of mailing. Thus, there was no irregularity in mailing of the Non-Final Office Action on the part of the U.S. Patent and Trademark Office.

The allegation of non-receipt is supported by a statement by the petitioner attesting that the Office Action was not received and that a search of the contents of the file jacket and docket records reveal no evidence of receipt. Copies of the docket records have also been included to corroborate petitioner's claim.

The showing offered complies with the requirements of a successful petition to withdraw the holding of abandonment due to non-receipt of the Non-Final Office Action as set forth above. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Accordingly, the petition is **GRANTED.**

Due to the time lapse from the previous Office action and this decision, the file will be forwarded to the examiner for updating the search and the Office action as appropriate. The time period for response will be set to run from the mailing date of the new action.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications

Pet Dec.

PTO/SB/83 (08-03)
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	10/164,331
Filing Date	June 5, 2002
First Named Inventor	Jacob Owen Thompson
Art Unit	1731
Examiner Name	Jose A. Fortuna
Attorney Docket Number	401604

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby apply to withdraw as attorney or agent for the above identified application.

The reasons for this request are: Files have been transferred

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	Samuel Digirolamo, Esq.				
Address	BLACKWELL, SANDERS, PEPER, MARTIN LLP				
Address	720 Olive Street, Suite 2400				
City	St. Louis	State	Missouri	ZIP	63101
Country	United States				
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 30954

This request is enclosed in triplicate (including any attachments).

Name	Janette D. Strode
Signature	
Date	January 15, 2004

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Approved
JMStone
Jacqueline M. Stone, Director
Technology Center 1700

JUN 29 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

FEB 24 2003

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 3

In re Application of
Ashot Salvaryan
Application No. 10/164,336
Filed: June 7, 2002
Attorney Docket No. 1399

: DECISION ON PETITION

This is a decision on the petition filed on November 15, 2002 by which petitioner seeks to have the application made special for advanced examination out of turn. Petitioner has remitted the $130.00 petition fee.

The petition is dismissed.

Petitioner has stated facts in the petition which do not place the petition squarely within any of the designated types of petitions to make special discussed in MPEP 708.02. It would appear that the closest type of petition would be the petition to make special based on actual infringement. MPEP 708.02(II) states that a petition on the grounds of actual (not prospective) infringement must be supported by a statement 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.

In addition petitioner 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.

A review of the instant petition shows that it appears to be addressed to prospective infringement, and not to actual infringement. Therefore, the petition does not satisfy the requirements of MPEP 708.02(II).

Petitioner may file a renewed petition, without additional fee, addressing the requirements discussed above. Alternatively, petitioner may wish to file a renewed petition to make special based upon the accelerated practice discussed at MPEP 708.02(VIII). Any renewed petition must be filed within two months of the date of this decision. See 37 CFR 1.181(f).

The application is being returned to storage in the Technology Center Central Files awaiting appropriate action by petitioner, or examination in due course.

PETITION DISMISSED.

Stephen Marcus, Special Program Examiner
Patent Examining Groups 3710 and 3720

BEST AVAILABLE COPY

J. E. McTaggart
Suite 105
1860 Eastman Avenue
Ventura, CA 93003

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J.E. MCTAGGART
6650 CRESCENT STREET
SUITE 4
VENTURA CA 93003

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NOV 19 2007

OFFICE OF PETITIONS

In re Application of	:	
Salvaryan, Ashot	:	
Application No. 10/164,336	:	DECISION ON PETITION
Filed: June 7, 2002	:	
Attorney Docket No. 1399	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 24, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center 3700 for further examination on the merits.

Liana Walsh
Petitions Examiner
Office of Petitions

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900 SOUTH SERRANO
APT. 701
LOS ANGELES CA 90006

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APR 27 2009

OFFICE OF PETITIONS

In re Patent No. 6,840,983 :
Issue Date: January 11, 2005 :
Application No. 10/164,344 : ON PETITION
Filed: June 7, 2002 :
Attorney Docket No. 10001-CIP :

This is a decision on the petition under 37 CFR 1.378(c), filed March 13, 2009, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on January 12, 2009 for failure to pay the first maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

The patent file is being referred to Files Repository.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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EDWARDS LIFESCIENCES CORPORATION
LEGAL DEPARTMENT
ONE EDWARDS WAY
IRVINE, CA 92614

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JUN 22 2007

OFFICE OF PETITIONS

In re Application of	:	
Peter Thornton	:	
Application No. 10/164,353	:	ON PETITION
Filed: June 4, 2002	:	
Attorney Docket No. 5718cip	:	

This is a decision on the petition filed January 30, 2007 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the Issue fee in a timely manner in reply to the Notice of Allowance mailed September 20, 2006, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on December 21, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of 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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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/164,353	06/04/2002	Peter Thornton	5718cip

CONFIRMATION NO. 2085

OC000000024478622

30452
EDWARDS LIFESCIENCES CORPORATION
LEGAL DEPARTMENT
ONE EDWARDS WAY
IRVINE, CA 92614

Date Mailed: 06/21/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/06/2007.

- 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
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/164,353	06/04/2002	Peter Thornton	5718cip

CONFIRMATION NO. 2085

OC000000024478663

30452
EDWARDS LIFESCIENCES CORPORATION
LEGAL DEPARTMENT
ONE EDWARDS WAY
IRVINE, CA 92614

Date Mailed: 06/21/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/06/2007.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
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BOSTON, MA 02205

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OFFICE OF PETITIONS

In re Application of	:
Kai Y. Xu	:
Application No. 10/164,363	: DECISION ON PETITION
Filed: June 6, 2002	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 0402.013.0002	:

This is a decision on the petition, filed December 16, 2005, which is being treated as a petition under 37 CFR 1.78(a)(2) 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** as moot for the reason stated below.

In a communication filed January 4, 2006, petitioner (Matias Ferrario) requested that the petition filed on December 16, 2005 be withdrawn from consideration. Accordingly, pursuant to the request, no consideration on the merits of the petition of December 16, 2005 will be undertaken.

Since the request to withdraw consideration of the petition of December 16, 2005 was received prior to any decision being rendered, it would be appropriate to refund the fees assessed to the petition. Accordingly, the fees assessed (in the amount of $2,740) will be credited to petitioner's deposit account in due course.

In view of the nonacceptance on January 10, 2006 of the power of attorney filed January 4, 2006, a courtesy copy of this decision is being forwarded to petitioner. However, until such time as an acceptable power of attorney is received, all future communications will be mailed to the above address of record.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 1644 for further action as the nature of the case requires.

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Castellano Malm Ferrario & Buck PLLC
2121 K Street NW, Suite 800
Washington, DC 20037

UNITED STATES PATENT AND TRADEMARK OFFICE

OCT 16 2006

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AKERMAN SENTERFITT
P.O. BOX 3188
WEST PALM BEACH FL 33402-3188

In re Application of	:
Kai Xu	:
Serial No.: 10/164,363	: PETITION DECISION
Filed: June 6, 2002	:
Attorney Docket No.: 0402.013.0002	:

This is in response to the petition under 37 CFR § 1.59(b), filed August 25, 2006, to expunge information from the above identified application.

Petitioner requests that the last three pages entitled "Comments on Detailed Action" of the document submitted July 24, 2006, in connection with Applicants' response to the Non-Final action be expunged from the record.

Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the information is appropriate. The file entry for this document has been closed and as such the document is no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, applicants' petition is GRANTED.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

George C. Elliott

George Elliott
Director, Technology Center 1600

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STERNE, KESSLER, GOLDSTEIN & FOX
1100 NEW YORK AVENUE., N.W.
WASHINGTON DC 20005

In re Application of	:	
Min et al	:	
Application No. 10/164,364	:	DECISION GRANTING PETITION
Filed: June 7, 2002	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 1875.1530002	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 10, 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 November 29, 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 the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2611 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Karen Creasy
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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Paper No. 8

Greg Soderling
Tantalus Systems Corp.
4224 Manor Street
Burnaby, BC V5G 1B2
Canada

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NOV 1 8 2003
OFFICE OF PETITIONS

In re Application of :
Mohammad et al. :
Application No. 10/164,394 :
Filed: June 10, 2002 :
Attorney Docket No. TANTALUS #1 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 3, 2003, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner in reply to the Notice to File Missing Parts of Application (Notice) mailed July 12, 2002, which set a shortened statutory 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 have been obtained. Accordingly, the application became abandoned on September 13, 2002.

The application file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

Latrice Bond

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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LITMAN LAW OFFICES, LTD.
P.O. BOX 15035 CRYSTAL CITY STATION
ARLINGTON VA 22215

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OFFICE OF PETITIONS

In re Application of
William Dyson
Application No. 10/164,407
Filed: June 10, 2002
Attorney Docket No. 5884.02

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 3, 2005, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a reply to a non-final Office Action mailed December 4, 2003. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on March 5 , 2004. A Notice of Abandonment was mailed on September 15, 2004.

This petition is hereby **GRANTED**.

The Office hereby acknowledges the receipt of the amendment submitted with the instant petition.

This application is being forwarded to Technology Center 2800 for further processing.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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William E. Dyson III
503 Higgin Drive
Odenton MD 21113-2001

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APR 16 2008

In re Application of :
William Dyson :
Application No. 10/164,407 : ON PETITION
Filed: June 10, 2002 :
Attorney Docket No. 5884.02 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 11, 2007 and supplemented on January 19, 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 timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of February 7, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) 1 and 3.

As to item (1), an amendment after final Office action was submitted on petition. However, the examiner has determined the amendment does not place the application in condition for allowance. An advisory action accompanies this decision.

As to item (3), 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

enclosure

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/164,407	Applicant(s) DYSON, WILLIAM E.
	Examiner Audrey Y. Chang	Art Unit 2872

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☒ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,3-7 and 9-12*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Audrey Y. Chang/
Primary Examiner, Art Unit 2872

Continuation of 3. NOTE: Thre newly proposed amendment chages the scopes of the claims raises the issues of new matters and require further considerations and searches.

Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments are mainly based on newly proposed but not yet entered amendments to the claims that are not persuasive to overcome the rejections. .

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William E. Dyson III
503 Higgin Drive
Odenton MD 21113-2001

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AUG 2 9 2008

OFFICE OF PETITIONS

In re Application of	:	
William Dyson	:	
Application No. 10/164,407	:	ON PETITION
Filed: June 10, 2002	:	
Attorney Docket No.5884.02	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed June 13, 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 February 7, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is May 8, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405, and the submission required by 37 CFR 1.114; (2) the petition fee of $750; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

This application is being referred to Technology Center AU 2872 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.

Charlema Grant

Charlema Grant
Petitions Attorney
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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William E. Dyson III
60 Hamilton Street, N.W.
Washington, D.C. 20011-3312

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OFFICE OF PETITIONS

In re Application of
William Dyson III
Application No. 10/164,407
Filed: June 10, 2002
For: Gun Mirror

DECISION ON PETITION

This is a decision on the petition filed under 37 CFR 1.137(b) in the above-identified application filed on December 15, 2008.

The petition is **DISMISSED AS MOOT**.

A Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on November 17, 2008. The Notice set an extendable one- month reply period of December 17, 2008. A reply was received on December 15, 2008. The reply in the form of an amendment also included the instant petition.

A review of the record shows that since a timely response to the Notice of Non-Compliant Amendment (37 CFR 1.121) was submitted on December 15, 2008, a petition is not required. Accordingly, the petition is dismissed as moot.[1]

It should be noted, the examiner will determine the sufficiency of the amendment submitted on December 15, 2008.

The change of address submitted has been entered and made of record.

This application is being referred to Technology Center AU 2872 for appropriate action by the Examiner in the normal course of business on the reply received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

[1] It is further noted that the petition was not accompanied with a petition fee. However, in this instance since a petition was not required a decision has been rendered.

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MAR 16 2009

OFFICE OF PETITIONS

William E. Dyson III
60 Hamilton Street, N.W.
Washington, D.C. 20011-3312

In re Application of
William Dyson III
Application No. 10/164,407
Filed: June 10, 2002
For: Gun Mirror

DECISION ON PETITION

This is a decision on the petition filed under 37 CFR 1.137(b) in the above-identified application filed on January 21, 2009.

The petition is **DISMISSED AS MOOT.**

A Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on November 17, 2008. The Notice set an extendable one- month reply period of December 17, 2008. A reply was received on December 15, 2008. The reply in the form of an amendment also included the instant petition.

A review of the record shows that since a timely response to the Notice of Non-Compliant Amendment (37 CFR 1.121) was submitted on December 15, 2008, a petition is not required.

The abandonment, which occurred on March 4, 2004, was addressed with the revival of the application with the decision mailed on March 24, 2005.

Accordingly, the petition is dismissed as moot. No petition fees have been charged and none are required.

It should be noted, the examiner will determine the sufficiency of the amendment submitted on December 15, 2008.

There is no indication that the person signing the present petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. A courtesy copy of this decision is being mailed to the address given on the petition. However, the Office will mail all future correspondence solely to the address of record.

This application is being referred to Technology Center AU 2872 for appropriate action by the Examiner in the normal course of business on the reply received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

Cc: John Remon Wenzel
Litman Law
P.O. Box 15035
Arlington, VA 22215

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9003 FLORIN WAY
UPPER MARLBORO, MD 20772

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OFFICE OF PETITIONS

In re Application of	:	
Mark Geshel et al	:	
Application No. 10/164,412	:	DECISION DISMISSING PETITION
Filed: June 10, 2002	:	UNDER 37 CFR 1.313(a)
Attorney Docket No. 1494/19	:	

This is a decision on the petition under 37 CFR 1.313(a), filed June 30, 2006, requesting withdrawal of the above-identified application from issue.

The petition is **dismissed** as moot for the reasons stated below.

A review of the file record discloses that a Notice of Allowance was mailed on May 9, 2006, with the issue fee being due on or before August 9, 2006. The petition states that the issue fee in this case has not been paid.

The filing of a petition under 37 CFR 1.313(a) is unnecessary, since the mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. *Note* MPEP §§ 706.07(h)(IX) and 1308.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218.

The matter is being referred to Technology Center AU 2624 for appropriate processing of the RCE filed June 30, 2006, and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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YOUNG & THOMPSON
745 SOUTH 23RD STREET
2ND FLOOR
ARLINGTON, VA 22202

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OFFICE OF PETITIONS

In re Application of
Kurt Langen
Application No. 10/164,424
Filed: June 10, 2002
Attorney Docket No. 4301-1016-1

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Applicant is reminded that, in view of applicant's loss of entitlement to small entity status, the issue fee payment filed in response to the Notice of Allowance and Issue Fee Due mailed November 5, 2004 must be paid as a large entity.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (571) 272-3201.

This file is being referred to Publishing Division to await a response to the Notice of Allowance mailed November 5, 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
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WORKMAN NYDEGGER/MICROSOFT
1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UT 84111

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JUN 17 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
John Charles Dun et al :
Application No. 10/164,441 :
Filed: June 6, 2002 :
Attorney Docket No. 13768.291 :

This is a decision on the petition filed June 16, 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 15, 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 2114 for processing of the request for continued examination under 37 CFR 1.114.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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PERKINS COIE LLP
POST OFFICE BOX 1208
SEATTLE WA 98111-1208

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OCT 04 2007

OFFICE OF PETITIONS

In re Application of	:	
Justin Merritt et al	:	
Application No.10/164,446	:	DECISION ON PETITION
Filed:June 6, 2002	:	
Attorney Docket	:	
No.59157.8009.US00	:	

This is a decision on the petition, filed May 1, 2007, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to timely pay the issue and publication fee on or before April 5, 2007, in view of the Notice of Allowance mailed January 5, 2007.

Petitioner states that a timely reply was mailed via certificate of mailing on April 5, 2007, which included the following papers: Issue Fee Transmittal. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated April 5, 2007, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from

> the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:
>
> (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
>
> (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
>
> (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition fails to satisfy item (3) above. In this regard, a statement by the person signing the certificate of mailing, attesting to his/her personal knowledge of the previous timely mailing of the Issue Fee Transmittal stated to have been mailed on April 5, 2007, has not been presented. Accordingly, the holding of abandonment will not be withdrawn at this time.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

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 1.8(b).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

In re Application of	:	
Justin Merritt et al	:	
Application No. 10/164,446	:	DECISION ON PETITION
Filed: June 6, 2002	:	
Attorney Docket No. 59157.8009.US00	:	

This is a decision on the renewed petition, filed October 16, 2007, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before April 5, 2007, in view of the Notice of Allowance mailed January 5, 2007.

Petitioner states that a timely reply was mailed via certificate of mailing on April 5, 2007, which included the following papers: Issue Fee Transmittal. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated April 5, 2007, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or

after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely reply to the Notice of Allowance mailed January 5, 2007, is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed on April 5, 2007.

This application is being referred to the Office of Data Management to be processed into a patent.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : Mar. 2, 2006

TO SPE OF : ART UNIT 1755 (*Jerry Lorengo*)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,962,886

A response is requested with respect to the accompanying request for a certificate of correction. This response is for an IFW application, **please send this form with your decision - to be scanned into the IFW contents as DOC CODE: COCX**.

then return a message in MADRAS to Team: PUBSCofC, User: employee (named below). Please complete this form and have it scanned, within **7** days.

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.
See the tables and amendments. Which amdts. are approved or denied? Your denial or approval decision is needed below.

sp STACY STACY POWELL

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 x120

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☑ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

_____

_____

_____

_____

_____

_____ 1755
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

JJGJR.: 06-06

Paper No:__

MYERS BIGEL
SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH NC 27627

COPY MAILED

JUN 19 2006

OFFICE OF PETITIONS

In re Application of	:	
Johnson	:	DECISION
Application No. 10/164,471	:	
Filing Date: 6 June, 2002	:	
Attorney Docket No.: 9060-194	:	

This is a decision on the petition filed on 25 May, 2006, requesting withdrawal of the holding of abandonment under 37 C.F.R. §1.181.

For the reasons set forth below, the petition as considered under 37 C.F.R. §1.181 is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the final Office action mailed on 4 May, 2005, with reply due absent an extension of time on or before 4 August, 2005;
- the instant application went abandoned by operation of law after midnight 4 August, 2005;
- the Office mailed the Notice of Abandonment on 17 May, 2006;
- on 25 May, 2006, Petitioner averred that he filed a Notice of Appeal (with fee) on 6 September, 2005, and an Appeal Brief (with fee) on 3 November, 2005, and provided

copies of the documents in question and copies of date-stamped ("SEP 6 2005" and "NOV 3 2005," respectively) receipt cards (see: MPEP §503[1]) to which Petitioner referred;

- out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose;[2]

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[1] MPEP §503 provides in pertinent part:

§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.

(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.

(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

- Petitioner now can be said to have made the required showing.

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

---

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;

(2) Returning papers;

(3) Precluding a party from filing a paper, or presenting or contesting an issue;

(4) Imposing a monetary sanction;

(5) Requiring a terminal disclaimer for the period of the delay; or

(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).

[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

[3] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6] And the Petitioner must be diligent in attending to the matter.[7] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[9]

Petitioner now appears to have satisfied that construct.

CONCLUSION

Because it appears that Petitioner has satisfied the burdens set forth in Delgar v. Schulyer, the petition as considered under 37 C.F.R. §1.181 hereby is **granted**, the 17 May, 2006, Notice of Abandonment is **vacated**, and the fees are waived and were not charged.

---

[4] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[5] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[6] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[7] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[8] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

[9] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

The instant application is released and forwarded to Technology Center 2800 to await the Examiner's Answer in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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1600 TCF TOWER
121 SOUTH EIGHT STREET
MINNEAPOLIS, MN 55402

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OFFICE OF PETITIONS

In re Application of	:
Forbes, et al.	: DECISION ON APPLICATION
Application No. 10/164,475	: FOR PATENT TERM ADJUSTMENT
Filed: June 6, 2002	:
Atty. Dkt. No: 303.585US2	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)" filed February 13, 2006.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **DISMISSED**.

Applicants request that the Determination of Patent Term Adjustment be corrected from 40 days, as indicated on the Determination of Patent Term Adjustment mailed November 10, 2005, to an adjustment of 96 days.

Applicants argue that the reduction of 122 days is in error, arguing that a response to the Notice mailed January 29, 2004 was timely submitted within three months.

Applicants are advised that the adjustment was properly reduced 122 days in accordance with 37 CFR 1.704(c)(7) as reflected in the Determination of Patent Term Adjustment. A Restriction Requirement was mailed September 29, 2003. A response containing an omission was filed November 3, 2003. A Notice regarding the omission was mailed January 29, 2004, to wit, a reply was filed March 4, 2004. Accordingly, the period of reduction began November 4, 2003, the day after the date that the reply containing the omission was filed, and ended March 4, 2004, the date that the reply correcting the omission was filed.

In view thereof, at the time of allowance, the application is entitled to an adjustment of 40 days, as indicated in the Determination of Patent Term Adjustment.

The Office acknowledges receipt of the required $200.00 application fee.

The application file is being forwarded to the Office of Patent Publication for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No. 5

PENTRON CORPORATION
53 NORTH PLAINS INDUSTRIAL ROAD
WALLINGFORD, CT 06492

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JUL 1 6 2004

OFFICE OF PETITIONS

In re Application of :
Lopez, et al :
Application No. 10/164,512 : ON PETITION
Filed: June 6, 2002 :
Attorney Docket No. JPP-1230CIP2 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 7, 2004, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

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 July 9, 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 September 10, 2002. A Notice of Abandonment was mailed on January 2, 2004.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for

failure to prosecute, the required reply may be met by the filing of a continuing application. In an application, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

The Notice to File Missing Parts of Application mailed July 9, 2002 requires the submission of a properly signed oath or declaration in compliance with 37 CFR 1.63 and the $65.00 surcharge for late filing of the oath or declaration. As the required reply has not been submitted, the petition must be dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
2011 South Clark Place
Crystal Plaza Two (left side entrance of building)
Arlington, VA

Telephone inquiries should be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Paper No. 8

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OFFICE OF PETITIONS

PENTRON CORPORATION
53 NORTH PLAINS INDUSTRIAL ROAD
WALLINGFORD, CT 06492

In re Application of	:	
Lopez, et al	:	
Application No. 10/164,512	:	ON PETITION
Filed: June 6, 2002	:	
Attorney Docket No. JPP-1230CIP2	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed August 5, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed July 9, 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 September 10, 2002. A Notice of Abandonment was mailed on January 2, 2004.

The file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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PENTRON CORPORATION
53 NORTH PLAINS INDUSTRIAL ROAD
WALLINGFORD, CT 06492

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DEC 1 6 2005

OFFICE OF PETITIONS

In re Application of :
Lopez, et al. :
Application No. 10/164,512 : ON PETITION
Filed: June 6, 2002 :
Attorney Docket No. JPP-1230CIP2 :

This is a decision on the papers styled, "Letter To Rescind Notice of Abandonment," filed June 14, 2005, which has been treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a proper reply to the non-final Office action mailed December 10, 2004. Accordingly, this application became abandoned on March 11, 2005. With the submission of a three (3) month extension of time, the date of abandonment is June 11, 2005. A Notice of Abandonment was mailed on June 8, 2005.

Petitioner asserts that an amendment and a three (3) month extension of time were timely submitted on June 9, 2005. In support, petitioner has submitted a copy of the originally filed amendment and extension of time. The amendment and extension of time each contain an executed Certificate of Mailing under 37 CFR 1.8 dated June 9, 2005.

Accordingly, the petition is granted and the holding of abandonment is withdrawn.

This application is being forwarded to Technology Center 3700, for review of the amendment, filed June 13, 2005 (Certificate of Mailing date: June 9, 2005).

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

SPE B. Copenheaver

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/164,547

Paper No.: _____

DATE : 6/8/05

TO SPE OF : ART UNIT 1733

SUBJECT : Request for Certificate of Correction on Patent No.: 6875298

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.

Lamonte Newsome

Thank You For Your Assistance

Certificates of Correction Branch

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

The proposed amendment does not change the scope of the claim. This amendment is considered to be minor in character.

STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

SPE

1731

Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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DICKSTEIN SHAPIRO MORIN & OSHINSKY
EDWARD A. MEILMAN
41ST FLOOR
1177AVENUE OF THE AMERICAS
NEW YORK NY 10036-2714

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DEC 0 8 2004

OFFICE OF PETITIONS

In re Application of :
Teppei Akiyoshi :
Application No. 10/164,564 :
Filed: June 10, 2002 :
Attorney Docket No. M1071.1733/P1733 :

ON PETITION

This is a decision on the petition, filed December 7, 2004, and supplemented on December 8, 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 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 should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2823 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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : ~~7/24/06~~ 7/19/06

TO SPE OF : ART UNIT 1745

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/164603 Patent No.: 6870086 B2

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Virginia Tolbert

Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

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_____

_____

_____ SPE _____ Art Unit

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1501 - 10060 JASPER AVENUE
EDMONTON, AB, CANADA T5J 3R8

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DEC 0 1 2005

OFFICE OF PETITIONS

In re Application of
Edward James Cargill et al
Application No. 10/164,604
Filed: June 10, 2002
Attorney Docket No. 58029-26D(2)

DECISION GRANTING PETITION
UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition, filed November 29, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 1, 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 3671 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b) (along with any balance due at the time of payment), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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NOV 0 8 2005

TECHNOLOGY CENTER 2100

Patent Department
Macrovision Corporation
2830 De La Cruz Blvd.
Santa Clara, CA 95050

In re Application of: Newman
Application No. 10/164,653
Filed: June 6, 2002
For: CONTROLLING THE DOWNLOADING AND RECORDING OF DIGITAL DATA

DECISION ON PETITION TO MAKE SPECIAL UNDER M.P.E.P.§708.02(II): INFRINGEMENT

This is a decision on the petition, filed September 6, 2005, under 37 C.F.R. 1.102(d) and M.P.E.P. §708.02(II): Infringement, to make the above-identified application special.

A grantable petition under 37 C.F.R. 1.102(d), and M.P.E.P. §708.02, Section II, must be accompanied by payment of the fee under 37 C.F.R. 1.17(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 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.

The petition and declaration filed September 6, 2005 include all of the requirements set forth above and, therefore, the petition is **GRANTED**.

The application is being forwarded to the examiner to be advanced out of turn for examination in accordance with the procedures set forth in M.P.E.P. §708.02 and 37 C.F.R. 1.102.

Brian L. Johnson
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(571) 272-3595

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

FAY SHARPE FAGEN MINNICH & McKEE LLP
1100 SUPERIOR AVENUE
SEVENTH FLOOR
CLEVELAND, OH 44114-2518

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OCT 1 5 2002

OFFICE OF PETITIONS

In re Application of Craig M. Saunders et al Application No. 10/164,661 Filed: June 6, 2002 Attorney Docket No. NSEE 2 13445	DECISION GRANTING PETITION UNDER 37 CFR 1.137(f)

This is a decision on the petition, filed September 27, 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 applications filed in foreign countries on August 6, 2002 and August 7, 2002. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found in compliance with 37 CFR 1.137(f). However, while the statement of unintentional delay does not comply with the rule, the statement presented will be construed as meaning that "the entire delay in filing the required reply [Notice to Rescind Previous Nonpublication Request Under 35 U.S.C. § 122(b)(2)(B)(ii)] until the filing of a grantable petition was unintentional." Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days as provided by 35 U.S.C. § 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Corrected Filing Receipt which sets forth the projected publication date of February 12, 2003 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 1723 for examination in due course.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/164,667	06/07/2002	Carl Jackson	HCG 2479000	7299

21909 7590 05/06/2004

CARR LAW FIRM, L.L.P.
670 FOUNDERS SQUARE
900 JACKSON STREET
DALLAS, TX 75202

EXAMINER
NGUYEN, CHAU N

ART UNIT	PAPER NUMBER
2831	

DATE MAILED: 05/06/2004

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.
10/164,667			

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.

PTO-1432 (07/01)

UD

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7/3/07

COLGATE-PALMOLIVE COMPANY
PATENT DEPARTMENT
909 River Road
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Piscataway, NJ 08855-1343

In re Application of: HEALY, STEVEN MICHAEL *et al.* Serial No.: 10/164,670 Filed: Sept. 24, 2001 Docket: 6188-01 Title: RECLOSABLE BAG	DECISION ON PETITION

This is a decision on the petition received on January 16, 2007 seeking to remove the Examiner's 37 C.F.R 1.83(a) drawing objection.

The petition is **DISMISSED as moot**.

In the petition the petitioner requests that the examiner's objection to the drawings be removed. The examiner's objection reads:

> "The drawings are objected to under 37 C.F.R. 1.83(a). The drawings must show every feature of the invention specified in the claims, Therefore, the region adjacent to the reclosable seal removed from the volume of the bag by bonding of the front wall to the rear wall within a vent located in the removed region must be shown or the feature cancelled from the claims. No New Matter should be entered."

The petitioner submits that the substance of claim 26 that is the subject of the objection is clearly shown in Figure 1, fully described in the specification and further shown in Figure 9. The features of the claims are shown in the drawings. The petitioner further contends that a person reading the claims, the specification, and viewing the drawings is put in full possession of the scope of the claims.

The record shows that:

1) On Jan. 26, 2005, the examiner objected to the drawings as quoted above.
2) On July 27, 2005, the applicant filed an amendment after final requesting reexamination and reconsideration.
3) On August 12, 2005 the examiner issued an advisory action stating "the applicant's remarks filed Jul. 27, 2005 do not overcome the drawing objection in

the Office action mailed Apr. 27, 2005 because although seals 28 may show the front and rear walls being sealed to the gusset sideways to form removed regions, the drawings do not show the front wall being bonded to the rear wall to form the removed regions as claimed"

4) On September 29, 2005 the applicant filed a notice of appeal
5) On December 27, 2005 the applicant filed the appeal brief.
6) The examiner's answer to the appeal brief was mailed on February 16, 2006.
7) The Board of Patent Appeals and Interferences issued a decision reversing the examiner on November 17, 2006.
8) On January 16, 2007 the applicant filed the present petition.
9) On January 16, 2007 the applicant also filed Remarks and claim amendments to overcome the examiner's drawing objection.
10) On February 26, 2007, a Notice of Allowance was issued in response to the amendment filed on January 16, 2007, Claims 14-17, 25 and 27 have been allowed.
11) Additionally, on May 25, 2007 in a telephone interview, the examiner withdrew the drawing objection and rendered it moot due to the cancellation of claim 26 in the amendment filed Jan. 16, 2007.

In light of the fact that the Claim 26 has been canceled by the applicant's amendment on January 16, 2007 and further that the examiner agreed to withdraw the drawing objection, the basis of this petition has been rendered moot. There is no relief that can be granted.

For the foregoing reasons, the relief requested by petitioner is moot. Specifically, the examiner's objection to the drawings is not longer necessary.

The application is being forwarded to Publication Branch for further process. Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner at (571) 272-4856.

PETITION DISMISSED AS MOOT.

Karen M. Young

Karen M. Young, Director
Technology Center 3700

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Commissioner for Patents
United States Patent and Trademark Office
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PRINCETON NJ 08543-5312

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MAY 0 1 2009

OFFICE OF PETITIONS

In re Application of	:	
Rumreich, Mark Francis	:	
Application No. 10/164,683	:	ON PETITION
Filed: June 7, 2002	:	
Attorney Docket No. PU010283	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 2, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Issue Fee Transmittal with payment of the issue and publication fees, (2) the petition fee, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to the Office of Data Management for processing into a patent.

Liana Walsh
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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OFFICE OF PETITIONS

In re Application of :
Williams, et al. : LETTER REGARDING PTA
Application No. 10/164,685 :
Filed: June 5, 2002 :
Atty. Dkt. No.: 020031-002410US :

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT(PTA) CALCULATION," filed September 2, 2005. The Office thanks applicants for their good faith and candor in bringing this to our attention.

The Determination of Patent Term Adjustment under 35 USC 154(b) mailed June 21, 2005 indicated that the above-identified application was entitled to a patent term adjustment (PTA) of 132 days. The issue fee was received August 22, 2005. The instant communication, received September 2, 2005, indicates that the adjustment of 132 days is in error and that the correct period of adjustment is 126 days.

Applicants indicate that the adjustment of 367 days should have been reduced an additional 6 days in accordance with 37 CFR 1.704(b). As the six days at issue overlaps with the reduction of 202 days, an additional reduction has not been assessed.

Accordingly, at the time of allowance, the application is accorded an adjustment of 132 days.

As applicants are advising us of a potential error in providing too much patent term adjustment in this application, no fee is due in connection with this matter.

This application is being forward to the Office of Patent Publication for issuance of the patent. The patent term adjustment shown on the patent (and in the Issue Notification mailed approximately three weeks prior to issuance) will include any additional patent term accrued pursuant to sections 1.702(a)(4) and 1.703(b).

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A Fries

Kery Fries
Senior Patent Attorney
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

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P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

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JUN 20 2008

In re Application of	:	
Rosche, et al.	:	DECISION ON PETITION
Application No. 10/164,722	:	
Filed: June 7, 2002	:	
Dkt. No.: 03052-006001	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed April 30, 2008.

The Notice of Abandonment, mailed July 26, 2006, states the application is abandoned for failure to timely submit a proper reply to the Notice of Allowability mailed March 23, 2006. The issue fee was timely submitted April 17, 2006 (certificate of mailing date of April 11, 2006).

Petitioners assert the drawing requirement set forth in the Notice of Allowability was made in error. Petitioners further assert that the examiner of record acknowledged in writing that the drawing requirement was made in error in an Office communication dated April 10, 2008.

A review of the record reveals that in response to the Notice of Abandonment dated July 26, 2006, applicants on August 2, 2006 filed a response seeking withdrawal of the holding of abandonment. A review of the response reveals that it includes a copy of a letter that bears a certificate of mailing date April 11, 2006 in which applicants argue that the drawing requirement was made in error.

The letter bearing a certificate of mailing date of April 11, 2006, copy of which was submitted August 2, 2006, has not been located in the official file, however, in view of the certificate of mailing contained thereon, the copy submitted August 2, 2006 is convincing evidence that applicants timely sought redress of requirement set forth in the Notice of Allowability.

In view of applicants' timely response to the Notice of Allowability and, further, the Office communication dated April 10, 2008 wherein the examiner of record indicates the drawing

requirement set forth in the Notice of Allowability was made in error, 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**.

This application is being directed to the Office of Data Management 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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ALEXANDRIA, VA 22313-1450
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LEVISOHN, BERGER & LANGSAM, LLP
805 THIRD AVENUE, 19TH FLOOR
NEW YORK, NY 10022

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FEB 07 2006

OFFICE OF PETITIONS

NOTICE

In re Patent No. 6,744,047	:	
Issued: June 1, 2004	:	
Application No. 10/164,724	:	
Filed: June 7, 2002	:	
Attorney Docket No. 840.043.005	:	

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 (571) 272-3282.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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JJGJR.: 09-07

Paper No: __

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OFFICE OF PETITIONS

UNISYS CORPORATION
MS 4773
PO BOX 64942
ST. PAUL MN 55164-0942

In re Application of	:	
Klingman, et al.	:	DECISION
Application No.: 10/164,748	:	
Filing Date: 6 June, 2002	:	
Attorney Docket No. RA 5515 (33012/346/101)	:	

This is a decision on the paper viewed as a petition filed on 25 September, 2006, to withdraw the holding of abandonment and considered under 37 C.F.R. §1.181.

The Office regrets the delay in addressing this matter, however, the instant petition was presented to the attorneys in the Office of Petitions only at this writing.[1]

For the reasons set forth below the petition as considered under 37 C.F.R. §1.181 is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to s non-final Office action mailed on 26 July, 2005, with reply due absent an extension of time on or before 26 October, 2005;

[1] **NOTE: Monitoring of the status of applications on PAIR can inform one's management of application responses and provide an indication when mailings of Office actions should be expected. Status Inquiries filed at three (3) or four (4) month intervals provide a demonstration of diligence and attention in supporting a petition seeking relief under 37 C.F.R. §1.181.**

- the application went abandoned by operation of law after midnight on 26 October, 2005;
- the Office mailed the Notice of Abandonment on 19 September, 2006;
- on 25 September, 2006, Petitioner filed the instant petition, and averred therein, *inter alia*, timely reply over a 26 October, 2006, certificate of mailing and evidenced the reply with supporting documentation, including a date-stamped (OCT 28 2005) receipt card (see: MPEP §503[2]).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) can inform an applicant/practitioner as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office

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[2] MPEP §503 provides in pertinent part:

§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)); and those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the

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[3] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—
(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and
(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —
(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;
(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.
(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —
(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(4) Imposing a monetary sanction;
(5) Requiring a terminal disclaimer for the period of the delay; or
(6) Terminating the proceedings in the Patent and Trademark Office.
(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).
[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[4]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[5]

Delays in responding properly raise the question whether delays are unavoidable.[6] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[7]

And the Petitioner must be diligent in attending to the matter.[8] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[9]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal

---

[4] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[5] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[6] See: *Changes to Patent Practice and Procedure; Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[7] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[8] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[9] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

of a holding of abandonment.[10]

The commentary at MPEP §711.03(c) provides:

* * *

B. Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed

37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), * (e), or (g) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. §1.8(b) and MPEP § 512. As stated in 37 C.F.R §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous

---

[10] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

> timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).
>
> 37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. 1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP § 512.
>
> * * *

Moreover, the regulation places upon Petitioner a diligence requirement to seek relief within two (2) months of the act complained of.

It appears Petitioner has satisfied the showings required herein.

CONCLUSION

The petition as considered under 37 C.F.R. §1.181 is **granted**, and the 19 September, 2006, Notice of Abandonment is **vacated**.

The instant application is released to Technology Center 2100 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571)

272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[11]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[11] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing.The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation,or understanding in relation to which there is disagreement or doubt.

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Paper No. 12

IRA LEE ZEBRAK
THE BOC GROUP, INC.
INTELLECTUAL PROPERTY DEPARTMENT
100 MOUNTAIN AVENUE
MURRAY HILL, NJ 07974

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DEC 2 2 2003

OFFICE OF PETITIONS

ON PETITION

In re Application of
Ian David Stones et al
Application No. 10/164,757
Filed: June 7, 2002
Attorney Docket No. M01B110

This is a decision on the petition under 37 CFR 1.313(c), filed December 8, 2003, which is being treated under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 8, 2003 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Wan Laymon at (703) 306-5685.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 3745 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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WOODS FULLER SHULTZ & SMITH P.C.
ATTN: JEFFREY A. PROEHL
P.O. BOX 5027
SIOUX FALLS, SD 57117

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MAY 02 2007

OFFICE OF PETITIONS

In re Application of	:	
HA	:	
Application No.: 10/164,777	:	DECISION ON PETITION
Filing Date: June 7, 2002	:	UNDER 37 CFR 1.137(B)
Attorney Docket No.: 00-2051 (TOR6398)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 14, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed March 25, 2005, which set a statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on June 26, 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 payment of the issue fee is accepted as having been unintentionally delayed.

This application is being referred to the Office of Publications.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3303.

Bryan Lin

Bryan Lin
Legal Examiner
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

DEC -7 2005

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Jeffrey A. Proehl
LEONARD & PROEHL, PROF. LLC
3500 S. First Ave Cir. Suite 250
Sioux Falls, SD 57105-5802

In re Application of: Richey	:
Appl. No.: 10/164,801	: DECISION ON PETITION
Filed: June 7, 2002	:
For: INFLATABLE FOOT-WARE	:

This is a decision on the petition filed on April 26, 2004 by which petitioner requests that the holding of Abandoment be withdrawn (and presumably the Office Action be withdrawn and then re-issued with a new response date that will provide reasonable time to prepare a reply to the office action) due to non-receipt of Office action via US Postal Service. The petition is considered pursuant to 37 CFR 1.181, and no fee is required. No Notice of Abandonment has been mailed.

The petition is dismissed.

It appears from the petition that the Office letter in question, mailed August 5, 2003, was never received by petitioner. This conclusion is reached based upon the evidentiary showing that accompanies the petition, which is persuasive that the Office letter in question was not received. In general, compare the requirements of the Notice published at 1156 OG 53 with respect to nonreceipt of Office correspondence. However, is also appears clear from the record that petitioner was not entitled to receive the Office Action mailed August 5, 2003 as petitioner was not of record in the application as of that date. Petitioner was not appointed a power of attorney in the instant application until receipt of the appointment papers on January 27, 2004 and as recognized in the Office Letter of January 29, 2004. Petitioner gained power of attorney a full five months after mailing of the Office Action. A copy of the outstanding Office Action was mailed to the appropriate correspondence address at the time of mailing. Accordingly, there is no basis for granting the relief sought by petitioner.

It is also noted that the application has not formally been held abandoned. The examiner will prepare and mail a notice of abandonment in due course.

PETITION DISMISSED.

Richard A. Bertsch

Richard A. Bertsch, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JEFFREY A. PROEHLE
LEONARD & PROEHLE, PROF, LLC
3500 S. FIRST AVENUE CIRCLE, SUITE 250
SIOUX FALLS, SD 57105-5802

COPY MAILED

MAR 14 2006

OFFICE OF PETITIONS

In re Application of
Todd Douglas Richey :
Application No. 10/164,801 : ON PETITION
Filed: June 7, 2002 :
Attorney Docket No: 22-0042 :

This is a decision on the petition to withdraw the holding of abandonment, which is treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned on November 6, 2003, for failure to file a timely response to the non-Final Office Action, mailed August 5, 2003, which set a three (3) month statutory period for reply. Accordingly, a Notice of Abandonment was mailed December 19, 2005. Petitioner asserts that the non-Final Office Action was never received.

A petition to withdraw the holding of abandonment was filed April 29, 2004 and was dismissed in a decision mailed December 7, 2005 because while petitioner claimed non-receipt and provided copies of the docket and file jacket, according to the file record for the instant application, a change of address had been filed prior to the mailing of the non-Final Office Action and thus petitioner was not the attorney of record and the proper party to have received the office communication.

With the renewed petition to withdraw the holding of abandonment, petitioner argues and provides copies of the oath or declaration filed upon application, that no interim power of attorney or change of address was filed prior to the mailing of the non-Final Office Action mailed August 5, 2003.

A review of the file reveals that petitioner is correct. No such power of attorney or change of address appears in the file and as a result, it appears that the Office mailed the non-Final Office Action to an incorrect address. In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry

indicating receipt of the non-Final Office Action mailed August 5, 2003, it is apparent that the office communication was not received. The evidence submitted corroborates non-receipt of the non-Final Office Action.

In view of the facts set forth in the petition, it is concluded that the non-Final Office Action was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

This matter is being referred to Technology Center 3728 for a re-mailing of the non-Final Office Action.

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

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C., 20231, on the date indicated below.

BY: Sheryl R. Neuman DATE: September 16, 2002

OIPE
SEP 2 0 2002
PATENT & TRADEMARK OFFICE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re:	Patent Application of Keigo KUSAKA et al.	: Attention: **Box Missing Parts**
Conf. No.:	3726	
Appln. No.:	10/164,806	: Group Art Unit: 3682
Filed:	June 7, 2002	: Attorney Docket No. **8861-440US**
For:	HYDRODYNAMIC GAS BEARING	: **(P28281-01)**

TRANSMITTAL OF MISSING PARTS OF APPLICATION
FILING DATE GRANTED

In response to the Notice to File Missing Parts dated July 15, 2002, we submit herewith the following:

[X] Copy of the Notice to File Missing Parts of Application -- Filing Date Granted, mailed July 15, 2002.

[ ] No Notice to File Missing Parts has been received.

[X] Declaration and Power of Attorney.

[ ] Verified English translation of application as filed.

[X] Priority document: Certified copy of Japanese patent application No. 2001-171996, filed in Japan on June 7, 2001 from which priority is claimed under 35 U.S.C. § 119.

[ ] Formal drawings: sheets

[ ] Information Disclosure Statement, PTO/SB/08A and/or PTO/SB/08B, and cited references.

[ ] Preliminary Amendment.

[ ] Nucleotide and/or Amino Acid Sequence Submission, including:

[ ] Computer readable copy [ ] Paper Copy [ ] Verified Statement

[ ] Petition for Extension of Time along with requisite fee.

[ ] Request for Refund.

[ ] Request for Corrected Filing Receipt. Attached is a marked-up copy of the Filing Receipt showing corrections.

[ ] Applicant(s), by its/their undersigned attorney, claim(s) Small Entity Status under 37 C.F.R. §1.27 as [ ] an Independent Inventor, or [ ] a Small Business Concern, or [ ] a Non-Profit Organization.

[ ] Other:

COPY

			SMALL ENTITY			LARGE ENTITY	
CLAIMS	NO. FILED	NO. EXTRA	BASIC FEE: $370.			BASIC FEE: $740	
Total	-20 =		X9	$	OR	X18	$
Independent	- 3=		X42	$	OR	X84	$
[ ] Multiple Dependent Claims Present			$140	$	OR	$280	$
			TOTAL	**$**	OR	**TOTAL**	**$**

[X] The following fees noted below are being paid.

- **[X]** Surcharge of **$130.00** for late filing of filing fee and/or Declaration and Power of Attorney.
- **[ ]** Surcharge of **$130** for late filing of English translation.
- **[ ]** Extension of Time fee in the amount of $___.00 (Petition for Extension of Time is attached).
- **[ ]** Filing Fee in the amount of $___.00 calculated above.

[X] Enclosed is our firm's check in the amount of **$130.00** for the above fee(s).

[X] The Commissioner is hereby authorized to charge and/or credit Deposit Account No. 50-1017 (Billing No. 208861.0440) as noted below. A duplicate copy of this sheet is enclosed.

- **[ ]** The above-calculated fee(s) calculated totaling $____.00.
- **[X]** Any overpayments or deficiencies in the above-calculated fee(s).
- **[X]** Any additional fees required under 37 C.F.R. § 1.16 or § 1.17.
- **[X]** In the event that a Petition for Extension of Time is required during the prosecution of this application, but not submitted, please charge any extension fee under 37 C.F.R. § 1.136(a) to our Deposit Account noted above.

CORRESPONDENCE ADDRESS

September 16, 2002 By: Martin G. Belisario

(Date)

MARTIN G. BELISARIO
Registration No. 32,886
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
One Commerce Square
2005 Market Street - Suite 2200
Philadelphia, PA 19103-7086
Telephone: (215) 965-1200
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Facsimile: (215) 965-1210
E-Mail: mbelisario@akingump.com

MGB:srn
Enclosures

UNITED STATES PATENT AND TRADEMARK OFFICE

#3

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/164,806	06/07/2002	Keigo Kusaka	8861-440US (P28281-01)

000570
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
ONE COMMERCE SQUARE
2005 MARKET STREET, SUITE 2200
PHILADELPHIA, PA 19103

OIPE JC102
SEP 2 0 2002
PATENT & TRADEMARK OFFICE

CONFIRMATION NO. 3726
FORMALITIES LETTER
OC000000008452517

Date Mailed: 07/15/2002

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

Items Required To Avoid Abandonment:

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(l) of $130 for a non-small entity, must be submitted with the missing items identified in this letter.

Items Required To Avoid Processing Delays:

The item(s) indicated below are also required and should be submitted with any reply to this notice to avoid further processing delays.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **$130** for a Large Entity

- **$130** Late oath or declaration Surcharge.

09/23/2002 NMOHAMM1 00000063 10164806
01 FC:105 130.00 OP

A copy of this notice MUST be returned with the reply.

Customer Service Center
Initial Patent Examination Division (703) 308-1202
PART 2 - COPY TO BE RETURNED WITH RESPONSE

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

Michael B. Stewart
RADER, FISHMAN & GRAUER PLLC
39533 Woodard Avenue
Suite 140
Bloomfield Hills, MI 48304-0610

MAIL

APR 13 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:
Basavapatna P. Naganarayana
Application No. 10164,813
Filed: June 7, 2002
For: ENHANCING DYNAMIC CHARACTERISTICS IN AN ANALYTICAL MODEL

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed October 29, 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 October 29, 2004 meets all the requirements. Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the above-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

for James R. Matthews

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
(571) 272-3613

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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FEB 27 2004

OFFICE OF PETITIONS

GEN PROBE INCORPORATED
10210 GENETIC CENTER DRIVE
SAN DIEGO, CA 92121

In re Application of
Nanibhushan Dattagupta, et al.
Application No. 10/164,833
Filed: June 7, 2002
Attorney Docket No. GP056-04.RE1

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 9, 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 on June 3, 2003, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220.

The application is being forwarded to Technology Center AU 1634 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).

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

CORNING INCORPORATED
SP-TI-3-1
CORNING NY 14831

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OFFICE OF PETITIONS

In re Application of
J. Michael Harris et al
Application No. 10/164,865
Filed: June 6, 2002
Attorney Docket No. Harris 4-2A

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 16, 2002, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of a prior-filed application, and on the petition under 37 CFR 1.78(a)(6) for the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional application.

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

[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).

> 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 June 6, 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)(3)(i).

As to the benefit claim under 37 CFR 1.78(a)(6):

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

> (1) the surcharge set forth in 37 CFR 1.17(t);
>
> (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional; and
>
> (3) the reference to the prior filed provisional application supplied in an application data sheet (ADS)37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5)(i). The Commissioner may require additional information where there is a question whether the delay was unintentional.

Prior-filed nonprovisional Application No. 09/429,135 was filed within twelve months of provisional Application No. 60/129,798, for which priority is now sought under the provisions of 37 CFR 1.78(a)(6). A reference to the prior-filed provisional 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)(5)(i).

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Also, the reference to the prior-filed applications was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. §§ 120 and 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior applications under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) should <u>not</u> be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior applications. In order for the instant application to be entitled to the benefit of the prior applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

Any questions concerning this matter may be directed to Karen Creasy at (703) 305-8859 .

The application is being forwarded to the Office of Initial Patent Examination for pre-examination processing, which will include the mailing of a corrected filing receipt with the projected publication date. Thereafter, the application will be forwarded to Technology Center Art Unit 2871 for processing the amendment filed January 31, 2003, and for consideration by the examiner of the claim under 35 U.S.C. §120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed nonprovisional application, Application No. 09/429,135, filed October 28, 1999, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of prior-filed provisional application, Application No. 60/129,798, filed April 16, 1999.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JJGJr: 06-06

Paper No: 16

DANIEL E. JOHNSON
IBM CORPORATION,
ALMADEN RESEARCH CENTER
INTELLECTUAL PROPERTY LAW DEPT. C4TA/J2B
650 HARRY ROAD
SAN JOSE CA 95120-6099

COPY MAILED
JUN 19 2006
OFFICE OF PETITIONS

In re Application of:	:	
Campbell, et al.	:	
Patent No.: 7,046213	:	
Issue Date:16 May, 2006	:	
Application No. 10/164,883	:	ON PETITION
Filed: 5 June, 2002	:	
Attorney Docket No.: ARC920020006US1	:	

This is a decision on the request filed on 21 April, 2006, under 37 C.F.R. §3.81 wherein Petitioner seeks the have the Office accept the correction of the instant patent to reflect issuance in the name of the assignee, and considered under 37 C.F.R. §1.323 to correct Applicant/Petitioner's error in the issuance of the patent to the Assignee under 37 C.F.R. §1.183 (for waiver) and 37 C.F.R. §3.81–the Issue Fee transmittal was submitted with an error as to the assignee identification.

The petition is **GRANTED**.

BACKGROUND

As is evident from the caption, above, the instant application:

- was filed on 5 June, 2002; and

- issued as a patent on 16 May, 2006

What Petitioner failed to state was the following Reel/Frame recordation data: 012993 / 0336

The file is being forwarded to the Certificate of Correction Branch for issuance of the requested Certificate of Correction in due course consistent with the recorded assignment (to Assignee **International Business Machines Corporation,** Armonk, NY (US), the substance of which was filed herein.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,584,967	2003-07-01	10/164,925	2002-06-06	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		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	/Albert W. Watkins reg. #31,676/	Date (YYYY-MM-DD)	2007-09-03
Name	Albert W. Watkins	Registration Number	31676

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 6584967
Issue Date: July 1,2003
Application No. 10164925
Filed: June 6,2002
Attorney Docket No. 2916.02US01

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed September 3,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of September 3,2007 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

2/29/08

In re Application of :
Farley, Brian E. et al
Appl. No.: 10/164,928
Filed: Jun. 7, 2002
Attorney Docket Number: VNUS.502CPCP1C
For: METHOD OF LIGATING HOLLOW ANATOMICAL STRUCTURES

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed Jan. 8, 2008 to expunge information from the above identified application.

The decision on the petition will be held in abeyance until allowance of the application or mailing of an *Ex parte Quayle* action or a Notice of Abandonment, at which time the petition will be decided.

Petitioner requests that the information submitted in the Information Disclosure Statement under the heading of Non Patent Literature Documents, (total of nine documents) filed Jan. 8, 2008 be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(g) has been charged.

The decision on the petition is held in abeyance because prosecution on the merits is not closed. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material," with "materiality" being defined as any information

which the examiner considers as being important to a determination of patentability of the claims. Thus, the decision on the petition to expunge must be held in abeyance at this time.

During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material." If the information is not considered by the examiner to be material, the information will be removed from the official file. The information has been closed from public view for the remainder of prosecution.

Questions concerning this decision should be directed to Special Programs Examiner Henry C. Yuen at 571-272-4856.

Decision held in ABEYANCE.

Karen M. Young

for Frederick R. Schmidt, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

12/15/08

In re Application of:
FARLEY, BRIAN E. et al:
Appl. No.: 10/164,928 : DECISION ON PETITION
Filed: Jun. 7, 2002 : Under 37 CFR 1.59
For: METHOD OF LIGATING HOLLOW :
ANATOMICAL STRUCTURES :

This is a response to the petition under 37 CFR 1.59(b), filed on Jan. 8, 2008 by which petitioners request to expunge information from the above identified application.

The petition is granted.

Petitioner requests that documents listed on the Information Disclosure Statement under M.P.E.P. § 724 filed on Jan. 8, 2008 be expunged from the record. In the earlier decision mailed on Feb. 29, 2008, petitioner was informed that the requested relief was held in abeyance until mailing of notice of abandonment of the application. On Dec. 2, 2008, a notice of abandonment was mailed. The information in question also has been determined by the undersigned to not be material to the examination of the instant application.

In view of the fact that petitioner has met the requirements of MPEP 724.05(I) as indicated in the earlier decision mailed on Feb. 29, 2008, the proprietary information disclosure statement filed on Jan. 8, 2008 is now removed from the official file and will be destroyed in due course.

Applicant is required to retain the expunged material(s) for the life on any patent which issues on the above-identified application.

Petition to expunge GRANTED.

Robert Olszewski, Director
Technology Center 3700

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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MARK S. LEONARDO, ESQ.
BROWN RUDNICK BERLACK ISRAELS
ONE FINANCIAL CENTER
BOSTON MA 02111

COPY MAILED

MAR 1 8 2005

OFFICE OF PETITIONS

In re Application of
F. Mark Ferguson et al
Application No. 10/164,944
Filed: June 6, 2002
Attorney Docket No. 20518/10/25.2

: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition filed November 1, 2004, which is being treated as a petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

The amendment filed November 1, 2004, fails to comply with the provisions of 37 CFR 1.78(a)(5)(i) and is therefore unacceptable. The amendment states that Application No. 09/619,190, filed July 19, 2000, claims benefit to Provisional Application Nos. 60/254,506, filed December 8, 2000; 60/275,810, filed March 14, 2001; 60/275,886, filed March 14, 2001, and 60/296,968, filed June 8, 2001. All were filed after the filing of Application No. 09/619,190. The nonprovisional application must be filed within twelve months of the filing of the provisional applications for which benefit is claimed.

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) and a substitute amendment correcting the above matter is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Window located at:

Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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MARK S. LEONARDO
BROWN RUDNICK BERLACK ISRAELS
ONE FINANCIAL CENTER
BOSTON, MA 02111

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OCT 0 3 2005

OFFICE OF PETITIONS

In re Application of
F. Mark Ferguson et al
Application No. 10/164,944
Filed: June 6, 2002
Attorney Docket No. 20518/10/25.2

: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the renewed petition filed April 18, 2005 which is being treated as petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §§120, and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **Granted**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6).

The instant nonprovisional application was pending at the time of filing of the reference to the prior-filed provisional applications as required by 37 CFR 1.78(a)(5)(ii). Additionally, intermediate Application No. 09/892,593 was filed within twelve months of the filing date of the prior-filed provisional applications, for which priority is claimed.

The petition complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title as provided by 37 CFR §§ 1.78(a)(2)(iii) and 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. §§ 120 and 119(e) to the above-noted, prior-filed nonprovisional applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should <u>not</u> be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should <u>not</u> be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being forwarded to Technology Center Art Unit 3763 for appropriate action on the amendment submitted April 18, 2005, including consideration by the examiner of the claim under 35 U.S.C. § §120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed applications, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional applications.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT : Corrected Filing Receipt

SCANI **Please forward case and paper to address shown below.**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/16/07

TO SPE OF : ART UNIT 3753 John Rivell

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/464945 Patent No.: 7152630

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

HENRY RANDALL
Certificates of Correction Branch
703-308-9390 ext. _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- [x] Approved — All changes apply.
- [ ] Approved in Part — Specify below which changes do not apply.
- [ ] Denied — State the reasons for denial below.

Comments: A22 OK GR 11/26/07

Gregory L. Huson
3751

SPE — Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

JOHN VANDEN BOSCHE
17405 NE 131 STREET
REDMOND, WA 98052

MAILED

JUN 23 2003

Director's Office
Group 3700

Paper No. 5

In re Application of
DAWSON ET AL.
Application No.: 10/164,959
Filed: June 04, 2002

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed August 8, 2002 to make special under 37 CFR 1.102(c).

Since the requirements of 37 CFR 1.102(c) and MPEP 708.02, V and VI have been met, the petition is granted.

The application is being forwarded to the examiner for an action on the merits.

Linda J. Sholl
Special Program Examiner
Technology Center 3700
Phone: (703) 308-1288

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12-1-05

TO SPE OF : ART UNIT 2834

SUBJECT : Request for Certificate of Correction on Patent No.: 6933640

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.

Nonyma
Certificates of Correction Branch

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ Approved — All changes apply.
- ☐ Approved in Part — Specify below which changes do not apply.
- ☐ Denied — State the reasons for denial below.

Comments:

DARREN SCHUBERG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

SPE

2834
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Offi

This is approved by the Examiner. It can be entered.
TMD 12/9/05

PTO/SB/44 (07-03)
Approved for use through 01/31/2004. OMB 0651-0033
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO.: 6,933,660 B2
DATED : August 23, 2005
INVENTOR(S) :

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Please correct the claims as follows (PTO error):
Column 6, Claim 6, Line 48, delete "maintaining" and insert -- resistance --

Column 7, Claim 16, Line 23, delete "in" and insert --to--

MAILING ADDRESS OF SENDER:
Caterpillar Inc.
100 NE Adams St.
Peoria, IL 61629-6490

PATENT NO. 6,933,660

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This collection of information is required by 37 CFR 1.322, 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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March 2005

GOODWIN PROCTER LLP
Patent Administrator
53 State Place
Exchange Place
Boston, MA 02109-2881

MAR 1 8 2005

In re Application of:
Anthony J. Lochtefeld et al.
Serial No.: 10/164,988
Filed: June 7, 2002
Attorney Docket No.: 94-0302.02

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is a decision on the petition under 37 C.F.R. § 1.181 filed on April 19, 2004 requesting the withdrawal of the holding of abandonment of the above-identified application.

The petition is **GRANTED**.

A Notice of Abandonment was mailed on March 2, 2004. The Notice of Abandonment states the application is abandoned in view of applicant's failure to timely file a proper reply to the Office letter mailed on February 26, 2003. The Office letter of February 26, 2003 was an Informality Re Payment of Fee letter indicating that a balance of $186.00 was due for additional claims.

A review of the application file indicates that a response to the Office letter of February 26, 2003 was filed on March 10, 2003. The response was entitled "Response to Communication and Request for Clarification of Status." The response indicated that applicant believed the Office letter of February 26, 2003 was unnecessary because the amendment that was filed on February 10, 2003 contained a clause authorizing the PTO to charge a deposit account. The response also requested a reconsideration of the $186.00 surcharge since the fee letter failed to indicate the basis of the surcharge.

The amendment filed on February 10, 2003 does include an authorization to charge Deposit Account No. 20-0531 for any additional fees required under 37 CFR 1.16 and 1.17. Thus, as stated in the response filed on March 10, 2003, the fee letter of February 26, 2003 was unnecessary. However, a review of the claims indicates the fee letter was correct in that a surcharge was due but incorrect as to the amount of surcharge due.

The basis of the $186.00 surcharge after the amendment of February 10, 2003 was that there was 58 total claims and 8 independent claims which produced a fee of $780.00. A copy of the fee

determination sheet used by the Technical Support Staff to come to this figure is attached. The fee calculation used by the applicant was based upon 57 total claims and 6 independent claims for a total of $594.00. The $186.00 surcharge was the difference between $780.00 and $594.00.

Since the amendment of February 10, 2003 cancelled one claim, the actual total number of claims remaining after the amendment was 57 claims with 8 of these claims (claims 1, 5, 22, 23, 24, 43, 44 and 45) being independent. Thus, the fee due from the amendment of February 10, 2003 should have been $762.00. The amendment was accompanied with a payment of $594.00 for the claims. Therefore, the surcharge should have been the difference between $762.00 and $594.00 (i.e., $168.00).

Due to the fact that applicant did respond to the fee letter of February 26, 2003 and that the amendment filed February 10, 2003 did include an authorization to charge additional fees to a deposit account, there clearly was no abandonment in fact. Accordingly, the Notice of Abandonment mailed March 2, 2004 is **VACATED** and the holding of abandonment is withdrawn.

A surcharge of $168.00 will be charged to Deposit Account No. 20-0531 as authorized in the amendment of February 10, 2003 and the examiner will prepare an Office action based upon the amendment.

Any inquiry regarding this petition should be directed to Edward Westin at (571) 272-1638.

Sharon A. Gibson, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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OFFICE OF PETITIONS

DUCKOR SPRADLING METZGER
401 WEST A STREET, SUITE 2400
SAN DIEGO, CA 92101-7915

In re Application of
Mark K. Pryor, et al.
Application No. 10/164,990
Filed: June 6, 2002
Attorney Docket No. 023795-2014

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 8, 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 on December 10, 2003, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220.

The application is being forwarded to Technology Center AU 2821 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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401 WEST A STREET, SUITE 2400
SAN DIEGO, CA 92101-7915

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OFFICE OF PETITIONS

In re Application of :
Mark K. Pryor, et al. :
Application No. 10/164,990 : ON PETITION
Filed: June 6, 2002 :
Attorney Docket No. 023795-2014 :

This is a decision on the petition, filed May 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 August 3, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2821 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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OFFICE OF THE DIRECTOR
TC 3600

AKIN GUMP STRAUSS HAUER & FELD, LLP
P.O. Box 688
Dallas, TX 75313-0688

In re application of
L. William Wittsche :
Application No. 10/164,997 :
Filed: June 06, 2002 :
For: COMPUTER SYSTEM AND METHOD FOR PROVIDING AN ON-LINE MALL :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on November 22, 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 as Moot**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney in the above-identified application is not approved as moot because the attorney making the request; Tarek N. Fahmi does not now have, and apparently never has had, power of attorney in this application. There is no record of power of attorney ever being given to the attorney making the request.

Further, as to Item B) above, the reason "Discontinuation of the attorney/client relationship" is not appropriate since it is not clear that the client initiated the transfer, or that the client knowingly or freely assents to the transfer to new counsel. A proper reason for withdrawal is enumerated in 37 CFR 10.40(b) subsections (1)-(4) or subsections (1)-(6) of 37 CFR 10.40(c) must be provided.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868

SNM/pav: 03/03/05

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P.O. BOX 802333
DALLAS TX 75380

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OFFICE OF PETITIONS

In re Application of

Ronald C. Allan :

Application No. 10/165,016

: DECISION ON PETITION

Filed: June 6, 2002

:

Attorney Docket No. **AUS920020020US1**

This is a decision on the petition under 37 CFR 1.137(b), filed, November 30, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed November 23, 2005, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on February 24, 2006. A Notice of Abandonment was mailed June 15, 2006.

The amendment filed November 30, 2006, is noted.

The application is being forwarded to Technology Center 2100, GAU 2145 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/23/06

TO SPE OF : ART UNIT 3755

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/165020 Patent No.: 7032840

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

HENRY RANDALL
Certificates of Correction Branch
703-308-9390 ext.

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☒ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

Kevin P. Shaver
SPE

3755
Art Unit