PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,891,502	2005-05-10	10/339,493	2003-01-10	MEMS-0211

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

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

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

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

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

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

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Mark E. Olds/	Date (YYYY-MM-DD)	2009-06-26
Name	Mark E. Olds	Registration Number	46507

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

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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.

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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. 6891502
Issue Date: May 10,2005
Application No. 10339493
Filed: January 10,2003
Attorney Docket No. MEMS-0211

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

This is a decision on the electronic petition, filed June 26,2009 ,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 26,2009 .
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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www.uspto.gov

MAR 23 2007

YANKWICH & ASSOCIATES
201 Broadway
Cambridge MA 02139

In re Application of	:
Rittershaus et al.	:
Serial No.: 10/339,522	: PETITION DECISION
Filed: January 8, 2003	:
Attorney Docket No.: TCS-411.1P US-3	:

This is in response to the petition under 37 CFR § 1.181, filed December 22, 2006, requesting that the after final amendment filed on November 6, 2006 be entered into the above referenced application. The delay in acting upon this petition is regretted.

BACKGROUND

A review of the file history shows that the examiner mailed a final Office action on July 5, 2006, setting forth a three-month shortened statutory period for reply and setting forth new grounds of rejection necessitated by applicants' amendment of April 14, 2006. In this Office action, claims 1, 4, 7, 9-12, 14, 39 and 42 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement as the specification does not provide adequate written description of the claimed invention. Claims 9-14 and 42 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention. Claims 4, 5, 10, 11 and 13 were rejected under 35 U.S.C. 102 (e) as being anticipated by US 6,410,022 B1. Claims 39 and 42 were objected to because of informalities. Finally, claims 2, 3, and 6 were objected to as being dependent upon a rejected base claim.

In response, applicants filed a Notice of Appeal and an amendment after final on October 10, 2006 arguing the merits of the final Office action and amending the claims.

On November 6, 2006, the examiner mailed an advisory action which stated that the amendment after final of October 10, 2006 would not be entered as the proposed amendment raised new issues and new matter.

In response thereto, applicants filed this petition on December 22, 2006 requesting that the amendment after final filed on October 10, 2006 be entered into the above referenced application.

DISCUSSION

Applicants petitioned the denial of entry of the after final amendment asserting that the new grounds of rejection pertaining to written description raised in the final Office action of July 5, 2006 are unrelated to the claim amendments submitted in the response to the first Office action. This point is moot because the written description issues raised in the final Office action are substantially the same as those set forth in the first Office action of October 11, 2005.

Applicants also argue that the examiner raised a new written description objection under 35 U.S.C. 112, first paragraph, alleging that the recitation of an antigenic hybrid peptide that included a "B cell epitope of CETP" was directed to any CETP and the specification did not fully describe the entire genus of B cell epitopes encompassed by the pending claims and that applicants amended the claims in accordance with the examiner's suggestion. This argument is not persuasive as this issue of an antigenic hybrid peptide that includes a B cell epitope of "any" CETP was raised and is present in the Written Description rejection in the non-final Office action of October 11, 2005.

Applicants further point out that on April 4, 2006, an in-person interview was held with the examiner and on August 31, 2006, a telephonic interview was held with the examiner to discuss potential ways of overcoming the rejections of record. Although potential ways of overcoming the rejections of record were discussed in the telephonic interview of August 21, 2006, the examiner specifically indicated to the attorney of record (Mr. O'Brien) that no new issues would be considered after final rejection. Also, remarks made by the examiner in the Interview Summary were not an invitation to amend the claims guaranteeing entry thereof. Finally, as set forth in the Advisory Action, the issues for appeal were not reduced as a new search and consideration would have been necessary as the proposed amendment to the claim to recite "and wherein said CETP is at least 80% homologous to SEQ ID NO: 4" was never previously presented to the examiner. However, with regard to the new matter issue raised in the Advisory Action, it is agreed that applicants' proposed claim amendment, would not be new matter as set forth in the Advisory Action of November 6, 2006.

Applicants further argue that the proposed claim amendments submitted in the after final amendment only address issues preventing allowance that are directed to formal matters related to written description. This point is not persuasive because, as set forth above, the proposed claim amendments raise new issues that were not previously considered by the examiner.

DECISION

The petition is **DENIED**. Any new or renewed petition must be filed within TWO MONTHS of the mailing date of this decision.

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.

John LeGuyader
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Paper No. 4

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OFFICE OF PETITIONS

Mark Farber, Esq.
Alexion Pharmaceuticals, Inc.
352 Knotter Drive
Cheshire, CT 06410

In re Application of	:	
Bell	:	
Application No. 10/339,562	:	ON PETITION
Filed: January 9, 2003	:	
Attorney Docket No. 1087-75	:	

This decision is in response to the petition under 37 C.F.R. § 1.137(b) filed December 18, 2003.

The petition is GRANTED.

This application became abandoned May 11, 2003 for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application mailed March 10, 2003. The Notice set a two month shortened statutory period of time for reply. No petition for an extension so time in accordance with 37 C.F.R. § 1.136 was timely submitted. This decision precedes Notice of Abandonment.

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 failure to timely reply to the Notice is accepted as having been unintentionally delayed.

The required petition fee has been charged as requested to petitioner's deposit account.

This application will be forwarded to the Office of Initial Patent Examination for further processing.

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

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6876495
Issue Date: April 5,2005
Application No. 10339574
Filed: January 10,2003
Attorney Docket No. 0787-0118P

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

This is a decision on the electronic petition, filed June 14,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of June 14,2010 .
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.

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Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,876,495	2005-04-05	10/339,574	2003-01-10	0787-0118P

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

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○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Michael R. Cammarata/	Date (YYYY-MM-DD)	2010-06-14
Name	Michael R. Cammarata	Registration Number	39491

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Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6757184	2004-06-29	10/339,576	2003-01-10	01640354AA

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○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Michael E. Whitham/	Date (YYYY-MM-DD)	2010-03-01
Name	Michael E. Whitham	Registration Number	32635

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

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

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

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

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

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In re Patent No. 6757184
Issue Date: June 29,2004
Application No. 10339576
Filed: January 10,2003
Attorney Docket No. 01640354AA

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

This is a decision on the electronic petition, filed March 1,2010 ,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 March 1,2010 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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Paper No.12

J. RODMAN STEELE, JR.
AKERMAN SENTERFITT
P O BOX 3188
WEST PALM BEACH, FL 33402-3188

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SEP 2 2 2005

OFFICE OF PETITIONS

In re Application of :
Bradley Gotfried :
Application No. 10/339,592 :
Filed: January 9, 2003 :
Attorney Docket No. 6686-8-1 :

ON PETITION

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

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed November 13, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned at midnight on February 13, 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, the $510 extension of time submitted on August 26, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

The petition satisfies the requirement of 37 CFR 1.137 (b) in that petitioner has supplied (1) the reply in the form of an Amendment; (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the petition filed August 26, 2005 is accepted as having been unintentionally delayed.

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

The application file is being forwarded to Technology Center 2600, Art Unit 2636 for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Mark D. Passler
222 Lakeview Avenue, Suite 400
West Palm Beach, FL 33401-3188

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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GOODWIN PROCTER LLP
901 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20001

Mail Date: 05/21/2010

Applicant	: Mark Sheehan	: DECISION ON REQUEST FOR
Patent Number	: 7627521	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/339,596	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1910** 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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Alexandria, VA 22313-1450
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MAR 25 2010

OFFICE OF PETITIONS

BRIAN T. COLE
7620 AVALON DRIVE
PLANO TX 75025

In re Patent No. 6,840,141
Issue Date: January 11, 2005
Application No. 10/339,614
Filed: January 9, 2003
Attorney Docket No. COLE-25, 780

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed January 5, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on January 11, 2009, for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The patent file is being forwarded to Files Repository.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: MICHAEL G. CAMERON, ESQ.
2025 SAVANNAH DRIVE
MCKINNEY, TX 75070

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

GREGORY D CALDWELL
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
SEVENTH FLOOR
12400 WILSHIRE BOULEVARD
LOS ANGELES, CA 90025

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OFFICE OF PETITIONS

In re Application of :
Howard Bubb :
Application No. 10/339,628 :
Filed: January 9, 2003 :
Attorney Docket No. 024/15x2 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 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 File Missing Parts of Application (Notice) mailed March 4, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on May 5, 2003. A Notice of Abandonment was mailed on January 29, 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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MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 300
MCLEAN VA 22102

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JUL 16 2007

OFFICE OF PETITIONS

In re Application of :

HENZ, Volker :
Application No. 10/339,646 :
Filed: January 10, 2003 :
Attorney Docket No. **449122050800** :

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 01, 2007.

The request is **APPROVED**.

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

The request was signed by Deborah S. Gladstein on behalf of all attorneys of record who are associated. 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.

There is an outstanding Office action mailed June 13, 2007 that requires a reply from the applicant.

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **VOLKER HENZ**
THEODOR-HEUSS-STR.31
OBERSCHLEISSHEIM, GERMANY 85764

cc: **KEVIN SPIVAK, BELL BOYD & LLOYD LLC**
70 WEST MADISON STREET
SUITE 3100
CHICAGO, IL 60602-4207

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450www.uspto.gov

CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON DC 20044-4300

In re Application of
Oswald Zimmer et al.
Serial No.: 10/339,671
Filed: January 10, 2003
Attorney Docket No.: 029310.51862US

: PETITION DECISION

This is in response to the petition under 37 CFR 1.181, filed April 15, 2004, for withdrawal of abandonment of the above identified application based on failure to timely pay the issue fee and publication fee within three months from the mailing date of the Notice of Allowance dated November 24, 2003. The delay in responding to this petition is regretted.

A review of the file history shows that the examiner mailed a Notice of Allowance on November 11, 2003. Upon failure to receive payment of the issue fee and publication fee the application was abandoned on April 7, 2004. On April 15, 2004 applicant called the office of patent publications and spoke to a Mr Thomas Hawkins who informed applicant that the Notice of Allowance had been mailed on November 22, 2003. This was incorrect. The Notice was mailed on November 24, 2003. Based on the information supplied by the office of patent publications, applicant supplied docket documentation from February 21-23, 2004 to show that there was no entry in the docket for the days the payment was due. However the payment was really due on February 24, 2004. The activity of the application on that date was not supplied by applicant. Applicant was telephoned on December 18, 2004 and asked to send in an addition to the petition which included the docketing report for application 10/339,671 to show that there was no receipt of a Notice of Allowance or to supply the February 24, 2004 record of docket activity for the firm. On December 27, 2004 applicant supplied the complete docket record for application 10/339,671. Based on this addition to the record there is a showing that applicant did not receive the Notice of Allowance and the Notice of Allowability. The application will be reinstated to active status upon mailing of this decision and the issue fee will be due three months from the mailing of this decision. Attached is a copy of the Notice of Allowance and the Notice of Allowability.

The petition is **GRANTED.**

Should there be any questions about this decision please contact Jean F. Vollano, by letter addressed to Director, TC 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0648 or by facsimile sent to the general Office facsimile number.

Jean Vollano for
Bruce Kisliuk
Director, Technology Center 1600

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

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MAY 17 2007

OFFICE OF PETITIONS

In re Application of Axel Spriestersbach et al Application No. 10/339,673 Filed: January 10, 2003 Attorney Docket No. 13909-113001/2002P00001US	DECISION GRANTING PETITION UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition, filed May 16, 2007, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 17, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2151 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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Paper No. 5

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

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

In re Application of
MOSKOWITZ
Application No. 10/339,684
Filed: January 8, 2003
For: **ANALOG TELEVISION SIGNAL DATA DELIVERY SYSTEM**

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as agent of record filed on January 13, 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**.

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 Technical Support Staff to update the correspondence address and then will be forwarded to the files repository.

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

Cc: Hickman Palermo Truong & Becker LLP
1600 Willow Street
San Jose, CA 95125-5106

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/339,684	01/08/2003	Alan Moskowitz	TIVO0078

CONFIRMATION NO. 4398

OC000000012038545

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

Date Mailed: 03/05/2004

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 01/13/2004.

- 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.

ALLYSON L DESPERTT
2600 (703) 305-4800

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OFFICE OF THE DIRECTOR
TC 3600

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

Paper No. 6

In re application of
James M. Barton
Application No. 10/339,698 :
Filed: January 8, 2003 :
For: ELECTRONIC CONTENT DISTRIBUTION AND EXCHANGE SYSTEM :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the supplemental request filed on January 13, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney in the above-identified application is not approved because the request does not comply with Item B) above.

As to Item B), there is no indication in the file record of the assignee being the "client", and responsible for payment of legal fees. Absent a 3.73(b) statement (e.g., a copy of an executed assignment) providing documentary evidence of a chain of title from the original owners to the assignee or a statement specifying where this evidence is recorded in the Office (e.g., reel and frame number), the "client" referred to in 37 CFR 10.40 is seen as being those individuals who conferred power upon the attorneys, in this case the inventors. Therefore, the stated reason for withdrawal that "client/assignee requested this application be transferred to another law firm. See letter attached.", is improper because there is no evidence in the file record establishing Mathew P. Zinn, the individual signing the letter presumably on behalf of the assignee, as the "client". A proper reason for withdrawal as enumerated in 37 CFR 10.40(b) subsections (1)-(4) or subsections (1)-(6) of 37 CFR 10.40(c) must be provided.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868

SNM/cps: 2/24/04

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Paper No. 8

HICKMAN PALERMO TRUONG & BECKER, LLP
1600 WILLOW STREET
SAN JOSE CA 95125

MAIL

JUN 0 3 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
James Barton, et al. :
Application No. 10/339,699 :DECISION ON REQUEST TO
Filed: January 08, 2003 :WITHDRAW AS ATTORNEY
For: CLIENT-SIDE MULTIMEDIA CONTENT :
TARGETING SYSTEM :

This is a decision on the request to withdraw as attorney/agent of record filed on January 13, 2004.

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

The Request to Withdraw as Attorney is **DISMISSED AS MOOT**.

Attorney requesting withdraw is not of record due to a Revocation of Power of Attorney executed by the assignee on April 14, 2004.

Further communications will be directed to the address listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address. It should be noted that the address provided above is the address associated with the customer number provided by the assignee; which is slightly different than the actual address provided by the assignee.

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications

cc: Michael Glenn, Esq.
Glenn Patent Group
3475 Edison Way, Suite L
Menlo Park, CA 94025

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

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

In re Application of
WESTBROOK
Application No. 10/339,700
Filed: January 8, 2003
For:
SYSTEM FOR REMOTELY CONTROLLING CLIENT RECORDING AND STORAGE BEHAVIOR

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as agent of record filed on January 13, 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**.

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 Technical Support Staff to update the correspondence address and then will be forwarded to the files repository.

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

Cc: Hickman Palermo Truong & Becker LLP
1600 Willow Street
San Jose, CA 95125-5106

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 9

HICKMAN PALERMO TRUONG
& BECKER LLP
1600 WILLOW STREET
SAN JOSE, CA 95125-5106

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OFFICE OF PETITIONS

In re Application of
Westbrook et al.
Application No. 10/339,700
Filed: January 8, 2003
Attorney Docket No. 60097-0234

ON PETITION

This decision concerns the March 19, 2004 petition under 37 CFR 1.137(b).

The petition is **GRANTED.**

The application became abandoned on April 21, 2003 for failure to timely submit a properly signed oath or declaration as required by the February 20, 2003 "Notice to File Missing Parts of Nonprovisional Application."

A grantable petition under 37 CFR 1.137(b), in the instant case, must be accompanied by: (1) a properly signed oath or declaration and the $130 surcharge for late filing of such an oath or declaration; (2) the $1,330 petition fee; and (3) a statement that the entire delay in filing a proper oath or declaration from the due date until the filing of a grantable §1.137(b) petition was unintentional.

The instant petition meets the above requirements and is thus granted. The application is now complete.

Finally, the petition encloses a $2,010 check intended for a 5-month extension of time. However, an extension of time under 37 CFR 1.136 may only be obtained prior to expiration of the maximum extendable reply period.[1] The request for extension of time submitted with the instant petition is not applicable, in that, it is filed subsequent to the maximum extendable reply period, i.e., subsequent to September 20, 2003. Consequently, the $2,010 payment has been credited to Deposit Account No. 50-1302 as authorized in the petition.

The file is being forwarded to Technology Center 2600 for examination in due course.

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

RC Tang
Petitions Attorney
Office of Petitions

---

1 See In re Application of S., 8 U.S.P.Q.2d 1630, 1631 (Comm'r Pats. 1988).

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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HICKMAN PALERMO TRUONG & BECKER, LLP
2055 GATEWAY PLACE
SUITE 550
SAN JOSE CA 95110

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OFFICE OF PETITIONS

In re Application of :
Paul Westbrook et al. :
Application No. 10/339,700 : ON PETITION
Filed: January 8, 2003 :
Attorney Docket No. 60097-0234 :

This is a decision on the petition filed October 3, 2008, under 37 CFR § 1.183 requesting waiver of 37 CFR § 1.64 as it relates to a concurrently filed petition under 37 CFR § 1.48(a)(2).

The petition under 37 CFR § 1.183 is **GRANTED**.
The petition under 37 CFR § 1.48 is **GRANTED**.

Petitioner seeks waiver of the rules such that the petition under 37 CFR 1.48 may be considered in the absence of the signatures on the required supplemental declaration of the originally named inventors. The application was filed naming Paul Westbrook, Howard Look, James Young, Stephen Lacy, and Timothy Davison and seeks under 37 CFR § 1.48(a) to amend the inventive entity by the addition of James M. Barton.

37 CFR § 1.48(a) requires that an amendment to the named inventive entity be accompanied by:

(1) a petition including a statement from *each person being added* and from each person being deleted as an inventor that the error occurred without deceptive intention on his or her part;
(2) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47;
(3) the fee set forth in 37 CFR 1.17 (h); and
(4) the written consent of any existing assignee, if any of the originally named inventors has executed an assignment.

The declaration filed with the petition is signed by the added inventor with a statement that through error and without deceptive intent, the original application improperly set forth the inventorship. All of the original inventors have signed the supplemental declaration except joint inventor Davison.

The petition is also accompanied by the proper petition fees and a consent of assignee however, while petitioners assert that the supplemental declaration has been forwarded to Mr. Davison, they argue that to date they have not been successful in locating him.

The supplemental declaration has been reviewed and found in compliance with 37 CFR §§ 1.67 and 1.63. In view of the foregoing evidence provided, it is concluded that waiver of the requirement that the supplemental declaration be signed by joint inventor Davison is appropriate.

The petition bears proof that the nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and, accordingly, this application has been corrected in compliance with 37 CFR 1.48. The inventorship of this application has been changed by the addition of James M. Barton as a joint inventor.

This matter will be referred to the Office of Patent Application Processing for issuance of a corrected filing receipt, correction of the file and PTO PALM data to reflect the inventorship as corrected. Thereafter, the matter will be referred to the Publishing Division.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

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OCT 0 8 2008

OFFICE OF PETITIONS

In re Application of
Paul Westbrook et al
Application No. 10/339,700
Filed: January 8, 2003
Attorney Docket No. 60097-0234

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.314, filed October 6, 2008, to defer issuance of the patent.

The petition is **GRANTED**.

Issuance will be deferred for a period of one month from the date of this decision. At the end of this period, the application will be referred to Publishing Division to be processed into a patent.

If an additional deferral period is required, another petition and fee should be promptly submitted. The petition must include a showing of extraordinary circumstances. See MPEP 1306.01.

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

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

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

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

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

Karen Creasy

Karen Creasy
Petitions Examiner

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

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OFFICE OF PETITIONS

In re Application of	:	
Paul Westbrook et al	:	
Application No. 10/339,700	:	DECISION ON PETITION
Filed: January 8, 2003	:	
Attorney Docket No. 60097-0234	:	

This is a decision on the petition under 37 CFR 1.314, filed November 11, 2008, to defer issuance of the patent.

The petition is **GRANTED**.

Since the requested deferral period has now passed, this application will be referred to the Office of Data Management to be processed into a patent.

Telephone inquiries 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
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P.O. Box 1450
Alexandria, VA 22313-1450
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BIOTECHNOLOGY LAW GROUP
C/O PORTFOLIO IP
PO BOX 52050
MINNEAPOLIS, MN 55402

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OFFICE OF PETITIONS

In re Application of Hofmann et al. :
Application No. 10/339,708 : Decision on Petition
Filing Date: January 8, 2003 :
Attorney Docket No. GTI-1360-CP :

This is a decision on the petition under 37 CFR 1.181, filed April 24, 2006, to withdraw the holding of abandonment.

The petition is **granted.**

Facts:

A non-final Office action was mailed September 1, 2005.

Petitioner filed a reply and a request for a three-month extension of time. The file wrapper includes the reply and request for an extension of time. The papers include signed Certificates of Mailing verifying the papers were mailed March 1, 2006.

A Notice of Abandonment was mailed March 8, 2006, prior to the reply being matched with the file.

Decision:

Petitioner has demonstrated a reply was timely filed in response to the non-final Office action.

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

Technology Center Art Unit 3763 will be informed of the instant decision and the examiner will further consider the merits of the application in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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. 082604

DUANE MORRIS LLP
100 COLLEGE ROAD WEST, SUITE 100
PRINCETON, NJ 08540-6604

SEP - 2 2004

In re Application of:	:	
ANTHONY D. KURTZ *et al.*	:	
Serial No.: 10/339,725	:	DECISION ON REQUEST TO WITHDRAW
Filed: January 09, 2003	:	FROM RECORD
Attorney Docket No.: **N0843-00087**	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed August 02, 2004.

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

The request meets all the above stated requirements. The request was signed by Paul A. Schwarz, on behalf of himself and all the attorneys/agents of record. There is no outstanding Office action at this time.

The request is **APPROVED**.

All future communications from the Office will be directed to Plevy & Howard, at the below address, until otherwise notified by applicant.

Inquiries related to this decision should be directed to Lissi Marquis at (571) 272-1596.

Lissi Marquis, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: PLEVY & HOWARD
600 NORTH EASTON ROAD
WILLOW GROVE, PA 19090

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 11/23/09

DATE : 8/7/05

TO SPE OF : ART UNIT 3749

SUBJECT : Request for Certificate of Correction on Patent No.: 6,908 039

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

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-915
Palm location **7580** - Tel. No. 305-8309

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

Thank You For Your Assistance

Monchan
Certificates of Correction Branch

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

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

Comments:

Approved.

/Steven B. McAllister/
SPE, Art Unit 3749
SPE

3749
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 4

TOWNSEND & TOWNSEND & CREW
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CA 94111-3834

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MAR 13 2003

OFFICE OF PETITIONS

In re Application of	:	
Gunars Edwin Valkirs et al	:	
Application No. 10/339,744	:	NOTICE
Filed: January 8, 2003	:	
Attorney Docket No. 014907-004510US	:	

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

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

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United States Patent and Trademark Office
P.O. Box 1450
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GREER, BURNS & CRAIN
300 S WACKER DR.
25TH FLOOR
CHICAGO IL 60606

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MAR 23 2007

OFFICE OF PETITIONS

In re Application of	:
Angie Yeung	:
Application No. 10/339,746	: DECISION GRANTING PETITION
Filed: January 9, 2003	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 438 P 1077	:

This is a decision on the petition under 37 CFR 1.137(b), filed November 17, 2006, to revive the above-identified application.

The petition is **GRANTED**.

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

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue and publication fee and drawings; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance of August 9, 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 Patent Publication and for review of the drawings submitted November 17, 2006.

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
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IBM CORPORATION
INTELLECTUAL PROPERTY LAW
11400 BURNET ROAD
AUSTIN TX 78758

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AUG 1 5 2005

OFFICE OF PETITIONS

In re Application of :
Clabes et al :
Application No. 10/339,758 :
Filed: January 9, 2003 :
Attorney Docket No. AUS920020710US1 :

ON PETITION

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on 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]

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

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

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

The examiner of Technology Center AU 2817 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

cc:
CARR LLP
670 FOUNDERS SQUARE
900 JACKSON STREET
DALLAS, TEXAS 75202

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. _____

Date : August 15, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Joachim Gerhard Clabes et al
Application No. :10/339,758
Filed :January 9, 2003

The above-identified application has been assigned Patent No. 6,935,775 and an issue date of August 30, 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 August 30, 2005:

"All reference to Patent No. 6,935,775 to Joachim Gerhard Clabes et al of Texas for METHOD TO CALIBRATE A CHIP WITH MULTIPLE TEMPERATURE SENSITIVE RING OSCILLATORS BY CALIBRATING ONLY TSRO appearing in the Official Gazette of August 30, 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, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89
Tamara Greene, ST-8C13

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OFFICE OF PETITIONS

DICKINSON WRIGHT PLLC
1875 EYE STREET, NW
SUITE 1200
WASHINGTON DC 20006

In re Application of

MARKOVIC, Nenad s. et al.
Application No. 10/339,760
Filed: January 13, 2003
Attorney Docket No. **29401-00002**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 01, 2009.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Kevin Spivak on behalf of all attorneys of record who are associated with customer No. 35161. All attorneys/agents associated with the Customer Number 35161 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

cc: **DR. NENAD MARKOVIC**
14905 FOREST LANDING CIRCLE
ROCKVILLE MD 20850

UNITED STATES PATENT AND TRADEMARK OFFICE

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AUSTIN, TX 78758

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JUL 01 2010

OFFICE OF PETITIONS

In re Application of
Ravikumar Arimilli, et al.
Application No.: 10/339,764
Filed: January 9, 2003
Attorney Docket No.: AUS920020187US1

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed May 10, 2010, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure s to timely pay the issue and publication fees on or before August 22, 2005, as required by the Notice of Allowance and Fee(s) Due, mailed May 20, 2005, which set a statutory period for reply of three (3) months. A Notice of Abandonment was mailed on September 27, 2005. On May 10, 2010, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(a) in that petitioner has supplied (1) the required reply in the form of the $1,510 issue fee and $300 publication fee; (2) the petition fee of $540; and (3) a showing to the satisfaction of the Director that the entire delay was unavoidable.

It is noted that a change of address has been submitted by petitioner; however, the address given on the petition differs from that address, now of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The application is being referred to the Office of Data Management 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 as a patent should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: BRIAN F. FUSSELL
8911 N. CAPITAL OF TEXAS HWY, SUITE 2110
AUSTIN, TX 78759

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

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JUL 0 2 2004

Technology Center 2100

In re Application of:
Michael Daconta, et al.
Application No. 10/339,775
Filed: January 9, 2003
For: ELECTRONIC DOCUMENT VALIDATION

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed September 29, 2003.

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

The request is **GRANTED.**

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

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

cc: Christopher M. Tobin, Esq.
Collier Shannon Scott PLLC
3050 K Street, NW, Suite 400
Washington DC 20007

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Commissioner for Patents
United States Patent and Trademark Office
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W.L. GORE & ASSOCIATES, INC.
551 PAPER MILL ROAD
P.O. BOX 9206
NEWARK, DE 19714-9206

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Richard L. Baillie et al :
Application No. 10/339,787 :
Filed: January 9, 2003 :
Attorney Docket No. MI/201B

This is a decision on the petition, filed October 26, 2005 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

This matter is being referred 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

---

[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 : 7-25-05

TO SPE OF : ART UNIT 1774

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/339787 Patent No.: 7060354

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: _____

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
SPE

1774
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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YUKIKO IWATA
SHELL OIL COMPANY
LEGAL – INTELLECTUAL PROPERTY
P. O. BOX 2463
HOUSTON, TX 77252-2463

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JAN 27 2006

OFFICE OF PETITIONS

In re Application of	:
Lynn Henry Slaugh, et al.	:
Application No. 10/339,797	: DECISION ON PETITION
Filed: January 10, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. TH1493 02 (US)	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 15, 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 with the petition.

The petition is **DISMISSED AS MOOT**.

The current procedure where a claim for priority under 37 CFR §§ 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR §§ 1.78(a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR §§ 1.78(a)(3).[1] In the present case, the Office noted the claim for priority of the prior-filed applications in the transmittal letter filed with the application, as shown by their inclusion on the filing receipt.

In view of the above, the $130 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

---

[1] *Note* MPEP 201.11 (III)(D) , pages 200-59 and 200-60 (Rev. 2. May 2004) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

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

This application matter is referred to the Publishing Division.

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
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MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK, NY 10154-0053

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JAN 1 0 2005

OFFICE OF PETITIONS

In re Application of :
Petri Visikivi, et al. :
Application No. 10/339,799 :
Filed: January 10, 2003 :
Attorney Docket No. 4208-4112 :

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed July 7, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen months publication country on January 9, 2004. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen months publication country.

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

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

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

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

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

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of April 21, 2005 was mailed on January 10, 2005.

Any inquiries concerning this decision may be directed to Retta Williams at (571) 272-3229.

This application matter is being forwarded to Technology Center Art Unit 3627 for examination in due course.

Marianne C. Jenkins

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

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SPENCER, FANE, BRITT & BROWNE
1000 WALNUT STREET
SUITE 1400
KANSAS CITY MO 64106-2140

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OFFICE OF PETITIONS

In re Patent No. 6,862,762	:	
Issue Date: March 8, 2005	:	
Application No. 10/339,806	:	NOTICE
Filed: January 10, 2003	:	
Attorney Docket No. 1239W	:	

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.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3213.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

1FW

128

SPENCER FANE
BRITT & BROWNE LLP

ATTORNEYS & COUNSELORS AT LAW

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FROM:	Roberta L. Morehead, Paralegal	DATE:	March 26, 2009
PHONE:	(816) 292-8307	FILE NO.:	5009463-6-
RE:	NOTICE OF LOSS OF SMALL ENTITY STATUS		

Total number of pages including this page: 3
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I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office (Fax No. (571) 273-6500, Attn: Maintenance Fee Branch) on March 26, 2009.

Roberta L. Morehead

Roberta L. Morehead

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Michael Karl Johnson, et al. Attorney Docket No. 5009463-6

U.S. Patent No.: 6,862,762

Issued: March 8, 2005

Application No.: 10/339,806

Filed: January 10, 2003

Title: PATIENT SUPPORT APPARATUS

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

NOTICE OF LOSS OF SMALL ENTITY STATUS

Sir:

It has come to the attention of Assignee that Assignee's acquisition of a new company in January of 2007, potentially changed the entity status of Assignee from a small entity to a large entity. Assignee was unaware of the potential change in entity status at the time the 3 1/2 year maintenance fee was paid in connection with the above-referenced patent. To ensure proper status, Assignee desires to pay the large entity fee at this time. Therefore the undersigned attorney of record, and authorized user, would like to charge the fee deficiency to Deposit

03/30/2009 TCOATES 00000024 500354 6862762
01 FC:1559 515.00 DA

WA 1169854.1

Best Available Copy

Account No. 500354. The Director is hereby authorized to charge $515.00 to cover the payment of the first maintenance fee deficiency as calculated below:

Current Large Entity Fee:	$980.00
Original Small Entity Fee Paid March 24, 2008:	$465.00
Deficient Amount:	$515.00

The Director is also hereby authorized to charge any deficiency in the payment of the required fee or credit any overpayment to Deposit Account No. 500354 and to officially record the loss of entitlement to small entity status.

Respectfully submitted:

SPENCER FANE BRITT & BROWNE LLP

By: Kyle L. Elliott

Kyle L. Elliott, Reg. No. 39485
Spencer Fane Britt & Browne LLP
1000 Walnut Street, Suite 1400
Kansas City, MO 64106
P: (816) 474-8100
F: (816) 474-3216

Date: March 26, 2009

PAGE 3/3 * RCVD AT 3/26/2009 5:08:54 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/8 * DNIS:2736500 * CSID:8164716467 * DURATION (mm-ss):01-02

RAM Fee History Query

Revenue Accounting and Management

Name/Number: 6862762

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
03/30/2009	00000027	2	1559	$515.00	03/26/2009	DA 500354
03/25/2008	00004582	2	2551	$465.00	03/24/2008	DA 500354

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Paper No. 05

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OFFICE OF DIRECTOR
GROUP

Walter W. Duft
Suite 10
10255 Main Street
Clarence, NY 14031

In re Application of:	:	
KIEKHAEFER, JOHN H.	:	
Application No. 10/339,814	:	DECISION ON PETITION
Filed: January 10, 2003	:	TO MAKE SPECIAL
Attorney Docket No.: 6499-5	:	

This is a decision on the petition under 37 C.F.R. § 1.102, filed January 10, 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 does not fully comply with item (b) above. To expedite the examining proceeding of this application, this decision is rendered based on the assumption that should the examiner hold that the claims are not directed to a single invention, applicant is hereby required to make an oral election without traverse. Failure to make an oral election without traverse would result in the application file being returned to the Group Director's office for issuance of a decision vacating this decision and withdrawing the special status granted hereby.

For the above stated reasons, the petition is GRANTED.

The application is being forwarded to the examiner for examination and expedited prosecution under the accelerated examination procedure..

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. § 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

SM

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Paper No. 04252005

MAY 19 2005

ANDREW F. SAYKO JR.
P.O. BOX 6339
SHALLOTTE, NC 28470

In re Application of FARAHI et al. Application No. 10/339,815 Filed: January 10, 2003 Attorney Docket No. 2003/01	: : : : :	DECISION ON PETITION

The petition filed February 20, 2004 under 37 CFR 1.137(a), to revive the above-identified application has been treated as a petition requesting that the holding of abandonment be withdrawn. No petition fee has been paid.

The petition to withdraw the holding of abandonment is GRANTED.

A non-final Office action was mailed on October 17, 2003, setting forth a three-month period of response. In the absence of a response, the application was held abandoned and a Notice of Abandonment was mailed on January 26, 2004.

Petitioner asserts that because the application was erroneously held to be abandoned only three months after the non-final Office action was mailed, the response to the non-final Office action and the Petition for Extension of Time with the appropriate fee submitted with this petition is timely filed.

The review of the application file reveals the application was abandoned about three months from the date the non-final Office action was mailed. Upon following the procedures set forth in 37 CFR 1.136(a) Extension of Time, applicant could have extended the time to reply to the non-final Office action up to six months from the date the non-final Office action was mailed.

37 CFR 1.136 provides for two distinct procedures to extend the period for action or reply in particular situations. The procedure which is available for use in a particular situation will depend upon the circumstances.

37 CFR 1.136(a) permits an applicant to file a petition for extension of time and a fee as set forth in 37 CFR 1.17(a) up to 5 months after the end of the time period set to take action except:

(A) where prohibited by statute,
(B) where prohibited by one of the items listed in the rule, or
(C) where applicant has been notified otherwise in an Office action.

The petition and fee must be filed within the extended time period for reply requested in the petition and can be filed prior to, with, or without the reply. The filing of the petition and fee will extend the time period to take action up to 5 months dependent on the amount of the fee paid except in those circumstances noted above.

MPEP 710.02(e) provides that:
While a petition for an extension of time under 37 CFR 1.136(a) must be filed within the extended period for reply, the petition need not be filed within the original shortened statutory period for reply.

The response to the non-final Office action and the Petition for Extension of Time with the appropriate fee submitted with this petition meets the conditions of 37 CFR § 1.136(a) to establish timely filing of the response.

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

The application file is being forwarded to the technical support staff for processing the response to the October 17, 2003 office action. From there, it will be returned to the examiner for further prosecution.

Janice A. Falcone

Janice A. Falcone, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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JAY F. MOLDOVANYI
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP
1100 SUPERIOR AVENUE, 7TH FLOOR
CLEVELAND, OH 44114-2518

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OFFICE OF PETITIONS

In re Application of :
John S. Murphy et al. :
Application No. 10/339,829 : ON PETITION
Filed: January 10, 2003 :
Attorney Docket No. RYLZ200907 :

This is a decision on the petition under 37 CFR 1.137(b)[1], filed March 17, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on November 25, 2005, for failure to timely file a reply to the final Office action mailed August 23, 2005, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed on March 13, 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 continuing application under 37 CFR 1.53(b); (2) the petition fee of $750; and (3) an adequate statement of unintentional delay.

Since this application is being revived for purposes of continuity only and since

---

[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)).

continuity has been established by this decision reviving the application, the application is again abandoned in favor of continuation application no.11/356,571 filed February 17, 2006, pursuant to the provisions of 37 CFR 1.53(b).

Additionally, the record reveals that a three month extension of time was filed with the instant petition, however, 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 $1020.00 extension of time fee submitted with the petition on March 17, 2006, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 06-0308.

This matter is being referred to Technology Center 1744 for processing of the continuation application filed February 17, 2006.

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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Paper No. 6

HOGAN & HARTSON L.L.P.
500 S. GRAND AVENUE
SUITE 1900
LOS ANGELES, CA 90071-2611

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OFFICE OF PETITIONS

In re Application of	:	
Venegas et al.	:	
Application No. 10/339,834	:	
Filed: January 10, 2003	:	ON PETITION
Attorney Docket No.:	:	
81925.0009	:	

This is a decision on the petition under 37 CFR 1.137(a), filed March 8, 2004, to revive the above-identified application. The petition is properly treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment.

The petition is **granted.**

The above-identified application became abandoned for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, mailed February 28, 2003. The Notice set a two (2) month period for reply. No reply having been received, the above-identified application became abandoned April 29, 2003. A Notice of Abandonment was mailed on January 28, 2004.

Applicant's Assertion

Applicant avers non-receipt of the non-final Office action, mailed July 1, 2002. In support, Applicant has provided the necessary statements and copies of the docket record where the non-received Office action would have been entered had it been received and docketed. Applicant has demonstrated by a preponderance of the evidence that the Office action was not received.

The Notice of Abandonment is hereby withdrawn. No fee has been charged and none is due.

The Oath/declaration has been entered and made of record.

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

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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TAROLLI, SUNDHEIM,
COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVEVLAND OH 44114

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In re Application of		
Drefahl	:	
Application No. 10/339,835	:	
Filed: 10 January, 2003	:	ON PETITION
Patent No. 6,854,356	:	
Issued: 15 February, 2005	:	
Attorney Docket No.: TRW(ASG)5535-2	:	

This is a decision on the petition (with fees) filed on 10 June, 2005, under 37 C.F.R. §1.183 (for waiver of 37 C..F.R. §3.81) and 37 C.F.R. §1.323 to correct the Assignee data because of the Petitioner's error (the Issue Fee transmittal was submitted with an error as to the assignee name), and so to obtain a certificate of correction setting forth the assignee.

The petition(s) under 37 C.F.R. §1.183 (for waiver of §3.81) and §1.323 are **GRANTED**, and the Certificate of Correction and petitions fee have been charged as authorized.

The file is being forwarded to the Certificate of Correction Branch for issuance of the requested Certificate of Correction (of the form and substance submitted) 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[1]) 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

[1] See: the regulations at 37 C.F.R. §1.2.

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OFFICE OF PETITIONS

In re Application of	:	
Victor Franklin Klebanoff	:	
Application No. 10/339,847	:	ON PETITION
Filed: January 10, 2003	:	
Attorney Docket No. AP34931 - 070457.1256	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 17, 2009, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of June 13, 2008. 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). Three-month (3) extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is December 14, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810 and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 3692 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petition Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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44TH FLOOR
NEW YORK, NY 10112-4498

Mail Date: 04/20/2010

Applicant	: Victor Franklin Klebanoff	: DECISION ON REQUEST FOR
Patent Number	: 7580891	: RECALCULATION of PATENT
Issue Date	: 08/25/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/339,847	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1588** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

In re	:
Johansen et al.	: DECISION GRANTING
Reissue Application No. 10/339,862	: PETITION UNDER
Filed: January 9, 2003	: 37 CFR 1.183
Attorney Docket No. 1247USRE	:

This is a decision on the Petition Under 37 CFR §1.47(a), filed August 27, 2007, which in effect requests suspension or waiver of the regulations (presumably §1.172) that require all of the inventors to sign a supplemental declaration in a reissue application. This petition is properly treated pursuant to 37 CFR 1.183[1].

The petition is **GRANTED**.

U.S. Patent No. 6,170,166 issued on January 9, 2001. A broadening reissue application (the present application) was filed for the '166 patent on January 9, 2003, and it was assigned application number 10/339,862. On May 6, 2003, applicants submitted three declarations executed, in combination, by all four joint inventors.

[1] Petitions under 37 CFR 1.47 are only applicable to an original oath or declaration and are not applicable to the execution of a supplemental oath or declaration. In such circumstances, a petition under 37 CFR 1.183 (and required fee presently $400) should be considered requesting waiver of the requirement that all of the inventors execute the supplemental declaration.

On May 25, 2007, the examiner mailed a Notice of Allowability, requiring a supplemental declaration to correct the declaration to use the phrase "material to patentability" rather than the phrase "material to examination" with respect to applicants' duty to disclose under 37 CFR 1.56.

In response, applicants timely filed the instant petition, in support of the application being made by inventors Brittain, Monsrud, and Davidson because inventor Johansen has refused to sign the Reissue declaration. Accompanying the petition are two declarations executed, in combination, by joint inventors Brittain, Monsrud and Davidson on behalf of themselves and on behalf of non-signing inventor Johansen. In support of the petition, applicants submit a statement of facts by Susanni Li (the person who sent the letters to inventor Johansen requesting his signature on the declaration). On January 16, 2008, applicants submitted an additional statement of facts by patent attorney Amy Hoffman detailing the efforts that had been undertaken to reach or find inventor Johansen.

The provisions of 35 U.S.C. 251, which are directed to reissue of patents, do not address the signature requirements of a declaration or oath in reissue. As to the reissue regulations, 37 CFR 1.172 requires that a reissue declaration or oath be made (and signed) by the inventors, except as otherwise provided (37 CFR §§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged. In addition, 37 CFR 1.175(b)(1), requires that:

> "For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant." [Emphasis added]

37 CFR 1.175(b)(1), taken in conjunction with 37 CFR 1.172, requires that a supplemental oath or declaration be signed by all of the inventors. This is because all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration. See In re Hayes, 53 USPQ2d 1222 (Comm'r Pat. 1999). Thus, each oath and/or declaration must bear the appropriate signatures of the inventors.

In the present instance, the supplemental declaration is not signed by all of the inventors. 37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such waiver, and applicants have requested, via the present petition, a waiver of the requirement that the 37 CFR 1.175(b)(1) supplemental declaration be signed by all of the inventors.

Petitioner has made an adequate showing that waiver of the requirement that all of the inventors sign the supplemental reissue declaration is warranted. The petition supports a conclusion that inventor Johansen cannot be reached or found after diligent effort to join in the reissue declaration. The petition includes a statement of the last known address of the non-signing inventor and payment of the petition fee of $400.

The showing as to extraordinary circumstances is complete, 37 CFR § 1.183 can be invoked in order to waive § 1.175. Accordingly, this petition under 37 CFR 1.183 is granted to waive the rules. The provisions of 37 CFR 1.175(b)(1), and 37 CFR 1.172 are hereby waived to the extent that the August 27, 2007 supplemental reissue application declaration submitted with the present petition will be accepted as though it was signed by all of the inventors.

The issue fee was received in this application on August 27, 2007, and thus, the application is before the Office of Patent Publication for processing into a patent. The application is being forwarded for processing consistent with this decision (including any further screening of the supplemental declaration filed August 27, 2007 that is required).

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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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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JAN 23 2006

OFFICE OF PETITIONS

In re Application of :
Linda Marie Allen-Atkins :
Application No. 10/339,892 :
Filed: January 10, 2003 :
Attorney Docket No. 99-0263 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 7, 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 June 20, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on September 21, 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 referred to the Publishing Division for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions

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WALDER INTELLECTUAL PROPERTY LAW, P.C.
17330 PRESTON ROAD
SUITE 100B
DALLAS TX 75252

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SEP 22 2008

OFFICE OF PETITIONS

In re Application of	:	
Matthew Bruce Keelan, et al.	:	
Application No. 10/339,901	:	DECISION ON PETITION
Filed: January 10, 2003	:	TO WITHDRAW
Attorney Docket No. BZMII.001	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 20, 2008 and resubmitted June 20, 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 J. Walder 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 request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

There is an outstanding Office action mailed June 10, 2008 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: MATTHEW BRUCE KEELAN
409 FOREST GROVE DRIVE
RICHARDSON, TX 75080

cc: TOM WERNER
11432 LACKLAND AVENUE
ST LOUIS, MO 63146

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
10/339,901	01/10/2003	Matthew Bruce Keelan	BZMII.001

CONFIRMATION NO. 4991

POWER OF ATTORNEY NOTICE

OC000000032186191

50171
WALDER INTELLECTUAL PROPERTY LAW, P.C.
17330 PRESTON ROAD
SUITE 100B
DALLAS, TX 75252

Date Mailed: 09/19/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 02/20/2008.

- 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.

/amwise/

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

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APR 13 2007

OFFICE OF PETITIONS

MIRUS CORPORATION
505 SOUTH ROSA RD
MADISON, WI 53719

In re Application of Monahan et al.	:	
Application No. 10/339,934	:	Decision Granting Petitions
Filing Date: January 10, 2003	:	Under 37 CFR 1.78(a)(3) and (a)(6)
Attorney Docket No. Mirus.030.03	:	

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed March 6, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed 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 Director may require additional where there is a question whether the delay was unintentional.

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

All of the above requirements having been satisfied, the late claim for benefit of priority to the prior-filed applications under 35 U.S.C. §§ 120 and 119(e) is accepted as being unintentionally delayed.

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

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

The application is being forwarded to Technology Center Art Unit 1635 for consideration by the examiner of the claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications and the claim under 35 U.S.C. § 119(e) for the benefit of priority to the prior-filed provisional application.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Charles Steven Brantley
Senior Petitions Attorney
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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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/339,934	01/10/2003	1635	458	Mirus.018.04	22	3

CONFIRMATION NO. 5270

CORRECTED FILING RECEIPT

OC000000023362911

25032
MIRUS CORPORATION
505 SOUTH ROSA RD
MADISON, WI 53719

Date Mailed: 04/12/2007

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Sean D. Monahan, Madison, WI;
Jon A. Wolff, Madison, WI;
Paul M. Slattum, Madison, WI;
James E. Hagstrom, Madison, WI;
Vladimir G. Budker, Madison, WI;
David B. Rozema, Madison, WI;

Power of Attorney:

Mark Johnson--35909

Domestic Priority data as claimed by applicant

This application is a CIP of 09/877,436 06/07/2001 ABN
and is a CIP of 09/447,966 11/23/1999 PAT 6,627,616
which is a CIP of 09/391,260 09/07/1999 ABN
which is a DIV of 08/975,573 11/21/1997 PAT 6,265,387
which is a CON of 08/571,536 12/13/1995 ABN
which claims benefit of 60/005,091 10/11/1995

Foreign Applications

If Required, Foreign Filing License Granted: 02/26/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/339,934

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Expression of zeta negative and zeta positive nucleic acids using a dystrophin gene

Preliminary Class

514

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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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OFFICE OF PETITIONS

JOHN D. GUGLIOTTA, P.E., ESQ.
PATENT, COPYRIGHT & TRADEMARK LAW GROUP, LLC
P.O. BOX 506
RICHFIELD, OH 44286

In re Application of	:	
Brian Sroub et al	:	
Application No. 10/339,937	:	ON PETITION
Filed: January 10, 2003	:	
Attorney Docket No. SR-2039	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 25, 2010, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 12, 2008, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on December 13, 2008.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

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

This matter is being referred to Technology Center AU 3629 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: John D. Gugliotta
4199 Kinross Lakes Parkway, Suite 275
Richfield, OH 44286

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DYKAS, SHAVER & NIPPER, LLP
P.O. BOX 877
802 WEST BANNOCK STREET, SUITE 405
BOISE ID 83701

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MAR 0 3 2005

OFFICE OF PETITIONS

In re Application of	:	
Carl L. Bonner	:	
Application No. 10/339,990	:	ON PETITION
Filed: 10 January, 2003	:	
Att'y Docket No. DIAZ117	:	

This is a decision on the petition under 1.137(b),[1] filed on 6 December, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 29 August, 2004, for failure to timely reply to the non-final Office action mailed on 28 May, 2004, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37

---

[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)).

CFR 1.136(a) were obtained. The filing of the present petition precedes the mailing of Notice of Abandonment.

Petitioner has submitted an amendment as the required reply.

The application is being referred to Technology Center Art Unit 3725 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

PTO/SB/17 (10-07)
Approved for use through 06/30/2010. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2008

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 2540.00

Complete if Known	
Application Number	10/339991
Filing Date	1/10/2003
First Named Inventor	Moser
Examiner Name	
Art Unit	
Attorney Docket No.	10014403-1

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☑ Deposit Account Deposit Account Number: 08-2025 Deposit Account Name: Hewlett-Packard

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☑ Charge fee(s) indicated below
☐ Charge fee(s) indicated below, **except for the filing fee**
☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17
☐ Credit any overpayments

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.

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES Fee ($)	FILING FEES Small Entity Fee ($)	SEARCH FEES Fee ($)	SEARCH FEES Small Entity Fee ($)	EXAMINATION FEES Fee ($)	EXAMINATION FEES Small Entity Fee ($)	Fees Paid ($)
Utility	310	155	510	255	210	105	
Design	210	105	100	50	130	65	
Plant	210	105	310	155	160	80	
Reissue	310	155	510	255	620	310	
Provisional	210	105	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	210	105
Multiple dependent claims	370	185

Multiple Dependent Claims Fee ($) _____ Fee Paid ($) _____

Total Claims _____ - 20 or HP = _____ x **Fee ($)** _____ = **Fee Paid ($)** _____
HP = highest number of total claims paid for, if greater than 20.

Indep. Claims _____ - 3 or HP = _____ x **Fee ($)** _____ = **Fee Paid ($)** _____
HP = highest number of independent claims paid for, if greater than 3

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $260 ($130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets _____ - 100 = _____ **Extra Sheets** / 50 = _____ **Number of each additional 50 or fraction thereof** (round up to a whole number) x **Fee ($)** _____ = **Fee Paid ($)** _____

4. OTHER FEE(S)

Non-English Specification, $130 fee (no small entity discount) **Fees Paid ($)** _____

Other (e.g., late filing surcharge): Petition fee and 4 year Maintenance fee 2540.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 27,196	Telephone 408-447-4447
Name (Print/Type)	Douglas M. Gilbert		Date June 12, 2008

This collection of information is required by 37 CFR 1.136. 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 30 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

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)
6698750	2004-03-02	10339991	2003-01-10	10014403-1

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	DMGilbert	Date (YYYY-MM-DD)	2007-06-12
Name	Douglas M Gilbert	Registration Number	27196

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.**

UNITED STATES 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 7

Paul M. Denk
763 South New Ballas Road
St. Louis, MO 63141

COPY MAILED

MAR 0 8 2004

OFFICE OF PETITIONS

In re Application of
Joseph Miller
Application No.10/340,056
Filed: January 13, 2003
Attorney Docket No.7386
Title of Invention: MINIATURE FLASHLIGHT AND KEYHOLDER

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), filed February 20, 2004, to revive the above-identified application.

This above-identified application became abandoned for failure to file a response to a Notice to file Missing Parts of a Nonprovisional Application which was mailed on March 4, 2003. The Notice to File Missing Parts set an extendable two (2) month period for reply. No timely request for extensions of time were obtained under the provisions of 37 CFR §1.136(a). An untimely response was submitted on January 12, 2004. Accordingly, this application became abandoned on May 5, 2003. A Notice of Abandonment was mailed on February 3, 2004.

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 the $385 filing fee and the $65 surcharge for late filing of a fee or declaration. in the amount of $375.00, the late filing fee surcharge of $65.00 and an executed declaration.

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

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 306-0251.

Charlema R. Grant
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

HAVERSTOCK & OWENS LLP
162 N WOLFE ROAD
SUNNYVALE, CA 94086

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DEC 2 3 2008

OFFICE OF PETITIONS

In re Application of	:	
Larry Lee White, et al.	:	
Application No. 10/340,095	:	ON PETITION
Filed: January 10, 2003	:	
Attorney Docket No. SONY-23900	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 11, 2008, to revive the above-identified application.

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 January 31, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is April 30, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

The petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642.

This application is being referred to Technology Center AU 2144 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. BOX 1450
Alexandria, Va 22313- 1450
www.uspto.gov.

DATE: August 18, 2005

Mark S. Matkin
WELLS ST. JOHN, P.S.
601 West First Avenue
Suite 1300
Spokane, WA 99201-3828

Patent No: 6787463 B2
Applicant: Allen P. Mardian
Issued: September 7, 2004
Title: CHEMICAL VAPOR DEPOSITION METHODS, AND ATOMIC LAYER DEPOSITION METHOD

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 1.323.

The error purported to be in column 5, line13, cannot be located found in the printed patent.

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

Correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Virginia Tolbert
For Cecelia Newman, Supervisor
Decisions and Certificates of Correction
(703) 305-8309 or 308-9390 ext. 113

vt

#11

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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

JAN 13 2006

TECHNOLOGY CENTER 3600

SEYFARTH SHAW LLP
55 EAST MONROE STREET
SUITE 4200
CHICAGO, IL 60603-5803

In re Application of
Goeran Jerstroem et al.
Application No. 10/340,120
Filed: January 10, 2003
For: RACK WITH PIVOTING FINGERS

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the Petition to Withdraw the Holding of Abandonment filed in the United States Patent and Trademark Office on November 12, 2004.

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 June 21, 2004 (certificate of mail June 17, 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/bkg: 1/10/06

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

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

Paper No. 122004

JAN 7 2005

LAW OFFICES OF MARK C. PICKERING
P.O. BOX 300
Petaluma, CA 94953

In re Application of:
Reda Razouk
Serial No.: 10/340,165
Filed: January 10, 2003
Attorney Docket No.: **100-20000(P05408)**

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 November 12, 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 Mark C. Pickering, on behalf of himself and all the attorneys associated with Customer No. 33405.

The request is APPROVED. There are no attorneys of record at this time.

All future communications from the Office will be directed to, the Patent Legal Staff Eastmen Kodak, at the address indicated below until otherwise notified by applicant.

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

Henry Phan

Hien H. Phan, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

HHP/nmc

cc: Patent Legal Staff Eastman Kodak Company
343 State Street
Rochester, NY 14650-2201

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
DIW May-07

DAVID A. FOX
55 GRIFFIN SOUTH ROAD
BLOOMFIELD CT 06002

COPY MAILED

MAY 11 2007

OFFICE OF PETITIONS

In re Application of	:	
Seung-Woo Lee	:	DECISION ON PETITION TO
Application No. 10/340178	:	WITHDRAW HOLDING OF
Filed: 01/10/2003	:	ABANDONMENT
Atty. Docket No. YOM-0012	:	

This is a decision on the petition, filed on 1 March, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

A Notice of Abandonment was mailed on 13 February, 2007, stating that the application was abandoned for failure to timely file a reply to the final Office action mailed on 2 June, 2006.

Petitioner asserts that a timely and proper reply to the final Office action was filed on 2 August, 2006. In support, petitioners have provided a copy of the reply and an Acknowledgement Receipt showing the reply was received on 2 August, 2006.

A review of the record reveals that the reply was timely filed on 2 August, 2006. Further, the examiner has indicated that the reply places the application in condition for allowance. As such, a timely and proper reply to the final Office action mailed on 2 June, 2006, was filed on 2 August, 2006.

As such, there is no abandonment in fact. The Office regrets the error.

The holding of abandonment is withdrawn. The Notice of Abandonment is vacated.

The application is referred to Technology Center Art Unit 2629 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

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

Straub & Pokotylo
788 Shrewsbury Avenue
Tinton Falls, NJ 07724

Mail Date: 05/25/2010

Applicant	: Eric Veach	: DECISION ON REQUEST FOR
Patent Number	: 7668748	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/340,193	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1453** 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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Alexandria, VA 22313-1450
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PARSONS HSUE & DE RUNTZ
655 MONTGOMERY STREET
SUITE 1800
SAN FRANCISCO, CA 94111

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OCT 20 2004

OFFICE OF PETITIONS

In re Application of :
Wu et al :
Application No. 10/340,221 : NOTICE
Filed: January 10, 2003 :
Attorney Docket No. BTAT.007US1 :

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 Wan Laymon at (571) 272-3220.

This matter is being referred to Publishing Division.

Wan Laymon

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Fliesler Meyer LLP
650 California Street
14th Floor
San Francisco CA 94108

MAILED

MAR 24 2009

OFFICE OF PETITIONS

In re Patent No. 7,373,556	:	
SRIVASTAVA et al.	:	LETTER REGARDING PATENT
Issue Date: May 13, 2008	:	TERM ADJUSTMENT AND
Application No. 10/340,227	:	NOTICE OF INTENT TO ISSUE
Filed: January 10, 2003	:	CERTIFICATE OF CORRECTION
Attorney Docket No. ORACL-01183US2	:	

This letter is in response to the "REQUEST FOR CERTIFICATE OF CORRECTION," filed July 23, 2008, which is properly being treated as a request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy pursuant to patentees' duty of good faith and candor to the Office.

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

Patentees are given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a patent term adjustment of **516 days**.

On May 13, 2008, the above-identified application matured into U.S. Patent No. 7,373,556, with a revised patent term adjustment of 543 days. On June 10, 2008, patentees submitted the instant comment requesting correction of the patent by issuance of a certificate of correction showing a patent term adjustment of

538 days. Patentees state no basis for the request for review of the patent term adjustment.

The application history has been reviewed and it has been determined that the number days of applicant delay is incorrect.

The record supports a conclusion that the patent term adjustment should have been reduced by 5 days for applicant delay in responding to the final Office action mailed March 10, 2006. See 37 CFR 1.704(b).[1]

A final Office action was mailed on March 10, 2006. Applicants filed their response in the form of a RCE and submission on June 15, 2006, in excess of the three-month period from the mailing date of the final Office action. See 37 CFR 1.704(b). Thus, applicants failed to engage in reasonable efforts to conclude prosecution of this application. The period of adjustment should have been reduced by 5 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the final Office action, June 11, 2006, ending on the date the reply was filed, June 15, 2006. See 37 CFR 1.704(b). Accordingly, a period of reduction of 5 days will be entered.

---

[1] 37 CFR 1.704(b) states:

> With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

Additionally, a review of the application history shows that applicants submitted an Information Disclosure Statement (IDS) on February 25, 2008, after the mailing of the notice of allowance. Moreover, a review of the IDS reveals that applicants did not include a statement under 37 CFR 1.704(d)[2] in the IDS, which under the circumstances of this patent application, is a ground for reduction of patent term adjustment under 37 CFR 1.704(c)(10).

37 CFR 1.704(c)(10) provides:

> Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;
>
> or
>
> (ii) Four months;

In this instance, it is undisputed that applicants filed the IDS on February 25, 2008, after the mailing of the notice of allowance. The Office responded to the IDS on March 17, 2008. Thus, the period of adjustment should have been reduced by the

---

[2] Pursuant to 37 CFR 1.704(d):

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

lesser period of 22 days, beginning on the date the IDS was filed, February 25, 2008, and ending on the mailing date of the Office action or notice in response to the IDS, March 17, 2008. Accordingly, a period of reduction of 22 days will be entered.

In view thereof, the patent should have issued with a patent term adjustment of **516 days** (602 days of Office delay - 86 days (5 + 28 + 31 + 22) of applicant delay).

As this letter was submitted as an advisement to the Office of an error in patentees' favor, the Office will not assess the $200.00 fee under 37 CFR 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **516 days**.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

Kery A. Fries

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

Enclosure: Copy of DRAFT Certificate of Correction

PALM INTRANET

Day : Monday
Date: 3/9/2009
Time: 11:58:07

PTA Calculations for Application: 10/340227			
Application Filing Date:	01/10/2003	PTO Delay (PTO):	602
Issue Date of Patent:	05/13/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	59
Post-Issue Petitions:	0	Total PTA (days):	516
PTO Delay Adjustment:	-27		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
102	03/09/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		27	
96.5	04/23/2008	PTA 36 MONTHS			
96	05/13/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
95	04/14/2008	EXPORT TO FINAL DATA CAPTURE			
94	04/10/2008	FINISHED INITIAL DATA CAPTURE			
93	04/11/2008	DISPATCH TO FDC			
92	04/11/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
91	02/25/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
90	03/17/2008	MAIL PUB NOTICE OF NON-COMPLIANT IDS			
89	03/14/2008	PUB NOTICE OF NON-COMPLIANT IDS			
88	02/25/2008	ISSUE FEE PAYMENT VERIFIED			
87	02/25/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
86	02/25/2008	ISSUE FEE PAYMENT RECEIVED			
85	01/29/2008	MAIL NOTICE OF ALLOWANCE			
84	01/29/2008	MAIL EXAMINER'S AMENDMENT			
83	01/28/2008	ISSUE REVISION COMPLETED			
82	01/28/2008	DOCUMENT VERIFICATION			
81	01/28/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
80	01/22/2008	EXAMINER'S AMENDMENT COMMUNICATION			
79	01/22/2008	NOTICE OF ALLOWABILITY			
78	11/06/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
77	01/16/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL			

		- 413)			
76	01/14/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
75	11/06/2007	REFERENCE CAPTURE ON IDS			
74	11/17/2007	DATE FORWARDED TO EXAMINER			
73	11/06/2007	RESPONSE AFTER NON-FINAL ACTION		31	67
72	11/06/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
71	11/06/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
70	11/06/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
69	08/01/2007	CASE DOCKETED TO EXAMINER IN GAU			
68	08/01/2007	CASE DOCKETED TO EXAMINER IN GAU			
67	07/06/2007	MAIL NON-FINAL REJECTION			
66	07/05/2007	NON-FINAL REJECTION			
65	06/20/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
64	06/20/2007	REFERENCE CAPTURE ON IDS			
63	06/20/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	61
62	06/25/2007	DATE FORWARDED TO EXAMINER			
61	06/20/2007	RESPONSE AFTER NON-FINAL ACTION			
60	06/20/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59	07/13/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
58	07/13/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
57	05/31/2007	MAIL NON-FINAL REJECTION			
56	05/25/2007	NON-FINAL REJECTION			
55	04/05/2007	DATE FORWARDED TO EXAMINER			
54	03/28/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
53	04/05/2007	DATE FORWARDED TO EXAMINER			
52	03/28/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		28	44
51	04/05/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
50	03/28/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			

49	03/28/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
48	02/20/2007	MAIL ADVISORY ACTION (PTOL - 303)			
47	02/16/2007	ADVISORY ACTION (PTOL-303)			
46	01/29/2007	DATE FORWARDED TO EXAMINER			
45	01/23/2007	AMENDMENT AFTER FINAL REJECTION			
44	11/28/2006	MAIL FINAL REJECTION (PTOL - 326)			
43	11/24/2006	FINAL REJECTION			
42	11/16/2006	CORRESPONDENCE ADDRESS CHANGE			
41	11/16/2006	DATE FORWARDED TO EXAMINER			
40	11/06/2006	RESPONSE AFTER NON-FINAL ACTION			
39	08/14/2006	MAIL NON-FINAL REJECTION			
38	08/03/2006	NON-FINAL REJECTION			
37	04/03/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
36	06/15/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
35	06/15/2006	REFERENCE CAPTURE ON IDS			
34.7	06/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	06/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	06/20/2006	DATE FORWARDED TO EXAMINER			
32	06/15/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
31	06/20/2006	DATE FORWARDED TO EXAMINER			
30	06/15/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
29	06/20/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
28	06/15/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
27	04/03/2006	REFERENCE CAPTURE ON IDS			
26.7	04/03/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26	04/03/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
25	03/10/2006	MAIL FINAL REJECTION (PTOL - 326)			
24	03/06/2006	FINAL REJECTION			
23	02/01/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
22	02/01/2006	REFERENCE CAPTURE ON IDS			

21.7	02/01/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	19
21	02/01/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	02/15/2006	DATE FORWARDED TO EXAMINER			
19	02/01/2006	RESPONSE AFTER NON-FINAL ACTION			
18	11/02/2005	MAIL NON-FINAL REJECTION	602		-1
17	10/31/2005	NON-FINAL REJECTION			
15	09/19/2005	CASE DOCKETED TO EXAMINER IN GAU			
14	02/05/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	02/05/2005	CASE DOCKETED TO EXAMINER IN GAU			
12	07/03/2003	REFERENCE CAPTURE ON IDS			
10	08/08/2003	APPLICATION DISPATCHED FROM OIPE			
9	08/08/2003	APPLICATION IS NOW COMPLETE			
8	06/16/2003	ADDITIONAL APPLICATION FILING FEES			
7	06/16/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
6	04/14/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	04/06/2003	CLEARED BY L&R (LARS)			
3	01/27/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/16/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/10/2003	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to OASIS | Home page

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,373,556 B2

DATED : May 13, 2008

INVENTOR(S) : Srivastava 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 (543) days

Delete the phrase "by 543 days" and insert – by 516 days--

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ALLERGAN INC
STEPHEN DONOVAN ESQ
2525 DUPONT DRIVE
MAILSTOP T2-7H
IRVINE CA 92612

OCT 25 2007

In re Application of	:
Thierry Nivaccioli et al	:
Serial No.: 10/340,237	: PETITION DECISION
Filed: January 9, 2003	:
Attorney Docket No.: 5487-0107PUS1	:

This is a decision on applicants' request for a three day (business) Extension of Time under 37 CFR 1.136(b) filed on October 22, 2007.

The fee for the extension of time of $200.00 has been paid.

Applicants request the additional time due to a mandatory evacuation order affecting applicants' attorney's offices due to wildfires in San Diego, CA.

The Request is **GRANTED** for one month.

Patent Owner's due date for filing a Reply Brief is extended by ONE MONTH to November 20, 2007.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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WILLIAM L. HAYNES
GARRISON & ASSOCIATES PS
SUITE 3300
2001 SIXTH AVENUE
SEATTLE WA 98121

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JUL 29 2004

OFFICE OF PETITIONS

In re Application of	:	
David L. Garrison et al	:	
Application No. 10/340,242	:	ON PETITION
Filed: January 10, 2003	:	
Attorney Docket No. BAR102	:	

This is a decision on the petition under 37 CFR 1.182, filed March 30, 2004, to change the order of the names of the inventors.

The petition is granted.

A corrected Filing Receipt with the desired Order of Inventorship accompanies this decision on petition.

This application is being referred to Technology Center Art Unit 3679.

Karen Creasy

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

ATTACHMENT: CORRECTED FILING RECEIPT

ETC

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Paper No. 040505

25859
Wei Te Chung
FOXCONN International, INC
1650 Memorex Drive
Santa Clara, CA 95050

APR 25 2005

In re Application of:
Yun Lung Chen, et al.
Serial No.: 10/340,265
Filed: January 9, 2003

NOTICE OF WITHDRAWAL
FROM ISSUE
UNDER 37 CFR § 1.313

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR § 1.313.

The above-identified application is hereby withdrawn from issue. The Notice of Allowance and Issue Fee Due and the Notice of Allowability mailed January 5, 2005, are hereby VACATED.

The application is being withdrawn to permit reopening of prosecution. The reasons therefor will be communicated to you by the examiner.

Upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that any previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund, or a credit to a Deposit Account.

Telephone inquires should be directed to Lynn Feild at (571) 272-2092.

The above-identified application is being forwarded to the examiner for prompt appropriate action.

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

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SEP 20 2007

OFFICE OF PETITIONS

MORRISON AND FOERSTER, LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130

In re Application of Christopher Schreiber, et al Application No. 11/340,298 Filed: January 26, 2006 Attorney Docket No. 620602007100	DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 7, 2007.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Morrison and Foerster, LLP has been revoked by the assignee of the patent application on May 25, 2007. 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.

Telephone inquires concerning this decision should be directed to Diane Goodwyn at 571-272-6735.

April Wise
Petitions Examiner
Office of Petitions

cc: JOEL D. VOELZKE
24772 SADDLE PEAK ROAD
MALIBU, CA 90265-3042

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CST

March 11, 2010

In re application of William C. Kimbrell, Jr. et al Serial No. 10/340,300 Filed: January 10, 2003 For: SUBSTRATES HAVING REVERSIBLY ADAPTABLE SURFACE ENERGY PROPERTIES	: : : : : : :	DECISION ON REQUEST TO PARTICIPATE IN PATENT PROSECUTION HIGHWAY PROGRAM AND PETITION TO MAKE SPECIAL UNDER 37 CFR 1.102(d)

This is a decision on the request to participate in the Patent Prosecution Highway (PPH) pilot program filed February 2, 2010.

The request and petition are **DISMISSED** as moot. Specifically, a non-final rejection was mailed in this application on November 3, 2009.

A grantable request to participate in the PPH pilot program and petition to make special require:

(1) The U.S. application must validly claim priority under 35 U.S.C. 119(a) to one or more applications filed in the JPO, note where the JPO application with similar claims is not the same application from which the U.S. application claims priority that the applicant must identify the relationship between the JPO application with similar claims and the JPO priority application;

(2) Applicant must submit a copy of:
   a. The allowable/patentable claim(s) from the JPO application(s) or if a copy of the allowable/patentable claims is available via the Dossier Access System (DAS) applicant may request the USPTO to obtain a copy from DAS; however, if the USPTO is unable to obtain a copy from the DAS, the applicant will be required to submit a copy;
   b. An English translation of the allowable/ patentable claim(s), if applicable; and
   c. A statement that the English translation is accurate, if applicable;

(3) Applicant must:
   a. Ensure all the claims in the U.S. application must sufficiently correspond or be amended to sufficiently correspond to the allowable/patentable claim(s) in the JPO application(s); and
   b. Submit a claims correspondence table in English;

(4) Examination of the U.S. application has not begun;

(5) Applicant must submit:
a. Documentation of prior office action:
i. a copy of the office action(s) just prior to the "Decision to Grant a Patent" from each of the JPO application(s) containing the allowable/patentable claims(s) or
ii. if the allowable/patentable claim(s) are from "Notification of Reasons for Refusal" then the Notification of Reasons for Refusal or
iii. if the JPO application is a first action allowance then no office action from the JPO is necessary should be indicated on the request/petition form:
Further, if a copy of the documents from a or b is available via the Dossier Access System (DAS), applicant may request the USPO obtain a copy from the DAS; however, if the USPTO is unable to obtain a copy of the DAS, the applicant will be required to submit a copy;
b. An English language translation of the JPO Office action from (5)(a)(i)-(ii) above if applicable; and
c. A statement that the English translation is accurate;

(6) Applicant must submit:
a. An IDS listing the documents cited by the JPO examiner in the JPO office action (unless already submitted in this application)
b. Copies of documents except U.S. patents or U.S. patent application publications (unless already submitted in this application); and

(7) The required petition fee under 37 CFR 1.17(h).

The request to participate in the PPH pilot program and petition fail because:

(4) Examination of the U.S. application has begun. Specifically, note that a non-final rejection was mailed on November 3, 2009.

Any inquiry regarding this decision should be directed to Christine Tierney, Quality Assurance Specialist, at (571) 272-1055.

All other inquiries concerning the examination or status of the application is accessible in the PAIR system at http://www.uspto.gov/ebc/index.html.

/Christine Tierney/

Christine Tierney
Quality Assurance Specialist
Technology Center 1700

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

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OCT 27 2005

OFFICE OF PETITIONS

In re Application of Nakajima et al.	:	
Patent No. 6,897,570	:	
Application Number: 10/340,307 Issue Date : May 24, 2005	:	DECISION ON PETITION
Filing Date: January 9, 2003	:	
Attorney Docket Number: 16869S-070800US	:	

This is a decision on the petition for certificate of correction under 37 CFR 3.81(b) filed on September 22, 2005.

The request 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 C.F.R. § 1.136(a) are not permitted. The reconsideration request should include a cover letter entitled "Renewed Petition". This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any request for issuance of an application in the name of the assignee submitted after the date of the payment of the issue fee, and any request that a patent be corrected to state the name of assignee must :

(A) state the assignment was submitted for recordation as set forth in 37 CFR §3.11 before issuance of the patent;

(B) provide a request for a certificate of correction §1.323;

(C) provide the fee set forth in 37 CFR §1.20 (a) and

(D) provide the processing fee set forth in 37 CFR §1.17(I)

Petitioner has failed to establish (A). A review of Office Assignment records shows that the above patent was assigned solely to Renesas Technology Corporation. Petitioner contends the recordation form contained a clerical error that showed both Hitachi, LTD and Hitachi, ULSI Systems Co., LTD as the assignor when only Hitachi, LTD was conveying their interest to Renesas. This error resulted in an incorrect May 19, 2004 Notice of recordation. However a request to correct the Notice of Correction was not filed prior to the issuance of the patent. Therefore, issuance of a certificate of correction herein is not in order.

As issuance of a Certificate of Correction is not appropriate, the $100.00 fee paid for issuance of the Certificate of Correction will be refunded to petitioner's deposit account, No. 20-1430, in accordance with the petition filed on September 22, 2005.

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

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(571) 273-8300
By delivery service: FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

Charlema R. Grant

Charlema R. Grant

Petitions Attorney

Office of Petitions

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TWO EMBARCADERO CENTER
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SAN FRANCISCO CA 94111-3834

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SEP 29 2008

OFFICE OF PETITIONS

In re Patent No. 6,897,570 :
Issue Date: May 24, 2005 :
Application No. 10/340,307 :
Filed: January 9, 2003 :
Attorney Docket No. 16869S-070800US :

ON PETITION

This is a decision on the renewed petition filed August 18, 2006, which is being treated as a petition under 37 CFR 3.81(b) to add the name of the assignee on the front page of the above-identified patent by way of a certificate of correction.

The petition is **DISMISSED**.

Petitioner requests issuance of a certificate of correction in the names of "Renesas Technology Corporation and Hitachi ULSI Systems Co. Ltd."

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 [emphasis added]. *See also* MPEP 1481.01.

A review of Office Assignment records shows that the above patent was assigned solely to Renesas Technology Corporation. Petitioner contends the recordation form contained a clerical error that showed both Hitachi, LTD and Hitachi, ULSI Systems Co., LTD as the assignor when only Hitachi, LTD was conveying their interest to Renesas. This error resulted in an incorrect May 19, 2004 Notice of recordation. However a request to correct the recordation was not filed prior to the issuance of the patent. Therefore, issuance of a certificate of correction herein is not in order.

Telephone inquiries concerning this decision on petition should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

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KONSTANTINE J. DIAMOND
4010 E. 26TH STREET
LOS ANGELES, CA 90023

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APR 21 2005

OFFICE OF PETITIONS

In re Application of
William P. APPS et al.
Application No. 10/340,315
Filed: January 9, 2003
Attorney Docket No. 2078 PUS

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed February 3, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 1, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 2, 2004. A Notice of Abandonment was mailed on January 19, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of July 1, 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 3637 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7-20-04

TO SPE OF : ART UNIT 2812

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/316323 Patent No.: 6902995

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 Drawing figs

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. 177

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

2812

Art Unit

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)
6679748	2004-01-20	10340343	2003-01-09	100444.0009US1

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

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

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

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

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

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

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2008-05-01
Name	Kendal M. Sheets	Registration Number	47077

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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In re Patent No. 6679748
Issue Date: January 20,2004
Application No. 10340343
Filed: January 9,2003
Attorney Docket No. 100444.0009US1

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

This is a decision on the electronic petition, filed May 1,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of May 1,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

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TRIANGLE PATENTS, P.L.L.C.
P.O. BOX 28539
RALEIGH NC 27611-8539

In re Patent No. 6,929,418	:	
Issue Date: August 16, 2005	:	
Application No. 10/340,347	:	ON PETITION
Filed: January 10, 2003	:	
Attorney Docket No. 4025-002	:	

This is a decision on the petition under 37 CFR 1.378(c), filed October 1, 2009, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on August 17, 2009 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

The 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 Olisa Anwah at (571) 272-6051 or in his absence to the undersigned at (571) 272-7099.

The patent file is being forwarded to Files Repository.

David Bucci
Petitions Examiner
Office of Petitions

cc **Ann Kulprathipanja**
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

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SNELL & WILMER L.L.P.
One Arizona Center
East Van Buren
Phoenix, AZ 85004-2202

Paper No. 8

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JUL 1 4 2003

OFFICE OF PETITIONS

In re Application of:
Berardi et al.
Application No. 10/340,352
Filed: January 10, 2003
Title of Invention: SYSTEM AND METHOD FOR INCENTING PAYMENT USING RADIO FREQUENCY IDENTIFICATION IN CONTACT AND CONTACTLESS TRANSACTIONS

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This Decision is in response to a Petition Under 37 C.F.R. 1.47(a), filed May 8, 2003 (Certificate of Mailing dated May 5, 2003), to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor(s).

The petition is **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, Alexandra Mayers, 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

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Alexandria Mayers
19 Grove Street
New York, NY 10014

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JUL 14 2003

OFFICE OF PETITIONS

In re Application of:
Berardi et al.
Application No. 10/340,352
Filed: January 10, 2003
Title of Invention: SYSTEM AND METHOD FOR INCENTING PAYMENT USING RADIO FREQUENCY IDENTIFICATION IN CONTACT AND CONTACTLESS TRANSACTIONS

LETTER

Dear Ms. Mayers:

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) 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: SNELL & WILMER L.L.P.
One Arizona Center
East Van Buren
Phoenix, AZ 85004-2202

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : February 14, 2006

TO SPE OF : ART UNIT 2875

SUBJECT : Request for Certificate of Correction on Patent No.: 6,926,432/Appl.10/340360

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:

2/24/06 examiner BAO TRUONG 2875

SPE **Art Unit**

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Paper No. 4

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JUL 14 2003

OFFICE OF PETITIONS

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

In re Application of
Harold Miyamura and Rong-Che Chen
Application No.10/340,369
Filed: January 10, 2003
Attorney Docket Number: 100202028-1
Title of Invention: HEAT SINK ATTACHMENT

DECISION ACCORDING STATUS
UNDER 37 CFR 1.47(a)

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

The petition is GRANTED.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of Laura A. Hernandez attest a copy of the application was sent to non-signing inventor's last known address via Federal Express on three occasions. A message left by non-signing inventor confirmed his refusal 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.

Deposit account 08-2025 has been charged the $130.00 late oath or declaration surcharge.

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.

It should be noted that Robert J. Brill, petitioner is not associated with customer number of record 22879. Nor does a review of the record show an associate power of attorney has been submitted. If Mr. Brill wishes to recognized as an attorney of record for this application the appropriate associate power of attorney should be submitted.

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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Rong-Che Chen
Foxconn
458 Lambert Road
Fullerton, California 92835

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JUL 1 4 2003

OFFICE OF PETITIONS

In re Application of
Harold Miyamura and Rong-Che Chen
Application No.10/340,369
Filed: January 10, 2003
Attorney Docket Number: 100202028-1
Title of Invention: HEAT SINK ATTACHMENT

LETTER

Dear Mr. Chen:

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

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

Telephone inquiries regarding this communication should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper In the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

David Plettner
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/340,374	01/09/2003	Douglas S. Ransom	6270/84

CONFIRMATION NO.
5286

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

Date Mailed: July 9, 2004

Decision Dismissing Petition under 37 CFR 1.138(c)

The declaration of express abandonment will not be recognized

This is in response to the petition under 37 CFR 1.138(c) filed on September 30, 2003, for express abandonment to avoid publication of the above-identified application.

The petition is dismissed.

The express abandonment will **not** be recognized for the reason(s) indicated below:

1. ☐ The petition under 37 CFR 1.138(c) was not filed in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication process.

2. ☐ The petition was not signed by a party authorized by 37 CFR 1.33(b)(1), (3) or (4).

3. ■ The Application was published on October 30, 2003, in compliance with 35 U.S.C. 122(b), the publication number is US20030204756A1, and it is available on the USPTO web site at http://www.uspto.gov/patft/index.html.

The application **has/will be published** as scheduled.

Telephone inquiries should be directed Office of Patent Publication, Pre-Grant Publication Division, 703-605-4283.

Barbara J. Debnam
Office of Patent Publication
Pre-Grant Publication Division

Rev. 10/01

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HOGAN & HARTSON, LLP
ONE TABOR CENTER, SUITE 1500
1200 SEVENTEENTH ST
DENVER, CO 80202

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DEC 1 3 2005

OFFICE OF PETITIONS

In re Application of	:	
Jon M. Huppenthal, et. al.	:	
Application No. 10/340,390	:	DECISION ON PETITION
Filed: January 10, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. SRC012 CIP	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 25, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the 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 petition does not satisfy items (1) and (3) above.

With respect to item (1), the reference to add the above-noted, prior-filed applications on page one following the first sentence of the specification 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).

With respect to item (3), the petition failed to contain the proper statement of unintentional delay. 37 CFR § 1.78(a)(3) requires 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.

Before the petition under 37 CFR §§ 1.78(a)(3) can be granted, a renewed petition and a substitute amendment or an Application Data Sheet (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

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

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

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

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

Any questions concerning this matter may be directed to Andrea Smith at (571) 272-3226.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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DENVER, CO 80202

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OFFICE OF PETITIONS

In re Application of	:
Jon M. Huppenthal, et. al.	:
Application No. 10/340,390	: DECISION ON PETITION
Filed: January 10, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. SRC012 CIP	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed February 13, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **GRANTED**.

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

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

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

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

All the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

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

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

The amendment filed February 13, 2006, is being treated as having been received prior to payment of the issue fee.

This application is being forwarded to Technology Center Art Unit 2182 for appropriate action on the amendment filed February 13, 2006, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

Any inquiries concerning this decision may be directed to Andrea Smith at (571) 272-3226. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/340,390	01/10/2003	2182	1596	SRC012 CIP	8	65	2

CONFIRMATION NO. 6030

CORRECTED FILING RECEIPT

OC000000018252821

25235
HOGAN & HARTSON LLP
ONE TABOR CENTER, SUITE 1500
1200 SEVENTEENTH ST
DENVER, CO 80202

Date Mailed: 03/09/2006

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)

Jon M. Huppenthal, Colorado Springs, CO;
Thomas R. Seeman, Colorado Springs, CO;
Lee A. Burton, Divide, CO;

Power of Attorney: The patent practitioners associated with Customer Number **25235**.

Domestic Priority data as claimed by applicant

This application is a CIP of 09/932,330 08/17/2001
which is a CIP of 09/755,744 01/05/2001 ABN
which is a DIV of 09/481,902 01/12/2000 PAT 6,247,110
which is a CON of 08/992,763 12/17/1997 PAT 6,076,152
This application 10/340,390
claims benefit of 60/422,722 10/31/2002

Foreign Applications

If Required, Foreign Filing License Granted: 02/19/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/340,390

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

SWITCH/NETWORK ADAPTER PORT COUPLING A RECONFIGURABLE PROCESSING ELEMENT TO ONE OR MORE MICROPROCESSORS FOR USE WITH INTERLEAVED MEMORY CONTROLLERS

Preliminary Class

709

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is

revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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JJGJR.: 06-06

Paper No: __

BRUCE B. BRUNDA
STETINA BRUNDA
GARRED & BRUCKER
SUITE 250
75 ENTERPRISE
ALISO VIEJO CA 92656

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JUN 19 2006

OFFICE OF PETITIONS

In re Application of	:	
Chen	:	
Application No. 10/340,397	:	ON PETITION
Filed: 10 January, 2003	:	
Attorney Docket No. EQUUS-069B	:	

This is a decision on a petition filed on 24 April, 2006, under 37 C.F.R. §1.137(b).

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

BACKGROUND

The record indicates:

- Petitioner failed to reply timely and properly to the final Office action mailed on 22 September, 2005, with reply due absent an extension of time on or before 22 December, 2005;
- the application went abandoned by operation of law after midnight 22 December, 2005;
- Petitioner filed a reply in the form of an after final amendment, which reply is not of

right,[1] and the Examiner mailed an Advisory Action on 9 February, 2006;

- with the instant petition and fee, petitioner has filed a reply in the form of a request for continued examination and fee and submission (in the form of an amendment) under 37 C.F.R. §1.114, 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).[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.

---

[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.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

Allegations as to
Unintentional Delay

The requirements for 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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Michael A. Jaskolski
Quarles & Brady, LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202

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APR 19 2005

OFFICE OF PETITIONS

In re Application of
De La Huerga
Application No. 10/340,401
Filed: January 10, 2003
Attorney Docket No. 250591.90449

Decision on Petition

This a decision on the petition under 37 CFR 1.137(b), filed December 20, 2004, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed August 16, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on November 17, 2004.

The instant petition requests revival of the application. Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

The Office of Publications will be informed of the instant decision so that it may take steps to process the instant application into a patent.

Telephone inquiries may be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

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P.O. Box 1450
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OSTRAGER CHONG FLAHERTY & BROITMAN PC
250 PARK AVENUE, SUITE 825
NEW YORK, NY 10177

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MAY 19 2005

OFFICE OF PETITIONS

In re Application of	:
Steven Ausnit et al	:DECISION ON PETITION
Application No. 10/340,421	:UNDER 37 CFR 1.78(a)(3)
Filed: January 10, 2003	:
Attorney Docket No. ITW-13913	:

This is a decision on the petition filed March 25, 2005, which is being treated under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition considered under 37 CFR 1.78(a)(3) 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 petition complies with items (1) through (3) above. However, the examiner has indicated that the proposed amendment would not be entered because "[t]he proposed amendment to claim priority to prior-filed applications raises a new issue of obviousness-type double patenting with respect to U.S. Patent Application Serial No. 09/462,101. The proposed amendment doesn't remove the obviousness-type double patent rejection in the final Office action." Therefore, since the amendment does not *prima facie* place the application in condition for allowance for the reasons indicated by the examiner, petitioner must now submit a Notice of Appeal, a request for continued examination (RCE) under the provisions of 37 CFR 1.114, or file a continuing application pursuant to the provisions of 37 CFR 1.53(b).

Additionally, it is noted that the amendment states that this application is a continuation-in-part of Application No. 09/949,081. However, the inventors named in the instant application are not the same inventor as named in the application for which priority is being claimed. 37 CFR 1.78(a)(1) states:

> In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claim in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. § 112.

Any request for reconsideration of this decision must be accompanied by a cover letter entitled "Renewed Petition under 37 CFR 1.78(a)(3)" and must include the appropriate reply to continue prosecution of the instant application and ensuring that the instant application is filed by a common inventor or inventors named in the previously filed application..

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

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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250 PARK AVENUE, SUITE 825
NEW YORK, NY 10177

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OFFICE OF PETITIONS

In re Application of :
Steven Ausnit et al :
Application No. 10/340,421 : DECISION ON PETITION
Filed: January 10, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. ITW-13913 :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed June 30, 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 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 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 previously 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 Wan Laymon (571) 272-3220. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 3727 for appropriate action on the amendment filed June 30, 2005, 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

ATTACHMENT: Corrected Filing Receipt

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SEAGATE TECHNOLOGY LLC
C/O NOVAK DRUCE & QUIGG LLP
1000 LOUISIANA, SUITE 5350
HOUSTON, TX 77002

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OFFICE OF PETITIONS

In re Patent No. 7,235,168	:	
Issue Date: June 26, 2007	:	
Application No. 10/340,423	:	DECISION ON PETITION
Filed: January 10, 2003	:	
Attorney Docket No. 8209.024.NPUS00	:	

This is a decision on the petition under 37 CFR 1.182, filed November 9, 2007, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Office of Data Management is directed to issue a duplicate Letters Patent.

Telephone inquiries concerning this decision may be directed to Sherry D. Brinkley at (571) 272-3204. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to Niomi Farmer in the Office of Data Management at (703) 308-9250, Ext. 119.

A copy of this decision is being faxed to Office of Data Management for issuance of a duplicate Letters Patent.

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.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: Niomi Farmer, South Tower, 8th Floor, Room C23 (Fax No. (571) 270-9753)

NOVAK DRUCE & QUIGG LLP
525 MARKET STREET, SUITE 3750
SAN FRANCISCO, CA 94105

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MAY 12 2006

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

MAA, SHALONG
P.O. BOX 600118
DALLAS TX 75360-0118

In re Application of:	:	
MAA, SHALONG	:	
Application Serial No.: 10/340,429	:	DECISION
Filed: January 10, 2003	:	ON PETITION
For: **DIGITAL ENHANCEMENT OF STREAMING**	:	
VIDEO AND MULTIMEDIA SYSTEM	:	

This is a decision on the petition, filed on October 31, 2005 under 37 C.F.R. §1.181 to invoke supervisory authority and to respond to Applicant's interrogations regarding his Art Unit's obligation to follow statute, regulation and MPEP in examination of patent applications. Petitioner requests the following relief:

a.) A copy of each and every e-mail communication relating to the present patent Applicant and the Examiner be made of record in the application file. MPEP § 502.3 (II);

b.) The Group Director clarify whether, in general, the examiners of his group art unit are authorized to follow the procedures set forth in MPEP, and if not, how does the Group Director assure equal treatment for different applicants, especially those minority and independent inventors;

c.) The Group Director clarify whether, in general, the examiners of his group art unit are authorized to comply with the requirement of facilitating and expediting the processing of patent applications without unnecessary delay. 35 USC § 2(b)(2)(C).

The petition is **dismissed.**

As to sub-part a.) Applicant has provided a copy of the e-mail communications. This was provided on February 21, 2006.

As to sub-parts b.) and c.) A review of the record indicates that proper procedure has been followed. The application has been processed without unnecessary delay within the meaning of 35 USC § 2(b)(2)(C).

The application is being forwarded to Issue Branch for further processing.

Kenneth A. Wieder, Special Program Examiner
Technology Center 2600
Communications

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OFFICE OF PETITIONS

BRACEWELL & GIULIANI LLP
P.O. BOX 61389
HOUSTON TX 77208-1389

In re Application of

Jerry Foley
Application No. 10/340,450
Filed: January 10, 2003
Attorney Docket No. 025607.0000002

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 19, 2006.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of attorneys/agents associated with customer number 35979. 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, Termination of attorney-client relationship, do not meet any the conditions set forth in 37 CFR 10.40.

There is an outstanding Office action mailed February 24, 2006 that requires a reply from the applicant

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

Telephone inquiries concerning this decision should be directed to Charles Smoot at 571-272- 3299.

for David Bucci
Petitions Examiner
Office of Petitions

cc: Jeffrey S. Foley
125 W. Lambert Ln.
820 S. Euclid Avenue
Tuscan, AZ 85719

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Kevin D. McCarthy
Roach Brown McCarthy & Gruber, P.C.
1620 Liberty Building
420 Main Street
Buffalo NY 14202

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DEC 05 2007

OFFICE OF PETITIONS

In re Application of	:	
Noam Danenberg	:	
Application No. 10/340,462	:	DECISION ON PETITION
Filed: January 9, 2003	:	
Attorney Docket No. 0-03-001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 31, 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 October 11, 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 January 12, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $750, and (3) a proper statement of unintentional delay. Accordingly, the reply to the Office action of October 11, 2006 is accepted as being unintentionally delayed.

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

This application is being referred to Technology Center AU 3625 for appropriate action in the normal course of business on the reply received May 31, 2007.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 5

John E. Vandigriff
Suite 200
190 N. Stemmons Frwy.
Lewisville, TX 75067

COPY MAILED
JUL 21 2004
OFFICE OF PETITIONS

In re Application of :
Roe et al. :
Application No. 10/340,463 :
Filed: January 13, 2003 :
Attorney Docket Number: TAR101 : ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed February 6, 2004, to revive the above-identified application. The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

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

The above-identified application became abandoned for failure to timely and properly reply to the Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice"), mailed February 27, 2003. The Notice set a two (2) month period for reply. No response having been received, the application became abandoned on April 28, 2003. A Notice of Abandonment was mailed January 29, 2004.

Applicant files the instant petition wherein Applicant avers that he did not receive the Notice.

Applicant is advised that an allegation that an Office action was not received may form the basis for revival of an application based upon unavoidable abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the Applicant stating that the Office communication was not received by the Applicant and

attesting to the fact that a search of the file jacket and docket records indicate that the Office communication was not received.

2. A copy of the file jacket or 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 Applicant's statement.

Accordingly, Applicant's assertion, that the Notice was not received, is insufficient to justify granting of the petition. Applicant must also attest to the fact that a search of the file jacket and docket records indicate that the Notice was not received, and provide a copy of the docket record (or file jacket) where the non-received Notice would have been entered had it been received and docketed.

Applicant should file a Request for Reconsideration of Petition and include the necessary statements and copies of documents.

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

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

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

By hand: 2201 South Clark Place
Customer Window
Crystal Plaza Two, Lobby Room 1B03
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

JOHN E. VANDIGRIFF
SUITE 200
190 N. STEMMONS FRWY
LEWISVILLE, TX 75067

COPY MAILED
AUG 1 8 2004
OFFICE OF PETITIONS

In re Application of :
Roe et al. :
Application No. 10/340,463 :
Filed: January 13, 2003 : ON PETITION
Attorney Docket Number: TAR101 :

This is a decision in response to the Petition under 37 CFR 1.137(b), filed August 3, 2004 (Certificate of Express Mailing dated July 28, 2004), to revive the above-identified application.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (hereinafter "Notice"), mailed February 27, 2003. The Notice required $5.00 to complete the statutory basic filing fee and a late filing fee or oath or declaration surcharge in order to avoid abandonment. The Notice set a two (2) month period for reply from the mail date of the Notice, and also provided for extensions of time under 37 CFR 1.136(a). No reply having been received, the application became abandoned on April 28, 2003.

A Petition to revive the application under 37 CFR 1.137(a) based upon unavoidable abandonment of the application was filed on February 6, 2004. Accompanying the petition were the fees necessary to revive the application required to properly respond to the Notice. That petition was dismissed in a Decision mailed July 21, 2004 for failing to meet the requirements of a grantable petition under 37 CFR 1.137(a).

With the instant Renewed Petition, Applicant has satisfied the requirements of a grantable petition under 37 CFR 1.137(b). The fees necessary to revive the application required to properly respond to the Notice have been previously filed on February 6, 2004.

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

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

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JOHN E. VANDERGRIFF
HAMMERLE FINLEY LAW FIRM
1660 S STEMMONS FREEWAY, SUITE 300
LEWISVILLE, TX 75067

AUG 8 2006

In re Application of	:
Suzanne Rose et al	:
Serial No.: 10/340,463	: PETITION DECISION
Filed: January 13, 2000	:
Attorney Docket No.: TAR101	:

This is in response to the request which is being treated as a petition under 37 CFR 1.181, filed May 26, 2006, requesting refund of any extension of time fees required for a late response.

A review of the file history shows that applicants filed a proper Change of Correspondence Address on February 1, 2005. It appears that the address change was not properly entered on Office records inasmuch as the next Office action, setting a one month response period, mailed March 3, 2006, was mailed to the above attorney at 190 N STEMMONS PARKWAY, SUITE 200, LEWISVILLE, TX 75067, not the current address. The Office action was not forwarded to applicants' current correspondence address, but was discovered on a routine check of pending applications and a copy obtained. Applicants filed a reply to the Office action with this request on May 26, 2006, electing Group I for prosecution. Applicants do not state the date the error was discovered and the copy of the Office action obtained, but it is presumed to have been less than one month prior to the reply being filed. In view thereof the request is granted.

The petition is **GRANTED**.

The application will be forwarded to the examiner for further prosecution.

No extension of time fee was paid and none will be required.

Applicants should note that petitions and replies to Offices action should be presented as separate papers in the future.

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.

Bruce M. Kisliuk
Director, Technology Center 1600

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JOHN E. VANDERGRIFF
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1660 S STEMMONS FREEWAY, SUITE 300
LEWISVILLE, TX 75067

AUG 8 2006

In re Application of	:
Suzanne Rose et al	:
Serial No.: 10/340,463	: PETITION DECISION
Filed: January 13, 2000	:
Attorney Docket No.: TAR101	:

This is in response to the request which is being treated as a petition under 37 CFR 1.181, filed May 26, 2006, requesting refund of any extension of time fees required for a late response.

A review of the file history shows that applicants filed a proper Change of Correspondence Address on February 1, 2005. It appears that the address change was not properly entered on Office records inasmuch as the next Office action, setting a one month response period, mailed March 3, 2006, was mailed to the above attorney at 190 N STEMMONS PARKWAY, SUITE 200, LEWISVILLE, TX 75067, not the current address. The Office action was not forwarded to applicants' current correspondence address, but was discovered on a routine check of pending applications and a copy obtained. Applicants filed a reply to the Office action with this request on May 26, 2006, electing Group I for prosecution. Applicants do not state the date the error was discovered and the copy of the Office action obtained, but it is presumed to have been less than one month prior to the reply being filed. In view thereof the request is granted.

The petition is **GRANTED**.

The application will be forwarded to the examiner for further prosecution.

No extension of time fee was paid and none will be required.

Applicants should note that petitions and replies to Offices action should be presented as separate papers in the future.

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.

Bruce M. Kisliuk
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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William P. Glenn, Jr.
2102 Mechanic Street
Suite 205
Galveston, Texas 77550

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OFFICE OF PETITIONS

In re Application of
William A. Stephens Jr.
Application No.: 10/340,476
Filing Date: 10 January 2003
Attorney Docket No.: 03516.50268

DECISION ON
PETITION
UNDER 37 CFR 1.137(b)

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed 09 September 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 10 December 2004.

The present petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Response under 37 CFR 1.111, (2) the petition fee for a small entity, and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Office action of 09 September 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 request for extension of time submitted with the petition on 20 April 2005 was subsequent to the maximum extendable period for reply, therefore, no fee is required and none has been charged.

As authorized, the $750 fee required under 37 CFR 1.137(b) has been charged to petitioner's Deposit Account No. 50-1523.

This matter is being referred to Technology Center Art Unit 1772.

Telephone inquiries concerning this decision should be directed to Nguyen Ngoc-Ho at (571) 272-3290.

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

NNH/WL:hn

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

Date : March 31, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Andrew F. Stewart
Application No. :10/340,484
Filed :January 10, 2003

The above-identified application has been assigned Patent No. 6,875,739 and an issue date of April 5, 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 April 5, 2005:

"All reference to Patent No. 6,875,739 to Andrew F. Stewart of Pennsylvania for TREATMENT OF BONE DISORDERS WITH SKELETAL ANABOLIC DRUGS appearing in the Official Gazette of April 5, 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, MDW-4B03, (FAX-273-5468
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038)
Duane Davis P/OPC MDE-7D89
Tamara Greene, ST-8C13

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FOLEY & LARDNER LLP
111 HUNTINGTON AVENUE
26TH FLOOR
BOSTON MA 02199-7610

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MAR 3 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Andrew F. Stewart	:	
Application No. 10/340,484	:	ON PETITION
Filed: January 10, 2003	:	
Attorney Docket No. 25200-501 UTIL	:	

This is a decision on the petition, filed March 30, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 14, 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 1654 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. 6

MICHAEL J. DELUCA, JOAN S. DELUCA
734 CAMINO GARDENS LANE
BOCA RATON FL 33432

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MAR 3 0 2004

OFFICE OF PETITIONS

In re Application of
Michael J. Deluca et al.
Application No. 10/340,488
Filed: January 10, 2003
Attorney Docket Number: MJD03-002

ON PETITION

This is a decision on the petition filed February 10, 2004, under 37 CFR 1.137(a)[1] to revive the above-identified application which is first treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

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

The application became abandoned on June 22, 2003, for failure to file a timely response to the Notice to File Missing Parts mailed April 21, 2003, which set a two (2) month statutory period for reply. Accordingly, a Notice of Abandonment was mailed January 29, 2004.

Petitioner asserts that the Notice to File Missing Parts was never received.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner asserts that the Notice to File Missing Parts mailed April 21, 2003, was never received. A review of the record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office 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

[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)).

statement.[2] 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).

The showing of record is insufficient to warrant withdrawal of the holding of abandonment. Petitioners have not presented any evidence that would indicate that the Office communication was not received. What is usually required is a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed. As the required showing has not been presented, the petition must be dismissed.

PETITION UNDER 37 CFR 1.137(a)

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to be "unavoidable".[3] Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[4]

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).[5] Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[6]

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[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).

[3]35 U.S.C. § 133.

[4]In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

[5]See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

[6]Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

As the showing of record, petitioner's bald assertion that the Notice to File Missing Parts was never received, is insufficient to satisfy the requirements of a grantable petition under 37 CFR 1.137(a), the petition will be dismissed.

ALTERNATIVE VENUE

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

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

(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 additional petition fee due would be $665.00.

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

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

By FAX: (703) 872-9306

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.

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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Paper No. 8

MICHAEL J. DELUCA
JOAN S. DELUCA
734 CAMINO GARDENS LANE
BOCA RATON FL 3342

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OFFICE OF PETITIONS
ON PETITION

In re Application of
Michael J. DeLuca et al.
Application No. 10/340,488
Filed: January 10, 2004
Attorney Docket No. MJD03-002

This is a decision on the renewed petition under 37 CFR 1.137(a), filed April 20, 2004, to revive the above-identified application. This petition is being treated as a petition to withdraw the holding of abandonment 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 on June 22, 2003, for failure to file a timely response to the Notice to File Missing Parts mailed April 21, 2003, which set a two (2) month statutory period for reply. Accordingly, a Notice of Abandonment was mailed January 29, 2004. On February 10, 2004, petitioner filed a petition under 37 CFR 1.1377(a) to revive the application which was also treated under 37 CFR 1.181 because petitioner asserted that the Notice to File Missing Parts was never received, but that petition was dismissed in a decision mailed March 30, 2004.

Comes now petitioner with the instant request for reconsideration.

The file record discloses that the Notice to File Missing Parts was mailed to the address of record which is the same address used on all correspondences from the USPTO including the Notice of Abandonment. Petitioner has provided a copy of a page from the docketing record, wherein receipt of the Notice to File Missing Parts mailed April 21, 2003 would have been entered, had it been received. Petitioner also documents instances of proper handling of USPTO correspondence dating back to 1997 in an effort to show that the Notice mailed April 21, 2003 was not received.

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the Notice to File Missing Parts mailed April 21, 2003, it is apparent that the Notice was not received. The evidence submitted corroborates non-receipt of the Notice.

In view of the facts set forth in the petition, it is concluded that the Notice to File Missing Parts was never received at the address of record. Accordingly, the holding of abandonment is withdrawn. The petition fee in the amount of $55.00 submitted with the petition filed February 10, 2004 will be refunded.

This application is being forwarded to the Office of Initial Patent Examination for a remailing of the Notice to File Missing Parts.

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
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KUSNER & JAFFE
HIGHLAND PLACE SUITE 310
6151 WILSON MILLS ROAD
HIGHLAND HEIGHTS OH 44143

In re Application of
LEKHTMAN
Application No. 10/340,495
Filed: January 10, 2003
Attorney Docket No. SW7466US

DECISION ON PETITION TO WITHDRAW FROM RECORD

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply properly and in a timely manner to the final Office action mailed July 14, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 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 under 37 CFR 1.116 that cancels all the rejected claims or otherwise *prima facie* places the application in condition for allowance; (2) the petition fee of $750; and (3) the statement of unintentional delay have been received. Accordingly, the amendment under 37 CFR 1.116 is accepted as having been unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $510 extension of time fee submitted with the petition on May 25, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4787.

The application matter is being forwarded to Technology Center AU 3617 for further processing.

Denise Pothier
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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HIGHLAND HEIGHTS OH 44143

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OFFICE OF PETITIONS

COPY MAILED
APR 25 2006
OFFICE OF PETITIONS

In re Application of
LEKHTMAN
Application No. 10/340,495
Filed: January 10, 2003
Attorney Docket No. SW7466US

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply properly and in a timely manner to the final Office action mailed July 14, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 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 under 37 CFR 1.116 that cancels all the rejected claims or otherwise *prima facie* places the application in condition for allowance; (2) the petition fee of $750; and (3) the statement of unintentional delay have been received. Accordingly, the amendment under 37 CFR 1.116 is accepted as having been unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $510 extension of time fee submitted with the petition on May 25, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4787.

The application matter is being forwarded to Technology Center AU 3617 for further processing.

Denise Pothier
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of :

LEKHTMAN, David :
Application No. 10/340,495 : DECISION ON PETITION
Filed: January 10, 2003 : TO WITHDRAW
Attorney Docket No. **SW7466US** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 22, 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 Mark Kusner, on behalf of all attorneys of record who are associated. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Mark Kusner at the address indicated below.

There is an outstanding Office action mailed April 17, 2007, that requires a reply from the applicant.

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **DAVID LEKHTMAN**
245 ANTOINE-VILLERAY
BECONSFIELD, QUEBEC, H9W 6E9
CANADA

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Patent No. : 7,512,448 B2
Serial No. : 10/340,529
Inventor(s) : Malick et al.
Issued : March 31, 2009
Title : **ELECTRODE PLACEMENT FOR WIRELESS INTRABODY COMMUNICATION BETWEEN COMPONENTS OF A HEARING SYSTEM**
Docket No. : **22010-197**

Re: Request for Reconsideration

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

A petition under 37 CFR 3.81 must be filed and granted to fulfill your request, to date, there is no petition on record to consider your request to add Assignee.

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

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

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

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

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

Applicant has not included items B and or C above, accordingly, the request for Certificate of Correction to add or change the assignee data is dismissed.
Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

If, 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), which has been received.

Ernest C. White, *LIE*
For Mary F. Diggs (703) 308-9390 x 125
Decisions & Certificates
of Correction Branch
(703) **308-9390 x 122**

KRIEG DEVAULT LLP
ONE INDIANA SQUARE
SUITE 2800
INDIANAPOLIS IN 46204-2079

ecw

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APR 15 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY UT 84110

In re application of	:	**DECISION ON PETITION**
Stanford A. Graham et al.	:	**TO MAKE SPECIAL**
Application No. 10/340,540	:	**(INFRINGEMENT)**
Filed: January 10, 2003	:	
For: SYSTEMS AND METHODS FOR FACILITATING THE PROTECTION OF PERSONAL ASSETS FROM BUSINESS OBLIGATIONS		

This is a decision on the petition under 37 C.F.R §1.102(d) to make the above-identified application special that was filed on February 26, 2004.

The petition requests that the above-identified application be made special under the procedure set forth in MPEP 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market; (B) that a rigid comparison of the alleged infringing device or product with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed February 26, 2004 lacks requirement 2(C), above. In view of this deficiency, the petition is **DISMISSED**.

The applicant, assignee or attorney in addition to stating that a careful search of the prior art has been made, or having good knowledge of the prior art, **must** submit the most closely related pieces of prior art.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

Should petitioner desire reconsideration, a renewed petition should be submitted providing the information as outlined above.

Any renewed petition should be submitted to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/mjz: 4/12/04

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In re application of	:	**DECISION ON PETITION**
Stanford A. Graham et al.	:	**TO MAKE SPECIAL**
Application No. 10/340,540	:	**(INFRINGEMENT)**
Filed: January 10, 2003	:	
For: SYSTEMS AND METHODS FOR FACILITATING THE PROTECTION OF PERSONAL ASSETS FROM BUSINESS OBLIGATIONS		

This is a decision on the petition under 37 C.F.R §1.102(d) to make the above-identified application special that was filed on February 26, 2004.

The petition requests that the above-identified application be made special under the procedure set forth in MPEP 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market; (B) that a rigid comparison of the alleged infringing device or product with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed February 26, 2004 lacks requirement 2(C), above. In view of this deficiency, the petition is **DISMISSED**.

The applicant, assignee or attorney in addition to stating that a careful search of the prior art has been made, or having good knowledge of the prior art, **must** submit the most closely related pieces of prior art.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

Should petitioner desire reconsideration, a renewed petition should be submitted providing the information as outlined above.

Any renewed petition should be submitted to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/mjz: 4/12/04

UNITED STATES PATENT AND TRADEMARK OFFICE

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TRASKBRITT, P.C.
P.O. BOX 2550
SALT LAKE CITY UT 84110

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OFFICE OF PETITIONS

In re Application of
GRAHAM, Stanford A. et al.
Application No. 10/340,540
Filed: January 10, 2003
Attorney Docket No. **3058-5672US**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 11, 2009.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Brick Power on behalf of all attorneys of record who are associated with customer No. 24247. All attorneys/agents associated with the Customer Number 24247 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence address of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor 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 Tredelle Jackson at 571-272-2783.

/Tredelle D. Jackson/
Petitions Examiner
Office of Petitions

cc: **STANFORD A. GRAHAM**
2120 NORTH VALLEY VIEW DRIVE
LAYTON UT 84040

cc: **REES U. JENSEN**
4548 S. ATHERTON DRIVE
STE 200
SALTE LAKE CITY

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)
6,805,313	2004-10-19	10340541	2003-01-10	

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	/Douglas H. Nilsen/	Date (YYYY-MM-DD)	2009-01-14
Name	Douglas H. Nilsen		

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 6805313
Issue Date: October 19,2004
Application No. 10340541
Filed: January 10,2003
Attorney Docket No. 49656/KMO/A669

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

This is a decision on the electronic petition, filed January 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 January 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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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Saul Ewing LLP (Baltimore)
Attn: Patent Docket Clerk
Lockwood Place
500 East Pratt Street, Suite 900
Baltimore MD 21202

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OFFICE OF PETITIONS

In re Application of	:	
Sherry A. Bradford	:	
Application No. 10/340,549	:	DECISION ON PETITION
Filed: January 10, 2003	:	TO WITHDRAW
Attorney Docket No. 356528.0003	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed June 3, 2009.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Konstantina M. Katcheves on behalf of all attorneys of record who are associated with Customer No. 74549.

All attorneys/agents associated with the Customer No. 74549 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 Sherry A. Bradford at the address list below.

There is an outstanding Office action mailed on April 3, 2009, that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Sherry A. Bradford
2490 W. Oakfield Road
Grand Island, NY 14072

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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SEMION TALPALATSKY, ESQ.
CONEXANT SYSTEMS, INC.
4311 JAMBOREE ROAD
NEWPORT BEACH, CA 92660

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OFFICE OF PETITIONS

In re Application of	:	
Martin Vickers and Thomas Foxcroft	:	
Application No. 10/340,577	:	DECISION REFUSING STATUS
Filed: January 10, 2003	:	UNDER 37 CFR 1.47(a)
Title: SIGNAL DEROTATING RECEIVER	:	

This is in response to the "Petition Under 37 CFR 1.47(a)," filed August 27, 2003 (Certificate of Facsimile Transmission date: August 26, 2003). The papers were recently forwarded to this office for review.

The petition is dismissed.

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

The above-identified application was filed on January 10, 2003 without an executed oath or declaration and naming Martin Vickers and Thomas Foxcroft as joint inventors.

Accordingly, on February 26, 2003, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a filing fee, and a surcharge for their late filing.

In response, on filed August 27, 2003 (Certificate of Facsimile Transmission date: August 26, 2003, the instant petition and a four (4) month extension of time were filed.

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;

(3) the petition fee; and

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

Applicant lacks item (1), as set forth above.

Petitioner states, "On August 13, 2003, the undersigned received an e-mail from Thomas Foxcroft. This was the first contact the undersigned has had with Mr. Foxcroft. The e-mail from Mr. Foxcroft stated that he would not sign any documents on behalf of Conexant Systems, Inc. ..."

A copy of the above e-mail has not been submitted. Petitioner should submit a copy of the above e-mail, which includes an express refusal to sign the declaration, for review by this office.

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

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

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

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

Telephone inquiries related to this decision should 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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OFFICE OF PETITIONS

THE ECLIPSE GROUP
10605 BALBOA BLVD., SUITE 300
GRANADA HILLS CA 91344

In re Application of	:	
Vickers and Foxcroft	:	DECISION ACCORDING STATUS
Application No. 10/340,577	:	UNDER 37 CFR 1.47(a)
Filed: 10 January, 2003	:	
Atty Docket No. CX03002USU	:	
(00CXT0294D)	:	

This is in response to the renewed petition filed under 37 CFR 1.47(a) on 6 November, 2006.

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventor, Thomas Foxcroft, has refused to the sign the declaration after having been sent a copy of the application. Specifically, petitioners have shown, via the declaration of registered practitioner Francisco A. Rubio-Campos, that a copy of the application papers were sent to the non-signing inventor, but that the non-signing inventor failed to sign and return the declaration naming him as a joint inventor along with Martin Vickers. Additionally, the non-signing inventor sent an E-mail stating that he would not review the papers without payment.

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

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

The application is being referred to the Technology Center for further processing.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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 Foxcroft
52B Pembroke Road
Bristol BS8 3DT
UNITED KINGDOM

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JAN 24 2007

OFFICE OF PETITIONS

In re Application of
Vickers et al.
Application No. 10/340,577
Filed: 10 January, 2003
For: SIGNAL DEROTATING RECEIVER

Dear Mr. Foxcroft:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at 571/272-3231. Requests for information regarding your application should be directed to the File Information Unit at 571-272-3150. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 571-272-3150 or 1-800-972-6382 (outside the Washington D.C. area).

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

THE ECLIPSE GROUP
10605 BALBOA BLVD., SUITE 300
GRANADA HILLS CA 91344

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10605 Balboa BLVD., Suite 300
Granada Hills, CA 91344

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OFFICE OF PETITIONS

In re Application of :
Martin Vickers et al. :
Application No. 10/340,577 : ON PETITION
Filed: January 10, 2003 :
Attorney Docket No. CX03002USU :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed 19 December 2007, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed 26 January 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on 27 April 2007.

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

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination (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 courtesy copy of Advisory Action (PTOL-303) is attached.

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 Allen C. Ho at (571) 272-6052.

David Bucci
Petitions Examiner
Office of Petitions

enc: Advisory Action Before the Filing of an Appeal Brief (PTOL-303)

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/340,577	Applicant(s) VICKERS ET AL.	
	Examiner Kevin M. Burd	Art Unit 2611	

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

THE REPLY FILED 19 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

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

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

NOTICE OF APPEAL

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

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: *See 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: *1-32*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

/Kevin M. Burd/

Continuation of 3. NOTE: Applicant has added new limitations to the pending claims and these new limitations would require further consideration and/or search.

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JACKSON WALKER (CONEXANT)
901 MAIN STREET, SUITE 6000
DALLAS TX 75202

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AUG 0 1 2008

In re Application of
Martin **VICKERS, et al**
Application No. 10/340,577
Filed: January 10, 2003
Attorney Docket No. 013628.00491
(00CXT0294D)

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed March 3, 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 reply within the meaning of 37 CFR 1.113 to the final Office action mailed January 26, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on April 27, 2007.

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

In regard 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." The petition filed December 19, 2007 included such a statement affirmed by attorney Gregory B Gulliver. However, the previous Power of Attorney was revoked in favor of a new Power of Attorney filed February 7, 2008. The petition under 37 CFR 1.137(b) was then renewed on March 3, 2008. This break in Power of Attorney, coupled with the incomplete original petition, had the effect of preventing the previous statement of delay from applying to the renewed petition. The renewed petition did not provide a proper statement of delay signed by an appropriate party under 37 CFR 1.33(b). A new statement of delay, affirmed by an appropriate part, must be provided.

Also, 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 Lori Baker Amerson at (571) 272-6052 or in her absence the undersigned at (571) 272-7099.

Christopher Bottorff
for David Bucci
Petitions Examiner
Office of Petitions

Cc: Jeffery C. Wilk
The Eclipse Group LLP
10605 Balboa Blvd.
Suite 300
Granada Hills, CA 91344

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NXP, B. V.
NXP INTELLECTUAL PROPERTY &
LICENSING
M/S41-SJ
1109 MCKAY DRIVE
SAN JOSE, CA 95131

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OFFICE OF PETITIONS

In re Application of
Martin VICKERS et al.
Application No. 10/340,577
Filed: January 10, 2003
Attorney Docket No. 013628.00491
(00CXT0294D

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed August 11, 2008, to revive the above-identified application.

The petition is **GRANTED**.

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 January 26, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). 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 April 27, 2007.

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

The Power of Attorney filed September 17, 2008 is acknowledged.

Telephone inquiries concerning this decision should be directed to Ella Colbert at (571) 272-3217 or in her absence to the undersigned at (571) 272-7099.

The application is being referred to Technology Center AU 2611 for appropriate action on the concurrently filed amendment and Request for Continued Examination.

David Bucci
Petitions Examiner
Office of Petitions

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KENYON & KENYON
1500 K STREET, N.W., SUITE 700
WASHINGTON DC 20005

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OCT 29 2004

OFFICE OF PETITIONS

In re Application of :
Thompson et al. :
Application No. 10/340,580 :
Filed: 13 January, 2003 :
Attorney Docket No. 10799/48 :

ON PETITION

This is a decision on the petition, styled under 37 CFR 1.47(a) and filed on 28 September, 2004, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.63 where they require that a supplemental declaration be executed by the named inventor.[1]

The petition is **GRANTED.**

In view of the written refusal to sign a declaration for the present patent application signed by joint inventor Lu, it is agreed that justice would be served by waiving the requirement for her signature on the supplemental declaration filed on 28 September, 2004.

The aforementioned supplemental declaration has been accepted, on petition, and placed in the file.

The application is being referred to Technology Center 1600 for examination in due course.

Telephone inquiries related to this decision should be directed to the undersigned at 571.272.3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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[1] Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

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OCT 29 2004

OFFICE OF PETITIONS

In re Application of :
Thompson et al. :
Application No. 10/340,581 : ON PETITION
Filed: 13 January, 2003 :
Attorney Docket No. 10799/55 :

This is a decision on the petition, styled under 37 CFR 1.47(a) and filed on 28 September, 2004, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.63 where they require that a supplemental declaration be executed by the named inventor.[1]

The petition is **GRANTED.**

In view of the written refusal to sign a declaration for the present patent application signed by joint inventor Lu, it is agreed that justice would be served by waiving the requirement for her signature on the supplemental declaration filed on 28 September, 2004.

The aforementioned supplemental declaration has been accepted, on petition, and placed in the file.

The application is being referred to the Publishing Division for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 571.272.3231.

DIWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

---

[1] Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : ~~7/13/05~~ 7/20/06

TO SPE OF : ART UNIT 1652

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/340581 Patent No.: 6855529 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: The proposed change "Line 54" does not appear to be "Line 54" but rather "Item 54" and the change "~~Line to~~" "Column 10, Line 10" should be "Column 10, Line 12". All other corrections are approved.

SPE

1652
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 29 2004

OFFICE OF PETITIONS

In re Application of :
Thompson et al. :
Application No. 10/340,582 : ON PETITION
Filed: 13 January, 2003 :
Attorney Docket No. 10799/54 :

This is a decision on the petition, styled under 37 CFR 1.47(a) and filed on 28 September, 2004, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.63 where they require that a supplemental declaration be executed by the named inventor.[1]

The petition is **GRANTED**.

In view of the written refusal to sign a declaration for the present patent application signed by joint inventor Lu, it is agreed that justice would be served by waiving the requirement for her signature on the supplemental declaration filed on 28 September, 2004.

The aforementioned supplemental declaration has been accepted, on petition, and placed in the file.

The application is being referred to the Publishing Division for processing into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at 571.272.3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

---

[1] Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

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FOURTH FLOOR
ALEXANDRIA, VA 22314

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OFFICE OF PETITIONS

In re Application of	:	
Ming Nien	:	
Application No. 10/340,623	:	NOTICE
Filed: January 13, 2003	:	
Attorney Docket No. NIEN3020/EM		

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) 272-3201.

This file is being forwarded to Publishing Division for further processing.

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

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Suite 700
Washington, DC 20005

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In re Application of	:	DECISION ON PETITION
Thompson et al.	:	
Application No. 10/340,633	:	
Filed: January 13, 2003	:	
Attorney Docket No. 10799/47	:	

This is a decision on the petition under 37 CFR 1.47(a) filed September 28, 2004, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.63 where they require that a supplemental declaration be executed by the named inventor.[1]

Dongen Lily Lu signed the originally filed Declaration in the present application. However, inventor Lu has expressly indicated in writing that she refuses to join in the application or sign the substitute Declaration. A copy of Dongen Lily Lu's written refusal accompanies the present petition. In view of inventor Lu's express refusal, it is agreed that justice would be served by waiving the requirement for her signature on a supplemental Declaration.

Accordingly, the petition is **granted**.

Upon the granting of this petition, the declaration has been accepted. This application does not have any Rule 1.47 status and no such status should appear on the file wrapper. This application need not be returned to this Office for any further consideration under Rule 1.47(a).

---

[1] Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

The matter is being referred to Technology Center Art Unit 1638.

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

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OFFICE OF PETITIONS

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WASHINGTON, DC 20005

In re Application of :
Thompson et al. :
Application No. 10/340,650 : DECISION ON PETITION
Filed: January 13, 2003 : UNDER § 1.183
Attorney Docket No. 10799/50 :

This is a decision on the petition under § 1.47[1], filed September 13, 2004, which is properly treated as a petition under § 1.183 for acceptance of a supplemental declaration without the signatures of all inventors as required by § 1.67.

The petition is **GRANTED**.

On June 17, 2004, the Office mailed a supplemental Notice of Allowability, which required that applicants provide a corrected declaration. This Notice set a three-month nonextendable period for reply.

In response, applicants timely filed a supplemental declaration executed by joint inventors John Thompson and Tzann-Wei Wang on behalf of themselves and on behalf of joint inventor Dongen Lily Lu; and the instant petition for acceptance of the declaration. By declaration of Teresa Lavenue, petitioners have shown that inventor Lu is "unavailable" to execute the supplemental declaration. The petition includes an express written refusal signed by inventor Lu. The petition also includes the petition fee and a statement of the last known address of inventor Lu.

The supplemental declaration has been reviewed and found in compliance with § 1.67.

In view of the foregoing, it is concluded that waiver of the requirement that the supplemental declaration be signed by all of the joint inventors is appropriate.

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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[1] Petitions under 37 CFR 1.47 are only applicable to an original oath or declaration and are not applicable to the reexecution of another oath or declaration by A. See generally MPEP 201.03.

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OBLON, SPIVAK, MCCLELLAND MAIER
& NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

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OFFICE OF PETITIONS

In re Application of	:	
Josiane ALLEC et al.	:	
Application No. 10/340,662	:	DECISION ON PETITION
Filed: January 13, 2003	:	
Attorney Docket No. 232810US0CONT	:	

This is a decision on the petition, filed December 02, 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 reply to the Notice of Non-Compliant Appeal Brief mailed January 27, 2009, which set a one (1) month shortened statutory period for reply. The application became abandoned on February 28, 2009.

Petitioner asserts that the Notice of Non-Compliant Appeal Brief mailed January 27, 2009 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. 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 Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at (571) 272-4231.

This application is being referred to Technology Center AU 1655 for appropriate action in the normal course of business on the reply received with petition.

Thurman K. Page

Thurman K. Page
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20050927

DATE : September 27, 2005

TO SPE OF : ART UNIT 2852

SUBJECT : Request for Certificate of Correction on Patent No.: 10/340685

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: Arthur T. Grimley **Art Unit** 2852

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

Mail Date: 04/29/2010

Applicant	: Helene Papini	: DECISION ON REQUEST FOR
Patent Number	: 7610370	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/340,690	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/13/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2016** 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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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

Mail Date: 04/29/2010

Applicant	: Helene Papini	: DECISION ON REQUEST FOR
Patent Number	: 7610370	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/340,690	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/13/2003	: ISSUE CERTIFICATE OF CORRECTION

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

The patent term adjustment has been determined to be **2016** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

In re Application of :
Thompson et al. :
Application No. 10/340,693 : DECISION ON PETITION
Filed: January 13, 2003 : UNDER § 1.183
Attorney Docket No. 10799/49 :

This is a decision on the petition under § 1.47[1], filed September 16, 2004, which is properly treated as a petition under § 1.183 for acceptance of a supplemental declaration without the signatures of all inventors as required by § 1.67.

The petition is **GRANTED**.

On August 19, 2004, the Office mailed a Notice of Allowability, which required that applicants provide a corrected declaration. This Notice set a three-month nonextendable period for reply.

In response, applicants timely filed a supplemental declaration executed by joint inventors John Thompson and Tzann-Wei Wang on behalf of themselves and on behalf of joint inventor Dongen Lily Lu; and the instant petition for acceptance of the declaration. By declaration of Teresa Lavenue, petitioners have shown that inventor Lu refuses to execute the supplemental declaration. The petition includes an express written refusal signed by inventor Lu. The petition also includes the petition fee and a statement of the last known address of inventor Lu.

The supplemental declaration has been reviewed and found in compliance with § 1.67.

In view of the foregoing, it is concluded that waiver of the requirement that the supplemental declaration be signed by all of the joint inventors is appropriate.

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[1] Petitions under 37 CFR 1.47 are only applicable to an original oath or declaration and are not applicable to the reexecution of another oath or declaration by A. See generally MPEP 201.03.

Telephone inquiries regarding this decision should be directed to Karen Creasy at (571) 272-3208.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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DYKEMA GOSSETT PLLC
10 S. WACKER DR.
SUITE 2300
CHICAGO, IL 60606

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OFFICE OF PETITIONS

In re Application of	:	
Connie J. Jewell	:	
Application No. 10/340,696	:	DECISION ON PETITION
Filed: January 10, 2003	:	TO WITHDRAW
Attorney Docket No. 0065425-0001	:	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 15, 2009.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Timothy K. Sendek 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.

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

This application is now patented.

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

cc: CONNIE J. JEWEL
1805 SOUTH COLFAX AVENUE
BANTON HARBOR, MI 49022

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OFFICE OF PETITIONS

ON PETITION

In re Application of
John Michael Dougherty et al.
Application No. 10/340,700
Filed: January 9, 2003
Attorney Docket No. OPD008MD-1

This is a decision on the petition under 37 CFR 1.137(b)[1], filed November 20, 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 March 18, 2005. A response was filed June 19, 2005, but by Advisory Action of July 7, 2005, petitioner was advised that the response did not place the application in condition for allowance. This application became abandoned on June 20, 2005. Accordingly, a Notice of Abandonment was mailed September 29, 2005.

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 2859 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

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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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BARRY E. BRETSCHNEIDER
MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

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MAR 23 2004

OFFICE OF PETITIONS

In re Application of :
Arnold Keller et al :
Application No. 10/340,726 :
Filed: January 13, 2003 :
Attorney Docket No. 246472003400

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center AU 3738.

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

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BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

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OFFICE OF PETITIONS

In re Application of	:	
Yamada et al..	:	
Application No. 10/340,735	:	ON PETITION
Filed: January 13, 2003	:	
Attorney Docket No. 000004.00676	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 22, 2005, to revive the above-identified application. In view of the allegation in the petition of the non-receipt of the Notice of Allowance, the petition will also be considered under 37 CFR 1.181 requesting the withdrawal of the holding of abandonment in the above-identified application.

The petition under 37 C.F.R. § 1.181 is **DISMISSED**.

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

The above-identified application became abandoned for failure to the non-final Office action mailed June 10, 2004. 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, 2004. A Notice of Abandonment was mailed on December 22, 2004.

An allegation that an Office action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[1]

[1] See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993), and MPEP 711.03(c).

In the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

The showing in the instant petition is not sufficient to withdraw the holding of abandonment because practitioner did not include a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

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

Petitioner requests a waiver of the petition fee. The relief requested in this petition cannot be granted because 35 U.S.C. 41(a)(7) provides that a petition for the revival of an unintentionally delayed payment of the issue fee must be accompanied by a petition fee of $1500.00, unless the petition is filed under 35 U.S.C. 133 or 151 on the basis of unavoidable delay. Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived. Accordingly, the $130.00 petition fee submitted with the waiver request will be credited to petitioner's deposit account.

This matter is being referred to Technology Center 3700 for further examination on the merits.

Telephone inquiries should 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

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NOV 20 2007

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Mae Joanne Rosok
SEED Intellectual Property Law Group PLLS
701 Fifth Avenue, Suite 5400
Seattle Washington 98104

In re Application of	:
Brodeur et al	:
Serial No.: 10/340,792	: Decision on Petition
Filed : 13 January 2003	:
Attorney Docket No484112.418C1	:

This letter is in response to the Petition under 37 C.F.R. 1.144 filed on 5 November 2007.

BACKGROUND

The petition filed under 37 CFR 1.144 requests reconsideration of the restriction requirement mailed 25 August 2006. The restriction requirement mailed 7 March 2006 divided claims 1-43 into 3 groups and then required a restriction to a single sequence within each group.

Group I: Claims 1-22, drawn to isolated polynucleotides, complementary polynucleotides, vectors comprising said polynucleotides, host cells comprising said vector, and processes for producing a polypeptide by culturing said host cells;

Group II: Claims 23-36, drawn to isolated polypeptides and vaccine compositions comprising said polypeptides; and

Group III: Claims 37-43, drawn to methods of treatment using a polypeptide.

On 7 July 2006, Applicants elected Group II and SEQ ID No 44 with traverse.

On 25 August 2006, the examiner considered the restriction requirement and made it FINAL. Claims 24, 27, 29, 30, 32, 33, 35-43 were withdrawn as being directed to non-elected invention. Claims 23, 25-26, 28, 31 and 34 were rejected under 35 USC 101, (provisional double patenting), 35 USC 112, first paragraph for written description, 35 USC 112, second paragraph and various rejections under 35 USC 102. SEQ ID No 44 was indicated as free of the prior art.

A final Office action on the merits was mailed 15 May 2007.

This petition was filed 5 November 2007, before the filing of a Notice of Appeal, and is thus considered timely.

DISCUSSION

The application, petition and file history have been considered carefully. The petition requests rejoinder of the polypeptides having SEQ ID No 39 and 44.

The petition states that residues 26-434 of SEQ ID No. 39 are identical to residues 1-409 of SEQ ID No. 44. A review of the sequences shows that SEQ ID No 39 contains the signal sequence while SEQ ID No 44 is directed to the mature form of the protein, lacking the signal sequence.

MPEP 803 discusses the two criteria for a proper requirement for restriction between patentably distinct inventions:

> (A) The inventions must be independent (see MPEP § 802.01, § 806.06, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(j)); and
> (B) There would be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 808, and § 808.02).

In this particular instance, the restriction requirement between polypeptides having SEQ ID No 39 and 44 is improper because the peptides are not distinct from each other and because it would not be a serious burden to examine the polypeptides together. Without a showing of serious burden or distinction, maintaining a restriction requirement between the elected inventions and withdrawn claims 29-30, 32-33 and 35 would not be proper.

DECISION

The petition filed under 37 CFR 1.144 is **GRANTED.**

The restriction requirement between polypeptides having SEQ ID No 39 and 44 has been withdrawn.

The finality of the Office action mailed 15 May 2007 has been withdrawn.

Claims 29-30, 32-33 and 35-36 will be rejoined for examination with pending claims 23, 26, 28, 34 and 44.

Claims 37-43 remain withdrawn from examination as being directed to method of Group III. Should all claims directed to the polypeptides become allowable, Applicants may be entitled to rejoinder for methods of making or using the allowable polypeptides, per MPEP 821.04(b).

The application will be forwarded to the Examiner to consider the papers filed on 15 November October 2007 and to prepare an Office action consistent with this decision.

Should there be any questions regarding this decision, please Quality Assurance Specialist/Program Manager Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 571-273-8300.

John LeGuyader
Director, Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 06-01-06

TO SPE OF : ART UNIT 1725

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/340798** Patent No **6966482**

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**.

Certificates of Correction Branch
703-308-9390 ext. 183

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: _____

_____

_____

_____

_____

SPE _____ **Art Unit** 1725

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): TOTANI et al.	Group Art Unit: 1725
Application No.: 10/340,798	Examiner:
Filed: January 13, 2003	Attorney Docket No.: 01-173-DIV
Title: CONNECTING METHOD AND CONNECTING STRUCTURE OF PRINTED CIRCUIT BOARDS	

Commissioner for Patents
Arlington, VA 22202
Mail Stop: Petitions

Date: February 17, 2004

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. 703-872-9306 on February 17, 2004 to the attention of Office of Petitions.

Typed Name: DAVID G. POSZ

Signature: _____

PETITION UNDER 37 C.F.R. § 1.48(b)

Sir:

Pursuant to 37 C.F.R. §1.48 (b) applicant hereby petitions that **Tomohiro YOKOCHI** be deleted as a named inventor because Tomohiro YOKOCHI is no longer an inventor of the invention being claimed in the present application, which is a divisional application of U.S. Application No. 09/907,599, filed on July 19, 2001.

A check for the requisite fee of $130 is enclosed pursuant to 37 C.F.R. §1.17(i). Although no additional fees are believed to be due, authorization is hereby given to charge any unforeseen fees to deposit account 50-1147.

Respectfully submitted,

David G. Posz
Reg. No. 37,701

DGP/yf
Posz & Bethards, PLC
11250 Roger Bacon Drive, Suite 10
Reston, VA 20190
Phone (703) 707-9110
Customer No. 23400

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WASHINGTON DC 20005

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Thompson et al. :
Application No. 10/340,813 :
Filed: January 13, 2003 :
Attorney Docket No. 10799/46 :

This is a decision on the petition under 37 CFR §1.47,filed September 28, 2004, which is being treated as a petition under 37 CFR §1.183 requesting waiver of 37 CFR §§ 1.67 and 1.63 where they require that a supplemental declaration be executed by all named inventors.[1]

The petition under 37 CFR §1.183 requesting waiver of 37 CFR §§ 1.67 and 1.63 is **granted**.

The petition under 37 CFR §1.47 is **dismissed as moot**.

In view of the written refusal by Inventor Dongen Lily Lu to sign any declaration in any divisional application based on parent application no. 09/957,771 (including the explicitly listed above-identified application), it is agreed that justice would be served by waiving the requirement for her signature on the supplemental declaration filed September 28, 2004.

The aforementioned supplemental declaration has been accepted, on petition, and placed in the file.

This application is being forwarded to Technology Center G.A.U. 1638 for examination in due course.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3230.

E. Shirene Willis

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

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[1] Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

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ARENT FOX LLP
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, DC 20036

Mail Date: 05/19/2010

Applicant	: Melvin S. Mogil	: DECISION ON REQUEST FOR
Patent Number	: 7682080	: RECALCULATION of PATENT
Issue Date	: 03/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/340,851	: OF WYETH
Filed	: 01/13/2003	:
		:

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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Paper No. 6

MICHAEL ZARRABIAN
SUITE 500
1925 CENTURY PARK EAST
LOS ANGELES, CA 90067

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In re Application of:
Jim Chaio, Teddy Hadiono, Allen Cheng-Wu Hu, Annie Mylang Le, Perry Neos, Chad Schroter, Eric Wong, Yan Zeng and Charles W. Miller
Application No. 10/053,220
Filed: January 17, 2002
Title of Invention: VERTICAL TRACK ZONING FOR DISK DRIVES

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to a Petition Under 37 C.F.R. 1.47(a), filed April 30, 2002, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on January 17, 2002, and included a declaration listing seven inventors, one of whose signature was missing. A Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice") was mailed on February 20, 2002, noting the above deficiency.

Petitioner subsequently, on April 9, 2002, filed correspondence noting that two additional inventors were missing from their filing receipt, and submitted a filing receipt correcting the inventorship.

Petitioner filed the instant petition on April 30, 2002, in response to the Notice. The petition includes a declaration listing four inventors.

Shortly thereafter, on May 8, 2002, this Office mailed a Response to Request for Corrected Filing Receipt (hereinafter "Response"), informing Petitioner that "[c]hanges made after submission of an executed declaration to the inventor information other than correction of typographical errors must be submitted in the form of a substitute declaration. Change of inventorship requires a petition under 37 CFR 1.48." Response at p.2.

The Petition under 37 CFR 1.47(a)

A petition under 37 CFR 1.47 is appropriate where the inventive entity has been established and when an inventor or all of the inventors refuse to sign the declaration or cannot be reached.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1), (2) and (4) as set forth above.

As to item (2), the Supplemental declaration fails to identify the entire inventive entity. See 37 CFR 1.67(a)(2). A properly executed oath or declaration which complies with 37 CFR 1.67(a)(2) is required. See, also, MPEP 605.04.

The petition under 37 CFR 1.48

The Response correctly informed Petitioner that a petition under 37 CFR 1.48 is required to correct the inventorship in this application.

A grantable petition under 37 CFR 1.48(a) requires: (1) a request to correct inventorship that sets forth the desired inventorship change; (2) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) an oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or 1.47; (4) the processing fee set forth in § 1.17(I); and (5) if an assignment has been executed by any of the named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

In view of Petitioner's inability to obtain the signature of named inventors, Petitioner may also be unable to comply with item (2) and obtain a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part. In that situation, petitioner must request a waiver of 37 CFR 1.48(a)(2) by filing a petition under 37 CFR 1.183. A petition under 37 CFR 1.183 would be in addition to the petition under 37 CFR 1.48(a).

Further to this, Petitioner must submit an oath or declaration permitted by 37 CFR 1.47, which means Petitioner must also satisfy the requirements of a grantable petition under 37 CFR 1.47.

In sum, petitioner must:

(1) file a petition under, and satisfy the requirements for a grantable petition under 37 CFR 1.48(a) to the extent possible, including a declaration as permitted by § 1.47, which means that

petitioner must;

(2) satisfy the requirements for a grantable petition under 37 CFR 1.47(a), which petitioner has attempted to do with the instant petition. To satisfy the deficiency, noted supra, petitioner must submit a properly executed oath or declaration which complies with 37 CFR 1.67(a)(2). Where petitioner is unable to comply with 37 CFR 1.48(a)(2), petitioner must request a waiver, which requires;

(3) a petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.48(a)(2).

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

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

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA 22202-3513

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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BELLINGHAM, WA 98226

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In re Application of :
Jim Chiao et al :
Application No. 10/340,855 : DECISION ON PETITION
Filed: January 10, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. Q01-1005-US2

This is a decision on the petition filed March 3, 2005 under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 10/053,220, as set forth in the concurrently filed amendment.[1]

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 January 10, 2003, and was pending at the time of filing of the instant petition. A reference to the above-noted prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after

[1] Note 37 CFR 1.4(c).

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.

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

This matter is being referred to Technology Center Art Unit 2651.

Frances Hicks
Petitions Examiner
Office of Petitions

Attachment: Corrected Filing Receipt

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OFFICE OF PETITIONS

In re Application of	:	
CHIAO, et al.	:	
Application No. 10/340,855	:	DECISION ON PETITION
Filed: January 10, 2003	:	TO WITHDRAW
Attorney Docket No. Q01-1005-US2	:	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 18, 2006.

The request is **APPROVED**.

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

The request was signed by Tejpal S. Hansra, the sole attorney of record. Tejpal S. Hansra has been withdrawn as attorney or agent of record. 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.

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: **JIM CHIAO**
13635 OLD TREE WAY
SARATOGA, CA 95070

cc: **SEAGATE TECHNOLOGY LLC**
INTELLECTUAL PROPERTY – SHK2LG
1280 DISC DRIVE
SHAKOPEE, MN 55379

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	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/340,855	01/10/2003	Jim Chiao	Q01-1005-US2

CONFIRMATION NO. 5619

OC000000021408261

32093
HANSRA PATENT SERVICES
4525 GLEN MEADOWS PLACE
BELLINGHAM, WA 98226

Date Mailed: 11/30/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/18/2006.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

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6/16/05

WAK

In re Application of :
Charles Heinig :
Serial Number: 10/340,857 : DECISION
Filed: January 9, 2003 : ON
For: Novel Materials and Methods For Water Purification: PETITION

This is in response to the request filed March 15, 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

Peter C. Lauro
Edwards & Angell, LLP
P.O. Box 55874
Boston, Massachusetts 02205

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/1/07

TO SPE OF : ART UNIT 3723

SUBJECT : Request for Certificate of Correction on Patent No.: 6875086

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

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

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 114

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

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

Comments:

SPE

3723
Art Unit

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Paper No. 9

SMITH MOORE LLP
P. O. BOX 21927
GREENSBORO, NC 27420

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AUG 17 2004

OFFICE OF PETITIONS

In re Application of	:
Teckentrup et al.	:
Application No. 10/340,908	: DECISION ON PETITIONS
Filed: 10 January, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 5004273-002US1	: AND UNDER 37 CFR 1.55(c)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed on 17 May and supplemented on 22 July 2004, which is treated as a petition under 37 CFR 1.78(a)(3) and 1.55(c) to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of a prior-filed international application (PCT/EP01/07025, filed 21 June 2001) and under 35 U.S.C. § 119(a)-(d) for the benefit of a prior-filed foreign German application (100 33 706.6, filed 12 July 2000).

The petitions are **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 10 January, 2003, and the PCT application was filed on 21 June, 2001. The instant pending application was copending with the above-noted, prior-filed PCT application at the time of filing, for which priority is claimed. A reference to the above-noted, prior-filed PCT application has been included in an amendment to the first sentence of the specification following the title, which was filed concurrently with the instant petition on 17 May, 2004, but improperly included an incorporation by reference statement. However, a proper reference, without the incorporation by reference statement, to the above-noted, prior-filed PCT application was filed on 22 July, 2004 in an Application Data Sheet under 37 CFR 1.76(b)(6).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the above-noted, prior-filed PCT application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the above-noted, 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 and be included in the oath or declaration in accordance with 37 CFR 1.63(c)(2) or in an Application Data Sheet in accordance with 37 CFR 1.76(b)(6);

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

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

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

As stated above, the above-identified pending nonprovisional application was filed on 10 January 2003, and the intermediate PCT application (filed 21 June, 2001) was filed within 12 months of 12 July, 2000, which is the earliest filing date of the foreign application to which benefit is claimed. A certified copy of the foreign patent document was filed on 10 January, 2003. The surcharge required by 37 cFR 1.17(t) has been received. 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.

It is noted that petitioner's Application Data Sheet filed on 22 July, 2004 improperly claims under the section for domestic priority benefit to foreign Application No. DE 100 33 706.6. Nevertheless, benefit of the aforementioned foreign application was properly placed under the section for priority, and, therefore, will only be entered as such in Office records.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c) should not be construed as meaning that 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, 365(c) and 119(a)-(d) and 37 CFR 1.78(a)(1) and (a)(2) and 37 CFR 1.55 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 above-noted, prior-filed PCT and foreign applications, accompanies this decision on petition.

Telephone inquiries should be directed to Senior Petitions Attorney Douglas I. Wood at 703-308-6918.

This application is being forwarded to Technology Center Art Unit 3644 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 set forth in the ADS filed July 22, 2004.

Brian Hearn for
Charles A. Pearson
Director, Office of Petitions

Encl: Corrected Filing Receipt

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Angus C. Fox, III
4093 N. Imperial Way
Provo UT 84604-5386

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OFFICE OF PETITIONS

In re Application of Cowan Application No. 10/340,912 Filed: January 10, 2003 Attorney Docket No. FC02-01 FOR: EMERGENCY SUPPLY SYSTEM TO SUPPLANT INTERRUPTED PUBLIC AND PRIVATE UTILITIES	: : : : :	DECISION DISMISSING PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed March 28, 2005 (certificate of mailing date March 22, 2005), to revive the above-identified application.

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

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

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed August 3, 2004, which set an extendable three (3) month period for reply. On November 5, 2004 (certificate of mailing date November 2, 2004), petitioner filed an amendment after final, which failed to place the application in prima facie condition for allowance, as was stated in the November 19, 2004 Advisory action. Having received no extension of time fees and no further reply, this application became abandoned on November 4, 2004. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

Petitioner alleges that due to a clerical error, response date was docketed for February 19, 2005, which is three months from the mail date of the Advisory action. The response date should have been docketed in relation to the mail date of the final Office action. Petitioner asserts that the delay in responding to the final Office action was unavoidable.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof; (2) the petition fee as set forth in § 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

This petition does not satisfy requirement (3).

With respect to (3), the showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable". 35 USC § 133. Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term 'unavoidable' "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

As stated in the MPEP 711.03(c), a delay resulting from an error on the part of an employee in the performance of a clerical function may provide the basis for a showing of unavoidable delay provided that:

(1) the error was the cause of the delay at issue
(2) there was in place a business routine for performing the clerical function that could

reasonably be relied upon to avoid errors in its performance;

(3) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

Petitioner must supply a thorough explanation of the docketing and call-up system in use and must identify the type of records kept and the person responsible for the maintenance of the system. Petitioner must submit copies of mail ledgers, docket sheets, filewrappers and such other records as may exist which would substantiate an error in docketing. The Office would like to see portions of the master docket referenced in the petition where the docketing entry should have been entered, as well as where it was erroneously entered. An adequate showing requires a statement by all persons with direct knowledge of why docket procedures failed, setting forth the facts as they know them. Petitioner has not submitted a statement from his secretary regarding the alleged docketing error.

In addition, petitioner has not supplied information regarding the years of experience of the secretary, the amount and type of training provided to the secretary, the degree of supervision of his/her work, examples of other work functions carried out, and checks on the described work which were used to assure the proper execution of assigned tasks. The Office would like information pertaining to the reliability of the secretary. It must be established that reliance upon the secretary represented the exercise of due care on the part of the attorney.

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

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

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

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

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

E. Shirene Willis

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Provo UT 84604-5386

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OFFICE OF PETITIONS

In re Application of
Cowan
Application No. 10/340,912
Filed: January 10, 2003
Attorney Docket No. FC02-01
FOR: EMERGENCY SUPPLY SYSTEM TO SUPPLANT INTERRUPTED PUBLIC AND PRIVATE UTILITIES

DECISION GRANTING PETITION

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

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed August 3, 2004, which set an extendable three (3) month period for reply. On November 5, 2004 (certificate of mailing date November 2, 2004), petitioner filed an amendment after final, which failed to place the application in prima facie condition for allowance, as was stated in the November 19, 2004 Advisory action. Having received no extension of time fees and no further reply, this application became abandoned on November 4, 2004. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

Applicant has submitted a reply in the form of an after final amendment that *prima facie* places the application in condition for allowance, an acceptable statement of the unintentional nature of the delay in responding to the August 3, 2004 Office action, and the petition fee.

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

After the mailing of this decision the application will be forwarded to Technology Center 3753's technical support staff for processing the amendment filed March 28, 2005 (certificate of mailing date March 22, 2005).

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

E. Shirene Willis

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

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OFFICE OF PETITIONS

In re Application of
Bryan T. Cupps et al.
Application No. 10/340,922
Filed: January 13, 2003
Attorney Docket No. DUALC-71219

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)[1], filed March 10, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on December 17, 2004, for failure to timely file a reply to the non-Final Office action mailed August 4, 2005, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed on March 15, 2006, subsequent to the filing of the instant petition.

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 $750; and (3) an adequate statement of unintentional delay.

---

[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)).

Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of continuation application no.11/371,561 filed March 10, 2006, pursuant to the provisions of 37 CFR 1.53(b).

This matter is being referred to Technology Center 2116 for processing of the continuation application filed March 10, 2006.

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

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:
Cupps et al.	:
Application No. 10/340,938	:
Filed: January 13, 2003	:
Attorney Docket No. DUALC-71220	:

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 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 a continuing application; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 11/371,563.

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

Liana Walsh
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No. None

KENYON & KENYON
1500 K STREET, N.W., SUITE 700
WASHINGTON DC 20005

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OFFICE OF PETITIONS

In re Application of
John E. Thompson, Tzann-Wei Wang, and
Dongen Lily Lu
Application No. 10/340,965
Filed: January 13, 2003
Attorney Docket No. 10799/44
Title: DNA ENCODING A PLANT DEOXYHYPUSINE SYNTHASE, A PLANT EUKARYOTIC INITIATION FACTOR 5A, TRANSGENIC PLANTS AND A METHOD FOR CONTROLLING SENESCENCE PROGRAMMED AND CELL DEATH IN PLANTS

DECISION ON PETITION UNDER 37 C.F.R. §1.47(A)

This is in response to the petition under 37 C.F.R. §1.47(a)[1], filed September 28, 2004.

On January 13, 2003, the application was deposited with a transmittal sheet which indicated that the instant application is a divisional of prior-filed application number 09/597,771, which issued as patent number 6,538,182 on March 25, 2003. It is noted that the current application and the patent share a common inventorship. On filing, Petitioner further included a copy of the

1A grantable petition under 37 C.F.R. §1.47(a) requires:
(1) the petition fee of $130;
(2) a surcharge of either $65 or $130 if the petition is not filed at the time of filing the application, as set forth in 37 CFR § 1.16(e);
(3) a statement of the last known address of the non-signing inventors;
(4) either
a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
b) proof that the non-signing inventor cannot be found or reached after diligent effort;
(5) a declaration which complies with 37 CFR §1.63.

declaration which was filed with the parent application. It is noted that this declaration was executed by each of the inventors.

37 C.F.R. §1.63 sets forth, in part:

d)
(1) A newly executed oath or declaration is not required under § 1.51(b)(2) and § 1.53(f) in a continuation or divisional application, provided that:
(i) The prior nonprovisional application contained an oath or declaration as prescribed by paragraphs (a) through (c) of this section;
(ii) The continuation or divisional application was filed by all or by fewer than all of the inventors named in the prior application;
(iii) The specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application; and
(iv) A copy of the executed oath or declaration filed in the prior application, showing the signature or an indication thereon that it was signed, is submitted for the continuation or divisional application.

The parent application contained a declaration, the divisional application was filed by all of the inventors named in the parent, and a copy of the executed declaration filed in the parent, showing a signature for each of the three joint inventors, has been submitted for the divisional application on filing. Finally, since this is a divisional application, it is reasonable for the undersigned to assume that the specification and drawings filed in the divisional application contain no matter that would have been new matter in the prior application.

As such, a newly executed oath or declaration is not required. Consequently, this petition is **DISMISSED AS MOOT**.

The petition fee of $130.00 will not be refunded, as this petition was not necessitated by any error on the part of the Office.
The application will be 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
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

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1/19/05

In re Application of	:	
FILEV et al.	:	
Serial Number : 10/341,003	:	WITHDRAWAL
Filed : January 13, 2003	:	FROM
For : INTEGRATED PAINT QUALITY	:	ISSUE
CONTROL SYSTEM	:	

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.

If the issue fee has been submitted, the applicant may request a refund or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee to applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a deposit account.

Telephone inquiries should be directed to Christopher Fiorilla at 571-272-1187.

The application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

JMStone

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

Damian Porcari
Ford Global Technologies, LLC
One Parklane Blvd.
Suite 600 PTE
Dearborn, MI 48126

UNITED STATES PATENT AND TRADEMARK OFFICE

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Wilmer Cutler Pickering Hale and Dorr, LLP
60 State Street
Boston, MA 02109

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DEC 14 2006

OFFICE OF PETITIONS

In re Application of
Ward et al.
Application No. 10/341,005
Filed: January 13, 2003
Attorney Docket No. 11202.139

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 24, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **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.

The Office notes that 37 CFR 1.78(a)(3) requires 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 statement appearing in the petition varies from the required language; however, the statement is being construed as the statement required by 37 CFR 1.78(a)(3). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office. All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

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

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

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

This application is being forwarded to Technology Center Art Unit 1762 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/341,005	01/13/2003	1762	492	112020.139	34	33	2

CONFIRMATION NO. 6956

CORRECTED FILING RECEIPT

OC000000021594645

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

Date Mailed: 12/13/2006

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)

Jonathan W. Ward, Burlington, MA;
Thomas Rueckes, Boston, MA;
Brent M. Segal, Woburn, MA;

Power of Attorney:

James Lampert--24564
Gary Walpert--26098
Wayne Kennard--30271
Michael Bevilacqua--31091
Hollie Baker--31321
Henry Wixon--32073
Ann-Louise Kerner--33523
Irah Donner--35120
Wendy Verlander--35177
Rajesh Vallabh--35761

Domestic Priority data as claimed by applicant

This application is a CIP of 09/915,093 07/25/2001 PAT 6,919,592
and is a CIP of 10/128,118 04/23/2002 PAT 6,706,402

Foreign Applications

Projected Publication Date: To Be Determined - pending completion of Security Review

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Methods of making carbon nanotube films, layers, fabrics, ribbons, elements and articles

Preliminary Class

427

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

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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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APR 13 2007

OFFICE OF PETITIONS

WILMER CUTLER PICKERING
HALE AND DOOR LLP
60 STATE STREET
BOSTON, MA 02109

In re Application of	:
Jonathan W. Ward et al	:
Application No. 10/341,054	: DECISION ON PETITION
Filed: January 13, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 112020.141	:

This is a decision on the petition filed October 10, 2006, which is being treated as a petition under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the petition.

The petition is **GRANTED**.

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

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

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

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

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled

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

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

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

This application is being forwarded to Technology Center Art Unit 1762 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.

Frances Hicks
Petition Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/341,054	01/13/2003	1762	974	112020.141	81	2

CONFIRMATION NO. 6764
CORRECTED FILING RECEIPT
OC000000023336639
OC000000023336639

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

Date Mailed: 04/11/2007

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Jonathan W. Ward, Burlington, MA;
Thomas Rueckes, Boston, MA;
Brent M. Segal, Woburn, MA;

Power of Attorney:

James Lampert--24564
Gary Walpert--26098
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Henry Wixon--32073
Ann-Louise Kerner--33523
Irah Donner--35120
Wendy Verlander--35177
Rajesh Vallabh--35761

Domestic Priority data as claimed by applicant

This application is a CIP of 10/128,118 04/23/2002 PAT 6,706,402

Foreign Applications

Projected Publication Date: To Be Determined - pending completion of Security Review

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Methods of using pre-formed nanotubes to make carbon nanotube films, layers, fabrics, elements and articles

Preliminary Class

427

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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LICENSE FOR FOREIGN FILING UNDER
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Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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Paper No. 3

PEPPER HAMILTON LLP
ONE MELLON BANK CENTER
50TH FLOOR
500 GRANT STREET
PITTSBURGH, PA 15219

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MAR 2 7 2003

OFFICE OF PETITIONS

In re Application of :
Tao Zhang et al :
Application No. 10/341,073 :
Filed: January 13, 2003 :
Attorney Docket No. :

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to the Initial Patent Examination Unit.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAY 31 2005

Pepper Hamilton LLP
One Mellon Center
500 Grant Street, 50th Floor
Pittsburgh, PA 15219

In re application of Tao Zhang et al. Application No. 10/341,073 Filed: January 13, 2003 For: ANALYSIS OF THIRD PARTY NETWORKS	: : : : : : :	**DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)**

This is a decision on the petition under 37 C.F.R § 1.102(d) filed May 20, 2005 to make the above-identified application special.

The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market or method in use; (B) that a rigid comparison of the alleged infringing device, product or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed May 20, 2005 meets all of the requirements above and, therefore, the petition is **GRANTED**.

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

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

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
571-272-6611

RAR/dew: 05/27/05

22 NOV 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Knobbe, Martens, Olson & Bear
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

In re Application of	:	
FUJII	:	DECISION ON
Application No.: 10/341,091	:	
PCT No.: PCT/JP01/05844	:	PETITION
Int. Filing Date: 05 July 2001	:	
Priority Date: 13 July 2000	:	UNDER 37 CFR 1.181
Attorney's Docket No.: WAKAB78.002APC	:	
For: METHOD OF MEASURING MOTOR CONSTANT FOR INDUCTION MOTOR	:	

This application is before the PCT Legal Office for consideration of matters arising under 35 U.S.C. 371.

BACKGROUND

On 05 July 2001, applicant filed international application PCT/JP01/05844, which claimed priority of an earlier Japanese application filed 13 July 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 24 January 2002. A Demand for international preliminary examination, in which the United States was elected, was timely filed, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 13 January 2003.

On 10 January 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia,: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application as required by 35 U.S.C. 371(c)(2); and a declaration as required by 35 U.S.C. 371(c)(4). The application was treated as a filing under 35 U.S.C. 111(a).

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077

OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

> The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.
>
> * * *
>
> To clearly indicate an international application is being filed under 35 U.S.C. 371 the applicant should use the "Transmittal Letter for United States Designated Office" (Form PTO-1390) as the transmittal letter.
>
> Alternatively, one of the following indications may be used:
>
> 1) the applicant shall clearly state in the transmittal or cover letter that he or she is filing under 35 U.S.C. 371 or entering the national stage under PCT; or
>
> 2) the applicant clearly identifies in the oath or declaration the specification to which it is directed by referring to a particular international application by PCT Serial Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the described in the identified international application.

Applicant's transmittal letter was entitled, "TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A FILING UNDER 35 USC 371." Furthermore, applicants' declaration was directed "to the specification of which was described and claimed in PCT International Application No. PCT/JP01/05844 filed on July 5, 2001." Thus, the declaration served as an indication that the applicants were seeking to enter the national stage under PCT. Despite these indications, the application was treated as a filing under 35 U.S.C. 111.

Since the application was processed under 35 U.S.C. 111(a), the difference ($150) in the filing fee ($750) and the basic national fee ($900) has been charged to applicant's Deposit Account No. 11-1410.

Applicant is urged to use the "Transmittal Letter for United States Designated Office" (Form PTO-1390) as the transmittal letter when submitting papers under 35 U.S.C. 371 for entry into the national stage in the United States. A copy of this form is enclosed with this decision for applicant's convenience.

CONCLUSION

Applicant's claim for priority is acknowledged. The application has an international filing date of 05 July 2001 under 35 U.S.C. 363 and a date of **10 January 2003** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being forwarded to the National Stage Processing Branch of the International Division for treatment in accordance with this decision, that is for preparation and mailing of the Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903) and the mailing of a corrected filing receipt.

Leonard E. Smith
PCT Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration

LES:ls

Telephone: (571) 272-3297
Facsimile: (571) 273-0459

enclosure: Form PTO-1390

PTO-1390 (Rev. 10-2004)
Approved for use through 3/31/2007. OMB 0651-0021
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A SUBMISSION UNDER 35 U.S.C. 371

ATTTORNEY'S DOCKET NUMBER

U.S. APPLICATION NO. (If known, see 37 CFR 1.5)

INTERNATIONAL APPLICATION NO.	INTERNATIONAL FILING DATE	PRIORITY DATE CLAIMED

TITLE OF INVENTION

APPLICANT(S) FOR DO/EO/US

Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:

1. ☐ This is a **FIRST** submission of items concerning a submission under 35 U.S.C. 371.
2. ☐ This is a **SECOND** or **SUBSEQUENT** submission of items concerning a submission under 35 U.S.C. 371.
3. ☐ This is an express request to begin national examination procedures (35 U.S.C. 371(f)). The submission must include items (5), (6), (9) and (21) indicated below.
4. ☐ The US has been elected (Article 31).
5. ☐ A copy of the International Application as filed (35 U.S.C. 371(c)(2))
   a. ☐ is attached hereto (required only if not communicated by the International Bureau).
   b. ☐ has been communicated by the International Bureau.
   c. ☐ is not required, as the application was filed in the United States Receiving Office (RO/US).
6. ☐ An English language translation of the International Application as filed (35 U.S.C. 371(c)(2)).
   a. ☐ is attached hereto.
   b. ☐ has been previously submitted under 35 U.S.C. 154(d)(4).
7. ☐ Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3))
   a. ☐ are attached hereto (required only if not communicated by the International Bureau).
   b. ☐ have been communicated by the International Bureau.
   c. ☐ have not been made; however, the time limit for making such amendments has NOT expired.
   d. ☐ have not been made and will not be made.
8. ☐ An English language translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)).
9. ☐ An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)).
10. ☐ An English language translation of the annexes of the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)).

Items 11 to 20 below concern document(s) or information included:

11. ☐ An Information Disclosure Statement under 37 CFR 1.97 and 1.98.
12. ☐ An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.
13. ☐ A preliminary amendment.
14. ☐ An Application Data Sheet under 37 CFR 1.76.
15. ☐ A substitute specification.
16. ☐ A power of attorney and/or change of address letter.
17. ☐ A computer-readable form of the sequence listing in accordance with PCT Rule 13*ter*.2 and 37 CFR 1.821- 1.825.
18. ☐ A second copy of the published International Application under 35 U.S.C. 154(d)(4).
19. ☐ A second copy of the English language translation of the International Application under 35 U.S.C. 154(d)(4).
20. ☐ Other items or information:

This collection of information is required by 37 CFR 1.414 and 1.491-1.492. 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 15 minutes to complete, including gathering information, preparing, and submitting the completed 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 PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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.

U.S. APPLICATION NO. (if known, see 37 CFR 1.5)	INTERNATIONAL APPLICATION NO.	ATTORNEY'S DOCKET NUMBER

21. ☐ The following fees are submitted:	CALCULATIONS	PTO USE ONLY
BASIC NATIONAL FEE (CFR 1.492(a)(1)–(5)):		
Neither international preliminary examination fee (37 CFR 1.482) nor international search fee (37 CFR 1.445(a)(2)) paid to USPTO and International Search Report not prepared by the EPO or JPO.....$1110.00		
International preliminary examination fee (37 CFR 1.482) not paid to USPTO but International Search Report prepared by the EPO or JPO $950.00		
International preliminary examination fee (37 CFR 1.482) not paid to USPTO but international search fee (37 CFR 1.445(a)(2)) paid to USPTO $790.00		
International preliminary examination fee (37 CFR 1.482) paid to USPTO but all claims did not satisfy provisions of PCT Article 33(1)-(4) $750.00		
International preliminary examination fee (37 CFR 1.482) paid to USPTO and all claims satisfied provisions of PCT Article 33(1)-(4) $100.00		
ENTER APPROPRIATE BASIC FEE AMOUNT =	$	
Surcharge of **$130.00** for furnishing the oath or declaration later than 30 months from the earliest claimed priority date (37 CFR 1.492(e)).	$	

CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE		
				$	
Total claims	- 20 =		X $18.00	$	
Independent claims	- 3 =		X $88.00	$	
MULTIPLE DEPENDENT CLAIM(S) (if applicable)			+ $300.00	$	
TOTAL OF ABOVE CALCULATIONS =				$	
☐ Applicant claims small entity status. See 37 CFR 1.27. The fees indicated above are reduced by ½.				$	
SUBTOTAL =				$	
Processing fee of **$130.00** for furnishing the English translation later than 30 months from the earliest claimed priority date (37 CFR 1.492(f)). +				$	
TOTAL NATIONAL FEE =				$	
Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). **$40.00** per property +				$	
TOTAL FEES ENCLOSED =				$	
				Amount to be refunded:	$
				Amount to be charged:	$

a. ☐ A check in the amount of $ _____ to cover the above fees is enclosed.

b. ☐ Please charge my Deposit Account No. _____ in the amount of $ _____ to cover the above fees. A duplicate copy of this sheet is enclosed.

c. ☐ The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. _____. A duplicate copy of this sheet is enclosed.

d. ☐ Fees are to be charged to a credit card. **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.

NOTE: Where an appropriate time limit under 37 CFR 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the International Application to pending status.

SEND ALL CORRESPONDENCE TO:

_____
SIGNATURE

_____
NAME

_____
REGISTRATION NUMBER

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Knobbe, Martens, Olson & Bear
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

In re Application of FUJII Application No.: 10/341,091 PCT No.: PCT/JP01/05844 Int. Filing Date: 05 July 2001 Priority Date: 13 July 2000 Attorney's Docket No.: WAKAB78.002APC For: METHOD OF MEASURING MOTOR CONSTANT FOR INDUCTION MOTOR	DECISION ON PETITION UNDER 37 CFR 1.181

This application is before the PCT Legal Office for consideration of matters arising under 35 U.S.C. 371.

BACKGROUND

On 05 July 2001, applicant filed international application PCT/JP01/05844, which claimed priority of an earlier Japanese application filed 13 July 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 24 January 2002. A Demand for international preliminary examination, in which the United States was elected, was timely filed, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 13 January 2003.

On 10 January 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia,: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application as required by 35 U.S.C. 371(c)(2); and a declaration as required by 35 U.S.C. 371(c)(4). The application was treated as a filing under 35 U.S.C. 111(a).

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077

OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

> The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.
>
> * * *
>
> To clearly indicate an international application is being filed under 35 U.S.C. 371 the applicant should use the "Transmittal Letter for United States Designated Office" (Form PTO-1390) as the transmittal letter.
>
> Alternatively, one of the following indications may be used:
>
> 1) the applicant shall clearly state in the transmittal or cover letter that he or she is filing under 35 U.S.C. 371 or entering the national stage under PCT; or
>
> 2) the applicant clearly identifies in the oath or declaration the specification to which it is directed by referring to a particular international application by PCT Serial Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the described in the identified international application.

Applicant's transmittal letter was entitled, "TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A FILING UNDER 35 USC 371." Furthermore, applicants' declaration was directed "to the specification of which was described and claimed in PCT International Application No. PCT/JP01/05844 filed on July 5, 2001." Thus, the declaration served as an indication that the applicants were seeking to enter the national stage under PCT. Despite these indications, the application was treated as a filing under 35 U.S.C. 111.

Since the application was processed under 35 U.S.C. 111(a), the difference ($150) in the filing fee ($750) and the basic national fee ($900) has been charged to applicant's Deposit Account No. 11-1410.

Applicant is urged to use the "Transmittal Letter for United States Designated Office" (Form PTO-1390) as the transmittal letter when submitting papers under 35 U.S.C. 371 for entry into the national stage in the United States. A copy of this form is enclosed with this decision for applicant's convenience.

CONCLUSION

Applicant's claim for priority is acknowledged. The application has an international filing date of 05 July 2001 under 35 U.S.C. 363 and a date of **10 January 2003** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being forwarded to the National Stage Processing Branch of the International Division for treatment in accordance with this decision, that is for preparation and mailing of the Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903) and the mailing of a corrected filing receipt.

Leonard E. Smith
PCT Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration

LES:ls

Telephone: (571) 272-3297
Facsimile: (571) 273-0459

enclosure: Form PTO-1390

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JOHN K. MCCORMICK
6781 GLACIER DRIVE
WEST BEND, WI 53090

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AUG 0 4 2005

OFFICE OF PETITIONS

In re Application of :
John G. Suckow :
Application No. 10/341,127 : ON PETITION
Filed: January 13, 2003 :
Attorney Docket No. 215 :

This is a decision on the petition, filed May 12, 2005, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed March 5, 2004. A Notice of Abandonment was mailed on October 4, 2004. On May 12, 2005, the present petition was filed.

The petition is found to comply with the requirements of 37 CFR 1.137(b).

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries regarding this application should be directed to the Technology Center.

The application file is being forwarded to Technology Center AU 3677 for consideration of the amendment filed May 12, 2005.

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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MICHAEL N. HAYNES
1341 HUNTERSFIELD CLOSE
KESWICK, VA 22947

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DEC 2 1 2006

OFFICE OF PETITIONS

In re Application of	:	
EDWARDS, et al.	:	
Application No. 10/341,137	:	DECISION ON PETITION
Filed: January 13, 2003	:	TO WITHDRAW
Attorney Docket No. INTJ-001/02US 306456-2007	:	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 13, 2006.

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

A review of the file record indicates that the power of attorney to MICHAEL N. HAYNES has been revoked by the assignee of the patent application on November 16, 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 address listed below until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Patricia Volpe at 571-272- 6825.

Patricia Volpe
Petitions Examiner
Office of Petitions

cc: COOLEY GODWARD KRONISH LLP
ATTN: PATENT GROUP
THE BOWEN BUILDING
875 15TH STREET, N.W. SUITE 800
WASHINGTON, DC 20005-2221

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	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/341,137	01/13/2003	Evan T. Edwards	1022-003

CONFIRMATION NO. 9546

OC000000021687877

34060
MICHAEL N. HAYNES
1341 HUNTERSFIELD CLOSE
KESWICK, VA 22947

Date Mailed: 12/20/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/16/2006.

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

PVolpe

PATRICIA A VOLPE
OP (571) 272-6825

FORMER ATTORNEY/AGENT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
WASHINGTON DC 20006-5403

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Patent No. 6,840,709	:	
Application No. 10/341,183	:	
Filed: January 13, 2003	:	ON PETITION
Issued: January 11, 2005	:	
Title: DISTRIBUTED NATURAL GAS STORAGE SYSTEM(S) USING OIL & GAS & OTHER WELL(S)	:	

This is a decision on the petition under 37 CFR 1.378(c), filed March 30, 2009, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued January 11, 2005. The last day of the grace period for paying the 3.5-year maintenance fee was January 11, 2009. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No. 5

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

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APR 2 6 2004

OFFICE OF PETITIONS

In re Application of	:	
Ito	:	
Application No. 10/341,188	:	ON PETITION
Filed: January 13, 2003	:	
Attorney Docket No. FS.20082US0A	:	

This decision concerns the February 9, 2004 "Petition to Withdraw Holding of Abandonment under 37 CFR 1.181(a)."

The petition is **GRANTED.**

On January 29, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice Abandonment," stating that the application had become abandoned for failure to timely respond to a March 3, 2003 "Notice to File Missing Parts" ("3/3/03 Notice"). The instant petition then followed, asserting non-receipt of the 3/3/03 Notice, and requesting withdrawal of the holding of abandonment in this application.

A grantable petition to withdraw the holding of abandonment, alleging non-receipt of an Office action which is the cause of the abandonment, must overcome a strong presumption that the Office action at issue, duly addressed and indicated as mailed, was timely delivered to the addressee.[1] The showing required to overcome this presumption consists of:[2]

(1) a statement from the practitioner:

(A) stating that the Office action was not received by the practitioner;

(B) attesting, by referencing the docket record in (2) below, that a search of the relevant file jacket and docket records indicates that the Office action was not received; and

(2) a copy of the docket record where the Office action would have been docketed had it been received.

---

[1] 1156 OG 53 (Oct. 25, 1993).

[2] *Id.*

The petition meet all the requirements set forth above, and is thus granted.

The holding of abandonment in the instant application is hereby withdrawn, and the January 29, 2004 Notice of Abandonment vacated.

No petition fee is owed, and none was charged to counsel's deposit account.

In addition, the Office was not able to locate the 3/3/03 Notice in the USPTO paper or electronic file for this application. Accordingly, the application file is being returned to OIPE for pre-examination and mailing of a new Notice of Missing Parts and/or a Filing Receipt, as appropriate.[1]

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

RC Tang
Petitions Attorney
Office of Petitions

---

[1] **Upon completion of pre-examination, the application file will be forwarded to Technology Center 3700 for examination in due course.**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

MICHAEL GOLDMAN, ESQ.
NIXON PEABODY LLP
CLINTON SQUARE
P.O. BOX 31051
ROCHESTER, NY 14603-1051

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JUL 3 0 2003

OFFICE OF PETITIONS

In re Application of David E. Briles et al Application No. 10/341,201 Filed: January 13, 2003 Attorney Docket No. 57909/430	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 June 16, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional application, and on 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 priority to the prior-filed provisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **Granted**.

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

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

---

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

The instant application was filed on January 13, 2003 and was pending at the time of filing of the instant petition. A reference to the prior-filed application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(3).

As to the benefit claim under 37 CFR 1.78(a)(6):

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

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

(2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional; and

(3) the reference to the prior filed provisional application supplied in an application data sheet (ADS)37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5)(i). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application seeks acceptance of a claim for priority under 35 U.S.C. §119(e) for the benefit of prior-filed provisional Application No. 60/082,728, filed April 23, 1998. Additionally, intermediate Application No. 09/298,523, filed April 23, 1999, was filed within twelve months of provisional Application No. 60/082,728, for which priority is now sought under the provisions of 37 CFR 1.78(a)(6). A reference to the prior- filed applications has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Also, the reference to the prior-filed applications was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. §120 and §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.

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 Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 1645 for processing the amendment submitted June 16, 2003, and for consideration by the examiner of the claim for the benefit of the prior-filed applications.

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

ATTACHMENT : Corrected Filing Receipt

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OFFICE OF PETITIONS

In re Patent No. 7,292,399	:	
OTSUKI et al.	:	DECISION ON REQUEST
Issue Date: November 6, 2007	:	FOR RECONSIDERATION OF
Application No. 10/341,208	:	PATENT TERM ADJUSTMENT
Filed: January 13, 2003	:	
Attorney Docket No. 9281-4470	:	

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed January 7, 2008. Patentee requests that the Patent Term Adjustment for the above-identified patent be set at 717 days.

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

Patentee is given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under § 1.136.

On November 6, 2007, the above-identified application matured into U.S. Patent No. 7,292,399. The instant request for reconsideration was timely filed on January 7, 2008. The patent issued with a revised Patent Term Adjustment of 525 days.

Patentee requests an additional 192 days of patent term adjustment for the Office's failure to issue the patent within three years in accordance with pursuant to 37 CFR 1.702(b). Specifically, patentee contends:

> The present application was filed on January 13, 2003. The 3 year date specified in 37 C.F.R. § 1.703(b) is January 13, 2006. Pursuant to 37 C.F.R. § 1.703(b)(1),

> the period of adjustment does not include the number of days, if any, in the period beginning on the date on which a request for continued examination (RCE) was filed and ending on the date the patent was issued. An RCE was filed on July 24, 2006. The difference between the 3 year date and the RCE date is 192 days.

Petition dated 01/07/08, p. 2.

In this instance, patentee filed a request for continued examination (RCE) on July 24, 2006. Thus, the RCE cuts-off the ability to accumulate additional patent term adjustment against the three-year pendency provision, but does not otherwise effect patent term adjustment. Accordingly, the period of adjustment under 37 CFR 1.702(b) is 191 days, counting the number of days beginning on January 14, 2006, and ending on July 23, 2006. See 37 CFR 1.703(b)(1).

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 was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than three years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the period of delay of 550 days attributable to grounds specified in 37 CFR 1.702(a)(1) overlaps with the 191 days attributable to the delay in the issuance of the patent. Thus, the period of adjustment cannot exceed the actual number of days of delay of 525 days.

In view thereof, the patent properly issued with a patent term adjustment of **525 days**.

The $200.00 fee under 37 CFR 1.18(e) will be charged to the Deposit Account as authorized.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

Kery A. Fries

Kery A. Fries
Senior Legal Advisor
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
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Pabst Patent Group LLP
1545 PEACHTREE STREET NE
SUITE 320
ATLANTA GA 30309

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DEC 17 2009

OFFICE OF PETITIONS

In re Patent No. 6,881,560	:	
Issue Date: April 19, 2005	:	
Application No. 10/341,214	:	LETTER
Filed: January 13, 2003	:	
Attorney Docket No. MIT 4403 CIP CON (3)	:	

This is in response to the notice filed by facsimile on July 24, 2009, for acceptance of a fee deficiency submission under 37 CFR 1.28.

Your fee deficiency submission under 37 CFR 1.28 is hereby **NOT ACCEPTED**.

It appears that the petition was not properly signed by a person having authority to prosecute in the above-identified patent. Therefore, the request can not be accepted at this time.

Petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
>
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
> (3) An assignee as provided for under §3.71(b) of this chapter; or
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

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.

Accordingly, the request cannot be accepted until it is signed by all inventors, an attorney/agent who is registered to practice before the U.S. Patent and Trademark Office, or the assignee of the entire interest. If the request is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b).

Inquiries concerning this communication should be directed to the undersigned at (571) 272-3213.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: Daniel O' Brien
Massachusetts Institute of Technology
Technology Licensing Office
Five Cambridge Center, Kendall Square
Cambridge, Massachusetts 02142-1493

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SUGHRUE MION PLLC
2100 PENNSYLVANIA AVE NW
WASHINGTON DC 20037-3213

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JUL 17 2006

OFFICE OF PETITIONS

In re Application of	:	
Omori, et al.	:	
Application No. 10/341,229	:	ON PETITION
Filed: January 13, 2003	:	
Attorney Docket No. Q73416	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed June 19, 2006.

The petition is **GRANTED**.

This application was held abandoned for failure to timely reply to the non-final Office action mailed November 16, 2005. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the above identified application became abandoned on February 17, 2006. A Notice of Abandonment was mailed on June 6, 2006.

Petitioner contends that he did timely file a reply to the November 16, 2005 Office action In support, petitioner has included a copy of a properly itemized, USPTO date-stamped receipt, itemizing that an Amendment, Terminal Disclaimer, and IDS were filed on February 14, 2006. Moreover, a review of Office records reveals that the Officer received the fees for the Terminal Disclaimer and the IDS on February 14, 2006.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

In view thereof, **THE HOLDING OF ABANDONMENT IS WITHDRAWN.**

Given the basis for granting this petition, no petition fee was required and none has been charged.

The matter is being forwarded to Group Art Unit 1742 for consideration of the Amendment, Terminal Disclaimer and IDS, all filed on February 14, 2006 (copies re-supplied on petition filed June 19, 2006).

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

Cliff Congo
Petitions Attorney
Office of Petitions

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HAYNES BEFFEL & WOLFIELD LLP
P.O. BOX 366
HALF MOON BAY, CA 94019

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SEP 12 2006
OFFICE OF PETITIONS

In re Application of
Bryan T. Cupps et al.
Application No. 10/341,242
Filed: January 13, 2003
Attorney Docket No. GCV1-P006

ON PETITION

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

The petition is **GRANTED**.

This application became abandoned on December 17, 2004, for failure to timely file a reply to the final Office action mailed September 16, 2004, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed on April 20, 2005.

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 $750; and (3) an adequate statement of unintentional delay.

Since this application is being revived for purposes of continuity only and since

---

[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)).

continuity has been established by this decision reviving the application, the application is again abandoned in favor of continuation application no.11/053,780 filed February 9, 2005, pursuant to the provisions of 37 CFR 1.53(b).

Additionally, the record reveals that a two month extension of time was filed with the instant petition, however, 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 $225.00 extension of time fee submitted with the petition on April 7, 2006, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 06-2425.

This matter is being referred to Technology Center 2182 for processing of the continuation application filed April 7, 2006.

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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ALEXANDRIA, VA 22313-1450
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VP
PAPER NO. ___

JUL 21 2004

In re Application of	:	
Edward F. DeCrosta	:	
Serial Number: 10/341,243	:	PETITION UNDER
Filed: January 13, 2003	:	M.P.E.P.708.02 IV
For: MODIFIED THERMAL GALVANIC CELL	:	

This is in response to the petition filed February 3, 2003, requesting that the above-identified application be granted Special Status under Section 708.02 IV of the MPEP and 37 CFR 1.102(c) (**no fee required**).

The request for Special Status considered under Section 708.02 IV of the MPEP is granted because criteria under 37 CFR 1.102(c) has been met.

Accordingly the petition is **GRANTED.**

Marian C Knode

Marian C. Knode, Special Programs Examiner
Technology Center 1700
Chemical and Materials Engineering

JAMES MAGEE, JR.
30 CANTERBURY RD.
CLIFTON PARK NY 12065

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BIRCH STEWART KOLASCH & BIRCH, LLP
PO BOX 747
FALLS CHURCH, VA 22040-0747

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FEB 17 2009

OFFICE OF PETITIONS

In re Application of :
Michael H. Tsang :
Application No. 10/341,247 :
Filed: January 14, 2003 :
Attorney Docket No. 003797.00447 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 22, 2008, 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 27, 2008, 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 August 28, 2008.

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 $1110 extension of time submitted with the petition on December 22, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credit to petitioner's deposit account.

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

This matter is being referred to Technology Center AU 2434 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
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/341,247	01/14/2003	Michael H. Tsang	003797.00447

CONFIRMATION NO. 7232

POWER OF ATTORNEY NOTICE

OC000000034547756

28319
BANNER & WITCOFF, LTD.
ATTORNEYS FOR CLIENT NOS. 003797 & 013797
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON, DC 20005-4051

Date Mailed: 02/12/2009

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/22/2008.

- 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

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/341,247	01/14/2003	Michael H. Tsang	003797.00447

CONFIRMATION NO. 7232

POA ACCEPTANCE LETTER

67321
BIRCH, STEWART, KOLASCH & BIRCH, LLP
PO Box 747
FALLS CHURCH, VA 22040-0747

OC000000034547823

Date Mailed: 02/12/2009

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/22/2008.

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

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400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

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JUL 26 2007

OFFICE OF PETITIONS

In re Application of	:	
James Pristas et al	:	
Application No. 10/341,264	:	DECISION ON PETITION
Filed: January 13, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 67,036-020	:	

This is a decision on the petition, filed January 11, 2007, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on February 6, 2004. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

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

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

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

(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request, which sets forth the projected publication date of November 1, 2007, has been mailed under separate cover.

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

This application is being referred to Technology Center Art Unit 2617 for appropriate action on the reply received February 16, 2007 in response to the Office action of November 16, 2006.

Frances Hicks
Petitions Examiner
Office of Petitions

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3458 ELLICOTT CENTER DRIVE
SUITE 101
ELLICOTT CITY, MD 21043

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OFFICE OF PETITIONS

In re Application of
Joe Chen
Application No. 10/341,266
Filed: January 14, 2003
Attorney Docket No. MR1683-569

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 4, 2004, to revive the above-identified application.

The petition is GRANTED.

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 December 24, 2003, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on March 25, 2004.

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

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United States Patent and Trademark Office
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KUO-HSIUNG CHIU
13F., NO.23, JIUN-HO STREET, PEITUN DISTRICT
TAICHUNG, TAIWAN 406

In re Patent Application of
WANG ET AL.
Appl. No.: 10/341,268
Filed: January 14, 2003

MAILED

OCT 17 2005

Director's Office
Group 3700

DECISION DISMISSING PETITION
37 CFR 1.181

This application is before the Director of Technology Center 3700 for reconsideration of the Notice of Abandonment mailed December 7, 2004. In view of the statements in the letter of January 17, 2005, the submission is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-identified application. No fee is required.

The petition is dismissed. The application remains abandoned.

The records of the Office indicate that an Office action was mailed to applicant at the address of record on April 22, 2004. There is a strong presumption that mail properly addressed and delivered to the United States Postal Service is in fact delivered to the addressee. An allegation that an Office action was not received may be considered in a formal petition for the withdrawal of the holding of abandonment, in accordance with Delgar Inc. v. Schuyler, 172 USPQ 513. This presumption that the Office action was delivered to applicant may be overcome by a showing that the action was not, in fact, received. As part of the showing, applicant must submit (1) a statement by him, and/or by anyone else at applicant's correspondence address that would have handled the Office action, stating that the Office action was not received, (2) a statement attesting to the fact that a search of the file jacket and other records indicate that the Office action was not received, and (3) all supporting documentary evidence available, as proof contra to the presumption of the delivery of the Office action such as copies of records, which disclose the receipt of other correspondence mailed from the Office on or about the same date as the action in question but fail to disclose receipt of that action would be acceptable or copies of records in which the action would have been entered had it been received, for example, file jacket notations, calendar notations, docket records, etc.

The request filed January 17, 2005 includes item (1) but not (2) and (3). Petitioner has not provided a statement attesting to the fact that he has searched the file jacket and that of all other records that he keeps for the instant application, which search failed to indicate that the Office communication in question was received. Petitioner has failed to describe what records, if any, he keeps to let him know what papers he has received from the Office and the due dates for the responses that need to be filed. How and where is the information regarding receipt of Office papers and mailing of responses kept? How does petitioner know a response is due? Is this information kept on a calendar? Separate sheet of paper? On the file maintained by petitioner? An explanation of where/how the above information is kept and copies of the pertinent papers should be submitted. To aid petitioner prepare a renewed petition, if that is petitioner's desire, enclosed is a copy of section 711.03(c) of the Manual of Patent Examining Procedure (MPEP), which section deals with petitions relating to abandonment. Any request for reconsideration of this decision should 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".

Summary: Petition to Withdraw Holding of Abandonment is Dismissed pending the submission of a renewed petition.

Richard A. Bertsch, Director
Technology Center 3700

UNITED STATES
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www.uspto.gov

9/24/03

David A Hall Esq
Heller Ehrman White and McAuliffe LLP
4350 La Jolla Village Drive 7th Floor
San Diego CA 92122-1246

Dear Applicant:

The Box PGPub replacement drawings for application number 10/341,278 received on 7/28/03 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Customer Service, Office of Initial Patent Examination, at 703-308-1202.

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Signature of Reviewer, Office of Initial Patent Examination

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Alan C. Gordon
HELLER EHRMAN LLP
4350 La Jolla Village Drive #700
San Diego, CA 92122

MAILED

JAN 30 2007

Technology Center 2100

In re Application of:	)	
G. Van Datta	)	
Application No. 10/341,278	)	
Filed: January 09, 2003	)	**DECISION ON REQUEST FOR**
For: DYNAMIC BANDWIDTH CONTROL	)	**WITHDRAWAL AS ATTORNEY**
	)	
	)	

This is a decision on the Request For Withdrawal As Attorney Under 37 CFR § 1. 36 and 10.40(c) filed March 09, 2006.

A Revocation Of Power Of Attorney Under 37 CFR § 1. 36 was filed on March 17, 2006. The Power Of Attorney revoked all prior Powers Of Attorney and appointed Fitch, Even, Tabin and Flannery as the attorneys of record of the instant application. The Power Of Attorney of March 17, 2006 was accepted. Accordingly, all communications from the U.S. Patent and Trademark Office to applicant are to be conducted by Fitch, Even, Tabin and Flannery.

For the above stated reasons, the request is DISMISSED AS MOOT.

No further communication to you regarding this application will be made.

for

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

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 Power of Attorney dated March 17, 2006.

Cc: Fitch Even Tabin and Flannery
120 South La Salle Street
Suite 1600
Chicago, IL 60603-3406

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C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DRIVE,
SUITE 200
FALLS CHURCH VA 22042-7195

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MAR 05 2009

OFFICE OF PETITIONS

In re Application of	:	
Tanaka et al.	:	
Application No. 10/341,300	:	ON APPLICATION FOR
Filed: January 13, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 13240.0003.	:	
DVUS01	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705 filed January 8, 2009. Applicants request that the determination of patent term adjustment should be increased from eight hundred eighty-two (882) days to one thousand thirty-one (1031) days. Applicants request this correction 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).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, 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). (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 applicants are 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 filed in this application on June 12, 2006.

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

The application 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 the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
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Paper No.

HOWREY LLP-HN
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DRIVE, SUITE 200
FALLS CHURCH VA 22042-7195

COPY MAILED
MAR 17 2010

In re Patent No. 7,514,244	:	DECISION ON REQUEST
Tanaka et al.	:	FOR
Issue Date: April 7, 2009	:	RECONSIDERATION OF
Application No. 10/341,300	:	PATENT TERM ADJUSTMENT
Filed: January 13, 2003	:	and
Atty Docket No. 14672.0002	:	NOTICE OF INTENT TO ISSUE
.DVUS01	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on April 21, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand four (1004) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand four (1004) days is **GRANTED**.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) on January 8, 2009. No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand four (1004)** days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,514,244 B2

DATED : **April 7, 2009** **DRAFT.**

INVENTOR(S) : Tanaka 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 855 days

Delete the phrase "by 855 days" and insert – by 1004 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 7

DICKE, BILLIG & CZAJA, PLLC
701 Building, Suite 1250
701 Fourth Avenue South
Minneapolis MN 55415

COPY MAILED

NOV 2 5 2003

OFFICE OF PETITIONS

In re Application of:
Miller et al.
Application No.: 10/341,335
Filed: January 10, 2003
Title of Invention: METHOD AND SYSTEM AND METHOD FOR AUTOMATED MONITORING, RECOGNIZING, SUPPORTING, AND RESPONDING TO THE BEHAVIOR OF AN ACTOR

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to a petition under 37 CFR 1.47(a), filed August 25, 2003, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on January 10, 2003, without an executed oath or declaration. A Notice to File Missing Parts of Nonprovisional Application was mailed to Applicant on February 20, 2003, noting this deficiency and requiring, inter alia, an executed oath or declaration.

In response to the Office action, Applicant files the instant petition and Declaration and Power of Attorney. The petition avers that diligent effort was made to secure the execution of the Oath or Declaration by the nonsigning inventors. In support of this assertion, a Statement of Facts in Support of Filing on

Behalf of Nonsigning Inventor Victor A. Riley (hereinafter "the Riley Statement"), and a Statement of Facts in Support of Filing on Behalf of Nonsigning Inventor Lawrence A. King (hereinafter "the King Statement"), are submitted.

The Riley Statement provides that inventor Riley's wife sent an e-mail to Attorney Czaja, and that the e-mail evinces inventor Riley's refusal to join the application. No copy of the e-mail is provided.

The King Statement provides that several on-line searches for inventor Kind have been unsuccessful. No copies of the results of any internet searches have been provided.

Applicable Law

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1).

As to item (1), if an inventor is unavailable (cannot be reached), a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made to locate the inventor. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement." See, MPEP § 409.03(d).

Further as to item (1), where an express refusal is alleged, [p]roof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express written refusal, a copy of the document evidencing that refusal

must be made part of the statement of facts. See, MPEP § 409.03(d).

Applicant must provide copies of the e-mails and copies of the results of internet searches.

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

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

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

By hand: 2201 South Clark Place
Customer Window
Crystal Plaza Two, Lobby Room 1B03
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 10

DICKE, BILLIG & CZAJA, PLLC
701 BUILDING, SUITE 1250
701 FOURTH AVENUE SOUTH
MINNEAPOLIS, MN 55415

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MAR 17 2004

OFFICE OF PETITIONS

In re Application of:	:	
Miller et al.	:	DECISION GRANTING
Application No. 10/341,335	:	STATUS
Filed: January 10, 2003	:	UNDER 37 CFR 1.47(a)
Title of Invention: SYSTEM AND	:	
METHOD FOR AUTOMATED MONITORING,	:	
RECOGNIZING, SUPPORTING, AND	:	
RESPONDING TO THE BEHAVIOR OF AN	:	
ACTOR	:	

This Decision is in response to a Request for Reconsideration of Petition Under 37 C.F.R. 1.47(a), filed March 1, 2004, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **granted**.

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

Petitioner has shown that the non-signing inventors, Lawrence A. King and Victor A. Riley, refuse to join in the application.

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mr. Victor A. Riley
5639 Park Place Drive
Shoreview, MN 55126

In re Application of:
Miller et al.
Application No. 10/341,335
Filed: January 10, 2003
Title of Invention: SYSTEM AND METHOD FOR AUTOMATED MONITORING, RECOGNIZING, SUPPORTING, AND RESPONDING TO THE BEHAVIOR OF AN ACTOR

LETTER

COPY MAILED
MAR 17 2004
OFFICE OF PETITIONS

Dear Mr. Riley:

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) 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: DICKE, BILLIG & CZAJA, PLLC
701 BUILDING, SUITE 1250
701 FOURTH AVENUE SOUTH
MINNEAPOLIS, MN 55415

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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Mr. Lawrence A. King
11218 North 49th Drive
Glendale, AZ 85304

COPY MAILED
MAR 17 2004
OFFICE OF PETITIONS

LETTER

In re Application of: :
Miller et al. :
Application No. 10/341,335 :
Filed: January 10, 2003 :
Title of Invention: SYSTEM AND :
METHOD FOR AUTOMATED MONITORING, :
RECOGNIZING, SUPPORTING, AND :
RESPONDING TO THE BEHAVIOR OF AN :
ACTOR :

Dear Mr. King:

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) 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: DICKE, BILLIG & CZAJA, PLLC
701 BUILDING, SUITE 1250
701 FOURTH AVENUE SOUTH
MINNEAPOLIS, MN 55415

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Stacey J. Longanecker
Roylance, Abrams, Berdo & Goodman, L.L.P.
Suite 600
1300 19th Street, N.W.
Washington, DC 20036

Mail Date: 04/21/2010

Applicant	: David Slik	: DECISION ON REQUEST FOR
Patent Number	: 7624158	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/341,360	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/14/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2000** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mailed: 7/18/05

spg

In re application of	:	
Jeffrey Sturgill et al.	:	DECISION ON
Serial No. 10/341,435	:	PETITION
Filed: January 13, 2003	:	
For: NON-TOXIC CORROSION-PROTECTION PIGMENTS	:	
BASED ON MANGANESE	:	

This is a response to the PETITION TO WITHDRAW A HOLDING OF ABANDONMENT UNDER 37 C.F.R. §1.181 filed June 28, 2004. The petition requests that any abandonment, for failure to timely file a proper reply to the Office letter mailed on March 17, 2004, be withdrawn since the applicant did not receive the Office letter mailed March 17, 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 Office letter mailed March 17, 2004. The evidence provided includes a statement by the petitioner that the Office letter mailed March 17, 2004 was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Office letter mailed March 17, 2004 was not received. Also provided is a copy of the attorney's application docket records where the Office letter mailed March 17, 2004 would have been posted had it been timely received.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Office letter originally mailed March 17, 2004 and restarting of the period of response from the remail date thereof.

The Petition is **GRANTED**.

It is noted that the instant petition requests that the nonreceived Office communication be mailed to the following address:

Dinsmore & Shohl LLP
One Dayton Centre
One South Main Street, Suite 1300
Dayton, Ohio 45402-2023

This address is not currently the address of record in the instant application, but in view of the petitioners request this decision is being mailed thereto. The current correspondence address of record is:

Killworth, Gottman,
Hagan & Schaeff, L.L.P.
One Dayton Centre, Suite 500
Dayton OH 45402-2023

If applicant desires all other correspondence in the instant application to be mailed to an address other than the current correspondence address of record, a change of correspondence address must be filed in accordance with MPEP § 601.03. As set forth in MPEP § 601.03 - "Thus, the mere inclusion, in a paper being filed for another purpose, of an address which is different from the previously provided correspondence address, without mention of the fact that an address change is being made would not ordinarily be recognized or deemed as instructions to change the correspondence address on the file record." MPEP 601.03 further states - " Where an attorney or agent of record (or applicant, if he or she is prosecuting the application pro se) changes his or her correspondence address, he or she is responsible for promptly notifying the Patent and Trademark Office of the new correspondence address (including ZIP Code). The notification should also include his or her telephone number. A change of correspondence address may not be signed by an attorney or agent not of record (see MPEP § 405)."

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

DINSMORE & SHOHL LLP
ONE DAYTON CENTRE
ONE SOUTH MAIN STREET, SUITE 1300
DAYTON, OH 45402-2023

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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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON VA 20191

COPY MAILED

OCT 0 3 2006

OFFICE OF PETITIONS

In re Application of :
Matsumoto et al :
Application No. 10/341,445 : ON PETITION
Filed: January 14, 2003 :
Attorney Docket No. P23209 :

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 18, 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 3751 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. _____

Date : October 3, 2006

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Tomohide Matsumoto et al
Application No. :10/341,445
Filed :January 14, 2003

The above-identified application has been assigned Patent No. 7,120,945 and an issue date of October 17, 2006.

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

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of October 17, 2006:

"All reference to Patent No. 7,120,945 to Tomohide Matsumoto et al of Japan for SANITARY WASHING APPARATUS appearing in the Official Gazette of October 17, 2006 should be deleted since no patent was granted."

Karen Creasy

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

cc: Paul Harrison, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OCT 03 2006

OFFICE OF PETITIONS

JOSEPH MICHAEL TEETS
5225 SE INKWOOD WAY
HOBE SOUND FL 33455

In re Application of	:	
Joseph Michael Teets et al	:	
Application No. 11/393,204	:	ON PETITION
Filed: March 30, 2006	:	
Attorney Docket No. 2006-04	:	

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

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on July 11, 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 2834 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date : Sep. 13, 2006

Appl. No. : 10/341,456
Patent No. : 7,007,136 B2
Inventor(s) : Yokoi et al.
Issued : Feb. 28, 2006
For : STORAGE DEVICE AND CACHE MEMORY DEVICE IN SET ASSOCIATIVE SYSTEM

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 Col. 11 – line 15, and Col. 12 – line 60, after inspection of the application, it is revealed that the lines are printed in accordance with the record. Therefore, being no fault of the Patent and Trademark Office, no correction(s) is/are in order here under United States Codes (U.S.C.) 254 or 255 and the Code of Federal Regulation (C.F.R.) 1.322 or 1.323).

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

A certificate will issue for the remaining error(s) in your request.

For further consideration, submit a Reconsideration Request for Certificate of Correction.

Note: This is a general hint, which may decrease the processing time of your request:
Certificate of Corrections are issued to correct errors of minor nature, i.e. typographical, spelling or grammar errors, errors not considered "critical information"; which are correctable under the provisions of 1.322a; or applicant's errors correctable under the provisions of 1.323. *If you obtain data that clearly shows the attorney/applicant is not in error, simply include supportive documentation and associated post card receipts, along with your certificate of correction or reconsideration via postal mail, not by fax. If you do not have supportive documentation that clearly shows the attorney/applicant is not in error and verifies that the PTO is in error regarding the matter in your request - then, the appropriate fee of $100.00 with your "Certificate of Correction" or "Reconsideration Certificate of Correction" - will be necessary. Without supportive documentation, depending upon the matter in your request, it is possible - that in addition, a petition with its appropriate fee of $130.00 may be necessary, or the request may be denied. Please be advised that – "identification of the exact point of error, by reference to column and line number in the printed patent", provides needed clarity to process a request; if a certificate of correction (PTOL-1050 form) is not clear and concise, its processing could possibly be in error, delayed, or denied. Please see the MPEP for further instruction and understanding.*

Stacy Powell, Sr.
For Cecelia B. Newman, Supervisor
Decisions & Certificates of
Correction Branch
(703) 308-9390 ext 120 or (703) 305-8309

STAAS & HALSEY LLP
1201 New York Ave., N.W.
7th Floor
Washington, DC 20005

CBN/spsr

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

1/17/08

Patent No. :7223571
Inventor(s) : Paul Deangelis and Wei Jing
Issued : 5/29/2007
Title : Targeted Glycosaminoglycan Polymers By Polymer Grafting And Methods Of Making And Using Same
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 that col. 25 line 66, col.38 lines 40-41.Is incorrect, should recite solution 1% SDS, followed with instead of instant change and is new matter by the SPE. 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. However the remaining of the corrections will be corrected.

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

KATHRYN L. HESTER
DUNLAP CODDING & ROGERS, P.C.
P.O. BOX 16370
OKLAHOMA CITY, OK 73113

HR/CBN

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NOVAK DRUCE DELUCA & QUIGG, LLP
1300 EYE STREET NW
SUITE 400 EAST TOWER
WASHINGTON DC 20005

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JUL 26 2006
OFFICE OF PETITIONS

In re Application of :
Sachse :
Application No. 10/341,474 : ON PETITION
Filed: January 14, 2003 :
Attorney Docket No. N/A :
For: DEVICE FOR RESORPTION OF
URINE FOR MALE INCONTINENCE

This is a decision on the petition under 37 CFR 1.137(b), filed May 4, 2006, to revive the above-identified application.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed July 26, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 27, 2005 for failure to reply. A Notice of Abandonment was mailed on February 10, 2006.

Petitioner has submitted an amendment in reply to the July 26, 2005 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the July 26, 2005 non-final Office action, and the required petition fee.

The petition is **GRANTED**.

The application file is being forwarded to Technology Center AU 3761 for consideration of the amendment filed on May 4, 2006.

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

Shirene Willis Brantley
Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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

ST. ONGE STEWARD JOHNSTON &
REENS, LLC
986 BEDFORD STREET
STAMFORD, CT 06905-5619

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MAY 0 6 2003

OFFICE OF PETITIONS

In re Application of :
Stephen C. Voorhees :
Application No. 10/341,502 :
Filed: January 13, 2003 :
Attorney Docket No. :
03008-P0003E :

DECISION ON PETITION

This is a decision on the Petition to Accord Filing Date to Items Alleged Omitted, filed March 11, 2003, requesting the application be accorded a filing date of January 13, 2003, including 27 sheets of drawings as part of the original disclosure.

The application was filed on January 13, 2003. However, on February 25, 2003, the Office of Initial Patent Examination mailed a Notice of Omitted Item(s) in a Nonprovisional Application (hereinafter "Notice"), stating that drawing Figure 8, 9 and 10 described in the specification appeared to have been omitted.

Petitioner argues that Figures 8, 9 and 10 described in the specification were included among 27 sheets of drawings described in the specification filed initially, on January 13, 2003, and were received by this Office as evidenced by the return-receipt postcard. In support, Petitioner provides a copy of a return receipt postcard acknowledging receipt of 27 sheets of drawings filed on January 13, 2003.

A review of the return receipt postcard reveals that Petitioner is correct. The postcard acknowledges receipt of 27 sheets of drawings by this Office on January 13, 2003. Petitioner has also re-submitted Figures 8, 9 and 10 described in the specification, with the instant petition.

Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self-addressed postcard properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the postcard in the outgoing mail. "A postcard receipt which itemizes and properly identifies the papers which

are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." MPEP § 503.

The petition is **granted**. The Notice is hereby withdrawn.

No petition fee is required. A refund of the petition fee has been scheduled.

The application will be returned to the Office of Initial Patent Examination for further processing as a nonprovisional application with a filing date of January 13, 2003, using the original application papers filed and Figures 8, 9 and 10 described in the specification submitted on March 11, 2003. The Office record should reflect that 27 sheets of drawings, including Figures 8, 9 and 10 described in the specification, were present on filing.

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

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT
AND TRADEMARK OFFICE

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

Date Mailed: April 2, 2009
Patent No. :7,488,467 B2
Ser. No. :10/341538
Inventor(s) :Steven Farber, et al.
Title :HIGH THROUGHPUT GENETIC SCREENING OF LIPID AND CHOLESTEROL PROCESSING USING FLUORESCENT COMPOUNDS

Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request in this matter is hereby denied.
A certificate of correction will issue for the remaining errors noted in your request.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

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

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

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

By fax: (571) 273-0025
ATTN: Office of Petitions

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

Magdalene Talley
For Mary F. Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 308-9390 ext. 116

Montgomery McCracken,
Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109

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
www.uspto.gov

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP
123 SOUTH BROAD STREET
AVENUE OF THE ARTS
PHILADELPHIA PA 19109

MAILED

MAY 20 2009

OFFICE OF PETITIONS
ON PETITION

In re Patent No. 7,488,467
Issue Date: February 10, 2009
Application Number: 10/341,538
Filing Date: January 13, 2003
Attorney Docket No: 61169.00291(N-2606)

This is a decision on the request under 37 CFR 3.81(b),[1] filed on April 8, 2009, to correct the assignee data on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Patentees request that the assignee name be changed from "**Carnegie Institute Of Washington**" to -- **Carnegie Institution of Washington** --.

The Office notes that although the assignment document itself correctly captions the assignee's name, the Recordation Form Cover Sheet submitted on October 6, 2008, miscaptions Institution as Institute.

The $130.00 processing fee required under 37 CFR 1.17(h) has been charged to counsel's deposit account as authorized.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3208. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 092704

ARNE I. FORS
GOWLING, STRATHY & HENDEERSON
SUITE 4900
COMMERCE COURT WEST
TORONTO ON M5L 1J3, CANADA

OCT 19 2004

In re Application of:	:	
ERNEST R. DRUCKER	:	
Serial No.: 10/341,559	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Filed: December 13, 2002	:	
Attorney Docket No.: **T8467385US**	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed September 14, 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 Mark W. Sajewycz, on behalf of himself and all the attorneys/agents of record. There is no outstanding Office action at this time.

The request is **APPROVED**.

There are no attorneys/agents of record at this time.

All future communications from the Office will be directed to the inventor, Ernest R. Drucker, at the below address, until otherwise notified by applicant.

Inquiries related to this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

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

cc: ERNEST R. DRUCKER
135 MARLEE AVENUE, SUITE 1905
TORONTO ONTARIO M6B 4C6, CANADA

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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ARENT FOX PLLC
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, DC 20036

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MAR 1 5 2006
OFFICE OF PETITIONS

In re Patent No. 6,891,505	:	
Issued: May 10, 2005	:	
Application No. 10/341,603	:	NOTICE
Filed: January 14, 2003	:	
Docket No.: 108306-00015	:	

This is a notice regarding the request under 37 CFR 1.28(c) filed January 25, 2006.

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.

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 PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.go

July 14, 2004

JUL 23 2004

J. Ronald Richebourg
232 Talquin Cove
Destin FL 32541

In re Application of:	:	
Peggy Weeks	:	DECISION ON PETITION TO WITHDRAW
Application No. 10/341,631	:	HOLDING
Filed: January 14, 2003	:	OF ABANDONMENT
For: DIGITAL DISPLAY TAPE	:	
MEASURING DEVICE		

This is a decision on the petition filed June 15, 2004, under 37 C.F.R. § 1.137(a) for revival of unavoidably abandoned patent application. The petition is being treated as a petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181, for which a fee is not required.

On February 13, 2004, the United States Patent and Trademark Office (PTO) received an amendment in response to the Office action of November 13, 2003. A Notice of Noncompliant Amendment (Notice) was mailed on April 27, 2004. The application was held abandoned for the apparent failure to respond to the Notice mailed on April 27, 2004. A Notice of Abandonment was mailed on June 18, 2004.

The petition filed on June 15, 2004, included, *inter alia*, a petition fee of $55.00 and an amendment that meets the requirements set forth in 37 § C.F.R. 1.121

A review of the application reveals that the Notice mailed on April 27, 2004, set forth a one-month extendable period to reply. The Notice stated that the amended document filed on February 13, 2004, was considered non-compliant because it failed to meet the requirements of 37 § C.F.R. 1.121. However, petitioner could obtain 5 months extension of time according to the Notice because the amendment was in response to a non-final office action. Therefore, petitioner had up to October 27, 2004 to reply. As such, the Notice of Abandonment was mailed prematurely and the PTO apologizes for any inconvenience this may have caused the applicant.

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

The application file is being forwarded to the Technology Center 2800 support staff for entry of the amendment filed on June 15, 2004. The petition fee of $55.00 will be applied to a one-month extension of time fee. From there, the application will be forwarded to the examiner for appropriate action.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (571) 272-1596.

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

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P.O. Box 1450
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OFFICE OF PETITIONS

KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP
535 SMITHFIELD STREET
PITTSBURGH, PA 15222

In re Application of :
Viorel Nicolaescu :
Application No. 10/341,652 :
Filed: January 14, 2003 :
Attorney Docket No. 020692 :

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed October 14, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen months publication country on January 9, 2004. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen months publication country.

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

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

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

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

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

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of

such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122 (b) (2) (B) (i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of May 5, 2005 accompanies this decision on petition.

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

Frances Hicks

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

Attachment: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JUN 21 2005

KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP
535 SMITHFIELD STREET
PITTSBURGH PA 15222

In re Application of	:
Viorel Nicolaescu et al	:
Serial No.: 10/341,652	: PETITION TO MAKE SPECIAL
Filed: January 14, 2003	:
Attorney Docket No.: 020692	:

This is in response to applicants' petition filed June 3, 2005, to make the above-identified application special under the provisions of 37 CFR 1.102(d).

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

The following condition applies to the grant of this petition: If, upon examination, it is determined that a restriction requirement is necessary because of multiple inventions being claimed, applicant will be required to make an election without traverse of a single invention to be prosecuted. Failure to make an election without traverse will void the special status accorded in this decision.

The application will be forwarded 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, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at the general Office facsimile number, 571-273-8300.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 3

Gregory Scott Smith
P.O. Box 88148
Atlanta, GA 30356

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APR 07 2003

OFFICE OF PETITIONS

In re Application of	:	
Daughtery, et al.	:	
Application No. 10/341,657	:	DECISION GRANTING STATUS
Filed: January 14, 2003	:	UNDER 37 CFR 1.47(a)
Atty. Dkt. No.: 13001.1090	:	
For: INTERFACE FOR SELECTING AND	:	
PERFORMING OPERATIONS ON OBJECTS	:	

This decision is in response to the petition under 37 CFR 1.47(a), filed January 14, 2003.

The petition is **GRANTED**.

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOEY L. DAUGHTERY
2585 RIDGEHURST DRIVE
BUFORD, GA 30518

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APR 0 7 2003

OFFICE OF PETITIONS

In re Application of Daughtery, et al. Application No. 10/341,657 Filed: January 14, 2003 Atty. Dkt. No.: 13001.1090 For: INTERFACE FOR SELECTING AND PERFORMING OPERATIONS ON OBJECTS	:	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(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FISH & RICHARDSON PC
1425 K STREET NW
11TH FLOOR
WASHINGTON, DC 20005-3500

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OFFICE OF PETITIONS

In re Application of
Shunpei Yamazaki et al
Application No. 10/341,661
Filed: January 13, 2003
Attorney Docket No. 07977-032005

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

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 May 17, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 1725 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).*

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)
6840167	2005-01-11	10341662	2003-01-13	

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

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

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

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

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

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

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

◉ The assignee of record of the entire interest

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.

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Lloyd Douglas Clark/	Date (YYYY-MM-DD)	2009-02-16
Name	Lloyd Douglas Clark, President Paedia LLC, Assigne		
Enter Reel and Frame Number		Remove	
Reel Number	013661	Frame Number	0845
Click ADD for additional Reel Number and Frame Number		Add	

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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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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In re Patent No. 6840167
Issue Date: January 11,2005
Application No. 10341662
Filed: January 13,2003
Attorney Docket No.

:

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

:

This is a decision on the electronic petition, filed February 16,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 16,2009 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No. 6

FITCH EVEN TABIN AND FLANNERY
120 SOUTH LA SALLE STREET
SUITE 1600
CHICAGO IL 60603-3406

COPY MAILED

JUN 16 2003

OFFICE OF PETITIONS

In re Application of
Harvey et al.
Application No. 10/341,681
Filed: 14 January, 2003
Atty Dkt CML00560NR/(78035)

DECISION GRANTING PETITION

This is a decision on the petition filed on 1 April, 2003, requesting that the above-identified application, including one sheet containing Figure 6 described in the specification, be accorded a filing date of 14 January, 2003.

On 14 January, 2003, the application was filed.

On 3 March, 2003, Initial Patent Examination Division mailed a Notice of Omitted Items in a Nonprovisional Application, stating that the application had been accorded a filing date of 14 January, 2003, but that, *inter alia*, Figure 6 described in the specification appeared to have been omitted.

In response, on 1 April, 2003, one (1) sheet of drawings containing Figure 6 and the present petition were submitted. Petitioners assert that one (1) sheet of drawings containing Figure 6 was filed with the other application papers on 14 January, 2003, but was subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt shows an Office date stamp of 14 January, 2003, and the above-identified application number, and acknowledges receipt, *inter alia*, of five (5) sheets of formal drawings. Petitioners request that the application, including the one (1) sheet of drawings containing Figure 6 be accorded a filing date of 14 January, 2003.

Upon further review, four (4) sheets of drawings containing Figures 1-5 have been located in the file. However, the evidence

is convincing that the application papers deposited on 14 January, 2003, included one (1) sheet of drawing containing Figure 6 as described in the specification, which was subsequently misplaced in the Office. Therefore, the application, including the one (1) sheet of drawing containing Figure 6 as described in the specification, is entitled to a filing date of 14 January, 2003.

Accordingly, the Notice of Omitted Items in a Nonprovisional Application mailed on 3 March, 2003, is hereby vacated to the extent that it stated that Figure 6 described in the specification appeared to have been omitted.

In view of the above, the petition is granted. The petition fee of $130.00 will be credited to counsel's deposit account, No. 06-1135.

The application will be processed using the application papers, filed on 14 January, 2003, and the one (1) sheet of drawings containing Figure 6 supplied on 1 April, 2003.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 14 January, 2003, using the application papers filed that date, and the one (1) sheet of drawings containing Figure 6 supplied with the present petition, and for an indication on the bib-data sheet that five (5) sheets of drawings were present on filing.

Telephone inquires should be directed to Senior Petitions Attorney Douglas I. Wood at at 703 308-6918.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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FITCH EVEN TABIN AND FLANNERY
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SUITE 1600
CHICAGO IL 60603-3406

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JUN 06 2007

OFFICE OF PETITIONS

In re Application of	:	
Harvey et al.	:	
Application No. 10/341,681	:	ON PETITION
Filed: 01/14/2003	:	
Attorney Docket No.	:	
CML00560NR/(78035)	:	

This is a decision in reference to the "PETITION UNDER 37 C.F.R. 1.137(A) TO REVIVE AN ABANDONED APPLICATION AND UNDER 37 C.F.R. 1,181(A)(1) TO COMPEL ACCEPTANCE OF AN APPEAL BRIEF" which, in view of petitioner's statement that the application should not be held abandoned, is first treated as a petition under 37 CFR 1.181, filed on 29 January, 2007, to withdraw the holding of abandonment.

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

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 the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)" or "Renewed Petition to withdraw the holding of abandonment," or as discussed below "Renewed Petition under 37 CFR 1.137(b)."

This application became abandoned on 29 September, 2006, for failure to properly reply to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) filed on 28 August, 2006, which set a one (1) month shortened period for reply. On 21 September, 2006, petitioner submitted a corrected Appeal Brief. However, the appeal brief was found to be noncompliant. On 19 December, 2006, a Communication Re: Appeal, was mailed, stating the application was abandoned.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioners assert that the application should not be held abandoned, and the Appeal Brief filed on 21 September, 2006, be accepted as a proper and timely Appeal Brief.

Petitioner's arguments have been considered by the examiner, but have not been found to be persuasive.

37 CFR § 41.47(c)(1)(v) states in relevant part:

a concise explanation of the invention is required for each of the independent claims
involved in the appeal, which explanation shall refer to the specification by page and
line number, and to the drawings, if any, by reference characters

The Appeal Center sent out a Notice of Non-Compliant Appeal Brief on August 28, 2006. In the comments section of this notice the Patent Appeals Specialist noted "Item 4. The claimed invention is not mapped to independent claims 1, 12, 14, 19 and 26, which shall refer to the specification by page and line number and to the drawing, if any".

In response to the Notice of Non-compliant Appeal Brief, petitioner sent in a response that made no effort to correct the Appeal Brief, but instead challenged the Notice. Petitioner argued that the Summary of the Claimed Subject Matter in the originally filed Appeal Brief as sufficient to satisfy the requirements of Section 41.47(c)(1)(v). This is clearly not the case. The Summary of the Claimed Subject Matter in the originally filed Appeal Brief makes no mention of the independent claims, let alone provide a concise explanation of each independent claim that refers to the specification by page and line number, and to the drawings, if any, by reference characters. While it is true that there are references to the specification and petitioner has include drawings in the Summary of the Claimed Subject Matter, these references and drawings are not linked to each of the independent claims. Thus, the Summary is clearly defective.

Note: It appears that what petitioner has labeled as the Summary of the Claimed Subject Matter is in fact a Summary of the Invention, which would have been compliant with the rules in effect prior to September 13, 2004.

Petitioner further argues that there are no means plus function or step plus function recitations in the independent or dependent claims. This is true. Consequently, no requirement was made by the Patent Appeals Specialist re these types of limitations.

Petitioner's final argument that his Summary of the Claimed Subject Matter is compliant is that there is no requirement for "mapping". Petitioner appears to be arguing semantics. The only difference between the language of the Patent Appeals Specialist's note and the language of Section 41.47(c)(1)(v) is the use of the terminology "mapped". In practice before the Patent and Trademark Office, the terminology "mapped" is commonly used as a synonym for referring to the specification by page and line number, and to the drawings, if any, by reference characters. Thus, the Patent Appeals Specialist's note does not add any requirement to Section 41.47(c)(1)(v), but merely restates the requirement using common terminology. Petitioner does not argue that the rules do not require a concise explanation of each of the independent claims that refers to the specification by page and line number, and to the drawings, if any, by reference character. Petitioner merely fails to comply with the rule.

Petitioner also contests the Patent Appeal Specialist's note requiring the use of headings. It appears that the Patent Appeals Specialist's requirement was made in error.

It is the Technology Center's position that failure to make an attempt to comply with a proper Notice of Non-compliant Appeal Brief does not constitute a proper response to a Notice of Non-compliant Appeal Brief. In view of petitioner's failure to correct the Appeal Brief, the petition is properly dismissed.

PETITION UNDER 37 CFR 1.137(a)

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to be "unavoidable".[1] 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:

[1] 35 U.S.C. § 133.

> 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.[2]

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).[3] Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[4]

A delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP does not constitute an "unavoidable" delay.[5] 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: (1) the applicant's reliance upon oral

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[2] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

[3] See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

[4] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

[5] See Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (N.D. Ind. 1987), Vincent v, Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

advice from Office employees; or (2) the Office's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action.[6]

The showing of record is that the application became abandoned because petitioners failed to timely supply a proper Appeal Brief. Such a failure does not rise to the level of unavoidable delay. The petition will therefore be dismissed.

ALTERNATIVE VENUE

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

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

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

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The 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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[6] See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985); see also In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994)(while the Office attempts to notify applicants of deficiencies in their responses in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in their responses in a manner permitting a timely correction).

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).

The petition fee of $400.00 is unnecessary and will be credited to counsel's deposit account. The $500.00 paid for the petition under 37 CFR 1.137(a) will not be refunded.

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

By hand: Customer Service Window
Mail Stop Petitions
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

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CHICAGO IL 60603-3406

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In re Application of	:	
Harvey et al.	:	
Application Number: 10/341681	:	ON PETITION
Filing Date: 01/14/2003	:	
Attorney Docket Number:	:	
CML00560NR/(78035)	:	

This is a decision on the petition under 1.137(b),[1] filed on 20 July, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 29 September, 2006, for failure to properly reply to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) filed on 28 August, 2006, which set a one (1) month shortened period for reply. On 21 September, 2006, petitioner submitted a corrected Appeal Brief. However, the

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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)).

appeal brief was found to be noncompliant. On 19 December, 2006, a Communication Re: Appeal, was mailed, stating the application was abandoned. The petition filed on 29 January, 2007, under 37 CFR 1.181 and 1.137(a) was dismissed on 6 June, 2007.

Petitioner has filed an amended Appeal Brief with the present petition.

The application is referred to Technology Center Art Unit 2157 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

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Paper No.

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Chicago IL 60606

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JUN 18 2008

In re Application of	:	
Sugaya et al.	:	
Application No. 10/341,683	:	LETTER REGARDING
Filed: January 14, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 02-112-D	:	

This is in response to the "GOOD FAITH AND CANDOR LETTER," filed February 20, 2008. Applicants disclose that the correct patent term adjustment pursuant to 35 U.S.C. 154(b) is three hundred forty-four (344) days, not four hundred thirty-six (436) days.

The request for review of the patent term adjustment is **GRANTED to the extent indicated herein**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred thirty-four **(334)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 20, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 436 days. Applicants disclose that the current Patent Term Adjustment has not taken into account Applicants' delay from filing a response 92 days after the three-month date from which the final Office Action was issued on August 11, 2006.

With respect to the applicant delay for the filing of the RCE, applicants are correct. In response to the final Office action mailed August 11, 2006, applicants did not file an RCE until

February 11, 2007, three months and 92 days later. As such, a period of reduction of 92 days should have been entered pursuant to 37 C.F.R. §1.704(b).

Moreover, a review of the record reveals that applicants' response to the restriction requirement mailed July 29, 2005 was filed on November 28, 2005. The Office erred in entering the paper as filed on November 18, 2005, and using that date for purposes of calculation of the period of reduction. Using the correct date, a period of reduction of 30 days, not 20 days, should have been entered pursuant to 37 C.F.R. §1.704(b).

As such, the correct initial determination of the patent term adjustment at the time of the mailing of the notice of allowance is three hundred thirty-four (334) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the $200.00 fee under 37 CFR 1.18(e). The Office thanks Applicants for their good faith and candor in bringing this to the attention of the Office.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PTA calculation

Day : Saturday
Date: 6/14/2008

PALM INTRANET

Time: 15:56:59

PTA Calculations for Application: 10/341683			
Application Filing Date:	01/14/2003	PTO Delay (PTO):	502
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	66
Post-Issue Petitions:	0	Total PTA (days):	334
PTO Delay Adjustment:	-102		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
92	06/14/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	20		
91	06/14/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		30	
90	06/14/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		92	
75	11/20/2007	MAIL NOTICE OF ALLOWANCE			
74	11/16/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
73	11/16/2007	ISSUE REVISION COMPLETED			
71	11/16/2007	DOCUMENT VERIFICATION			
70	11/13/2007	NOTICE OF ALLOWABILITY			
69	11/07/2007	FINISHED INITIAL DATA CAPTURE			
68	10/22/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
67	10/22/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
66	10/25/2007	DATE FORWARDED TO EXAMINER			
65	10/22/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
64	10/25/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
63	10/22/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
62	10/22/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
61	09/24/2007	EXPORT TO INITIAL DATA CAPTURE			
60	09/19/2007	MAIL NOTICE OF ALLOWANCE			
59	09/17/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
58	09/17/2007	CASE DOCKETED TO EXAMINER IN GAU			
57	09/17/2007	ISSUE REVISION COMPLETED			

56	09/17/2007	DOCUMENT VERIFICATION			
55	09/17/2007	NOTICE OF ALLOWABILITY			
54	06/25/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
53	09/05/2007	DATE FORWARDED TO EXAMINER			
52	08/29/2007	RESPONSE AFTER NON-FINAL ACTION		27	46
51	08/29/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
50	06/25/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	06/25/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
48	09/22/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
47	09/22/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	05/02/2007	MAIL NON-FINAL REJECTION			
45	04/30/2007	NON-FINAL REJECTION			
44	02/16/2007	DATE FORWARDED TO EXAMINER			
43	02/11/2007	RCE- AF PROCESSED			
42	02/16/2007	DATE FORWARDED TO EXAMINER			
41	02/11/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
40	02/16/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
39	02/11/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	02/11/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
37	08/11/2006	MAIL FINAL REJECTION (PTOL - 326)			
36	08/07/2006	FINAL REJECTION			
35	06/12/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
34	05/15/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
33.7	06/12/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		13	31
33	06/12/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	06/05/2006	DATE FORWARDED TO EXAMINER			
31	05/30/2006	RESPONSE AFTER NON-FINAL ACTION		6	28
30	05/15/2006	REFERENCE CAPTURE ON IDS			

29.7	05/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	05/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	02/24/2006	MAIL NON-FINAL REJECTION			
27	02/21/2006	NON-FINAL REJECTION			
26	09/20/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
25	01/23/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
23	12/08/2005	DATE FORWARDED TO EXAMINER			
22	11/18/2005	RESPONSE TO ELECTION / RESTRICTION FILED		20	20
21	11/18/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
20	07/29/2005	MAIL RESTRICTION REQUIREMENT	502		-1
19	07/25/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
18.7	09/20/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	09/20/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	02/19/2004	IFW AMENDED CASE PROCESSING COMPLETE			
16	01/23/2004	REFERENCE CAPTURE ON IDS			
15.7	01/23/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	01/23/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	11/10/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	10/30/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
11	05/06/2003	CASE DOCKETED TO EXAMINER IN GAU			
10	04/16/2003	APPLICATION DISPATCHED FROM OIPE			
9	04/14/2003	APPLICATION IS NOW COMPLETE			
8	03/27/2003	ADDITIONAL APPLICATION FILING FEES			
7	03/27/2003	SMALL ENTITY STATEMENT (37 CFR 1.27)			
6	03/27/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	02/28/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	02/05/2003	CLEARED BY L&R (LARS)			

3	01/27/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/22/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/14/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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300 S. WACKER DRIVE, 32ND FLOOR
CHICAGO, IL 60606

MAILED

FEB 17 2009

OFFICE OF PETITIONS

In re Application of	:	
Kiminobu **SUGAYA, et al.**	:	
Application No. 10/341,683	:	DECISION GRANTING PETITION
Filed: January 14, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **02-112-D**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 13, 2009, 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, 2008 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.134, the signature of Y. Elaine Chang appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. If Ms. Chang desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted.

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

This application is being referred to Technology Center AU 1617 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
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.*

SPE: N. Norton

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8/2/07

TO SPE OF : ART UNIT 1765

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/341,693 Patent No.: 7229930

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

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

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

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

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

NADINE NORTON
SUPERVISORY PATENT EXAMINER

Nadine Norton
SPE

1765
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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DUGAN & DUGAN, PC
55 SOUTH BROADWAY
TARRYTOWN, NY 10591

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APR 2 7 2005

OFFICE OF PETITIONS

In re Application of :
Lalitha Balasubramhanya, et al. :
Application No. 10/341,696 :
Filed: January 14, 2003 :
Attorney Docket No. 3520/D1/C1/ETCH/DICP/JB :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 13, 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 August 4, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on November 5, 2004.

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

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail future correspondence solely to the address of record.

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

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

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Robert W. Mulcahy
3050 Bowers Avenue, Ms/2061
Santa Clara, CA 95052

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KATHLEEN M. WILLIAMS
PALMER & DODGE LLP
111 HUNTINGTON AVENUE
BOSTON, MA 02199

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NOV 0 6 2003

OFFICE OF PETITIONS

In re Application of
Charles Bruce Baguley et al
Application No. 10/341,736
Filed: January 14, 2003
Attorney Docket No. 8654/2142

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center AU 1614.

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

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FOLEY & LARDNER LLP
975 PAGE MILL ROAD
PALO ALTO CA 94304

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SEP 16 2009

OFFICE OF PETITIONS

In re Patent No. 7,510,830	:	
Baguley et al.	:	DECISION ON
Issue Date: March 31, 2009	:	REQUEST FOR RECONSIDERATION
Application No. 10/341,736	:	OF
Filed: January 14, 2004	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 093397-0351	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTEMENT DETERMINATION UNDER 37 CFR §1.705," filed May 15, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from six hundred ninety-nine(699) days to eight hundred and five(805) days.

Patentees request that the decision on this request for reconsideration of patent term adjustment be deferred or delayed until a final decision has been rendered in *Wyeth v. Dudas*. There is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance.

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

On March 31, 2009, the above-identified application matured into U.S. Patent No. 7,510,830 with a patent term adjustment of 699 days.

This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 1.705(d).

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

Patentees request recalculation of the patent term adjustment based on the decision in *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that pursuant to *Wyeth*, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." Patentees maintain that the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 926 days and the period of adjustment due to examination delay, pursuant to 37 CFR §1.702(a), of 106 days do not overlap as these periods do not occur on the same day.

The 926 day period is calculated based on the application having been filed under 35 U.S.C. §111(a) on January 14, 2003, and a request for continued examination (RCE) having been filed in this application on July 28, 2008, three years and 926 days later.

Patentees assert that in addition to this 926 day period, they are entitled to a period of adjustment due to examination delay, pursuant to 37 CFR §1.702(a), of 106 days for the failure by the Office to mail at least one of a notification under 35 U.S.C. 132 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a), pursuant to § 1.702(a)(1).

Under 37 CFR § 1.703(f), patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR §1.702 reduced by the period of time equal to the period of time during which applicants failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR §1.704. In other words, the period of Office delay reduced by the period of applicant delay. The period of reduction of 277 days for applicant delay is not in dispute. Patentees assert that the total period of Office delay is the sum of the period of Three Years Delay (926 days) and the period of Examination Delay (106 days, not in dispute) **to the extent that these periods of delay are not overlapping**.

Patentees contend that no portion of the two periods of delay overlap.

As such, patentees assert entitlement to a patent term adjustment of 805 days (926 + 106 reduced by 0 overlap -277 for applicant delay).

As discussed above, the Office states that the patent issued 3 years and 926 days after the application's filing date, the calculation of the three year period ending when the July 28, 2008 RCE was filed. The Office agrees that the action detailed above was not taken within the specified time frame, and thus, the entry of period of adjustment of 106 days is correct. At issue is whether patentees should accrue 926 days of patent term adjustment for the Office taking in excess of three years to issue the patent, as well as, 106 days for Office failure to take a certain action within a specified time frame (or examination delay).

The Office contends that 106 days overlap. Patentees' interpretation of the period of overlap has been considered and found to be incorrect. Patentees' calculation of the period of overlap is inconsistent with the Office's interpretation of this provision. 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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

Likewise, 37 CFR 1.703(f) provides that:

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

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

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 54366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

The current wording of § 1.703(f) was revised in response to the misinterpretation of this provision by a number of Patentees. The rule was slightly revised to more closely track the corresponding language of 35 U.S.C. 154(b)(2)(A). The relevant portion differs only to the extent that the statute refers back to provisions of the statute whereas the rule refers back to sections of the rule. This was not a substantive change to the rule nor did it reflect a change of the Office's interpretation of 35 U.S.C. 154(b)(2)(A). As stated in the *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding §1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed. The grounds specified in these sections cover the A) guarantee of prompt Patent and Trademark Office responses, B) guarantee of no more than 3 year application pendency, and C) guarantee or adjustments for delays due to interference, secrecy orders and appeals. A section by section analysis of 35 U.S.C. 154(b)(2)(A) specifically provides that:

> Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)-(C), total adjustments granted for restorations under [35 U.S.C. 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under [35 U.S.C.] 181 and administrative delay under [35 U.S.C.] 154(b)(1)(A)), the term should not be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed; See 145 Cong. Rec. S14,718[1]

As such, the period for over 3 year pendency does not overlap only to the extent that the actual dates in the period beginning three years after the filing date overlap with the actual dates in the periods for failure of the Office to take action within specified time frames. In other words, consideration of the overlap does not begin three years after the filing date of the application. Treating the relevant period as starting on January 15, 2006, the date that is 3 years after the filing date of the application is incorrect.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the entire period from the application's filing date, January 14, 2003, to the date of filing of the RCE on July 28, 2008.

---

[1] The AIPA is title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948), which was incorporated and enacted as law as part of Pub. L. 106-113. The Conference Report for H.R. 3194, 106th Cong. 1st Sess. (1999), which resulted in Pub. L. 106-113, does not contain any discussion (other than the incorporated language) of S. 1948. A section-by-section analysis of S. 1948, however, was printed in the Congressional Record at the request of Senator Lott, See 145 Cong. Rec. S14,708-26 (1999)(daily ed. Nov. 17, 1999).

106 days of patent term adjustment were accorded prior to the filing of the request for continued examination for the Office failing to respond within a specified time frame during the pendency of the application. The Office took 14 months and 106 days to issue a first Office action. Otherwise, the Office took all actions set forth in 37 C.F.R. § 1.702(a) within the prescribed timeframes. Nonetheless, given the initial 106 days of Office delay, the 277 days of applicant delay and the time allowed within the time frames for processing and examination, as of the filing date of the RCE, the application was pending three years and 926 days. The Office did not delay 106 days and then an additional 926 days. Accordingly, 820 days of patent term adjustment for the Three Year Delay period was properly entered since the period of delay of 926 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 106 days attributable to grounds specified in § 1.702(a)(1). Entry of both periods is not warranted.

Accordingly, at issuance, the Office properly entered 820 additional days of patent term adjustment for the Office taking in excess of 3 years to issue the patent.

In view thereof, the Office affirms that the revised determination of patent term adjustment at the time of the issuance of the patent is 699 days.

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

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

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710 MEDTRONIC PARKWAY NE
MINNEAPOLIS MN 55432-9924

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OFFICE OF PETITIONS

In re Application of :
Jahns et al. :
Application No. 10/341,743 :
Filed: January 14, 2003 :
Attorney Docket No. P-10866.00 :

ON PETITION

This is a decision on the petition, filed October 22, 2009, which is being treated as a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

On March 11, 2009, the Board of Appeals issued a decision affirming the examiner of record. The decision set forth a two-month time period for filing an appeal or commencing a civil action. On May 15, 2009 (certificate of mailing date May 11, 2009), petitioner filed a Request for Rehearing under 37 CFR 41.52. On September 18, 2009, the Board of Appeals issued a denial on the request for rehearing. On September 29, 2009, a Notice of Abandonment was mailed.

Petitioner states that the instant application will abandoned prematurely. As pointed out by petitioner, 37 CFR 1.304 states,

> If a request for rehearing or reconsideration of the decision is filed within the time period provided under 41.52(a), § 41.79(a), or § 41.127(d) of this title, the time for filing an appeal or commencing a civil action shall expire two months after action on the request.

As such, petitioner had two months from the decision date of September 18, 2009 to file an appeal to the U.S Court of Appeal for the Federal Circuit. Petitioner has not supplied the USPTO with any evidence or indication that such an appeal was filed with the Federal Circuit. Absent any such showing, the petition is hereby dismissed and the abandonment of the instant application still stands.

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

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

By hand: Customer Window located at:

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

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

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

Liana Walsh
Petitions Examiner
Office of Petitions

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Paper No. 7

Stephen M. De Klerk
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

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OFFICE OF PETITIONS

In re Application of:
Mark A. Kupanoff and
Kenneth E. Salsman
Application No. 10/341,764
Filed: January 13, 2003
Title of Invention:
METHOD OF DETECTING A DISTORTION
ON A SURFACE

ON PETITION

This is in response to a petition under 37 CFR 1.47(a), filed September 22, 2003, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on January 13, 2003, without, *inter alia*, a fully executed oath or declaration. The Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice"), on April 17, 2003, requiring *inter alia*, a properly signed oath or declaration.

In response to the Notice, Petitioner files the instant wherein Petitioner avers that the nonsigning inventor refuses to join in the above-identified application and to execute the necessary Declaration and Assignment. This assertion is supported by a Statement of Facts wherein Applicant avers that the Oath and Declaration and Assignment were sent to the nonsigning inventor,

who informed Applicant that he would not sign the formal documents.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) as set forth above.

Applicant lacks item (1) set forth above.

As to item (1), where it is alleged that an applicant refuses to join an application, the applicant must establish that the nonsigning inventor was presented with the application for signature. The Manual of Patent Examining Procedure ("MPEP") states that

> A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

MPEP 409.03(d).

While the Applicant avers that the nonsigning inventor refuses to join in the application, Applicant does not aver that the application (specification, claims and drawings) was sent to the nonsigning inventor. Accordingly, where it is alleged that an inventor refuses to join an application, the MPEP requires that a copy of the application be sent to the last known address of the nonsigning inventor or her legal representative. See, MPEP 409.03(e).

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

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

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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OFFICE OF PETITIONS

Stephen M. De Klerk
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

In re Application of:
Michael Kozhukh and
Kenneth E. Salsman
Application No. 10/341,764
Filed: January 13, 2003
Title of Invention:
METHOD OF DETECTING A DISTORTION
ON A SURFACE

ON PETITION

This is in response to a Request for Reconsideration of Petition under 37 CFR 1.47(a), filed December 29, 2003 (Certificate of Mailing dated December 22, 2003), to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **granted**.

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

Petitioner has shown that the non-signing inventor, Michael Kozhukh, refuses to join in the application.

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

The Declaration/Power of Attorney has been entered and made of record.

The application file is being forwarded to the Office of Patent Publications to await the response to the Notice of Allowance and Issue Fee Due, mailed October 20, 2003.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

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Paper No. 10

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OFFICE OF PETITIONS

Stephen M. De Klerk
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

In re Application of:	CORRECTED DECISION
Michael Kozhukh and	ON PETITION
Kenneth E. Salsman	
Application No. 10/341,764	
Filed: January 13, 2003	
Title of Invention:	
METHOD OF DETECTING A DISTORTION	
ON A SURFACE	

RECEIVED FEB 19 2004

This is in response to a Request for Reconsideration of Petition under 37 CFR 1.47(a), filed December 29, 2003 (Certificate of Mailing dated December 22, 2003), to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **granted**.

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

Petitioner has shown that the non-signing inventor, Michael Kozhukh, refuses to join in the application.

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

The Declaration/Power of Attorney has been entered and made of record.

The application file is being forwarded to Technology Center Art Unit 2871 for examination in due course.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

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APR 0 2 2007

OFFICE OF PETITIONS

Michael I. Kroll
171 Stillwell Lane
Syosset, NY 11791

In re Patent No. 7,120,247	:	
Issue Date: October 10, 2006	:	
Application No. 10/341,778	:	DECISION GRANTING PETITION
Filed: January14, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. RW-1_GW	:	

This is a decision on the petition, filed September 29, 2006, 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 February 3, 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. 7,120,247 on October 10, 2006. Therefore, no further action being required, this patented file is being forwarded to Files Repository.

Telephone inquiries concerning this decision should be directed to Kenya A. McLaughlin, Petitions Attorney at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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Gregory Scott Smith
P.O. Box 88148
Atlanta GA 30356

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OFFICE OF PETITIONS

In re Application of :
Pickering, et al. :
Application No. 10/341,792 :
Filed: January 14, 2003 :
Attorney Docket No. 13001.1110 :
For: METHOD AND SYSTEM FOR
DISPLAYING DATA FIELDS

ON PETITION

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

This application became abandoned for failure to timely respond to the final Office action mailed March 2, 2005 set an extendable three month period for reply. Applicants submitted an amendment after final on June 1, 2005. The amendment after final failed to place this application in *prima facie* condition for allowance, as was explained in the July 11, 2005 Advisory action. Accordingly, this application became abandoned on June 3, 2005. A Notice of Abandonment was mailed on October 24, 2005.

Applicants have submitted a RCE and required fee and a request to use the previously filed amendment as the submission in reply to the March 2, 2005 final Office action, an acceptable statement of the unintentional nature of the delay in responding to the March 2, 2005 final Office action, and the petition fee.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 2174 for consideration of the RCE filed on December 16, 2005.

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

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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Paper No.

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OFFICE OF PETITIONS

In re Patent No. 7,206,817	:	DECISION ON REQUEST
Fanshier et al.	:	FOR RECONSIDERATION OF
Issue Date: April 17, 2007	:	PATENT TERM ADJUSTMENT
Application No. 10/341,801	:	and
Filed: January 14, 2003	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. BEAS-01212US1	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)" filed June 15, 2007. Patentees request that the Patent Term Adjustment indicated on the patent be corrected from six hundred thirty-four (634) days to seven hundred forty-six (746) days, the number of days indicated in the Determination of Patent Term Adjustment under 35 U.S.C. §154(b).

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of SEVEN HUNDRED FORTY-SIX (746) days.

On April 17, 2007, the above-identified application matured into U.S. Patent No. 7,206,817. The instant request for reconsideration filed June 15, 2007 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 634 days. Patentees dispute the reductions of (i) 37 days associated with the applicants' December 27, 2006 submission of Comments on Statement of Reasons for Allowance and (ii) 75 days associated

with applicants' February 2, 2007 filing of a copy of previously-submitted executed Declaration as requested by the examiner. Patentees state that the declaration was originally received by the USPTO on June 6, 2003 together with applicants' response to the Notice to File Missing Parts of Application.

Patentees' contention is well taken. The record supports a conclusion that the Office misplaced one of the originally submitted declarations. The resubmission on February 2, 2007, included two declarations executed in combination by both inventors. However, only one of the declarations is present in the record with a date of receipt of June 6, 2003. Nonetheless, upon receipt of the response on June 6, 2003, the application was processed as complete and no Notice of Incomplete Reply was mailed, stating that a declaration with the signature of the other inventor was missing. Under the circumstances, it is appropriate to treat a complete and proper declaration as having been submitted on June 6, 2003, prior to the mailing of the notice of allowance on November 30, 2006, and for the resubmission of the declaration to have no impact on the calculation of patent term adjustment. Furthermore, submission of a declaration on June 6, 2003 would have only caused entry of a period of reduction of 3 days. (This period of reduction was already entered).

Moreover, the Director has determined that the submission of the following papers after a "Notice of Allowance" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability;" and (7) letters related to government interests (e.g., those between NASA and the Office). See MPEP 2732 and *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). The paper filed December 27, 2006 was a Comment on Statement of Reasons for Allowance and thus, the reduction of 37 days was not warranted.

In view thereof, the revised patent term adjustment indicated on the patent should have been seven hundred forty-six (746) days.

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

The application 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 **SEVEN HUNDRED FORTY-SIX** (746) days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,206,817 B2

DATED : **April 17, 2007**

INVENTOR(S) : Fanshier 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 634 days

Delete the phrase "by 634 days" and insert – by 746 days--

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OFFICE OF PETITIONS

In re Application of
Chad J. Kugler et al.
Application No. 10/341,814
Filed: January 14, 2003
Attorney Docket No. CRD1001 USA
DIV2

DECISION GRANTING PETITION

This is a decision on the petition filed May 5, 2003 under 37 CFR 1.53, in response to the "Notice of Omitted Items" mailed April 10, 2003.

The instant application was filed January 14, 2003 and a filing date was accorded. However, according to the Notice of Omitted Items, the application papers submitted did not include page 36 of the specification.

Petitioner asserts that page 36 was among the papers filed on January 14, 2003, and submits a "legible" postcard receipt in evidence thereof. The postcard receipt, identifies the application and acknowledges, inter alia, the number of specification pages to be 41 and bears a United States Patent and Trademark Office date-stamp of January 14, 2003. Further, the postcard receipt lacks any notation of non-receipt of any item listed.

In view of the foregoing, the petition is **Granted.**

Given the basis for granting the petition, no petition fee is due and none has been charged to petitioner's deposit account.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing, using the application papers received in the Office on January 14, 2003 and page 36 of the specification submitted May 5, 2003.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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36th Floor
20 North Wacker Drive
Chicago IL 60606

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OFFICE OF PETITIONS

In re Application of Cheresh et al. Application No. 10/341,815 Filed: January 14, 2003 Attorney Docket Number: TSRI-816.0 Title of Invention: Peptide-Based Angiogenesis Inhibitors and Methods of Use Thereof	:	ON PETITION

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

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due which was mailed April 5, 2006. The Notice of Allowance and Fee (s) Due set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on July 6, 2006. This decision precedes the mailing of a Notice of Abandonment.

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

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

Telephone inquiries 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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600 SOUTH AVENUE WEST
WESTFIELD NJ 07090

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OFFICE OF PETITIONS

In re Application of Kinast, Eric Application No. 10/341,833 Filed: January 14, 2003 Attorney Docket No. DSCOPE 3.0-034 CIP	DECISION GRANTING PETITION UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 3, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior-filed provisional Application No. 60/308,070, filed July 26, 2001, as set forth in the concurrently filed amendment.

The petition is **GRANTED**.

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

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

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional application is submitted after expiration of the period specified by 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 1.78(a)(5)(iii). Additionally, the intermediate nonprovisional application was filed within twelve months of the filing date of the above-noted, prior-filed provisional application.

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) 272-3206. Any 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 3766 for appropriate action on the amendment submitted November 3, 2006, 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. 60/308,070.

Liana Walsh
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/341,833	01/14/2003	3766	3078	DSCOPE 3.0-034 CIP	7	33	5

CONFIRMATION NO. 9941
CORRECTED FILING RECEIPT
OC000000022031031
OC000000022031031

530
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

Date Mailed: 01/17/2007

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Eric Kinast, Santa Ana, CA;

Power of Attorney: The patent practitioners associated with Customer Number **000530**.

Domestic Priority data as claimed by applicant

This application is a CIP of 10/201,075 07/23/2002 ABN
which claims benefit of 60/308,070 07/26/2001

Foreign Applications

If Required, Foreign Filing License Granted: 02/25/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/341,833

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

PATIENT-WORN MEDICAL MONITORING DEVICE

Preliminary Class

600

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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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AUG 2 4 2004

OFFICE OF PETITIONS

In re Application of :
Chad J. Kugler, et al. :
Application No. 10/341,840 :
Filed: January 14, 2003 :
Attorney Docket No. CRD-1001 USA DIV1 :

ON PETITION

This is a decision on the petition, filed August 11, 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 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 relating to this decision should be directed to the undersigned at (703) 305-9220.

The application is being referred to Technology Center AU 3732 for further processing of the request for continued examination under 37 CFR 1.114 filed August 11, 2004.

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

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

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APR 12 2005

OFFICE OF PETITIONS

In re Application of	:
Ronald Redline et al	:
Application No. 10/341,859	: DECISION ON PETITION
Filed: January 14, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2156-056C	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 1, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application Nos. 09/698,370 and 09/251,641, as set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

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

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

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

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

This application is being forwarded to Technology Center Art Unit 1742 for appropriate action on the amendment filed February 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 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

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

MHKKG / GLOBALFOUNDRIES
P.O. Box 398
Austin, TX 78767-0698

Mail Date: 04/20/2010

Applicant	: Minh-Van Ngo	: DECISION ON REQUEST FOR
Patent Number	: 7648886	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/341,863	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/14/2003	: 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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ONE HEALTH PLAZA 104/3
EAST HANOVER NJ 07936-1080

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OFFICE OF PETITIONS

In re Application of	:	
KSANDER et al.	:	LETTER REGARDING
Application No. 10/341,868	:	PATENT TERM ADJUSTMENT
Filed: January 14, 2003	:	
Attorney Docket No. 4-32219A	:	

This letter is in response to the "COMMUNICATION REGARDING INITIAL PATENT TERM ADJUSTMENT," filed June 10, 2008. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of 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 **363 days.** A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 16, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 459 days. On June 10, 2008, applicants submitted the instant comment.

Applicants state that the initial patent term adjustment should be corrected to 433 days (555 days of Office delay - 122 days of applicant delay). Applicants assert that they should have been assessed a reduction of 26 days for filing a Request for

Continued Examination on November 20, 2006, in excess of the three-month period from the mailing date of the final Office action pursuant to 37 CFR 1.704(b).

The application history has been reviewed and it has been determined that the number days of applicant delay is incorrect.

A final Office action was mailed on July 25, 2006. Applicants filed their response in the form of a RCE and submission on November 20, 2006, in excess of the three-month period from the mailing date of the final Office action. See 37 CFR 1.704(b). Thus, applicants failed to engage in reasonable efforts to conclude prosecution of this application. The period of adjustment should have been reduced by 26 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the final Office action, October 26, 2006, ending on the date the reply was filed, November 20, 2006. See 37 CFR 1.704(b). Accordingly, a period of reduction of 26 days will be entered.

Additionally, applicants should have been assessed a delay under 37 CFR 1.704(c)(8) for submission of a supplemental reply or paper after a reply had been filed without the express request of the examiner.

Pursuant to 37 CFR 1.704(c)(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[.]

On January 15, 2008, applicants submitted a Supplement Amendment and an Information Disclosure Statement (IDS) after filing a reply on November 6, 2007. The record does not support a conclusion that the examiner expressly requested the filing of the Supplemental Amendment or IDS. Further, a review of the IDS, filed January 15, 2008, reveals that applicants did not

include a statement under 37 CFR 1.704(d).[1] Accordingly, the period of adjustment should be reduced by 70 days, the number of days beginning on the day after the date the reply was filed, November 7, 2007, and ending on the date that the Supplemental Amendment and IDS were filed, January 15, 2008.

It is noted that the filing of the Supplemental Amendment and the filing of the IDS on January 15, 2008, are two separate acts, each of which constitutes a failure to engage in reasonable efforts to conclude prosecution of the application. Since the periods of reduction for the filing of the Supplemental Amendment and the filing of the IDS completely overlap, only one period of reduction of 70 days is being entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is **363 days** (555 days of Office delay - 192 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the $200.00 fee as set forth in 37 CFR 1.18(e). The Office thanks applicants for applicants' good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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[1] Pursuant to 37 CFR 1.704(d):

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.
Telephone inquiries regarding this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

Day : Wednesday

Date: 11/19/2008

PALM INTRANET

Time: 18:15:42

PTA Calculations for Application: 10/341868			
Application Filing Date:	01/14/2003	PTO Delay (PTO):	555
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	96
Post-Issue Petitions:	0	Total PTA (days):	363
PTO Delay Adjustment:	-96		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
100	11/19/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		26	
99	11/19/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		70	
88	04/16/2008	MAIL NOTICE OF ALLOWANCE			
87	04/14/2008	ISSUE REVISION COMPLETED			
86	04/14/2008	DOCUMENT VERIFICATION			
85	04/14/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
84	04/14/2008	CASE DOCKETED TO EXAMINER IN GAU			
83	04/14/2008	EXAMINER'S AMENDMENT COMMUNICATION			
82	04/14/2008	NOTICE OF ALLOWABILITY			
74	02/14/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
73	03/12/2008	DATE FORWARDED TO EXAMINER			
72	02/14/2008	RESPONSE AFTER NON-FINAL ACTION			
70	01/15/2008	AMENDMENT CROSSED IN MAIL			
69	02/01/2008	MAIL NON-FINAL REJECTION			
68	01/31/2008	NON-FINAL REJECTION			
67	01/15/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
65	01/15/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
64	11/29/2007	DATE FORWARDED TO EXAMINER			
63	11/06/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
62	11/29/2007	DATE FORWARDED TO EXAMINER			
61	11/06/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		67	50

60	11/29/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
59	11/06/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
58	11/01/2007	MAIL ADVISORY ACTION (PTOL - 303)			
57	10/29/2007	ADVISORY ACTION (PTOL-303)			
56	10/24/2007	DATE FORWARDED TO EXAMINER			
55	10/23/2007	AMENDMENT AFTER FINAL REJECTION			
54	10/23/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
50	05/31/2007	MAIL FINAL REJECTION (PTOL - 326)			
49	05/29/2007	FINAL REJECTION			
48	03/15/2007	DATE FORWARDED TO EXAMINER			
47	03/09/2007	RESPONSE AFTER NON-FINAL ACTION			
46	02/05/2007	MAIL NON-FINAL REJECTION			
45	02/02/2007	NON-FINAL REJECTION			
44	12/01/2006	DATE FORWARDED TO EXAMINER			
43	11/20/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
42	12/01/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
41	11/20/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
40	11/20/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
39	10/03/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
38	07/25/2006	MAIL FINAL REJECTION (PTOL - 326)			
37	07/21/2006	FINAL REJECTION			
36	04/04/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
35	05/11/2006	NEW OR ADDITIONAL DRAWING FILED			
34	05/11/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
33	05/22/2006	DATE FORWARDED TO EXAMINER			
32	05/11/2006	RESPONSE AFTER NON-FINAL ACTION		29	28
31	05/11/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
30	04/04/2006	REFERENCE CAPTURE ON IDS			
29.7	04/04/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	04/04/2006	INFORMATION DISCLOSURE STATEMENT (IDS)			

		FILED			
28	01/12/2006	MAIL NON-FINAL REJECTION			
27	01/09/2006	NON-FINAL REJECTION			
26	06/01/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
25	11/05/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
24	11/02/2005	DATE FORWARDED TO EXAMINER			
23	09/30/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
22	09/20/2005	MAIL RESTRICTION REQUIREMENT	555		-1
21	09/19/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
20	08/29/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
19	08/29/2005	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
18	08/15/2005	MISCELLANEOUS INCOMING LETTER			
17	01/19/2005	CASE DOCKETED TO EXAMINER IN GAU			
16	11/30/2004	PRELIMINARY AMENDMENT			
15	11/30/2004	WORKFLOW INCOMING AMENDMENT IFW			
14	10/04/2004	MISCELLANEOUS INCOMING LETTER			
13.7	06/01/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	06/01/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	03/09/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
11	11/05/2003	REFERENCE CAPTURE ON IDS			
10.7	11/05/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	11/05/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	03/09/2004	CASE DOCKETED TO EXAMINER IN GAU			
7	03/26/2003	APPLICATION DISPATCHED FROM OIPE			
6	03/26/2003	APPLICATION IS NOW COMPLETE			
5	03/10/2003	ADDITIONAL APPLICATION FILING FEES			
4	03/10/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
3	03/03/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			

2	01/22/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/14/2003	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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BUSKOP LAW GROUP, P.C.
4511 DACOMA STREET
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JAN 20 2010

In re Patent No. 6,966,106	:	
Issue Date: November 22, 2005	:	
Application No. 10/341,926	:	NOTICE
Filed: January 13, 2003	:	
Attorney Docket No. 1141.01	:	

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

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **NOT ACCEPTED**.

The fee deficiency cannot be accepted because no itemization has been submitted, as required by 37 CFR 1.28(C) (ii) which states:

(2) Payment of deficiency owed. The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for non-small entity;

(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

This itemization must be provided within one (1) month of the mail date of this decision to avoid the return of the deficiency payment. See 37 CFR 1.28 (c)(3). No extension of this 1-month time limit will be granted under 37 CFR 1.136(a).

Inquiries related to this communication should be directed to Diane Goodwyn at (571) 272-6735.

for Thurman K. Page
Petitions Examiner
Office of Petitions

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PATENT DEPARTMENT
2001 ROSS AVENUE
SUITE 2300
DALLAS TX 75201

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OFFICE OF PETITIONS

In re Application of	:
Chang et al.	:
Application No. 10/341,979	: DECISION DISMISSING PETITION
Filed: 11 January, 2003	:
Att'y Docket No. 32144183.15	:

This is a decision on the petition filed on 7 July, 2004, requesting that the above-identified application be accorded a filing date of 15 January, 2003, rather than the presently accorded filing date of 11 January, 2003.

The petition is **DISMISSED**.

On 11 January, 2003, the application was filed.

On 7 July, 2004, the present petition was filed. Petitioners assert that the application should be accorded a filing date of 15 January, 2003, because "[a] telephone conference with the USPTO confirmed that the application was actually received by the USPTO on [15 January, 2003]."

Petitioners' argument has been considered, but is not persuasive. A review of the record reveals that the original application papers were stamped with a date of receipt of 11 January, 2003. Correspondence received in the Patent and Trademark Office is stamped with the date of receipt.[1] Furthermore, the filing date of an application for patent is the date on which a sepcification as prescribed by 35 U.S.C. § 112 containing a description pursuant to 37 CFR 1.71 and at least one claim pursuant to 37 CFR 1.75 and, any drawing required by 37 CFR 1.81(a) are filed in the Patent and Trademark Office.[2] Where the records of the Office (e.g. the file of the application) contain any document(s) or

[1] See 37 CFR 1.6(a).

[2] See 37 CFR 1.53(b).

fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office.

In summary, the showing of record is that no specification, including claims, and drawings was received on 15 January, 2003. Rather, the application papers were received on 11 January, 2003. Furthermore, petitioners have presented no evidence, save petitioners bare assertion that a USPTO employee verbally stated that the application was received on 15 January, 2003, that the application was received on a date other than the filing date assigned.

Petitioners are reminded that all business between applicants and the USPTO must be transacted in writing. The action of the USPTO 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.[3] As such, petitioner was not entitled to rely on oral advice as to the filing date of the application.

In summary, petitioners have provided no evidence that the filing date of the application is 15 January, 2003. Rather, the showing of record is that the application was filed on 11 January, 2003. In the absence of sufficient evidence to the contrary, the filing date of the application will remain as 11 January, 2003.

As this petition was not necessitated by an error on the part of the Office, a petition fee of $130.00 will be assessed to counsel's deposit account, No. 13-0480, as authorized in the present 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

---

[3] 37 CFR 1.2

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

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

The application is being forwarded to Technology Center 1600 for further processing.

Telephone inquiries 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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SUITE 2300
DALLAS TX 75201

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AUG 0 3 2004
OFFICE OF PETITIONS

In re Application of	:
Chang et al.	: CORRECTED DECISION
Application No. 10/341,979	: GRANTING PETITION
Filed: 15 January, 2003	:
Att'y Docket No. 32144183.15	:

This is a corrected decision on the petition filed on 7 July, 2004, requesting that the above-identified application be accorded a filing date of 15 January, 2003, rather than the presently accorded filing date of 11 January, 2003.

The petition is **GRANTED**.

On 15 January, 2003, the application was filed. The application, however, was assigned a filing date of 11 January, 2003.

On 7 July, 2004, the present petition was filed. Petitioners assert that the application should be accorded a filing date of 15 January, 2003, because "[a] telephone conference with the USPTO confirmed that the application was actually received by the USPTO on [15 January, 2003]." The petition was dismissed on 16 July, 2004.

A review of USPTO records reveals that this application was in fact received on 15 January, 2003, but was mistakenly assigned a filing date of 11 January, 2003, as a result of Office error. As such, the application is properly accorded a filing date of 15 January, 2003.

The petition fee of $130.00 will be credited to counsel's deposit account, No. 13-0480, as authorized in the present petition.

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to **15 January, 2003.** Thereafter, the application will be forwarded to Technology Center 1600 for further processing.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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BAKER & HOSTETLER LLP
Washington Square
Suite 1100
1050 Connecticut Avenue, N.W.
Washington DC 20036

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AUG 2 7 2004

OFFICE OF PETITIONS

In re Application of	:	
Hiles, et al.	:	
Application No. 10/342,014	:	DECISION GRANTING
Filed: January 13, 2003	:	PETITION
Attorney Docket No.18528.169/0204-CON-0	:	
For: USE OF EXENDINS AND AGONISTS THEREOF FOR THE TREATMENT OF GESTATIONAL DIABETES MELLITUS	:	

This is a decision on the petition under 37 CFR 1.182, filed July 23, 2004, requesting that the above-identified application be accorded a filing date of January 13, 2003, instead of the presently accorded filing date of June 5, 2003, 2003.

The petition under 37 CFR 1.182 is **GRANTED**.

The application was deposited on January 13, 2003. On March 5, 2003, 2003, the Office of Initial Patent Examination mailed a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures ("Notice") stating that the application had been accorded a filing date of January 13, 2003 and informing petitioners that page 78 of the specification appeared to have been omitted.

On June 5, 2003, petitioners filed a preliminary amendment seeking to add page 78. The amendment states that the present application is a continuation application of Application No. 09/323,867, which was incorporated by reference into the present application when the present application was filed.

An Updated Filing Receipt was mailed on August 11, 2003. The Update Filing Receipt states that the filing date of the above-identified application is June 5, 2003.

In response to the updated filing receipt, petitioners filed the present petition. Petitioners request

that the Office reinstate the January 13, 2003 filing date for the above-identified application.

The mailing of a "Notice of Omitted Items" permits an applicant to either: (1) promptly establish prior receipt in the PTO of the items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted items in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing items 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 items in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted items with an 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 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)). Failure to select option (1) or (2) above is considered a constructive acceptance of the application as filed.

In the instant case, petitioners did not select option (1) or (2). Instead, petitioners filed a preliminary amendment invoking incorporation by reference. This choice was explicitly stated in footnote 1 of the remarks in the June 5, 2003 amendment. The examiner of record should have compared the contents of page 78 to the disclosure of the prior application to determine whether page 78 contains new matter. The filing date should not have been changed from January 13, 2003 to June 5, 2003.

The application is entitled to a filing date of January 13, 2003. The Updated Filing Receipt was mailed in error. The petition is granted.

The $130.00 petition fee submitted on July 23, 2004 will be credited to deposit account no. 50-2387.

The application is being returned to Office of Initial Patent Examination for further processing with a filing date of **January 13, 2003** and the mailing of a corrected filing receipt. The application papers are those submitted on January 13, 2003. Page 78 is not part of the original application papers filed on January 13, 2003. The examiner of record will consider the June 5, 2003 Amendment for 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ARNOLD & PORTER LLP (18528)
555 TWELFTH ST, NW
WASHINGTON DC 20004

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OCT 20 2004

OFFICE OF PETITIONS

Applicant: Hiles et al.
Appl. No.: 10/342,014
Filing Date: January 13, 2003
Title: USE OF EXENDINS AND AGONISTS THEREOF FOR THE TREATMENT OF GESTATIONAL DIABETES MELLITUS
Attorney Docket No.: 18528.169/0204-CON-0
Pub. No.: US 2004/ 0023871 A1
Pub. Date: February 5, 2004

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on April 5, 2004.

The request is DISMISSED.

Applicant request that the application be republished because the patent application publication contains an error in the filing date, as the filing date is January 13, 2003 not June 5, 2003, which is on 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." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1] The instant request does not identify a material mistake in the publication made by the Office:

The error in the filing date on the first page of the publication is an Office mistake, but it is not a material mistake as required by 37 CFR 1.221(b). The error in the filing date is not a material mistake because the application is a continuation of U.S. Application 09/323,867 filed June 1, 1999, now U.S. Patent 6, 506,724. Thus, the patented file has the earliest effective U.S. filing date and the earliest 35 U.S.C. 102(b) date. Therefore, the error in the filing date on the front page of the publication does not affect the public's ability to appreciate the technical disclosure of

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

the 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. The error also does not affect the use of the patent application publication as a prior art reference, because the continuity data is correctly published and the patent has the best date as a reference. Furthermore, this is not a material error since the Image File Wrapper (IFW) for this application is available to the public, as of July 31, 2004 and public pair shows the filing date of the application.

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

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

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

By facsimile: 703-872-9306

The application will be examined in due course.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ARNOLD & PORTER LLP
555 TWELFTH ST, NW
WASHINGTON DC 20004

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NOV 0 8 2004

OFFICE OF PETITIONS

In re Application of
Hiles, et al.
Application No. 10/342,014
Filed: January 13, 2003
Attorney Docket No.18528.169/0204-CON-0
For: USE OF EXENDINS AND AGONISTS THEREOF FOR THE TREATMENT OF GESTATIONAL DIABETES MELLITUS

CORRECTED DECISION ON PETITION

This is a corrected decision on the petition under 37 CFR 1.182, filed July 23, 2004, requesting that the above-identified application be accorded a filing date of January 13, 2003, instead of the presently accorded filing date of June 5, 2003, 2003.

The first decision on petition, mailed August 27, 2004, was regrettably mailed to an incorrect address and returned to the Office. The decision itself is correct, but the undersigned felt it was best to mail a clean version of the first decision to the proper address of record, rather than merely forwarding a copy of the flawed first decision.

The petition under 37 CFR 1.182 is **GRANTED**.

The application was deposited on January 13, 2003. On March 5, 2003, 2003, the Office of Initial Patent Examination mailed a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures ("Notice") stating that the application had been accorded a filing date of January 13, 2003 and informing petitioners that page 78 of the specification appeared to have been omitted.

On June 5, 2003, petitioners filed a preliminary amendment seeking to add page 78. The amendment states that the present application is a continuation application of Application No. 09/323,867, which was incorporated by reference into the present application when the present application was filed.

An Updated Filing Receipt was mailed on August 11, 2003. The Update Filing Receipt states

that the filing date of the above-identified application is June 5, 2003.

In response to the updated filing receipt, petitioners filed the present petition. Petitioners request that the Office reinstate the January 13, 2003 filing date for the above-identified application.

The mailing of a "Notice of Omitted Items" permits an applicant to either: (1) promptly establish prior receipt in the PTO of the items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted items in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing items 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 items in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted items with an 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 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)). Failure to select option (1) or (2) above is considered a constructive acceptance of the application as filed.

In the instant case, petitioners did not select option (1) or (2). Instead, petitioners filed a preliminary amendment invoking incorporation by reference. This choice was explicitly stated in footnote 1 of the remarks in the June 5, 2003 amendment. The examiner of record should have compared the contents of page 78 to the disclosure of the prior application to determine whether page 78 contains new matter. The filing date should not have been changed from January 13, 2003 to June 5, 2003.

The application is entitled to a filing date of January 13, 2003. The Updated Filing Receipt was mailed in error. The petition is granted.

The $130.00 petition fee submitted on July 23, 2004 will be credited to deposit account no. 50-2387.

The application is being returned to Office of Initial Patent Examination for further processing with a filing date of **January 13, 2003** and the mailing of a corrected filing receipt. The application papers are those submitted on January 13, 2003. Page 78 is not part of the original application papers filed on January 13, 2003. The examiner of record will consider the June 5, 2003 Amendment for 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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ARNOLD & PORTER LLP (18528)
555 TWELFTH ST., N.W.
WASHINGTON DC 20004

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APR 0 4 2006

OFFICE OF PETITIONS

In re Application of :
Richard A. Hiles et al :
Application No. 10/342,014 :
Filed: January 13, 2003 :
Attorney Docket No. 18528.169 :

ON PETITION

This is a decision on the petition, filed March 27, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 14, 2005, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 1639 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 : 4-15-05

TO SPE OF : ART UNIT 2871

SUBJECT : Request for Certificate of Correction on Patent No.: 6819366

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-915
Palm location **7580** - Tel. No. 305-8309

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

Please check claims

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 — **Art Unit** 2871

2803.67283

MAR 0 4 2005

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Suzuki et al.	
Serial No.:	10/342,036	
Filed:	January 14, 2003	
For:	DISPLAY DEVICE WITH CONDENSER ELEMENTS	
Patent No.:	6,819,366	
Issued:	Nov. 16, 2004	
Art Unit:	2871	
Examiner:	Ton, Minh Toan T.	

I hereby certify that this paper is being deposited with the United States Postal Service as FIRST-CLASS mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this date.

1 March 05

Date *Registration No. 29,367*
Attorney for Applicant

Certificate
MAR 0 8 2005
of Correction

OK. to enter!
TT

REQUEST FOR CERTIFICATE OF CORRECTION UNDER RULE 323

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

Sir:

In accordance with 37 C.F.R. § 1.323, patentees, through their attorneys, respectfully request that a Certificate of Correction be issued in the above-referenced patent to correct the following errors:

03/07/2005 MAHMED2 00000005 6819366
01 FC:1811 100.00 OP

MAR 9 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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

YUKIKO IWATA
SHELL OIL COMPANY
LEGAL - INTELLECTUAL PROPERTY
P O BOX 2463
HOUSTON, TX 77252-2463

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APR 11 2005

OFFICE OF PETITIONS

In re Application of	:
Lynn Henry Slaugh et al	:DECISION ON PETITION
Application No. 10/342,060	:UNDER 37 CFR 1.78(a)(3)
Filed: January 14, 2003	:
Attorney Docket No. TH1492 02 (US)	:

This is a decision on the petition under 37 CFR § 1.78(a)(3), filed October 15, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed nonprovisional Application No. 09/309,417, as set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT**.

Along with the instant petition under 37 CFR § 1.78(a)(3), petitioner has submitted an amendment to the first sentence of the specification following the title to include a reference to the above-noted, prior-filed application.

While a reference to the prior-filed application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter filed with the above-identified application.

The current procedure where a claim for priority under 37 CFR § 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed

application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(3).[1] In the instant case, the Office noted the claim for priority of the above-noted, prior-filed application in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt.

In view of the above, the $130 petition fee[2] submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

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

This application is being forwarded to the Examiner of Technology Center AU 1764 for appropriate action on the amendment filed October 15, 2004, including consideration of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) for benefit of the above-noted, prior-filed application.

Frances Hicks

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

---

[1] *Note* MPEP 201.11 (III)(D) , pages 200-59 and 200-60 (Rev. 2. May 2004) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

[2] The actual fee for this type of petition is currently $1,370.

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Alexandria, VA 22313-1450
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MILORD & ASSOCIATES, P.C.
10880 WILSHIRE BOULEVARD
SUITE 2070
LOS ANGELES CA 90024

JAN - 5 2004

In re Application of:
Garabed Khayalian
Serial No.: 10/342,070
Filed: January 13, 2003
For: MUFFLER DEVICE

DECISION ON PETITION

This is a decision on the petition filed November 22, 2004, via facsimile transmission, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition is GRANTED.

A non-final Office action was mailed December 24, 2003, setting a three-month shortened statutory period for filing a response. In the apparent absence of a response, the application was held abandoned and a Notice of Abandonment was mailed September 21, 2004.

Petitioner asserts that a response was timely filed. To support the assertion, petitioner has submitted: 1) a copy of a response entitled "Amendment Under 37 CFR 1.115" which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated June 24, 2004, 2) a copy of a petition for extension of time, 3) a copy of an authorization to charge a credit card account, 4) a statement in support of the petition under 37 C.F.R. § 1.8(b) signed by attorney Milord A. Keshishian, 5) a supporting declaration by Stephanie V. Trice, and 6) copies of reports from petitioner's facsimile machine showing that an 18-page transmission was successfully transmitted to the USPTO on June 24, 2004 and a re-transmission to the examiner's "RightFax" number on July 12, 2004.

The file record does not include the 18-page transmission submitted on June 24, 2004.

The petition satisfies the conditions for accepting a response filed using a certificate of transmission under 37 C.F.R. § 1.8(a) but lost after having being received by the USPTO. Accordingly, the petition is granted.

The Notice of Abandonment mailed September 21, 2004 is hereby vacated and the holding of abandonment withdrawn.

The copy of the amendment submitted on November 22, 2004 with the petition is accepted since the USPTO has apparently lost the response originally submitted.

The technical support staff will process the amendment and the examiner will prepare an appropriate action in response to the amendment.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MICHAEL P. MORRIS
BOEHRINGER INGELHEIM
CORPORATION
900 RIDGEBURY ROAD
P. O. BOX 368
RIDGEFIELD, CT 06877-0368

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OFFICE OF PETITIONS

In re Application of

Germeyer, et al. :

Application No. 10/342,080

: DECISION ON PETITION

Filed: January 14, 2003

:

Attorney Docket No. 1/1293

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

The petition is **GRANTED**.

The above-cited application became abandoned for failure to file a proper reply in a timely manner to the final Office action mailed December 2, 2005, which set a shortened statutory period for reply of three (3) months from its mailing date. A proper response was not received within the allowable period. The application became abandoned on March 3, 2006. A Notice of Abandonment was mailed on July 13, 2006.

The Request for Continued Examination filed August 1, 2006, is noted and made of record.

The application is being forwarded to Technology Center 1600, GAU 1625 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
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Paper No. 5

AKERMAN, SENTERFITT & EDISON, PA
SUITE 400
222 LAKEVIEW AVENUE
WEST PALM BEACH, FL 33401

COPY MAILED

NOV 21 2003

OFFICE OF PETITIONS

In re Application of:	
John McAdams, Graydon Vadas,	
Michael Warshaw and Charley Hendrix:	DECISION REFUSING
Application No. 10/342,082	STATUS
Filed: January 14, 2003	UNDER 37 CFR 1.47(a)
Title of Invention: ARTICLE FOR	
DEBRIDEMENT & DETOXIFICATION OF	
WOUNDS	

This is in response to a petition under 37 CFR 1.47(a), filed August 25, 2003, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on January 14, 2003, without an oath or declaration. This Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice") on February 25, 2003, requiring, *inter alia*, a properly signed oath or declaration and a late filing fee, oath or declaration and surcharge.

In response to the Notice, Applicant files the instant petition wherein Applicant avers that the nonsigning inventor could not be reached for signature. Efforts to contact the nonsigning inventor include a visit to the nonsigning inventor's last known address, a telephone call to the nonsigning inventor's last

known home telephone number, contacting a friend of the nonsigning inventor who was unaware of the nonsigning inventors current address, and sending email to the nonsigning inventor's last known email address.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1), (2) and (4) as set forth above.

As to item (1), if an inventor is unavailable (cannot be reached), while it is not required that the application be mailed, Petitioner must establish the exercise of diligent effort in trying to find or reach the nonsigning inventor. A statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. (Emphasis supplied). See, MPEP § 409.03(d). At the very least, an Internet search, or a search of telephone directories should be undertaken of the regions where it is suspected the non-signing inventor may reside. Copies of the results of such searches must be referred to in any renewed petition. It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

As to item (2), Applicant has failed to provide an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116. A review of the oath or declaration filed with the instant petition reveal that none of the putative inventors have declared themselves to be the original, first, and joint inventors of the instant application[1]. A properly executed oath or declaration is required.

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

[1] It appears that page one of the oath or declaration has not been presented.

By mail: Commissioner for Patents
PO 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 22202-3113

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 7

AKERMAN, SENTERFITT & EDISON, PA
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222 LAKEVIEW AVENUE
WEST PALM BEACH, FL 33401

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FEB 02 2004

OFFICE OF PETITIONS

In re Application of:	:	
John McAdams, Graydon Vadas,	:	
Michael Warshaw and Charley Hendrix	:	DECISION GRANTING
Application No. 10/342,082	:	STATUS
Filed: January 14, 2003	:	UNDER 37 CFR 1.47(a)
Title of Invention: ARTICLE FOR	:	
DEBRIDEMENT & DETOXIFICATION OF	:	
WOUNDS	:	

This Decision is in response to a Petition Under 37 C.F.R. 1.47(a), filed November 14, 2003, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **granted**.

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

Petitioner has shown that the non-signing inventor, John McAdams, refuse to join in the application.

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

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John McAdams
9196 Southeast Parkway Drive
Hobe Sound, FL 33455

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FEB 02 2004

OFFICE OF PETITIONS

In re Application of: :
John McAdams, Graydon Vadas, :
Michael Warshaw and Charley Hendrix:
Application No. 10/342,082 : LETTER
Filed: January 14, 2003 :
Title of Invention: ARTICLE FOR :
DEBRIDEMENT & DETOXIFICATION OF :
WOUNDS :

Dear Mr. McAdams:

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) 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: AKERMAN, SENTERFITT & EDISON, PA
SUITE 400
222 LAKEVIEW AVENUE
WEST PALM BEACH, FL 33401

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Robert J. Schaap
Suite 188
21241Ventura Boulevard
Woodland Hills, CA 91364

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JAN 19 2006

OFFICE OF PETITIONS

In re Application of :
Richard Gerlach :
Application No. 10/342,090 :
Filed: January 13, 2003 :
Attorney Docket No. N/A :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on November 30, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply to the non-final Office action mailed January 25, 2005. A Notice of Abandonment was mailed on September 22, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay.

The Office also acknowledges receipt of $150 in claim fees and an Oath/Declaration.

The application file is being referred to Technology Center Art Unit 2878, for review of the amendment filed with the instant petition.

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

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SEP 1 8 2006
OFFICE OF PETITIONS

In re Application of	:	
Richard Gerlach	:	
Application No. 10/342,091	:	ON PETITION
Filed: January 13, 2003	:	
Attorney Docket No. N/A	:	

This is a decision on the petition under 37 CFR 1.137(b) filed May 2, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 24, 2005. A Notice of Abandonment was mailed on March 23, 2006.

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

With respect to item (1), the record fails to show that petitioner submitted the required reply to the non-final Office action August 24, 2005. Therefore, revival of the above application cannot occur until a response to the non-final Office action has been received.

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.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

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) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Frank L. Kluber
13261 S.W. 54th Court
Miramar, FL 33027

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Commissioner for Patents
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ROBERT J. SCHAAP
Suite 188
21241 Ventura Boulevard
Woodland Hills, CA 91364

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JUL 25 2007

OFFICE OF PETITIONS

In re Application of
Richard Gerlach
Application No. 10/342,091
Filed: January 13, 2003
Attorney Docket No. N/A

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed November 27, 2006, to revive the above-identified application.

The petition satisfies the requirements of 37 CFR 1.137(b), in that, petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2878, for review of the amendment filed with the instant petition.

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

Andrea Smith
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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Paper No.

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Joel H. Bootzin
PIPER RUDNICK
P.O. Box 64807
Chicago, IL 60664-0807

In re Application of:
Amram Chowdhry et al.
Application No. 10/342,092
Filed: January 14, 2003
For: FAST CREATION OF CUSTOM INTERNET PORTALS USING THIN CLIENTS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed September 07, 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 September 07, 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
(571) 272-3613

cc: Kerry Abbot, Esquire
Assistant General Counsel
AJG FINANCIAL SERVICES, INC.
Two Pierce Place
Itasca, IL 60143-3141

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Paul, Hastings, Janofsky & Walker LLP
P.O. Box 919092
San Diego, CA 92191-9092

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AUG 22 2006
OFFICE OF PETITIONS

In re Application of	:	
BROWN et al.	:	
Application No. 10/342,111	:	DECISION ON PETITION
Filed: January 13, 2003	:	TO WITHDRAW
Attorney Docket No. 45336.00002.UTL1	:	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 11, 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 Jane Song on behalf of all attorneys of record who are associated with customer No. 36183.

All attorneys/agents associated with the Customer Number 36183 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 Eric Brown at the address indicated below.

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

David Buccei
Petitions Examiner
Office of Petitions

cc: Eric Brown
P.O. Box 9731
Rancho Santa Fe, CA 92067

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
10/342,111	01/13/2003	Eric Brown	033435.0002.UTL

CONFIRMATION NO. 7984

OC000000019967023

36183
PAUL, HASTINGS, JANOFSKY & WALKER LLP
P.O. BOX 919092
SAN DIEGO, CA 92191-9092

Date Mailed: 08/10/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/11/2005.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

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DLA PIPER LLP (US)
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO CA 92121-2133

MAILED

JAN 27 2010

OFFICE OF PETITIONS

In re Application of
Wolfgang H. Dillman et al.
Application No. 10/342,120
Filed: January 13, 2003
Attorney Docket No. **ST-UCSD3240-1**

DECISION ON PETITION
UNDER § 1.183

This is a decision in response to the petition filed December 9, 2009, under 37 CFR § 1.183 for waiver of the requirement under 37 CFR § 1.131 that all of the inventors sign the declaration of prior inventorship.

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

In response to a Notice to File Missing Parts mailed March 13, 2003, declaration pursuant to 37 CFR 1.63, signed by all of the inventors was filed June 30, 2003 with a two month extension of time. With the instant petition, applicants filed a 37 CFR § 1.131 declaration. The 37 CFR § 1.131 declaration was executed by all the joint inventors except Frank Giordano. Applicants have filed the instant petition to have the 37 CFR § 1.131 declaration accepted as signed by all inventors on their own behalf and on behalf of non-signing inventor Giordano.

37 CFR 1.131 states, 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, the Manual of Patent Examining Procedure states that "an application 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."

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, applicants do not contend that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the 37 CFR § 1.131 declaration include all of the joint inventors.

In order for a petition under 37 CFR § 1.183 to be granted to waive this requirement that joint inventor Girodano sign the 37 CFR § 1.131 declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

On instant petition, applicants have set forth the steps taken to obtain joint inventor Girodano's signature on the 37 CFR § 1.131 declaration. The declaration presented is signed by the remaining joint inventors however, applicants have not shown that a bona fide effort was made to present the 37 CFR § 1.131 declaration and supporting documentation to Dr. Giordano.

Petitioners have argued that the Declaration under 37 CFR 1.131 was sent by email and regular mail to the work addresses for Dr. Giordano. The petition does not however include any corroborating evidence of presentment.

In view of the evidence presented, petitioners have not provided evidence that the declaration has been presented to Dr. Giordano and thus, under the circumstances, it is concluded that petitioner has not demonstrated that this is an extraordinary situation, warranting waiver of the rules.[1]

Before the Declaration under 37 CFR 1.131 can be entered, petitioner must provide proof of the presentment, perhaps by providing a copy of the letter sent by regular mail to Dr. Giordano.

Deposit account no. 07-1896 has been charged in the amount of $400 for the 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 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

[1] MPEP 409.03(d).

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BRINKS HOFER GILSON & LIONE
SUITE 3600
455 N. CITYFRONT PLAZA DR.
CHICAGO, IL 60611

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OFFICE OF PETITIONS

In re Patent No. 6,867,992	:	
Tringali et al.	:	
Issue Date: March 15, 2005	:	
Application No. 10/342,122	:	LETTER REGARDING
Filed: January 13, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 10519-91	:	

This is in response to "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed December 10, 2004. Patentees assert that because a terminal disclaimer was filed in this application no Patent Term Adjustment should be awarded.

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

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

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

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

37 CFR § 1.703(g) provides that:

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

The provisions of § 154(b), for adjustment due to examination delay, apply to original applications[1], other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

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

The application is being forwarded to Files Repository for storage as a patented case.

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

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

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

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ALAMEDA CA 94501

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OFFICE OF PETITIONS

In re Application of	:	
Meyer, David L.	:	
Application No. 10/342,136	:	DECISION ON PETITION
Filed: January 13, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 407T-301610US	:	

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed June 20, 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 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 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) and 1.78(a)(6) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3) and 1.78(a)(6), is required.

A Corrected Filing Receipt was mailed on June 27, 2005, reflecting the amendment to the claim for priority. In view of the improper amendment to the specification, it was sent in error. Another Corrected Filing Receipt will be issued when a proper substitute amendment is 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 Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions

Any questions concerning this matter may be directed to 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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[1] *Note* 37 CFR 1.121

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MAR 2 3 2006

OFFICE OF PETITIONS

In re Application of	:
Meyer, David L.	:
Application No. 10/342,136	: DECISION GRANTING PETITION
Filed: January 13, 2003	: UNDER 37 CFR 1.78(a)(3) AND
Attorney Docket No. 407T-301610US	: 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 March 10, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§120, 365(c) 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 January 13, 2003, and was pending at the time of filing of the instant petition. A reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). *See* 35 U.S.C. §§ 120 and 365(c) 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 365(c)

and § 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 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 the undersigned at (571) 272-3206.

This matter is being referred to Technology Center Art Unit 1636 for appropriate action on the amendment submitted March 10, 2006, including consideration by the examiner of the claim under 35 U.S.C. § §120 and 365(c) and 37 CFR 1.78(a)(2) for the benefit of the prior-filed applications, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application.

Liana Chase

Liana Chase
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/342,136	01/13/2003	1636	1020	407T-301610US	19	52	4

CONFIRMATION NO. 8360
CORRECTED FILING RECEIPT
OC000000018349991
OC000000018349991

22798
QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA, CA 94501

Date Mailed: 03/23/2006

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

David L. Meyer, Los Angeles, CA;

Assignment For Published Patent Application

The Regents of the University of California

Power of Attorney: The patent practitioners associated with Customer Number **22798**.

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/347,533 01/11/2002
and is a CIP of 09/446,992 02/23/2000
which is a 371 of PCT/US98/13870 07/02/1998
which claims benefit of 60/051,721 07/03/1997

Foreign Applications

If Required, Foreign Filing License Granted: 02/13/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/342,136

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Methods for increasing mRNA half-life in eukaryotic cells

Preliminary Class

435

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The

date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

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ALEXANDRIA, VA 22313-1450
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Alexander D. Forman
Ice Miller
One American Square
Box 82001
Indianapolis, IN 46282

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JUL 21 2005

Technology Center 2100

In re Application of: Ray, et al.	)	
Application No. 10/342,170	)	*SUA SPONTE*
Attorney Docket No. 01494-002	)	WITHDRAWAL OF HOLDING OF
Filed: January 13, 2003	)	ABANDONMENT
For: PORTABLE COLLAPSIBLE	)	
CORRAL FENCE AND METHOD OF USE	)	

The status inquiry, filed May 16, 2005 is acknowledged. The petition, under 37 CFR §1.181, to withdraw the holding of abandonment, filed November 15, 2004 is also acknowledged.

A Notice of Abandonment was mailed to the applicant on October 21, 2004. The notice indicated that the instant application was being held abandoned for failure to respond to the Non-Final Office letter (mailed on April 13, 2004).

A review of the file indicates that the Non-Final Office letter of April 13, 2004 was returned to the USPTO as undelivered mail on May 3, 2004. In addition, the file contents show a proper revocation in the power of attorney and change of correspondence address was received in the Office on April 5, 2004 and approved in the notice of acceptance mailed May 6, 2004.

In accordance with MPEP §402.05, "revocation of the power of attorney becomes effective on the date that the revocation is RECEIVED in the Office (not on the date of ACCEPTANCE)". As a result in the delay in acceptance and processing of the revocation of the power of attorney and correspondence address change filed April 5, 2004, the Non-Final Office letter of April 13, 2004 was inadvertently mailed to the previous address.

In view of these facts, the abandonment of the application was clearly in error and is hereby **VACATED**. The Office regrets any inconvenience this may have caused.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to **WITHDRAW** the holding of abandonment, restore the instant application to pending status and to redate/remail the Non-Final Office letter of April 13, 2004.

Inquiries to this decision may be directed to Special Programs Examiner Brian Johnson at (571) 272-3595.

Brian L. Johnson
Special Program Examiner 7/19/05
Technology Center 2100
Computer Architecture, Software, and Information Security

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Collier Shannon Scott, PLLC
3050 K Street, N. W.
Suite 400
Washington, DC 20007

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OFFICE OF PETITIONS

In re Application of :
Richard Vanderpoel :
Application No. 10/342,178 :
Filed: January 15, 2003 :
Attorney Docket No. 55060-00601 :

ON PETITION

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**.

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 slightly from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

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

The application file is being referred to the Publishing Division to be processed into a patent.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

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JUL 21 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER, 8TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3834

In re Application of :
Koomullil et al. :
Application No. 10/342,198 :
Filed: January 13, 2003 :
For: ESTIMATION AND CORRECTION OF DC OFFSET IN THE PRESENCE OF FREQUENCY OFFSET :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request to withdraw as attorney/agent of record filed on April 1, 2003.

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

The request is **GRANTED.**

All attorneys associated with Customer No. 20350 are granted the request for withdraw of attorney/agent. All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

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

cc: BENJAMIN S. WITHROW
WITHROW & TERRANOVA, P.L.L.C.
201 SHANNON OAKS CIRCLE, SUITE 200
CARY, NC 27511

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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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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

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OFFICE OF PETITIONS

In re Application of Ariga et al. :
Application No. 10/342,211 :
Filing Date: January 15, 2003 :
Attorney Docket No. 0505-1163P :

Decision on Petition

This is a decision on the petition under 37 CFR 1.181, filed November 26, 2007, to withdraw the holding of abandonment.

The petition is **granted.**

Facts:

The Office electronically notified petitioner of the issuance of a Notice of Abandonment on September 24, 2007. The Notice of Abandonment stated the application was abandoned due to petitioner's failure to reply to an Office letter mailed June 14, 2007.

On November 15, 2007, Patent Agent Carl Thomsen contacted the Office's Publications Branch and obtained a copy of the June 14, 2007 Notice.

Petitioner contends the June 14, 2007 Notice was never received and requests withdrawal of the holding of abandonment.

A review of the copy of the June 14, 2007 Notice to File Corrected Application Papers provided by petitioner indicates the Notice set a non-extendable time period for reply of 60 days. Therefore, unless the petition is granted, the application became abandoned on August 14, 2007.

Discussion:

The Office may have sent petitioner electronic notification of the issuance of the June 14, 2007 Notice.

The cover page of the Notice indicates the Office, on June 14, 2007, electronically notified petitioner of the issuance of a communication and that a copy of the communication could be obtained via PAIR. Assuming such an electronic communication was sent, the communication was insufficient in so far as a copy of the June 14, 2007 communication was not accessible in

PAIR. Specifically, the June 14, 2007 communication was not accessible via PAIR because the Notice is not part of the Office's Electronic Image File Wrapper for the application.

For the reasons above, any electronic notice concerning the June 14, 2007, sent by the Office was improper.

The second page of the June 14, 2007 Notice and the Notice of Abandonment state the June 14, 2007 Notice was mailed to petitioner. However, petitioner has provided a showing sufficient to demonstrate non-receipt of the June 14, 2007 Notice by mail.

Since petitioner was never properly notified, electronically or by mail, of the need to file Corrected Application Papers, the application is not abandoned.

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

The Office of Data Management will be informed of the instant decision and will determine if the drawings filed November 26, 2007, sufficiently address the problem noted in the June 14, 2007 Notice. If the drawings are insufficient, a new Notice to File Corrected Application Papers setting a new time period for reply should be issued.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON VA 20195

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OFFICE OF PETITIONS

In re Application of :
Bjoern Heismann et al. :
Application No. 10/342,250 : DECISION ON PETITION
Filed: January 15, 2003 :
Attorney Docket No. 32860-000462/US :

This is a decision on the petition, filed June 30, 2004 and resubmitted October 16, 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 respond to the Notice to File Missing Parts of Nonprovisional Application (Notice) of March 3 2003, which set a two (2) month shortened statutory period for reply. A reply was due on or before May 3, 2003.

Petitioner states that a reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on May 2, 2003 of, *inter alia,* a check for $130, copy of the Notice and an executed declaration. A copy of the previously submitted reply accompanies the petition.

The response to the Notice acknowledged as having been received in the USPTO on May 2, 2003 is not of record in the application file and has not to date been located. However, MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the response to the Notice was timely received in the USPTO but lost after receipt thereof.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The copy of the reply supplied with the petition will be accepted in place of the reply shown to have been received by the USPTO on May 2, 2003.

This application is being referred to Technology Center AU 2882 for appropriate action in the normal course of business on the reply received with petition.

Carl Friedman
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

In re Application of
Manoj Kumar Pandey et al.
Application No. 10/342,303
Filed: January 15, 2003
Attorney Docket No. 4062-51

ON PETITION

This is a decision on the October 10, 2007 "Petition Under 37 CFR 1.183 requesting waiver of the requirements of 37 CFR 1.63(a)(2).

The instant application was filed January 15, 2003 with an Oath which identified the seventh inventor as only RAJESH. In response to an inquiry by the Examiner of record, that 37 CFR 1.63(a)(2) requires at least one full name be provided, petitioners argue that the seventh inventor, RAJESH, has only one name and in support provides a copy of the inventor's passport and a copy of a "School Leaving Certificate, which evidences his birth date and his name. Both documents list the name "RAJESH" only. No surname is given on either document. .

Petitioner prays for relief under 37 CFR 1.183 which 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 Commissioner or the Commissioner's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed."

Accordingly, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules. The executed declaration filed January 15, 2003 has been entered, despite the fact that the requirements set forth in 37 CFR 1.63(a)(2), requiring Applicant to identify each inventor by full name, including the family name, and at least one given name without abbreviation, has not been satisfied.

In view thereof, the petition under 37 CFR 1.183 is **GRANTED**. The petition fee in the amount of $400 has been charged to petitioner's deposit account as per the authorization.

This matter is being referred to the Publishing Division.

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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HARNESS DICKEY & PIERCE PLC
PO BOX 828
BLOOMFIELD HILLS MI 48303

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OFFICE OF PETITIONS

In re Application of	:	
Yutaka Takeda	:	
Application No. 10/342,304	:	ON PETITION
Filed: January 15, 2003	:	
Attorney Docket No. 9432-000209	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed March 26, 2007.

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

The above-identified application became abandoned for failure to timely file a reply in response to the non-final Office action mailed June 15, 2006. This Office action set an extendable period for reply of three (3) months. Applicant filed an RCE on December 15, 2006, made timely by obtaining a three month extension of time. However, as the Office action mailed June 15, 2006, was a first non-final Office action, the RCE was not a proper reply. Accordingly, the application became abandoned on December 16, 2006. The mailing of this decision precedes the mailing of a Notice of Abandonment.

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

The matter is being forwarded to Group Art Unit 2141 for consideration of the Amendment filed March 26, 2007.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

John C. Thompson
69 Grayton Road
Tonawanda, NY 14150

In re:	Frank R. Lauciello	:	DECISION ON REQUEST
Serial No.:	10/342,411	:	UNDER 37 CFR 5.25
Filing date:	24 December 2003		
Docket No:	None		

Title: SETS OF POSTERIOR TEETH

In view of the communication(s) filed 24 December 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	14 January 2003

Approved:

Andrea M. Valenti

Andrea M. Valenti
Patent Examiner
Group 3643
(703) 305-3010

09 June 2004

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Paper No. 8

THOMAS J. PERKOWSKI, ESQ. P.C.
SOUNDVIEW PLAZA
1266 EAST MAIN STREET
STAMFORD, CT 06902

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OFFICE OF PETITIONS

In re Application of :
Schmidt, Russel, Knowles, Zhu, Au, :
Xu, Liu, Suzhou, and Zhang : DECISION REFUSING STATUS
Application No. 10/342,441 : UNDER 37 CFR 1.47(a)
Filed: 12 January, 2003 :
Attorney Docket No. 108-182USA000 :

This is in response to the petition filed under 37 CFR 1.47(a) on 19 August, 2003.

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

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

The above-identified application was filed on 12 January, 2003, without an executed oath or declaration. Accordingly, on 10 April, 2003, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application requiring an executed oath or declaration, the statutory basic filing fee, and a surcharge for their late filing, as well as replacement drawings. A two (2) month period for reply was set.

In response, on 19 August, 2003 (certificate of mailing date 10 August, 2003), the present petition was filed, along with the statutory basic filing fee, a two (2) month extension of time, replacement drawings, and a declaration naming Mark Schmidt, Garrett K. Russell, C. Harry Knowles, Xioxun Zhu, Ka Man Au, Congwei Xu, Liang Liu, Kai Ji, and Wuqing Zhang as joint inventors and signed by all joint inventors except Zhang on behalf of themselves and joint inventor Zhang.

Petitioners assert that the non-signing inventor could not be

contacted because he left his former employer and has relocated.

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 respect to item (1), petitioners must provide proof that, at a minimum, a copy of the application (specification, including claims, drawings, if any, and the declaration) was sent or given to the non-signing inventor at his or her last known address for review.[1] Petitioners may provide proof by providing a copy of the cover letter transmitting the application papers to the non-signing inventors or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Likewise, before a *bona fide* refusal to sign can be alleged petitioners must show that a copy of the application papers (specification, including claims, drawings, if any, and the declaration) were sent or given to each non-signing inventor. If there is a written refusal, petitioners must provide a copy of that written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

If application papers sent to the non-signing inventor at his or her last known address are returned as undeliverable, petitioners may show proof that diligent efforts have been made to locate the non-signing inventor(s) by providing a copy of an envelope showing that a letter sent to the last known address of the non-singing inventor was returned as undeliverable by the post office. Details of the efforts made to locate the non-signing

[1] MPEP 409.03(d).

inventor should be set forth in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Additionally, if an inventor(s) cannot be reached at his or her last known address, petitioners must provide details, in an affidavit or declaration of facts by a person with first hand knowledge of the details, of the efforts, such as Internet, e-mail, or telephone directory searches, which have been undertaken to locate that inventor, send or give a copy of the application papers to him or her, and request that he or she sign and return the declaration. If repeated attempts to contact an inventor(s) by telephone, mail, and e-mail, are unsuccessful, petitioners will have established that an inventor(s) cannot be found despite diligent efforts.

The Office is construing the address provided in the declaration for joint inventor Zhang as his last known address. Petitioners **must** inform the Office if this is an incorrect interpretation. If another address is determined for joint inventor Zhang, petitioners should provide that address in any renewed petition.

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

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

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

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

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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Paper No. 11

THOMAS J. PERKOWSKI, ESQ., PC
SOUNDVIEW PLAZA
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STAMFORD CT 06902

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OFFICE OF PETITIONS

In re Application of	:
Schmidt et al.	: DECISION NOTING JOINDER OF
Application No. 10/342,441	: INVENTOR
Filed: 12 January, 2003	:
Attorney Docket No. 108-182USA000	:

Papers filed on 6 November, 2003, in reply to "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on 9 September, 2003, included a Declaration signed by the previously nonsigning inventor, Wuqing Zhang, in compliance with 37 CFR 1.63.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is not required, as the petition involves a moot issue; this application does not have any rule 1.47(a) status and no such status should appear on the file wrapper. This application need not be returned to this office for any further consideration under 37 CFR 1.47(a).

This application will be forwarded to Technology Center 2800 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

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JAN 19 2005

Director's Office
Group 3700

Boris Leschinsky
Patent Agent
P.O. Box 72
Waldwick, NJ 07463

In re application of Blank, Et. Al.	:	**DECISION ON PETITION TO MAKE SPECIAL UNDER 37 CFR. 1.102(c)**
Serial Number: 10/342474 Filed: January 16, 2003	:	

For: **BELA-MARK CITY-TYPE FROST-RESISTANT WINDMIL WITH STABLE REVOLUTIONS**

This is a decision on the petition filed on December 07, 2004, under 37 CFR. 1.102(c) to make special the above identified application because of the age/health of the applicant. Since the requirements of the M.P.E.P Section 708.02 IV have been met, the petition will be GRANTED.

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

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

Summary: Decision on Petition **GRANTED**.

Richard A. Bertsch
Director
Technology Center 3700
(571) 272-3750

rt: 1/18/05

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GENERAL ELECTRIC COMPANY
CRD PATENT DOCKET RM 4A59
BLDG. K-1
P.O. BOX 8
SCHENECTADY, NY 12301

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:
Pressman, et al.	:
Application No. 10/342,475	:
Filed: January 16, 2003	:
Attorney Docket No.123952.2049	:

This is a decision on the petition under 37 CFR 1.137(a), filed February 24, 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 January 28, 2004, which set a one (1) month period for reply. Accordingly, this application became abandoned at midnight on February 28, 2004. A Notice of Abandonment was mailed on September 9, 2004.

Petitioner asserts that a response to the Office action was timely filed on February 27, 2004. In support, petitioner has submitted a copy of the response that contains an executed Certificate of Facsimile Transmission under 37 CFR 1.8 dated February 27, 2004.

Accordingly, the petition is granted and the holding of abandonment is withdrawn.

The $500.00 petition fee will be refunded to deposit account no. 07-0868.

This application is being forwarded Technology Center 1600 for further examination *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
United States Patent and Trademark Office

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OCT 17 2003

Office of the Director
Group 3600

J. Nevin Shaffer, Jr.
913 Gulf Breeze Parkway
Suite 43
Gulf Breeze, FL 32561

In re Application of:
Arthur I. Enfinger
Serial No. 10/342,476
Filed: January 16, 2003
For: NUCLEAR FUSION REACTOR AND METHOD

DECISION ON PETITION TO MAKE SPECIAL (ENERGY)

This is a decision on the petition filed August 14, 2003 under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section VI: Energy.

A grantable petition to make an application special under 37 C.F.R. 1.102 (c), MPEP 708.02, Section VI for an invention which materially contributes to (A) the discovery or development of energy resources, or (B) the more efficient utilization and conservation of energy resources must be accompanied by statements under 37 CFR 1.102 by applicant or his attorney explaining how the invention materially contributes to category (A) or (B) set forth above.

The petition includes applicant's statement that "the nuclear fusion reactor innovation set forth in the above identified application will materially contribute to the development and conservation of energy resources". Since the above statement is nothing more than a conclusion, this statement is insufficient to show how the invention provides a conservation of energy resources and also inadequate in its description to establish for the record that the invention "materially contributes to the development of energy resources". A detailed explanation of how the invention meets the above criteria is required.

For the above stated reasons, the petition is **DISMISSED**.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Should petitioner desire reconsideration, he should supplement this petition by a declaration or statement giving the information as outlined above. Petitioner should promptly submit such a renewed petition to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

SNM/ekn 10/16/03

#10

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DEC 16 2003

Office of the Director
Group 3600

J. Nevin Shaffer, Jr.
913 Gulf Breeze Parkway
Suite 43
Gulf Breeze, FL 32561

In re Application of:
Arthur I. Enfinger
Serial No. 10/342,476
Filed: January 16, 2003
For: NUCLEAR FUSION REACTOR AND METHOD

DECISION ON PETITION TO MAKE SPECIAL (ENERGY)

This is a decision on the renewed petition filed November 10, 2003 under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section VI: Energy.

A grantable petition to make an application special under 37 C.F.R. 1.102 (c), MPEP 708.02, Section VI for an invention which materially contributes to (A) the discovery or development of energy resources, or (B) the more efficient utilization and conservation of energy resources must be accompanied by statements under 37 CFR 1.102 by applicant or his attorney explaining how the invention materially contributes to category (A) or (B) set forth above.

The petition states that the "Applicant's nuclear fusion reactor provides a new energy source for use in providing energy to individuals and businesses and that it will reduce the demand for pre-existing energy sources such as fossil fuels". This statement, which evidences more efficient utilization and development of energy resources, is adequate to establish for the record that the invention "materially contributes to the development of energy resources".

For the above stated reasons, the petition is **GRANTED**.

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

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

Randolph A. Reese

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/cps: 12/15/03

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COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD
SUITE 2850
200 WEST ADAMS STREET
CHICAGO IL 60606

COPY MAILED

JUL 1 4 2004

OFFICE OF PETITIONS

In re Application of
Keithly, Taggart, Wilson
Application No. 10/342,481
Filed: January 15, 2003
For: COMMERCIAL POULTRY LITTER
ENHANCEMENT WITH CITRUS SOURCES

: ON PETITION

This is a decision on the petition filed April 30, 2004, under 37 CFR 1.182 and MPEP 402.10 requesting separate revocation and appointment of a power of attorney for inventor David Wilson in the above-identified application.

The petition is **granted**.

In accordance with MPEP 402.10 and 37 CFR 1.182, the requested revocation of the prior power, and appointment of counsel E.J. Asbury III to represent David Wilson is **granted** as of the mail date of this decision.

In order to assure that all interests are properly and effectively represented, all further correspondence to the United States Patent and Trademark Office (USPTO) in this application--or resultant patent-- must be signed **both** by Asbury who represents Wilson and by any one of those members of COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD ("COOK") appointed on the combined declaration and power of attorney present on filing, with the exception of maintenance fee payments. One of counsel already of record from COOK will also be responsible for coordinating all replies or submissions to the USPTO. See MPEP 402.10. *Any registered practitioner signing subsequent papers must indicate whom he or she represents.* The correspondence address remains that of COOK.

All parties are reminded that dual correspondence is not permitted, and will not be undertaken by the USPTO.

Nevertheless, a courtesy copy of this decision is being mailed to counsel for Wilson.

Telephone inquiries related to this decision should be addressed to the undersigned at (703) 305-1820.

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

cc:

E.J. Asbury III
3330 Cumberland Blvd.
Suite 500
Atlanta, GA 30339

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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Law Offices of Eric Karich
2807 St. Mark Dr.
Mansfield, TX 76063

DEC 21 2005

In re Application of:
David Halstead et al.
Serial No.: 10/342,485
Filed: January 15, 2003
Attorney Docket No.: 0333-14

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) filed on June 6, 2005 via U.S. Express Mail. 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 final Office action mailed on July 8, 2004. A Notice of Abandonment was mailed on May 13, 2005.

Petitioner asserts that a response (a Request for Reconsideration) was timely filed via facsimile transmission on September 2, 2004. The petition includes a statement by the petitioner 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 response was also included as an attachment to the petition. The copy of the response contains the required certificate of facsimile transmission (dated September 2, 2004) under 37 C.F.R. § 1.8 (a)(1)(ii). The petition 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 13, 2005 is hereby **VACATED** and the holding of abandonment is withdrawn.

The copy of the response submitted with the petition on June 6, 2005 is accepted since the response originally submitted was apparently lost.

Since this response was in reply to a final Office action, the response was forwarded to the examiner for consideration of the response and for determination whether the application in condition for allowance. The examiner has determined that the application is in condition for allowance. It should be noted that even if the examiner had determined the application was not in condition for allowance, the Examiner Interview Summary Record (mailed September 9, 2004) of the interview that took place on September 2, 2004, would have been interpreted as an

agreement by the examiner to at least withdraw the finality of the Office action.

A Notice of Allowability and a Notice of Allowance and Fee(s) Due will be mailed to the applicant in the near future.

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

Arthur Grimley, Acting Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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NOV 09 2009

OFFICE OF PETITIONS

JACQUELINE M. DASPIT
LEXMARK INTERNATIONAL, INC.
740 WEST NEW CIRCLE ROAD, BLDG. 082
LEXINGTON, KY 40550

In re Application of	:	
Christopher Alan ADKINS et al.	:	
Application No. 10/342,496	:	ON PETITION
Filed: January 15, 2003	:	
Attorney Docket No. 2002-0837.02	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 14, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the Final Office action mailed September 23, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 24, 2008.

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

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37CFR 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 reply to the Final Office Action filed July 14, 2009 does not meet requirement (1) above. The attached Advisory Action explains why the reply is unacceptable and the reply was not entered.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

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

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

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

Telephone inquiries concerning this decision should be directed to Ella Colbert at (571) 272-6051 or in her absence, the undersigned at (571) 272-7099.

David Bucci
Petitions Examiner
Office of Petitions

Cc: NEILL R. KAHLE, JR.
LEXMARK INTERNATIONAL, INC.
740 WEST NEW CIRCLE ROAD
LEXINGTON, KY 40550

Encl: Advisory Action Before the Filing of an Appeal Brief, PTOL-303

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/342,496	Applicant(s) ADKINS ET AL.	
	Examiner Yehdega Retta	Art Unit 3622	

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

THE REPLY FILED 14 July 2009 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: _____.
   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: _____.

/Yehdega Retta/
Primary Examiner, Art Unit 3622

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have already been addressed in the final rejection.

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KENYON & KENYON LLP
ONE BROADWAY
NEW YORK NY 10004

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APR 23 2010

OFFICE OF PETITIONS

In re Application of	:	
Michael R. Rosen, et al.	:	
Application No. 10/342,506	:	DECISION GRANTING PETITION
Filed: January 15, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 13533/48002	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, April 23, 2010 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 24, 2010 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 Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 1633 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Terri Johnson

Terri Johnson
Petitions Examiner
Office of Petitions

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

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)
6811624	2004-11-02	10342510	2003-01-15	

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	/Edward H. Jones, Jr./	Date (YYYY-MM-DD)	2009-01-07
Name	Edward H. Jones, Jr.	Registration Number	33717

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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In re Patent No. 6811624
Issue Date: November 2,2004
Application No. 10342510
Filed: January 15,2003
Attorney Docket No.

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

This is a decision on the electronic petition, filed January 7,2009 ,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 January 7,2009 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ROBERT D. FISH
RUTAN & TUCKER LLP
611 ANTON BLVD 14TH FLOOR
COSTA MESA CA 92626-1931

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JAN 10 2006

OFFICE OF PETITIONS

In re Application of	:	
Huynh-Tran et al.	:	
Application No. 10/342,533	:	ON PETITION
Filed: January 14, 2003	:	
Attorney Docket No. 101315.0010US1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 2, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to Technology Center 1700 for further examination on the merits.

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

Liana Chase
Petitions Examiner
Office of Petitions

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In re Patent No. 6841125
Issue Date: January 11,2005
Application No. 10342552
Filed: January 15,2003
Attorney Docket No. RM436D

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

This is a decision on the electronic petition, filed May 27,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of May 27,2009 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 3

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD, SEVENTH FLOOR
LOS ANGELES, CA 90025

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OCT 3 1 2003

OFFICE OF PETITIONS

In re Application of
Danie E. Grupp, et al.
Application No. 10/342,576
Filed: January 14, 2003
Attorney Docket No. 3771P004

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed October 17, 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 August 8, 2003. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

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

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

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

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of February 12, 2004 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-9220.

This application is being forwarded to Technology Center Art Unit 2811 for examination in due course.

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

PET. DEC.

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APR 7 2004

VP
PAPER NO. ___

In re Application of
Jeffrey A. Colborn et al.
Serial Number: 10/342,579
Filed: January 15, 2003
For: SYSTEM FOR PROVIDING BACKUP POWER FROM A REGENERATIVE FUEL CELL OR BATTERY ARRANGEMENT

PETITION UNDER M.P.E.P.708.02 V AND VI

This is in response to the petition filed March 17, 2003, requesting that the above-identified application be granted Special Status under Sections 708.02 V and VI of the MPEP and 37 CFR 1.102(c) (**no fee required**).

The request for Special Status considered under Section 708.02 V and VI is granted because criteria under 37 CFR 1.102(c) has been met.

Accordingly the petition is **GRANTED.**

Marian C. Knode

Marian C. Knode, Special Programs Examiner
Technology Center 1700
Chemical and Materials Engineering

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402-2100

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CHICAGO, IL 60606

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APR 06 2009

OFFICE OF PETITIONS

In re Application of	:	
Kiminobu Sugaya, et al.	:	
Application No. 10/342,616	:	DECISION GRANTING PETITION
Filed: January 14, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 02-112-B	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed April 3, 2009, 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 16, 2009 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries regarding the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1647 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
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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P.O. BOX 2550
SALT LAKE CITY, UT 84110

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MAR 21 2006

OFFICE OF PETITIONS

ON PETITION

In re Application of :
David J. Corisis :
Application No. 10/342,632 :
Filed: January 13, 2003 :
Attorney Docket No. 3384.6US (97-564.5)

This is a decision on the petition filed, March 10, 2006 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 12, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to 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

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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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SALT LAKE CITY UT 84110

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OFFICE OF PETITIONS

In re Application of	:	
David J. Corisis	:	
Application No. 10/342,632	:	ON PETITION
Filed: January 13, 2003	:	
Attorney Docket No. 3384.6US (97-564.5)	:	

This is a decision on the petition, filed December 20, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 3, 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 2814 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions

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

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Mailed OCT - 9 2003

UR
Paper NO. 8

In re Application of
Han H. Nee
Serial Number: 10/342,649
Filed: January 15, 2003
For: METAL ALLOYS FOR THE REFLECTIVE OR THE SEMI-REFLECTIVE LAYER OF AN OPTICAL STORAGE MEDIA

DECISION ON PETITION UNDER M.P.E.P. 708.02, II

This is in response to the petition filed, June 25, 2003, requesting that the above-identified application be granted Special Status under Section 708.02, II of the M.P.E.P. and 37 CFR 1.102(d) (fee authorized).

The petition has been considered and found to comply with the requirements set forth under the above-noted section. Accordingly, the petition is **GRANTED.**

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

Kurt N. Jones
Woodard Emhardt Naughton Moriarty & McNett
Bank One/Center Tower, Suite 3700
111 Monument Circle, IN 46204

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : 4/20/05

TO SPE OF : ART UNIT 1724

SUBJECT : Request for Certificate of Correction on Patent No.: 6790503 B2

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-915
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.

Virginia Tolbert
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:

SPE

1774
Art Unit

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WOODARD EMHARDT MORIARTY
MCNETT & HENRY LLP
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204

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OFFICE OF PETITIONS

In re Patent No. 6,790,503	:	
Issue Date: September 14, 2004	:	
Application No. 10/342,649	:	NOTICE
Filed: January 15, 2003	:	
Attorney Docket No. 7272-31		

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

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

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

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

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Paper No.

Derek H Maughan
Dykas,Shaver & Nipper LLP
PO Box 877
Boise, ID 83707

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JUN 03 2005

OFFICE OF PETITIONS

In re Application of	:	
Ing-Jun Chen	:	DECISION ON PETITION
Application No. 10/342,650	:	
Filed: January 15, 2003	:	
Atty Docket No. BA-22834	:	
(CIP-22771)	:	

This is a decision on the PETITION TO REVIVE UNAVOIDABLY ABANDONED APPLICATION Pursuant to 37 CFR 1.137(a) filed May 9, 2005.

The petition under § 1.137(a) is **granted**.

The above-identified application became abandoned for failure to timely file a response to the final rejection mailed May 11, 2004. This Office action set a three (3) month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No reply having been received and no extension of time obtained, the application became abandoned on August 12, 2004. A courtesy Notice of Abandonment was mailed on January 11, 2005.

Petitioner submits that the delay was unavoidable since the Office Action was sent to the incorrect address and the attorneys assigned to prosecute the application never received the Office action. Petitioner states that a change of address was filed in this application on March 31, 2004 (certificate of mailing date). On petition, applicant submitted payment of the petition fee under § 1.17(l). However, no response to the final rejection was submitted. Instead, petitioner states please find a continuation-in-part application (Office records show that

application No. 11/122,343, a C-I-P of the instant application, was filed on May 4, 2005).

As stated in MPEP 711.03(c)IIIC2

[W]here an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The following do not constitute proper notification of a change in correspondence address:

(A) the mere inclusion, in a paper filed in an application for another purpose, of an address differing from the previously provided correspondence address, without mention of the fact that an address change was being made;

(B) the notification on a paper listing plural applications as being affected (except as provided for under the Customer Number practice - see MPEP § 403); or

(C) the lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address.

The relevant Office action was mailed on May 11, 2004. On petition, applicant submits *prima facie* evidence, in the form of a date-stamped and itemized postcard, that a power of attorney and revocation of power of attorney were filed in the Office on April 5, 2004. Furthermore, the NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY mailed May 20, 2004 states that the power of attorney was filed April 5, 2004. Finally, a review of the power of attorney reveals that it was drafted in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address.

In view thereof, it is concluded that petitioner has met his burden of showing unavoidable delay, as well as, all other requirements for a grantable petition under § 1.137(a).

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the application, the application is again abandoned in favor of the continuation-in-part application filed May 4, 2005.

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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Commissioner for Patents
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POULSEN ROSER APS
620 S. FRONT STREET
CENTRAL POINT OR 97502

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AUG 0 2 2005

OFFICE OF PETITIONS

In re Application of
Olesen, et al.
Application No.: 10/342,702
Filed: January 14, 2003
Attorney Docket No. FAIRY BLUE
FOR: COMPACT FLORIBUNDA ROSE PLANT 'POULAC006'

: DECISION DISMISSING
: PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 24, 2005, requesting that the above-identified application be revived.

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 submission should include a cover letter entitled "Reconsideration Petition under 37 CFR 1.137(b)." Petitioner is advised that this is not a final agency decision.

The petition will not be treated because the petition is not signed by either (1) all the named inventors, (2) the owner to the rights of the inventor (the assignee), if any, or (3) a registered attorney or agent duly appointed by the inventors or owners, as is required by 37 CFR 1.33 (b). Ken Rynearson has not provided an attorney/agent registration number. Ken Rynearson's relationship to the application is unclear.

Applicants have three options. Applicants could resubmit the petition (1) signed by both inventors or (2) signed by a representative of the assignee with authority to bind the assignee - typically the President, Vice President, Treasurer, or Secretary. A person having a title, such as manager, that does not clearly set forth that person as an officer of the assignee is not presumed to have authority to sign the submission on behalf of the assignee. MPEP 324, or (3) signed by a newly appointed registered representative.

Both inventors or a representative of the assignee with authority to bind the assignee must sign any power of attorney documents.

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

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

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

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

Any inquiries pertaining to this matter may 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
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POULSEN ROSER PACIFIC, INC.
620 SOUTH FRONT STREET
CENTRAL POINT OR 97502

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SEP 2 6 2005

OFFICE OF PETITIONS

In re Application of
Olesen, et al.
Application No.: 10/342,702
Filed: January 14, 2003
Attorney Docket No. FAIRY BLUE
FOR: COMPACT FLORIBUNDA ROSE PLANT 'POULAC006'

: DECISION GRANTING
: PETITION

This is a decision on the reconsideration petition under 37 CFR 1.137(b), filed August 12, 2005, requesting that the above-identified application be revived.

The above-identified application became abandoned for failure to reply in a timely manner to the July 1, 2003 non-final Office action which set an extendable three (3) month period for reply. No extensions of time having been obtained pursuant to 37 CFR 1.136(a) and no reply being received in the Office, this application became abandoned on October 2, 2003. A Notice of Abandonment was mailed on March 5, 2004.

Petitioners have submitted an amendment in reply to the July 1, 2003 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the July 1, 2003 non-final Office action, and the petition fee.[1]

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center 1600's technical support staff for processing the amendment filed on June 24, 2005.

[1] The statement of unintentional delay may have been signed by a person who would have not been in a position of knowing that the delay in filing a timely response was unintentional. In the event that the person who signed the petition has no knowledge that the delay was in fact unintentional, petitioners should make a reasonable inquiry to ascertain that, in fact, the delay was unintentional. If petitioners discover that the delay was intentional, petitioners must so notify the Office.

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

E. Shirene Willis

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

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Paper No. 3

Joseph T. Guy Ph. D.
Nexsen Pruet Jacobs & Pollard LLP
201 W. McBee Avenue
Greenville SC 29603

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MAY 0 8 2003

OFFICE OF PETITIONS

In re Application of Friedel et al. Application No. 10/342,703 Filed: November 27, 2002 Attorney Docket No. 27500-128	: : : : :	DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.10(c), filed March 25, 2003, requesting that the above-identified application be accorded a filing date of November 27, 2002, rather than the presently accorded filing date of January 15, 2003.

Petitioner alleges that the application was deposited in Express Mail service on November 27, 2002. In support of the allegation, the petition is accompanied by a copy of Express Mail label No. EV153115440US. The "date-in" indicated on the Express Mail label is November 27, 2002. The same Express Mail label number was placed on the original application papers located in the official file.

In view of the above, the petition is **granted**. No petition fee is necessary.

This application file will be forwarded to the Office of Initial Patent Examination for correction of the filing date to November 27, 2002.

Telephone inquiries should be directed to the undersigned at (703) 306-5589.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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James F. Boyle
Boyle, Fredrickson, Newholm, Stein & Gratz, S.C.
Suite 1030
250 E. Wisconsin Avenue
Milwaukee WI 53202

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JUN 16 2005

OFFICE OF PETITIONS

In re Application of Michael Gauthier Application Number: 10/342,707 Patent: 6,817,458 Attorney Docket Number: 158.001 Filing Date: January 15, 2003 Issue Date: November 16, 2004 Title of Invention: Ratcheting Mechanism	: : : : : : : :	DECISION ON PETITION

This is a decision on the petition to correct the assignee under 37 CFR 1.183 filed on March 2, 2005. The petition is properly treated 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**.

Pursuant to petitioner's request deposit account 50-1170 is being charged the $130.00 processing fee pursuant to 37 CFR 1.17(i).

This application is being forwarded to the Certificate of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

Charlema R. Grant
Petitions Attorney
Office of Petitions

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[1]See 69 Fed. Reg. 29865 (May 26, 2004).

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Paper No. 5

IRELL & MANELLA LLP
840 NEWPORT CENTER DRIVE
SUITE 400
NEWPORT BEACH CA 92660

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NOV 25 2003

OFFICE OF PETITIONS

In re Application of Baldwin, et al. Application No. 10/342,709 Filed: January 14, 2003 Attorney Docket No. 01-1010CIP Title: SYSTEM AND METHOD FOR SECURITY OF COMPUTING DEVICES	: : : : : :	DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed September 30, 2003.

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

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

The above-identified application was filed on January 14, 2003, without an executed oath or declaration. Accordingly, on April 14, 2003, the Initial Patent Examination Division mailed applicant a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a two month period for reply.

In reply, applicant filed the instant petition to have joint inventors Robert W. Baldwin, Jose A. Casillas, David P. Jablon, Timothy J. Markey, David Pitard, Kai Wang and Stephen D. Williams make the application on behalf of themselves and non-signing

inventors Jean-Paul Abgrall, John D. Barr, and Pannaga Kotla. In addition, petitioner paid both the petition fee and the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a four month extension of time. Accompanying the petition were a declaration of Claudia M. Cameron in support of the petition, and accompanying exhibits.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached after diligent effort or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Rule 47 applicant has not met requirements (1) and (2) above.

As to requirement (1), there has been no showing that joint inventor John D. Barr was presented with the application papers (specification, claims, drawings, oath or declaration). Here, the petition only establishes that Barr was presented with the assignment and declaration papers. Regarding this, the Manual of Patent Examining Procedure states:

> A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers.
>
> It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. In re Gray, 115 U.S.P.Q. 80 Comm'r Pat. 1956).

Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to Barr for signature, but he refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient.[1]

On renewed petition, Rule 47 applicant must establish that a copy of the application papers were previously forwarded to Barr, or must forward a copy of the application papers to Barr.

Also with regard to requirement (1), petitioner has not demonstrated diligent effort in finding non-signing inventors Jean-Paul Abgrall and Pannaga Kotla. With respect to showing diligent effort, "an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made."[2] Petitioner

---

[1] MPEP 409.03(d).

[2] MPEP 409.03(d) (emphasis added).

has provided no details of the steps that were taken to locate Abgrall and Kotla after learning that they had moved. For example, copies of an internet search for the two inventors could be used to support a finding of diligent effort.[3]

Finally, as to requirement (2), petitioner has not submitted a 37 CFR 1.63 oath or declaration signed by joint inventors Robert W. Baldwin, Jose A. Casillas, David P. Jablon, Timothy J. Markey, David Pitard, Kai Wang and Stephen D. Williams, with the signature blocks for joint inventors Jean-Paul Abgrall, John D. Barr, and Pannage Kotla left blank.[4]

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[5]: (703) 308-6916
Attn: Office of Petitions

By hand[6]: 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 by

Cliff Congo
Petitions Attorney
Office of Petitions

---

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

[4] Petitioner submitted an assignment document, but not the 37 CFR 1.63 oath or declaration.

[5] Effective December 1, 2003, the following centralized facsimile number must be used: 703-872-9306.

[6] Effective December 1, 2003, the following address must be used for all hand carried correspondence: U.S. Patent and Trademark Office, 2011 South Clark Place, Customer Window, 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. 8

PHOENIX TECHNOLOGIES LTD
915 MURPHY RANCH RD
MILPITAS CA 95053

COPY MAILED

FEB 03 2004

OFFICE OF PETITIONS

In re Application of :
Baldwin, et al. :
Application No. 10/342,709 :
Filed: January 14, 2003 : DECISION DISMISSING
Attorney Docket No. 01-1010CIP : PETITION
Title: SYSTEM AND METHOD FOR SECURITY
OF COMPUTING DEVICES

This is in response to the request for reconsideration of petition under 37 CFR 1.47(a), filed January 23, 2004.

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

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

The above-identified application was filed on January 14, 2003, without an executed oath or declaration. Accordingly, on April 14, 2003, the Initial Patent Examination Division mailed applicant a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a two month period for reply. In reply, applicant filed a peti

In reply, applicant filed a petition under 37 CFR 1.47(a) to have joint inventors Robert W. Baldwin, Jose A. Casillas, David P. Jablon, Timothy J. Markey, David Pitard, Kai Wang and Stephen D. Williams make the application on behalf of themselves and non-signing inventors Jean-Paul Abgrall, John D. Barr, and Pannaga Kotla. In addition, petitioner paid both the petition fee and the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a four month extension of time. Accompanying the petition were a declaration of Claudia M. Cameron in support of the petition, and accompanying exhibits.

However, the petition was dismissed in a decision mailed on November 25, 2003. The petition was dismissed because Rule 47 applicant did not: (1) demonstrate that John D. Barr was presented with the

application papers; (2) demonstrate diligent effort in finding Jean-Paul Abgrall and Pannaga Kotla; and (3) submit a 37 CFR 1.63 oath or declaration.

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, Rule 47 applicant has submitted a 37 CFR 1.63 declaration executed by Abgrall. Accordingly, the objection set forth in the November 25, 2003 dismissal with respect to Abgrall is now moot, as Abgrall is a signing inventor. With respect to nonsigning inventor Barr, applicant has submitted a declaration of Claudia M. Cameron, clarifying that the application papers were forwarded to Barr on June 12, 2003. Lastly, applicant has included copies of internet search results, indicating that a search had been made to locate Kotla, but with no success.

In view of the above, Rule 47 applicant has submitted sufficient proof that non-signing inventors Barr and Kotla could not be reached or refused to sign the declaration.

However, Rule 47 applicant still has not submitted a declaration in compliance with 37 CFR 1.63. The declaration contains a noninitialed, nondated change to the residence and address of Abgrall. 37 CFR 1.52(c)(1) states, in pertinent part, that "[a]ny 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." Furthermore, the Manual of Patent Examining Procedure explains that "[t]he 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."[1]

On renewed petition, Rule 47 applicant must submit an oath or declaration in compliance with 37 CFR 1.63.

Receipt of the Change of Correspondence Address submitted with the instant petition is acknowledged. Future correspondence concerning this application will be mailed to the above address of record.

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

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

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

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

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

---

1 MPEP 605.04(a).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

IRELL & MANELLA LLP
840 NEWPORT CENTER DRIVE
SUITE 400
NEWPORT BEACH CA 92660

COPY MAILED

APR 14 2004

OFFICE OF PETITIONS

In re Application of Baldwin, et al. Application No. 10/342,709 Filed: January 14, 2003 Attorney Docket No. 01-1010CIP Title: SYSTEM AND METHOD FOR SECURITY OF COMPUTING DEVICES	:	DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the renewed petition under 37 CFR 1.47(a), filed April 1, 2004.

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

The above-identified application was filed on January 14, 2003, without an executed oath or declaration. Accordingly, on April 14, 2003, the Initial Patent Examination Division mailed applicant a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a two month period for reply.

In reply, on September 30, 2003, applicant filed a petition under 37 CFR 1.47(a) to have joint inventors Robert W. Baldwin, Jose A. Casillas, David P. Jablon, Timothy J. Markey, David Pitard, Kai Wang and Stephen D. Williams make the application on behalf of themselves and non-signing inventors Jean-Paul Abgrall, John D. Barr, and Pannaga Kotla. In addition, petitioner paid both the petition fee and the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a four month extension of time. Accompanying the petition were a declaration of Claudia M. Cameron in support of the petition, and accompanying exhibits.

However, this petition was dismissed in a decision mailed on November 25, 2003. Petitioner did not: (1) demonstrate that Barr was presented with the application papers; (2) demonstrate diligent effort in finding Abgrall; and (3) submit a 37 CFR 1.63 oath or declaration.

Petitioner filed a renewed petition on January 23, 2004. Petitioner overcame all of the objections set forth in the November 25, 2003 decision. However, the renewed petition was dismissed in a decision mailed on February 3, 2004. Petitioner submitted a 37 CFR 1.63 declaration that contained a non-initialed, non-dated change to the residence and address of inventor Abgrall.

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, Rule 47 applicant has included a 37 CFR 1.63 declaration from inventor Abgrall in which the changes to his residence and address information have been initialed and dated by Abgrall.

In view thereof, Rule 47 applicant has submitted a declaration in compliance with 37 CFR 1.63 and satisfied the requirements of 37 CFR 1.47(a). 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 inventors (Barr and Kotla) 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 2100, Group Art Unit 2132, 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOHN D BARR
3190 EAST YARROW CIRCLE
SUPERIOR CO 80027

COPY MAILED

APR 14 2004

OFFICE OF PETITIONS

In re Application of :
Robert W. Baldwin, Jean-Paul Abgrall, :
John D. Barr, Jose A. Casillas, David :
P. Jablon, Timothy J. Markey, Pannaga : LETTER
Kotla, David Pitard, Kai Wang, Stephen :
D. Williams :
Application No. 10/342,709
Filed: January 14, 2003
Title: SYSTEM AND METHOD FOR SECURITY
OF COMPUTING DEVICES

Dear Mr. Barr:

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

Loren H. McRoss (phone: 470-570-1000)
Phoenix Technologies Ltd.
915 Murphy Ranch Road
Milipitas, CA 95035

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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PANNAGA KOTLA
641 IRIS AVE APT 17
SUNNYVALE CA 94086

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APR 14 2004

OFFICE OF PETITIONS

In re Application of :
Robert W. Baldwin, Jean-Paul Abgrall, :
John D. Barr, Jose A. Casillas, David :
P. Jablon, Timothy J. Markey, Pannaga :
Kotla, David Pitard, Kai Wang, Stephen :
D. Williams :
Application No. 10/342,709
Filed: January 14, 2003
Title: SYSTEM AND METHOD FOR SECURITY
OF COMPUTING DEVICES

LETTER

Dear Mr. Kotla:

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
Petitions Attorney
Office of Petitions

Loren H. McRoss (phone: 470-570-1000)
Phoenix Technologies Ltd.
915 Murphy Ranch Road
Milipitas, CA 95035

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

Joseph T. Guy, Ph. D.
Nexsen Pruet Jacobs & Pollard, LLP
201 W. McBee Avenue
Greenville, SC 29603

COPY MAILED

MAR 2 5 2003

OFFICE OF PETITIONS

In re Application of	:	
Paul Leblans, et al.	:	
Application No. 10/342,712	:	DECISION GRANTING
Filed: November 21, 2002	:	PETITION
Attorney Docket No. 27500-127	:	

This is a decision on the petition filed March 5, 2003, requesting that the above-identified application be accorded a filing date of November 21, 2002, rather than the presently accorded date of January 15, 2003. The petition is properly treated as a petition under 37 CFR 1.10(c).

Petitioner alleges that the application was deposited in Express Mail Service on November 21, 2002. In support, the petition is accompanied by a copy of Express Mail receipt No. EV153115541US, showing a "date-in" of November 21, 2002. The same Express Mail receipt number was referred to in the original application papers found in the file.

The Office considers the date the paper or fee shown as deposited as "Express Mail" to be the "date-in" on the Express Mail label. See MPEP 513. That is the date that verifies that the package was actually mailed. The evidence is convincing that the application was deposited as "Express Mail" with the U. S. Postal Service on November 21, 2002.

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

It is noted that a Notice to File Missing Parts (Notice) was mailed to petitioner on February 24, 2003, requiring an additional $10 for the filing fee, as well as a surcharge of $130. Since a review of the record confirms that the application was filed prior to the fee increase effective January 1, 2003, the filing fee submitted on November 21, 2002 is sufficient. In view thereof, the Notice mailed February 24, 2003, is hereby vacated.

This application file is being forwarded to the Office of Initial Patent Examination Division for further **processing with a filing date of November 21, 2002.**

Telephone inquiries concerning this matter may be directed to Marianne Morgan at (703) 306-3475.

Sherry Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFIC
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.go

June 18, 2004

JUN 21 2004

McCormick, Paulding & Huber LLP
City Place II
185 Asylum Street
Hartford CT 06103-3402

In re Application of:	:	
TRUMBULL, DOUGLAS	:	DECISION ON PETITION TO
Application No. 10/342,735	:	MAKE SPECIAL
Filed: January 15, 2003	:	
Attorney Docket No: 5766-05-1	:	

This is a decision on the petition under 37 C.F.R. § 1.102, filed April 28, 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(h), (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 satisfies the above requirements. Accordingly, the petition is **GRANTED**.

The response of May 13, 2004, has been received and the application will be forwarded to the examiner for appropriate action.

After allowance, this application will be given priority for printing. See M.P.E.P. § 1309.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (571) 272-1596.

Lissi Mojica Marquis, Special Programs Examiner
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

McCormick, Paulding & Huber LLP
City Place II
185 Asylum Street
Hartford CT 06103-3402

In re Application of:	:	
TRUMBULL, DOUGLAS	:	DECISION ON PETITION TO
Application No. 10/342,735	:	TO PERMIT COLOR
Filed: January 15, 2003	:	DRAWINGS
Attorney Docket No. **5766-05-1**	:	

This is a decision on the petition under 37 CFR δ 1.84(a), filed July 3, 2003, to permit color drawings for the above-identified application.

Petitioner requests that color drawings be permitted under the procedure set forth in the Manual of Patent Examining Procedure (M.P.E.P.), Section 608.02, Item VIII: Color Drawings or Color Photographs.

A grantable petition to permit color drawings under 37 CFR δ 1.84(a) and in accordance with M.P.E.P., Section 608.02, Item VIII, must be accompanied by (i) the fee set forth in § 1.17(h); (ii) three (3) sets of color drawings; (iii) a black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing; and (iv) an amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings: The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

The petition satisfies the above requirements. Accordingly, the petition is **GRANTED**.

Telephone inquires should be directed to Judy Nguyen at (571) 272-2258.

Judy Nguyen

Judy Nguyen, Supervisory Patent Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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.
10/342,749	01/15/2003	Bryan Hoffman	50093/025002	9903

21559 7590 10/05/2004
CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

EXAMINER
TSO, EDWARD H

ART UNIT	PAPER NUMBER
2838	

DATE MAILED: 10/05/2004

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

In re Application of HOFFMAN, BRYAN Appl. No.: 10/342,749 Filed: January 15, 2003 For: METHODS FOR POLYSOME DISTRIBUTION ANALYSIS OF MRNA'S	**WITHDRAWAL FROM ISSUE** *37 CFR 1.313*

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR 1.313.

Due to a clerical error on the part of the Office, a Notice of Allowance was inadvertently mailed for this application. Accordingly, the application is being withdrawn to permit reopening of prosecution.

U.S. Patent and Trademark Office records reveal that the issue fee and the publication fee have not been paid. If the issue fee and the publication fee have 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 Fees Due, applicant may request that the previously submitted issue fee and publication fee be applied toward payment of the issue fee and publication fee in the amount identified on the new Notice of Allowance and Issue and Publication Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a specified Deposit Account.

The application is being forwarded to the examiner for action.

Richard K. Seidel
Director
Patent Examining Technology Center 2800

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

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

7045.10

MAY 15 2002

UR
PAPER NO. 4

In re Application of
Edward W. Jackson
Serial No. 09/643,097
Filed: August 21, 2000
For: OPEN SYSTEM SULPHUROUS ACID GENERATOR

DECISION ON PETITION UNDER 708.02, V

JC857 U.S. PTO 10/342755 01/14/03

This is in response to the petition filed April 23, 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

Todd E. Zenger
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 E. South Temple
Salt Lake City, UT 84111

RECEIVED
MAY 21 2002
KIRTON & McCONKIE

DOCKETING: 5/22/02 SP
RESPONSE DUE: n/a

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

UR
PAPER NO. 3

In re Application of	:	
Edward W. Jackson	:	DECISION
Serial No. 10/342,755	:	ON
Filed: January 14, 2003	:	PETITION
For: OPEN SYSTEM SULPHUROUS	:	UNDER 708.02, V
ACID GENERATOR	:	

This is in response to the petition filed January 14, 2003, 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.**

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

KIRTON & McCONKIE
1800 Eagle Gate tower
60 E. South Temple
Salt Lake City, UT 84111

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOHN W. BABCOCK
510 SOUTH 7500 EAST
HUNTSVILLE, UT 84317

COPY MAILED

SEP 14 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
John W. Babcock :
Application No. 10/342,758 :
Filed: January 14, 2003 :
Attorney Docket No.

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

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

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

The above-identified application became abandoned for failure to reply to the non-final Office action mailed May 5, 2004, which set a period for reply of three (3) months from its mailing date. Extensions of time for reply pursuant to 37 CFR 1.136(a) was available. A request for extension of time with the first month was request on July 1, 2004, but was not accompanied by a response to the non-final Office action. A proper response was not received within the allowed period, and the application became abandoned on September 6, 2004. A Notice of Abandonment was mailed on November 29, 2004.

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

---

[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 instant petition lacks items (1) and (3).

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

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

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

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

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7] The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

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

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

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

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

[7]Id.

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts that petitioner's illness prevented him from responding to the non-final Office action.

With regard to item (1), petitioner did not provide a proper reply to the non-final Office action. A proper reply might include an amendment or a continuing application. A proper reply to the non-final Office action must accompany any renewed petition filed or a petition under 37 CFR 1.137(b).

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

Petitioner has failed to satisfy the requirements of item (3) above because a successful petition under 37 CFR 1.137(a) requires that petitioner establish 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 1.17(a)--was unavoidable. While the illness of the inventor is indicative of unavoidable delay, petitioner must demonstrate that the illness, and other circumstances that contributed to the delayed response to the non-final Office action, occurred during the relevant period—from August 5, 2004 (the due date for the reply) through the filing of a grantable petition. Such a showing may be made with documentary evidence such as a memorandum from the treating physician or other relevant medical records. Petitioner is cautioned to redact any personal information, such as social security numbers or credit card numbers, that is not fundamental to the disposition of this petition.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b) (enclosed). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee ($1,500.00 for a large entity and $750.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional

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

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

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/64

UNITED STATES 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

JOHN W. BABCOCK
510 SOUTH 7500 EAST
HUNTSVILLE, UT 84317

In re Application of
John W. Babcock
Application No. 10/342,758
Filed: January 14, 2003
Attorney Docket No.

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(a), filed November 10, 2005, and in supplement on December 14, 2005, to revive the above-identified application.

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

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

The above-identified application became abandoned for failure to reply to the non-final Office action mailed May 5, 2004, which set a period for reply of three (3) months from its mailing date. Extensions of time for reply pursuant to 37 CFR 1.136(a) was available. A request for extension of time with the first month was request on July 1, 2004, but was not accompanied by a response to the non-final Office action. A proper response was not received within the allowed period, and the application became abandoned on September 6, 2004. A Notice of Abandonment was mailed on November 29, 2004. A petition under 37 CFR 1.137(a) was first filed on September 1, 2005, and dismissed by a decision mailed September 14, 2005.

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

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

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

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

The instant petition lacks items (1) and (3).

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

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

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

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

The standard

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

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

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

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

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

[7]Id.

person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

Application of the standard to the current facts and circumstances

In the instant renewed petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts that petitioner's illness prevented him from responding to the non-final Office action. Petitioner also states intimates that petitioner was confused about what could be filed with the petition in response to the non-final Office action and to corroborate petitioner's illness.

With regard to item (1), petitioner did not provide a proper reply to the non-final Office action. A proper reply might include an amendment or a continuing application. A proper reply to the non-final Office action must accompany any renewed petition filed or a petition under 37 CFR 1.137(b).

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

Petitioner has failed to satisfy the requirements of item (3) above because a successful petition under 37 CFR 1.137(a) requires that petitioner establish 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 1.17(a)--was unavoidable. While the illness of the inventor is indicative of unavoidable delay, petitioner must demonstrate that the illness, and other circumstances that contributed to the delayed response to the non-final Office action, occurred during the relevant period—from August 5, 2004 (the due date for the reply) through the filing of a grantable petition. Such a showing may be made with documentary evidence such as a memorandum from the treating physician or other relevant medical records. Petitioner is cautioned to redact any personal information, such as social security numbers or credit card numbers that are not fundamental to the disposition of this petition.

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

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

The undersigned notes the following statements made in the petition filed December 14, 2005:

> I spoke to the inventors assistance center and was advised that along with the medical records and the extension of time etc. that I could also file a continuing application at this time. I would prefer to do that at a later date but can at this time. Could you advise as to which time would be preferred for a continuing application?

A grantable petition under 37 CFR 1.137 requires that a proper response to the last Office action accompany the petition when it is filed. In this case, that would mean that petitioner must file the continuing application with the petition or the petition will be summarily dismissed. Petitioner was advised of this in the decision mailed September 14, 2005. Further, a grantable petition under 37 CFR 1.137(a) or (b) requires that petitioner demonstrate that the entire delay in filing a grantable petition was unavoidable or unintentional, respectively. This means that from the time the application is abandoned until the point a grantable petition is filed, petitioner cannot give the Office any reason to believe that petitioner purposefully delayed filing a petition and the accompanying response to the non-final Office action. Accordingly, statements such as the one made by petitioner as cited above can thoroughly undermine any argument petitioner makes that the entire delay was unavoidable or unintentional. Petitioner is cautioned to chose words wisely in filing a petition under 37 CFR 1.137 and to read this decision carefully prior to filing a petition.

Petitioner is advised that no further consideration will be given to petitioner's argument under37 CFR 1.137(a) after the second renewed petition is filed. If petitioner does not successfully establish that the entire delay was unavoidable, the second renewed petition will be denied which is a final agency action by the USPTO.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b) (enclosed). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee ($1,540.00 for a large entity and $770.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/64

PTO/SB/64 (11-07)
Approved for use through 11/30/2007. 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 at (571) 273-8300.

Date	Signature
	Typed or printed name of person signing certificate

Privacy Act Statement

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOHN ROBERT SHEARING
55 E JOSEPH ST
MOONACHIE NJ 07074

COPY MAILED

JAN 0 4 2005

OFFICE OF PETITIONS

In re Application of
John Robert Shearing
Application No. 10/342,767
Filed: January 15, 2003
Title of Invention: SPHERICAL ENCLOSURE SUITABLE AS A BUILDING STRUCTURE, PRESSURE VESSEL, VACUUM VESSEL, OR FOR STORING LIQUIDS

: DECISION DISMISSING
: PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed October 18, 2004 and supplemented October 26, 2004, to revive the above-identified application.

Prior to the treatment of the above referenced petition, the abandonment was withdrawn by the Technology Center. An office communication concerning this application or proceeding was mailed October 27, 2004 noting that the Notice of Abandonment mailed September 22, 2004 had been withdrawn.

In view of the above, the petition is **DISMISSED** as involving moot issues and the petition fee in the amount of $55.00 will be refunded.

This application will be forwarded to Technology Center 3636 for continued examination in due course.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KENYON & KENYON (SAN JOSE)
333 WEST SAN CARLOS ST.
SUITE 600
SAN JOSE, CA 95110

COPY MAILED

JUN 1 5 2005

OFFICE OF PETITIONS

In re Application of	:	
Li-Yan Zhu, et al.	:	
Application No. 10/342,780	:	ON PETITION
Filed: January 14, 2003	:	
Attorney Docket No. 2855/58	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed June 8, 2005, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on May 5, 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]

It is noted that the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

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

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

The application is being referred to Technology Center AU 2862 for further processing of the request for continued examination under 37 CFR 1.114 filed June 8, 2005.

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

cc: KENYON & KENYON
1500 K STREET, N.W., SUITE 700
WASHINGTON, D.C. 20005-1257

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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OFFICE OF PETITIONS

DAIMLERCHRYSLER INTELLECTUAL CAPITAL CORPORATION
CIMS 483-02-19
800 CHRYSLER DR EAST
AUBURN HILLS, MI 48326-2757

In re Patent No. 6,923,481	:	
Issue Date: August 2, 2005	:	
Application No. 10/342,784	:	ON PETITION
Filed: January 15, 2003	:	
Attorney Docket No. 706058US1	:	

This is a decision on the request for Certificate of Correction filed on February 9, 2006, which is being treated as a petition under 37 CFR 1.182, to correct the name and citizenship of the inventor. The delay in responding is regretted.

The petition is **dismissed**.

Petitioner requests to change the name and citizenship of inventor Richard P. Thomas of Clarkston, Michigan (US) to Richmond P. Thomas of Clarkston, Michigan (GB).

A review of the record shows that the name and citizenship of the inventor was listed as Richard P. Thomas of Clarkston, Michigan (US) through issuance of the above-identified patent. Therefore, the Office believes that the name and citizenship of the inventor, as listed on the patent, issued appropriately in the name of Richard P. Thomas of Clarkston, Michigan (US).

If the name and citizenship of the inventor changed **prior** to issuance of the above patent, then a court order showing the correct name and citizenship of the inventor must be submitted. However, if the changes took effect after issuance of this patent, then a Certificate of Correction would not be in order.

Since a petition fee of $400 is required for treatment of the instant petition, that fee has been charged to petitioner's deposit account, as authorized.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

#3

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MAR 23 2004

TECHNOLOGY CENTER 2100

Paper No. 3

John C. Phillips
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, CA 92130

In re Application of:
Dan Bailey et al.
Application No. 10/342,787
Filed: January 14, 2003
For: SOURCE CODE ANALYSIS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed March 15, 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 March 15, 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: OBJECTIVE SOFTWARE SOLUTIONS
171 Saxony Road, Suite 203
Encinitas, CA 92024

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

UR
PAPER NO. 3

MAR 31 2003

In re Application of	:	
Alberto Faks	:	DECISION
Serial No. 10/342,789	:	ON
Filed: January 15, 2003	:	PETITION
For: RUNNY CHOCOLATE SOUFFLE DESSERT	:	UNDER 708.02,VIII

This is in response to the petition filed January 15, 2003, requesting that the above-identified application be granted Special Status. The petition has been considered under Section 708.02 (VIII) of the MPEP and 37 CFR 1.102(c) (fee paid).

The petition has been found to be deficient for the following reason: Section 708.02, VIII(C) requires that a pre-examination search be made; this search should cover all areas searchable by the examiner. However, our review shows that Class 426, Subclasses 389, 391, 496, 512, 515 and 516 should have been searched.

Accordingly, the petition is **DENIED.**

JMStone

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

Ezra Sutton, PA
900 Route 9, Plaza 9
Woodbridge, NJ 07095

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Offic
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Date: 3/4/03

To: SPE, Art Unit 1761

From: Director's Office, 17B2

Subject: Petition for accelerated examination

A petition for accelerated examination, pursuant to MPEP 708.02 (VIII), has been filed in this application.

In order to respond to this request as promptly as possible, please complete the questions below and return to the Director's Office - CP3-8D19 by COB 3/12/03.

	Yes	No
1. Are all the claims directed to a single invention (no restriction required)?	[✓]	[ ]
a. If "no", has the petitioner made an election in the petition?	[ ]	[ ]
b. If "no", has a restriction requirement been made by examiner?	[ ]	[ ]
If "no" to (b), give to examiner for telephone restriction only		
c. If "yes" to (b), was election made without traverse?	[ ]	[ ]
If "no" to (c), return to secretary for "DENIAL" of petition.		
2. Is the field of search listed in the petition correct:		
a. Classes and subclasses?	[ ]	[✓]
If "no", please list all reasonable, additional classes/subclasses 426/568, 389, 391, 496, 516, 515, 512		
b. Publications? (If applicable)	[ ]	[ ]
If "no", please list all reasonable publications		
c. Foreign patent IPC classes/subclass? (If applicable)	[ ]	[ ]
If "no", please list all reasonable, additional IPC classes/subclasses		
d. Database searches, e.g., Chemical Abstract? (If applicable)	[ ]	[ ]
If "no", please list all reasonable, additional databases		
3. Has a search been performed by a foreign patent office, e.g., is an EPO, JPO, or WIPO document present in the application file or supplied by applicant, and is the document for an equivalent foreign application?	[ ]	[✓]
a. If "yes", does the document list an IPC type search?	[ ]	[ ]
b. If "yes" to (a), are the IPC classes/subclasses reasonable?(Optional)	[ ]	[ ]

PLEASE RETURN THIS SHEET AND THE APPLICATION TO THE DIRECTOR'S SECRETARY UPON COMPLETION.

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CHANTILLY 3.0-001

OIPE JC180
FEB 0 2 2004
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of : Alberto Faks

: Group Art Unit 1762

Serial No.: 10/342,789

: Examiner Thuy Tran

Filed: January 15, 2003

: January 30, 2004

For: **A RUNNY CHOCOLATE SOUFFLE DESSERT** :

Mail Stop Non-Fee
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

AMENDED PETITION TO MAKE SPECIAL
(MPEP Section 708.02)

Sir:

Applicant hereby files this Amended Petition to Make Special for this application for purposes of examination and payment of the issue fee, on the grounds of a pre-examination search. Applicant further submits a copy of the petition fee as filed with the original Petition to Make Special.

The application presents claims directed to a single invention. In case the Examiner believes that there is more than one invention, applicant hereby elects without traverse Claims 1 to 7.

PETITION GRANTED

R Crispino

Richard Crispino
Special Program Examiner
TC 1700

JUN 28 2005

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MICHAEL I KROLL
115 Eileen Way
Suite 105
SYOSSET NY 11791

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OFFICE OF PETITIONS

In re Application of	:	
Eugene J. Guerra	:	
Application No. 10/342,816	:	DECISION ON PETITION
Filed: January 15, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. EG-mv-1	:	

This is a decision on the petition, filed April 10, 2009, 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 November 25, 2004. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

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

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

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

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of

such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of September 24, 2009 accompanies this decision on petition.

Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.

This application is being forwarded to Technology Center Art Unit 3692 for examination in due course.

Carl Friedman
Petitions 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
10/342,816	01/15/2003	Eugene J. Guerra	EG-mv-1

CONFIRMATION NO. 1164

23647
MICHAEL I KROLL
115 Eileen Way
Suite 105
SYOSSET, NY 11791

NONPUBLICATION RESCISSION LETTER

OC000000036503517

Date Mailed: 06/16/2009

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 09/24/2009.

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".

/cdfriedman/

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

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MAR 25 2005

Elmer C. Lupton
Novate Co.
28 Constitution Road
Boston MA 02129

In re Application of Lev Bromberg et al Serial No.: 10/342,924 Filed: January 15, 2003 Attorney Docket No.: LB 301	: PETITION TO MAKE SPECIAL

This is in response to the petition filed March 14, 2005, to make the above-identified application special under the provisions of 37 CFR 1.102(d).

M.P.E.P. 708.02, section X states as follows:

> Applicants who desire that an application relating to HIV/AIDS or cancer be made special should file a petition and the fee under 37 CFR 1.17(h) requesting the U.S. Patent and Trademark Office to make the application special. The petition for special status should be accompanied by a statement explaining how the invention contributes to the diagnosis, treatment or prevention of HIV/AIDS or cancer.

Applicants claims are directed to graft reverse thermal hydrogels for cosmetic applications. None of the claims are directed to treating or preventing cancer. Including a laundry list of substances from an issued patent which are used for cancer treatment does not qualify an application for special status.

Applicant has **not** satisfied the provisions set forth in M.P.E.P. 708.02, X. Therefor the petition is **NOT GRANTED**.

The application will be acted on in turn.

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, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission to the Office general facsimile number, 571-273-8300.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MEDLEN & CARROLL, LLP
SUITE 350
101 HOWARD STREET
SAN FRANCISCO, CA 94105

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OFFICE OF PETITIONS

In re Application of	:	
Selvaganapathy et al.	:	
Application No. 10/342,935	:	ON PETITION
Filed: January 15, 2003	:	
Attorney Docket No. UM-07731	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 26, 2006, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to the Publishing Division for processing into a patent.

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

Liana Chase
Petitions Examiner
Office of Petitions

#3
DW

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OFFICE OF THE DIRECTOR
TC 3600

GREER, BURNS & CRAIN
300 S WACKER DR
25TH FLOOR
CHICAGO, IL 60606

In re Application of Vincent Cuervo SERIAL NO: 10/342,991 FILED: January 15, 2003 FOR: SYSTEM AND PROCESS FOR DEBIT CARD DISPENSING	:	DECISION ON PETITION TO MAKE APPLICATION SPECIAL (AGE)

This is a decision on your petition submitted on January 15, 2003 to make the above referenced application special on the basis that applicant is over 65 years of age.

The petition has been found to comply with all requirements of section 708.02, part IV of the Manual of Patent Examining Procedures, and will be GRANTED for that reason.

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

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

The application is being forwarded to the examiner for accelerated examination consistent with the provisions of section 708.02 of the MPEP.

Randolph A. Reese

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
703-308-0866
rar/dw: 02/12/03

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2/20/2007

TO SPE OF : ART UNIT 1700 (1742)

SUBJECT : Request for Certificate of Correction on Patent No.: 7,147,726

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

Please complete this form and return with file ***(PFW)**, within 7 days to:
Certificates of Correction Branch – 2900 South Tower ste.9A43A
Palm location **7580** or forward ***(IFW)** to scanning using document code **COCX**.

***Ok to make changes adding text to claims as req. in COCIN?**

Thank You For Your Assistance

Ernest C. White, LIE (703) 308-9390x122
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:

_____

_____

_____

_____

_____

Roy V. King — **SPE**

1742 — **Art Unit**

19 NOV 2003

#4

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PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND, OH 44114-3108

In re Application of FJAESTAD et al. Application No.: 10/343,033 PCT No.: PCT/SE01/01695 Int. Filing Date: 01 August 2001 Priority Date: 09 August 2000 Attorney's Docket No.: 35291 For: REFRIGERATOR OR FREEZER CABINET	RESPONSE TO COMMUNICATION

This is a response to applicants' "Letter" filed in the United States Patent and Trademark Office (USPTO) via facsimile on 03 November 2003, requesting issuance of a Notice of Acceptance and official filing receipt.

BACKGROUND

On 27 January 2003, applicants filed a Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 (Form PTO 1390) along with, *inter alia*, the basic national fee.

On 24 February 2003, applicants filed a declaration executed by the inventors, in compliance with 37 CFR 1.497(a) & (b) along with the $130 surcharge for filing the declaration after the 30 month period and an application data sheet.

On 12 May 2003, a Notification of Missing Requirements (Form PCT/DO/EO/905) was inadvertently mailed to applicants indicating that an oath or declaration in compliance with 37 CFR 1.497 and the $130 surcharge was required.

On 03 November 2003, applicants, in response to the Notification of Missing Requirements, filed a letter accompanied by a copy of the itemized postcard receipt bearing a USPTO mail room date-stamp of 27 May 2003. The postcard receipt indicated that a transmittal letter responding to the Notification of Missing Requirements, a copy of the Notice and a postcard receipt were filed on 27 May 2003. The postcard receipt did not indicate that a copy of the executed declaration was filed on 27 May 2003.

DISCUSSION

The original declaration filed on 24 February 2003 is located in the application file. A review of the finance records for 10/343,033 indicates that the $130 surcharge for filing the declaration after the thirty month period was paid on 27 January 2003.

A review of the declaration filed on 24 February 2003 reveals that the declaration identifies each inventor, and states the residency, citizenship and mailing address of each inventor. Thus, the declaration is acceptable and the requirements of 37 CFR 1.497 are met.

CONCLUSION

The copy of the declaration originally submitted on 24 February 2003 is acceptable and meets the requirements of 37 CFR 1.497(a) & (b).

The Notification of Missing Requirements (Form PCT/DO/EO/905) inadvertently mailed on 12 May 2003 is hereby **VACATED**.

The application will be forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing. The 35 U.S.C. 371 date is **24 February 2003.**

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467
Facsimile: (703) 308-6459

03 MAR 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

#6

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JOERG-UWE SZIPL
GRIFFIN & SZIPL, P.C.
SUITE PH-1
2300 NINTH STREET, SOUTH
ARLINGTON, VA 22204

In re Application of RUHE	:
US Application No.: 10/343,035	:
PCT Application No.: PCT/EP01/08546	: DECISION ON
Int. Filing Date: 24 July 2001	: PETITION UNDER
Priority Date: 27 July 2000	: 37 CFR 1.181
Attorney's File Reference: SCHWAB0005	: AND DEFECTIVE
For: SURFACE-ATTACHED	: RESPONSE
POLYFUNCTIONAL POLYMER	:
NETWORKS FOR SENSOR CHIPS	:

This is a decision on applicants' "Petition To Withdraw Holding of Abandonment" filed on 02 November 2004.

BACKGROUND

On 06 March 2003, a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) was mailed to applicants, requiring extra claim fees, and an executed oath or declaration in compliance with 37 CFR 1.497(a) and (b), and a surcharge for providing the oath or declaration later than 30 months from the priority date. An extendable 2-month reply period was provided. No response was filed on or before 06 May 2003, and no extension of time in accordance with 37 CFR 1.136(a) was obtained. The application was held abandoned as of 07 May 2003. A Notification of Abandonment (Form PCT/DO/EO/909) was mailed on 06 October 2004.

The instant petition asserts that the missing items were filed on 05 May 2003.

DISCUSSION

The petition is accompanied by a postcard receipt that has been date-stamped by the USPTO. The postcard indicates that on 05 May 2003, for this application, the USPTO received, *inter alia*, a Fee Transmittal (Form PTO/SB/17) including a deposit account authorization, an executed declaration, and copy of request for refund filed April 28, 2003. The petition further indicates that a copy of each of the documents previously filed on 05 May 2003 is enclosed with the petition.

The petition is sufficient to establish that the national stage documents submitted therewith were filed in the USPTO on 05 May 2003.

The holding of abandonment is hereby **WITHDRAWN** and the NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) mailed 29 September 2003, is hereby **VACATED**.

The declaration filed with the instant petition that is a copy of the declaration filed 05 May 2003 is of such poor quality that it is not legible. Therefore, the response is considered to be bona fide, but defective. To avoid abandonment of this application, a new declaration in compliance with 37 CFR 1.497(a) and (b) must be filed within **ONE MONTH** of the mailing date of this decision. This time period for response is non-extendable.

In reviewing the request for refund filed with the instant petition that is a copy of the request for refund filed 05 May 2003, as noted on the postcard receipt stamped 05 May 2003, this request for refund is a copy of request for refund filed 28 April 2003. According to 37 CFR 1.28(a) refunds based on later establishment of small entity status may only be obtained if an assertion under 37 CFR 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee. The three-month time period is not extendable under 37 CFR 1.136. As the postcard receipt date of 05 May 2003 is outside of the three month period. Therefore the request for refund based on later establishment of small entity status is DISMISSED. However, upon reviewing the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) mailed 06 March 2003, indicating that excess claim fees were due appears to be in error. Applicant submitted a preliminary amendment, *inter alia*, with the transmittal letter (Form PTO-1390), copy of the international application and the basic national fee on 27 January 2003.

MPEP 1893.01(c) states, in part:

> A preliminary amendment accompanying the initial national stage submission under 35 U.S.C. 371 that cancels claims and/or eliminates multiple dependent claims will be effective to reduce the number of claims to be considered in calculating extra claim fees required under 37 CFR 1.492(b)-(c) and/or eliminate the multiple dependent claim fee required under 37 CFR 1.492(d).

As a result, the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) stating that excess claim fees were due is in error. The application is being forwarded to PCT Operations for consideration of applicant's request for refund and to recalculate the excess claim fees in view of applicant's preliminary amendment filed 27 January 2003.

DECISION

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED.**

To avoid abandonment of this application, a new declaration in compliance with 37 CFR 1.497(a) and (b) must be filed within **ONE MONTH** of the mailing date of this decision. This time period for response is non-extendable.

The application is being forwarded to PCT Operations for consideration of applicant's request for refund and to recalculate the excess claim fees in view of applicant's preliminary amendment filed 27 January 2003.

Nathan Newhouse
PCT Legal Administration Detailee
Telephone: 571-272-6095

Richard Cole
PCT Legal Examiner
PCT Legal Administration

1 0 MAR 2003

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Legal Department
Huntsman LLC
P.O. Box 15730
Austin, TX 78761

In re Application of FRICK et al	:	
U.S. Application No.: 10/343,038	:	DECISION ON PETITION
Int. Application No.: PCT/EP01/06335	:	
Int. Filing Date: 04 June 2001	:	UNDER 37 CFR 1.137(b)
Priority Date: 06 June 2000	:	
Attorney Docket No.: HD1122	:	
For: HIGHLY CONCENTRATED COCONUT	:	
AMIDO PROPYL BETAINE	:	

This is in response to applicant's "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 27 January 2003.

BACKGROUND

On 04 June 2001, applicant filed international application PCT/EP01/06335, which claimed priority of an earlier United Kingdom application filed 06 June 2000. A copy of the international application was communicated to the USPTO from the International Bureau on 13 December 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 04 January 2002, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 06 December 2002.

International application PCT/EP01/06335 became abandoned as to the United States at midnight on 06 December 20002 for failure to pay the basic national fee.

On 27 January 2003, applicant filed the present petition. The petition states that it is accompanied by a proper response under 35 U.S.C. 371, the petition fee set forth in 37 CFR 1.17(m), and a statement that abandonment of the application was unintentional.

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), applicant has provided the required statement.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

This application has an international filing date of 04 June 2001 and a date under 35 U.S.C. 371(c) of 27 January 2003.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

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28 APR 2004

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In re Application of	:	
Andreas BEETZ	:	DECISION ON
Application No.: 10/343,048	:	
PCT Application No.: PCT/GB01/03398	:	PETITION
International Filing Date: 30 July 2001	:	
Priority Date: 28 July 2000	:	UNDER 37 CFR 1.181
For: FILE ANALYSIS	:	

Applicant's "Petition To Have Papers Treated As Having Been Earlier Submitted" filed in the United States Patent and Trademark Office (USPTO) on 19 April 2004 is **GRANTED**.

BACKGROUND

On 19 Feb 2003, the USPTO mailed out a Notification of Missing Requirement Under 35 U.S.C. 371 (PCT/DO/EO/905 Form) for this application. The 905 Form stated that an Oath or Declaration and the $65.00 Surcharge for late filing of an oath or declaration were due within two months from the filing date of the Notification. The 905 Form further stated that the time period could be extended under the provisions of 37 CFR 1.136(a).

On 25 February 2004, applicant submitted, *inter alia*, a declaration, a "PetitionTo Waive Extension of Time Fees Under 37 CFR 1.181," and a copy of a postcard receipt listing these items and including an official USPTO date stamp bearing the date 19 August 2003. (Applicant had previously called the PCT Help Desk to inquire as to why a PCT/DO/EO/903 Form had not been received. A staff member of the Help Desk informed applicant that there was no declaration in the file. The 25 February 2004 submission was made after applicant learned about the papers missing from the file.) Shortly thereafter, Mr. Isaacson, applicant's representative, was contacted and informed that the documents submitted on 25 February 2004 could not be treated as submitted on 19 August 2003 because the 25 February 2004 submission did not include a statement signed by a registered practitioner that the submitted documents are "true copies" of documents originally submitted on 19 August 2003. Although the copy of the postcard receipt itemized these documents and bore a 19 August 2003 date stamp, without the aforementioned statement, the documents submitted on 25 February 2004 lacked verification that they were not different in any way from the documents submitted on 19 August 2003.

On 19 April 2004, after several unsuccessful attempts to makes the required statement, applicant submitted the "Petition To Have Papers Treated As Having Been Earlier Submitted." This petition is treated as a petition under 37 CFR 1.181. It must be distinguished from the other

petition under 37 CFR 1.181 in this case, i.e., the petition to waive extension-of-time fees.

DISCUSSION

A. Petition to Have Papers Treated As Having Been Earlier Submitted

The 19 April 2004 petition states that the 25 February 2004 submission included true and correct copies of the following documents first submitted on 19 August 2003: (1) a transmittal letter, (2) a declaration and power of attorney, (3) a certificate of incorporation on change of name, (4) a Clearswift confidentiality agreement executed by Andy Beetz, and (5) a petition pursuant to 37 CFR 1.181 to have extension-of-time fees waived. The petition further states that the 25 February 2004 submission included a true and correct copy of a postcard receipt that was filed on 19 August 2003 and was returned bearing an official USPTO date stamp. The petition is signed by Mr. Isaacson, a registered practitioner. Therefore, the documents submitted on 25 February 2004 will be treated as if they were filed on 19 August 2003.

The transmittal form submitted on 19 August 2003 includes an authorization to charge $130.00 to Deposit Account No. 50-1390 for late filing of the declaration. It appears that on 22 August 2003, $130.00 was charged to this account. However, because applicant previously claimed small entity status, the Surcharge for late filing of the declaration is only $65.00. Account No. 50-1390 will receive a $65.00 credit.

B. Merits of the Declaration

The Declaration filed on 19 August 2003 is not compliant with the 37 CFR 1.497(a) and (b). In particular it is not made by the actual inventor. "Clearswift Limited," which appears to be the company to which the application is assigned, is written in the box where the full name of the inventor is supposed to appear. In the box where the inventor is supposed to place his signature, the following appears: "for and on behalf of [an illegible signature]." While the inventor's signature could logically follow the word "for and on behalf of," the signature that does follow these words does not appear to be that of Andrew Beetz. Even if the signature is that of Andrew Beetz, the declaration would not be sufficient because it does not properly identify the inventor and the inventor's country of citizenship. *See* 37 CFR 1.497(a)(3).

While a person to whom an inventor has assigned or agreed in writing to assign the invention may make an application for patent when a sole inventor cannot be found after diligent effort, the person must follow the procedure set forth in 37 CFR 1.47(b) and MPEP § 409.03(b). *At least* the following requirements of that procedure have not been met:

1. Assuming that the signature is one of an officer of Clearswift Limited, and not the signature of Andrew Beetz, the declaration does not list which officer has signed (President, Vice-President, Secretary, Treasurer, or Chief Executive Officer). If the

signature is someone other than an officer, the declaration is not accompanied with a document signed by an officer that gives the signor authority to sign the document.

2. The declaration does not state the full name, residence, post office address, and citizenship of the nonsigning inventor.
3. Although the declaration is accompanied by a document signed by Andrew Beetz agreeing to assign to all right, title, and interest to any intellectual property resulting from work performed for Clearswift, the declaration is not accompanied by a petition that includes the following:
   a. Proof that the inventor (1) cannot be found or reached after a diligent effort or (2) refuses to execute the application papers. *See* MPEP § 409.03(d).
   b. The last known address of the inventor. *See* MPEP § 409.03(e).
   c. Proof that the filing of the application is necessary (1) to preserve the rights of the parties or (2) to prevent irreparable damage. *See* MPEP § 409.03(g).

C. Petition to Waive Extension of Time Fees Under 37 CFR 1.181

The petition states the 905 Form was sent to the wrong address and therefore was not received. Therefore the petition requests that no extension-of-time fee be charged even though the declaration and the authorization to charge the surcharge for late filing of the declaration were received more than two months—but less than seven months—from the date of mailing of the 905 Form. The petition is accompanied by a "Notice of Customer Number Record Change" that was mailed by the USPTO on 12 December 2002. The Notice states that correspondence address for Customer Number 28970 has been changed to:

IP Law
Shaw Pittman
1650 Tysons Boulevard
McLean, VA 22102

The 905 Form, which was mailed on 19 February 2003, lists the following mailing address:

Brett C. Martin
1650 Tysons Boulevard
McLean, VA 22102

The number "28970," i.e., the Customer Number, appears above the mailing address. Therefore, it appears that, contrary to the 12 December 2002 Notice, the USPTO did not change the correspondence address for Customer Number 28970 to that listed in the Notice prior to the mailing of the 905 form. Therefore, applicant's petition is granted. No extension-of-time fee will be charged for filing of the declaration outside of the two-month response period set in the 905 Form.

CONCLUSION

The petition under 37 CFR 1.181(b) to have the papers submitted on 25 February 2004 treated as if they were filed on 19 August 2003 is **GRANTED**. The petition under 37 CFR 1.181 to waive extension-of-time fees for the filing of the declaration after expiration of the two-month response period set forth in the 905 Form is also **GRANTED**.

The application is being returned to the National Stage Processing Division of the Office of PCT Operations for continued processing, including the mailing of a Notice of Defective Response (Form PCT/DO/EO/916) indicating that the declaration filed on 19 August 2003 is not sufficient and setting a non-extendable response period for filing of a declaration compliant with 37 CFR 1.497(a) and (b).

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10 FEB 2004

#7

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In re Application of DARBY, et al. Application No.: 10/343,067 PCT No.: PCT/AU01/00924 Int. Filing Date: 27 July 2001 Priority Date: 27 July 2000 Attorney Docket No.: P014655 For: PSYCHOLOGICAL TESTING METHOD AND APPARATUS	DECISION ON REQUEST UNDER 37 CFR 1.497(d)

This decision is in response to applicant's "Petition Under 37 C.F.R. § 1.181(3)" filed 20 August 2003 in the United States Patent and Trademark Office (USPTO). The petition is being treated as a request under 37 CFR 1.497(d).

BACKGROUND

On 27 July 2001, applicant filed international application PCT/AU01/00924, which claimed priority of an earlier application filed 27 July 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 07 February 2002. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 27 January 2003.

On 24 January 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a First Preliminary Amendment.

On 19 May 2003, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was also notified of the need to pay the $65.00 surcharge for providing the oath or declaration later than 30 months from the earliest claimed priority date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 31 July 2003, applicant filed a response which included a combined declaration and power of attorney executed by David Darby and Ashley Bush. Ms. Bush was not listed as an inventor in the published international application.

On 11 August 2003, applicant was mailed a "NOTIFICATION OF DEFECTIVE RESPONSE" (Form PCT/DO/EO/916) informing applicant that the declaration filed 31 July 2003 was not in compliance with 37 CFR 1.497 (a) and (b) as the declaration was executed by an individual who was not listed on the international application. Applicant was informed that the declaration was therefore not considered a proper response to the Form PCT/DO/EO/905 mailed 19 May 2003. Applicant was afforded one month from the mailing of the Form PCT/DO/EO/916 or within the time remaining in the response set forth in the Form PCT/DO/EO/905, whichever was longer.

On 20 August 2003, applicant responded with the present petition which is being treated as a request under 37 CFR 1.497(d).

DISCUSSION

37 CFR 1.497(d) [formally, 37 CFR 1.48] states in part: "If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application....applicant must submit:

(1) a petition including a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part;

(2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.63;

(3) the fee set forth in 37 CFR 1.17(i); and

(4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

Applicant has satisfied items (2) and (3).

Regarding Item (1), applicant has not submitted a statement from Ms. Bush avowing that the error in inventorship occurred without any deceptive intention on her part.

Regarding Item (4), applicant has not provided a statement granting the consent of the assignee. Assignee is required to establish its ownership in accordance with 37 CFR 3.73 (See MPEP 201.03 and 324).

In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons above, applicant's request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

Applicant is hereby afforded **TWO (2) MONTHS** from the mail date of this decision to file any request for reconsideration. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.497(d)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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08 JUL 2004

#9

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In re Application of	:	
DARBY, et al.	:	DECISION ON RENEWED
Application No.: 10/343,067	:	
PCT No.: PCT/AU01/00924	:	REQUEST UNDER
Int. Filing Date: 27 July 2001	:	
Priority Date: 27 July 2000	:	37 CFR 1.497(d)
Attorney Docket No.: P014655	:	
For: PSYCHOLOGICAL TESTING METHOD	:	
AND APPARATUS	:	

This decision is in response to applicant's "Renewed Request Under 37 C.F.R. § 1.497(a)" filed 28 June 2004 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 10 February 2004, applicant was mailed a decision dismissing applicant's request under 37 CFR 1.497(d) to add Ashley BUSH as an inventor in the present application. Applicant was afforded two months to respond and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 28 June 2004, applicant filed the present renewed request accompanied by a petition for a three-month extension of time and payment of the appropriate extension of time fee. The renewed request is considered timely filed.

DISCUSSION

As discussed in the decision mailed 10 February 2004, 37 CFR 1.497(d) [formally, 37 CFR 1.48] states in part: "If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application....applicant must submit:

(1) a petition including a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part;

(2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.63;

(3) the fee set forth in 37 CFR 1.17(I); and

(4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

Applicant previously satisfied items (2) and (3).

As to Item (1), applicant has now submitted a statement from Ms. Bush avowing that the error in inventorship occurred without any deceptive intention on her part.

Regarding Item (4), applicant has now provided a statement granting the consent of the assignee. Assignee is required to establish its ownership in accordance with 37 CFR 3.73 (See MPEP 201.03 and 324).

As such, it is proper to grant applicant's renewed request at this time.

CONCLUSION

For the reasons above, applicant's renewed request under 37 CFR 1.497(d) is **GRANTED**.

This application will be given an international application filing date of 27 July 2001 and a date of **31 July 2003** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the DO/EO/US for processing in accordance with this decision.

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Mail Date: 04/21/2010

Applicant	: Hiroyuki Yamamoto	: DECISION ON REQUEST FOR
Patent Number	: 7590424	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/343,075	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/23/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **574** 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.

12 OCT 2004

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In re Application of	:	DECISION ON
KNEE, Michael, James	:	
Application No.: 10/343,081	:	
PCT No.: PCT/GB01/03402	:	PETITION UNDER
Int. Filing Date: 27 July 2001	:	
Priority Date: 28 July 2000	:	
Attorney Docket No.: 18872.0004	:	
For: VIDEO COMPRESSION	:	37 CFR 1.181

This communication is in response to the "PETITION TO THE COMMISIONER UNDER 37 CFR 1.181(A)," filed on 24 March 2004.

A review of the file reveals that applicant's executed declaration was received in the USPTO and placed in US application 10/343,081.

In addition, on 24 May 2004, the DO/EO/US mailed a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying 35 U.S.C.§ 371(c)(1), (c)(2), and (c)(4) date of this application as **23 October 2003**.

Consequently, since the declaration has been placed in the application file, the declaration filed on 24 March 2004 is **MOOT**.

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In re Application of	:	
FIOCCO, Maria Grazia	:	DECISION ON
Application No.: 10/399,081	:	
PCT No.: PCT/IT01/00187	:	
Int. Filing Date: 13 April 2001	:	
Priority Date: 13 October 2000	:	PETITION UNDER
Attorney Docket No.: 58009-016400	:	
For: COUPLING SYSTEM FOR	:	
REMOVABLE OR DETACHABLE...	:	
PANS AND THE LIKE	:	37 CFR 1.181

This decision is in response to the "PETITION UNDER 37 CFR 1.18 TO ESTABLISH PRIOR RECEIPT IN THE P.T.O. OF ... MISSING REQUIREMENTS" filed 22 August 2003, and 24 September 2003, requesting acceptance of a copy of the Declaration, Power of Attorney purportedly filed in the USPTO on 11 April 2003. Applicants have submitted, inter alia, a copy of the 11 April 2003 PTO stamped itemized postcard receipt. The itemized postcard lists, *inter alia*, the following item: PCT Power, Decl. & Petition.

BACKGROUND

On 11 April 2003, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), and a copy of the international application. Applicant, also, indicated that a Declaration was submitted at such time.

On 24 June 2003, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date" must be submitted within two months from its 24 June 2003 date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application. In addition, the surcharge for providing the oath or declaration later that the appropriate 20 or 30 months from the priority date (37 CFR 1.492(e))

On 22 August 2003 and 24 September 2003, applicant submitted this petition indicating that the items indicated as omitted were in fact deposited with the PTO with the original application papers filed on April 11, 2003.

DISCUSSION

Applicant's present petition accompanied by a copy of the following documents, filed purportedly, *inter alia*, with the PTO as indicated in the stamped postcard:

(1) PCT Power; Decl. & Petition
(2) Transmittal to DO/EO/US
(3) Preliminary Amendment

The postcard lists the above items and bears a USPTO date of stamp as 11 April 2003.

MPEP 503 provides:

> A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard is accepted as *prima facie* that a Declaration was deposited with the U.S. Patent and Trademark Office on 11 April 2003.

Accordingly, the date of receipt for the Declaration is 11 April 2003.

DECISION

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

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C.§ 371 date of **11 April 2003**.

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Leonard Smith
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PCT Legal Office

11 AUG 2004

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In re Application of ZELLER	:	
U.S. Application No.: 10/343,088	:	
PCT Application No.: PCT/DE01/02835	:	
Int. Filing Date: 26 July 2001	:	
Priority Date Claimed: 26 July 2000	:	DECISION
Attorney Docket No.: 03-129	:	
For: METHOD FOR CONSTANT-CURRENT	:	
GENERATION AND DEVICE USED TO	:	
CARRY OUT SAID METHOD	:	

This is in response to applicant's "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 26 July 2004.

BACKGROUND

On 26 July 2001, applicant filed international application PCT/DE01/02835, which claimed priority of an earlier Germany application filed 26 July 2000. A copy of the international application was communicated to the USPTO from the International Bureau on 31 January 2002. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired on 26 January 2003.

On 24 January 2003, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 04 March 2003, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 and a translation of the international application into English must be filed.

International application PCT/DE01/02835 became abandoned as to the United States for failure to timely file a proper response to the Notification of Missing Requirements.

On 26 July 2004, applicant filed the present petition. The petition states that it is accompanied by a proper response under 35 U.S.C. 371, the petition fee set forth in 37 CFR 1.17(m), and a statement that abandonment of the application was unintentional.

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), applicant has provided the required statement.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 26 July 2001, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 26 July 2004.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Bryan Tung

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : Nov. 4, 2005

TO SPE OF : ART UNIT 2822 (*Zandra Smith*)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,903,383 10/343097

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.
Please see the Foreign Priority and References Cited. Your denial or approval decision is needed below.

sp STACY POWELL

Thank You For Your Assistance

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

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

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

Comments:

_____

_____

_____

_____

_____

SPE 2822 **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

JAMES C. LYDON
100 DAINGERFIELD ROAD
SUITE 100
ALEXANDRIA, VA 22314

COPY MAILED

MAR 2 8 2007

OFFICE OF PETITIONS

In re Application of

Cleuziat, et al. :

Application No. 10/343,109

: DECISION ON PETITION

Filed: April 18, 2003

:

Attorney Docket No. BONN-098

This is a decision on the petition under 37 CFR 1.137(b), filed February 5, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to file a proper reply in a timely manner to the final Office action mailed April 5, 2006, which set a shortened statutory period for reply of three (3) months from its mailing date. A response was filed on July 5, 2006. An Advisory Action mailed January 24, 2007, advised petitioner that the response of July 5, 2006, failed to place the application in condition for allowance. No further responses were filed within the allowable period. The application became abandoned on July 6, 2006.

The Request for Continued Examination filed February 5, 2007, is noted and made of record

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

03 FEB 2005

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John Alexander Galbreath
2516 Chestnut Woods Court
Reistertown, Maryland 21136

In re Application of	:	DECISION
POLIAKINE	:	
Application No.: 10/343,113	:	ON PETITION
Filing Date: 18 November 2002	:	
Attorney Docket No.: None	:	
For: Electric Billboard with Reflective Color Liquid Crystal Display	:	

This decision is in response to applicant's Request filed 02 July 2004 to amend the specification and to waive the rule requiring a petition for unintentionally delaying the claiming of a benefit claim under 37 CFR 1.78.

BACKGROUND

On 15 May 2001, applicant filed in the English language international application PCT/IL01/00428 which claimed a priority date of 17 May 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 22 November 2001. A Demand was filed with the International Preliminary Examining Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 18 November 2002 (17 November 2002 was a Sunday).

On 18 November 2002, applicant filed, *inter alia*: a transmittal letter for a "Utility Patent Application (Form PTO/SB/05);" an application containing a specification, including claims, and drawings; a small entity statement; a Fee transmittal for FY 2002; a copy of the international application; and an executed declaration of the inventor. The application was treated as a submission under 35 U.S.C. 371 and accorded a 371(c) date of 18 November 2002.

On 28 April 2003, the United States Designated/Elected Office mailed a Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) indicating the application number for this application is 10/343,113.

On 13 June 2003, applicant, believing that the USPTO had lost the 18 November 2002 filing, filed a copy of the papers filed on 18 November 2003 requesting an application number be granted. In a decision dated 14 June 2004, applicant was informed that the copy was not needed as the original papers had been found and that the USPTO had improperly treated the 18

November 2002 papers as a submission under 35 U.S.C. 371. The applicant was informed that the application was considered to be a filing under 35 U.S.C. 111(a) with a filing date of 18 November 2002.

On 02 July 2004, applicant filed an amendment requesting that the first sentence be amended to indicate that the present application is a continuation of international application PCT/IL02/00428 filed on 15 May 2001. Applicant further requested a waiver of the surcharge required for filing a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. 120 and 35 U.S.C. 365(c) for the benefit of a prior-filed application.

DISCUSSION

A submission to enter the national stage must be clearly and unambiguously identified as such. Otherwise, the submission will be treated as being made under 35 U.S.C. 111(a). See 37 CFR 1.495(g)[1] and MPEP section 1893.03(a). Applicant's 28 October 2002 submission included a "Utility Patent Application Transmittal Letter" (Form PTO/SB/05). As expressly stated on Form PTO/SB/05, this form is only to be used for filing new nonprovisional applications under 35 CFR 1.53(b), i.e., applications under 35 U.S.C. 111(a).

Petitioner's paper filed 02 July 2004 requests a waiver of the surcharge required for filing a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. 120 and 35 U.S.C. 365(c) for the benefit of a prior-filed application.

Petitioner argues that the USPTO issued an Official Filing Receipt and a Notice of Acceptance Under 35 U.S.C. 371. Both indicated that the application was an application under 35 U.S.C. 371. The Official Filing Receipt indicated that "This application is a 371 of PCT/IL01/00428" filed 05/15/2001 and further indicated claim to Israeli application 136,205 filed 05/17/2000. Further petitioner argues that the USPTO on August 7, 2003 published the application with indications that the application was an application submitted under 35 U.S.C. 371. Petitioner also argues that had the USPTO timely notified applicant that the application was an application filed under 35 U.S.C. 111(a), petitioner could have filed the claim within the four-month period set in 37 CFR 1.78(a)(2)(ii) thus avoiding the surcharge required under 37 CFR 1.78(a)(3).

The application was complete when filed on 18 November 2002. The Notice of Acceptance Under 35 U.S.C. 371 was mailed on April 28, 2003. The application was published on August 7, 2003. There was no delay in publication of the application and the prior art date under 35 U.S.C. 102(e) would not be affected. The international application published in the

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[1] 37 CFR 1.495(g) states: The documents and fees submitted under paragraph (b) and (c) of this section must, except for a copy of the international application or translation of the international application that is identified as provided in section 1.417 be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

English language and hence the international filing date is the 35 U.S.C. 102(e) date for either a national stage application or a continuation application claiming benefit under 35 U.S.C. 120 and 365(c) to the international application.

The applicable rule for making a benefit claim under 35 U.S.C. 120 and 365(c) is set forth in 37 CFR 1.78(a). As was noted by petitioner, 37 CFR 1.78(a)(2)(ii)[2] requires the claim under 35 U.S.C. 120 and 365(c) to be made within four months of the filing date of the application. Petitioner failed to claim the benefit with four months of the filing date of the application.

Under 37 CFR 1.78(a)(3)[3] applicants may file a petition to accept an unintentionally delayed claim under 35 U.S.C. 120 and 365(c) for the benefit of a prior-filed application. Such a petition requires a surcharge. However, the USPTO has stated in the notice, Claiming the Benefit of a Prior- Filed Application under 35 U.S.C. 119(e), 120, 121, and 365(c), 1268 OG 89 (March 18, 2003) that under certain conditions the petition and fee would not be required. For instance the OG notice stated "Previously, the Office indicated that if an applicant includes a benefit claim in the application but not in the manner specified by 37 CFR 1.78(a) (e.g., if the claim is included in an oath or declaration or the application transmittal letter) within the time period set forth in 37 CFR 1.78(a), the Office will not require a petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) to correct the claim if the information concerning the

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[2] 37 CFR 1.78(a)(2)(ii) states, in part: This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371 (b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(I) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application.

[3] 37 CFR 1.78(a)(3) states: If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:
(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;
(ii) The surcharge set forth in § 1.17(t); and
(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

claim was recognized by the Office as shown by its inclusion on the filing receipt. If, however, a claim is included elsewhere in the application and not recognized by the Office as shown by its absence on the filing receipt, the Office will require a petition and the surcharge to correct the claim. See Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication Provisions, 66 Fed. Reg. 67087, 67089-90 (Dec. 28, 2001). The Office will continue to follow this practice."

The Office finds that there are similar circumstances in the present application. As was pointed out above, the U.S. patent application was published on time and there is no effect on the 35 U.S.C. 102(e) date. Furthermore as pointed out by petitioner, the Office did not recognize that it improperly treated the application as an application under 35 U.S.C. 371 until after 19 months from the filing of the original application papers. Accordingly, petitioner's request is grantable.

CONCLUSION

The petition under to accept an unintentionally delayed claim under 35 U.S.C. 120 and 35 U.S.C. 365(c) for the benefit of a prior-filed application without the petition fee is **GRANTED**.

This application is being forwarded to the Office of Initial Patent Examination for the issuance of a corrected filing receipt showing that the above application is an application filed under 35 U.S.C. 111(a) on **November 18, 2002** , which is a continuation of PCT/IL01/00428 filed 17 May 2000.

Leonard Smith
PCT Legal Examiner
Office of PCT Legal Administration
Telephone: (571) 272-3297
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14 JUN 2004

#4

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John Galbreath
2516 Chestnut Woods Ct.
Reisterstown MD 21136

In re Application of :
Ran Poliakine :
Application No.: 10/343,113 :
Filing Date: 18 November 2002 :
Attorney Docket No.: :
For: ELECTRONIC BILLBOARD :
WITH REFLECTIVE COLOR :
LIQUID CRYSTAL DISPLAYS :

This is in response to applicants papers filed on 13 January 2003 in copending application 10/362,156.

BACKGROUND

On 18 November 2002, applicant filed international application number PCT/IL01/00428, which claimed priority to an Israel application number 136205, which claimed a priority date of 17 May 2000.

On 18 November 2002, applicant filed a "Fee Transmittal for FY202" letter for filing of a new non-provisional application under 37 CFR 1.53 (b) in the United States, which was accompanied by, inter alia: the filing fee; a specification, claims, and abstract and an executed declaration.

On 28 April 2003, the United States Patent and Trademark Office issued a Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.495

On 08 January 2003, applicant contacted the United Sates Patent and Trademark Office and was informed that PCT/IL01/00428 was lost. Applicant had never received a post card receipt and was not charged for the Basic National fee. On 13 June 2003, applicant submitted copies of the application, including the express mail label, fee transmittal, declaration, along with international search report and international preliminary examination report. These papers were given application number 10/362,156.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all the conditions set forth in 35

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

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

The "UTILITY PATENT APPLICATION TRANSMITTAL" filed on 18 November 2002 indicated that the application was a filing of a new nonprovisional application under 37 CFR 1.53(b). The transmittal letter used by applicant is to be used only with submissions under 35 U.S.C. 111 (a). The filing under 37 CFR 1.53 (b) is only directed to application flied under 35 USC 111(a). Applicant thus did not give instructions to enter the national stage. Even if applicant had given instruction to file a national stage application, since applicant's transmittal letter would have been considered as a conflicting instructions and the papers would have been right fully considered as having been filed under 35 USC 111(a).

The application is deemed to have been filed under 35 USC 111(a). The United States Patent and Trademark Office issued a Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.495, on 28 April 2003 in error. Accordingly the Notice Of Acceptance is vacated.

The papers filed on 13 January 2003 are considered duplicates of the papers filed in this case and will be inserted into the application. Application number 10/362,156 will not be used. The money charged to 10/362,156 will be refunded to applicant.

CONTINUATION APPLICATION

Applicant is entitled to claim benefit under 35 USC 120 and 365 (c) for the filing date of the international application for the common subject matter, since this application and the international application designating the United States were copending on 18 November 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 international application. An appropriate passage would be, "This is an continuation of international application PCT/IL01/00428, filed 15 May 2001, which designated the United States and is now abandoned." Note: applicant must file a preliminary amendment and fee under 37 CFR 1.78 (a) (3) for the acceptance of a timely claim for benefit to an earlier application.

CONCLUSION

This application is properly treated as an application filed under 35 USC 111 (a) with a filing date of 18 November 2002.

This application is being forwarded to the Office Of Initial Patent Examination for correction of information in PALM and the issuance of a corrected filing receipt showing that the above application is not a 371 of PCT/IL01/00428, and to be treated as a filing under 35 USC 111 (a) with the filing date of November 18, 2002.

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John Alexander Galbreath
2516 Chestnut Woods Court
Reistertown, Maryland 21136

In re Application of	:	DECISION
POLIAKINE	:	
Application No.: 10/343,113	:	ON PETITION
Filing Date: 18 November 2002	:	
Attorney Docket No.: None	:	
For: Electric Billboard with Reflective Color Liquid Crystal Display	:	

This decision is in response to applicant's Request filed 02 July 2004 to amend the specification and to waive the rule requiring a petition for unintentionally delaying the claiming of a benefit claim under 37 CFR 1.78.

BACKGROUND

On 15 May 2001, applicant filed in the English language international application PCT/IL01/00428 which claimed a priority date of 17 May 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 22 November 2001. A Demand was filed with the International Preliminary Examining Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 18 November 2002 (17 November 2002 was a Sunday).

On 18 November 2002, applicant filed, *inter alia*: a transmittal letter for a "Utility Patent Application (Form PTO/SB/05);" an application containing a specification, including claims, and drawings; a small entity statement; a Fee transmittal for FY 2002; a copy of the international application; and an executed declaration of the inventor. The application was treated as a submission under 35 U.S.C. 371 and accorded a 371(c) date of 18 November 2002.

On 28 April 2003, the United States Designated/Elected Office mailed a Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) indicating the application number for this application is 10/343,113.

On 13 June 2003, applicant, believing that the USPTO had lost the 18 November 2002 filing, filed a copy of the papers filed on 18 November 2003 requesting an application number be granted. In a decision dated 14 June 2004, applicant was informed that the copy was not needed as the original papers had been found and that the USPTO had improperly treated the 18

November 2002 papers as a submission under 35 U.S.C. 371. The applicant was informed that the application was considered to be a filing under 35 U.S.C. 111(a) with a filing date of 18 November 2002.

On 02 July 2004, applicant filed an amendment requesting that the first sentence be amended to indicate that the present application is a continuation of international application PCT/IL02/00428 filed on 15 May 2001. Applicant further requested a waiver of the surcharge required for filing a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. 120 and 35 U.S.C. 365(c) for the benefit of a prior-filed application.

DISCUSSION

A submission to enter the national stage must be clearly and unambiguously identified as such. Otherwise, the submission will be treated as being made under 35 U.S.C. 111(a). See 37 CFR 1.495(g)[1] and MPEP section 1893.03(a). Applicant's 28 October 2002 submission included a "Utility Patent Application Transmittal Letter" (Form PTO/SB/05). As expressly stated on Form PTO/SB/05, this form is only to be used for filing new nonprovisional applications under 35 CFR 1.53(b), i.e., applications under 35 U.S.C. 111(a).

Petitioner's paper filed 02 July 2004 requests a waiver of the surcharge required for filing a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. 120 and 35 U.S.C. 365(c) for the benefit of a prior-filed application.

Petitioner argues that the USPTO issued an Official Filing Receipt and a Notice of Acceptance Under 35 U.S.C. 371. Both indicated that the application was an application under 35 U.S.C. 371. The Official Filing Receipt indicated that "This application is a 371 of PCT/IL01/00428" filed 05/15/2001 and further indicated claim to Israeli application 136,205 filed 05/17/2000. Further petitioner argues that the USPTO on August 7, 2003 published the application with indications that the application was an application submitted under 35 U.S.C. 371. Petitioner also argues that had the USPTO timely notified applicant that the application was an application filed under 35 U.S.C. 111(a), petitioner could have filed the claim within the four-month period set in 37 CFR 1.78(a)(2)(ii) thus avoiding the surcharge required under 37 CFR 1.78(a)(3).

The application was complete when filed on 18 November 2002. The Notice of Acceptance Under 35 U.S.C. 371 was mailed on April 28, 2003. The application was published on August 7, 2003. There was no delay in publication of the application and the prior art date under 35 U.S.C. 102(e) would not be affected. The international application published in the

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[1] 37 CFR 1.495(g) states: The documents and fees submitted under paragraph (b) and (c) of this section must, except for a copy of the international application or translation of the international application that is identified as provided in section 1.417 be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

English language and hence the international filing date is the 35 U.S.C. 102(e) date for either a national stage application or a continuation application claiming benefit under 35 U.S.C. 120 and 365(c) to the international application.

The applicable rule for making a benefit claim under 35 U.S.C. 120 and 365(c) is set forth in 37 CFR 1.78(a). As was noted by petitioner, 37 CFR 1.78(a)(2)(ii)[2] requires the claim under 35 U.S.C. 120 and 365(c) to be made within four months of the filing date of the application. Petitioner failed to claim the benefit with four months of the filing date of the application.

Under 37 CFR 1.78(a)(3)[3] applicants may file a petition to accept an unintentionally delayed claim under 35 U.S.C. 120 and 365(c) for the benefit of a prior-filed application. Such a petition requires a surcharge. However, the USPTO has stated in the notice, Claiming the Benefit of a Prior- Filed Application under 35 U.S.C. 119(e), 120, 121, and 365(c), 1268 OG 89 (March 18, 2003) that under certain conditions the petition and fee would not be required. For instance the OG notice stated "Previously, the Office indicated that if an applicant includes a benefit claim in the application but not in the manner specified by 37 CFR 1.78(a) (e.g., if the claim is included in an oath or declaration or the application transmittal letter) within the time period set forth in 37 CFR 1.78(a), the Office will not require a petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) to correct the claim if the information concerning the

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[2] 37 CFR 1.78(a)(2)(ii) states, in part: This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371 (b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(I) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application.

[3] 37 CFR 1.78(a)(3) states: If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:
(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;
(ii) The surcharge set forth in § 1.17(t); and
(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

claim was recognized by the Office as shown by its inclusion on the filing receipt. If, however, a claim is included elsewhere in the application and not recognized by the Office as shown by its absence on the filing receipt, the Office will require a petition and the surcharge to correct the claim. See Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication Provisions, 66 Fed. Reg. 67087, 67089-90 (Dec. 28, 2001). The Office will continue to follow this practice."

The Office finds that there are similar circumstances in the present application. As was pointed out above, the U.S. patent application was published on time and there is no effect on the 35 U.S.C. 102(e) date. Furthermore as pointed out by petitioner, the Office did not recognize that it improperly treated the application as an application under 35 U.S.C. 371 until after 19 months from the filing of the original application papers. Accordingly, petitioner's request is grantable.

CONCLUSION

The petition under to accept an unintentionally delayed claim under 35 U.S.C. 120 and 35 U.S.C. 365(c) for the benefit of a prior-filed application without the petition fee is **GRANTED**.

This application is being forwarded to the Office of Initial Patent Examination for the issuance of a corrected filing receipt showing that the above application is an application filed under 35 U.S.C. 111(a) on **November 18, 2002** , which is a continuation of PCT/IL01/00428 filed 17 May 2000.

Leonard Smith
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03 FEB 2003

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Andrew G. Kolomayets
Cook, Alex, McFaron, Manzo,
Cummings & Mehler, Ltd.
200 West Adams Street - Suite 2850
Chicago, IL 60606

In re Application of BARTL, Manfred, et al. Application No.: 10/343,120 PCT No.: PCT/EP01/06826 Int. Filing Date: 16 June 2001 Priority Date: 21 June 2000 Docket No.: 0636-0001 For: METHOD FOR PRODUCTION OF A HYBRID COMPONENT	DECISION ON PETITION UNDER 37 CFR 1.137(b)

Applicant's "Petition For Revival of an International Application For Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)," filed in the above-captioned application on 30 January 2003 is **GRANTED**.

Applicant states "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional," as required by 37 CFR 1.137(b)(3). The appropriate national fee and petition fee have been submitted. A terminal disclaimer is not required as the application was filed on or after 08 June 1995. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

A signed oath or declaration has not yet been submitted.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for continued processing in accordance with this decision, including the mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration are required.

Erin M. Pender

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: (703) 305-0455
Facsimile: (703) 308-6459

06 AUG 2004

#6

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Garron M. Hobson
THORPE, NORTH & WESTERN, L.L.P.
PO Box 1219
Sandy, Utah 84091-1219

In re Application of	:	
David W. Jensen et al	:	
Application No.: 10/343,133	:	
PCT Application No.: PCT/US01/23636	:	DECISION ON
International Filing Date: 27 July 2001	:	
Priority Date: 28 July 2000	:	PETITION UNDER
Attorney Docket No.: T8485.NP.PCT.US	:	
For: ISO-TRUSS STRUCTURE	:	37 CFR 1.181

This is in response to applicant's petition filed on 15 March 2004, to withdraw the holding of abandonment under 37 CFR 1.181 in the above identified application.

BACKGROUND

On 27 July 2001, applicant filed international application number PCT/US01/23636 which claimed priority to an earlier filed United States provisional application 60/221,445 filed on 28 July 2000. The period for paying the basic national fee is thus 30 months and ended at midnight 28 January 2003.

On 28 January 2003, a transmittal letter for entry into the national stage in the United States was filed along with, inter alia, the $455 (small entity) basic national fee required by 35 USC 371 (c)(1) and 37 CFR 1.492 (a)(5), and a surcharge of $65 (small entity) for furnishing the oath or declaration later than 30 months from the earliest claimed priority date but not an oath or declaration.

On 24 June 2003, the United States Patent and Trademark Office issued a Notification of Missing Requirements Under 35 USC 371 in the United States Designated/Elected Office (DO/EO/US) for failing to furnish an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date.

On 18 February 2004, the United States Patent and Trademark Office issued a Notification of Abandonment for failure to respond within the time period se by the notification of Missing Requirements mailed 24 June 2003.

DISCUSSION

Applicant's response file 15 March 2004 provides insufficient evidence to withdraw the holding of abandonment. In that the docket report submitted a proof of non-receipt is for only one specific application, applicant must submit the complete docket report for all applications as proof of non-receipt of an office action.

According to the MPEP, Section 711.03(c) states:

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

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)."

CONCLUSION

The petition to withdraw the holding of abandonment under 37 CFR 1.181 is DISMISSED without prejudice.

If reconsideration on the merits of this decision is desired, a proper response must be filed within TWO (2) months from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No petition fee is due. Extension of time are available under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, PO Box 1450, Alexandria, VA 222313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

Michael Lebentritt
Detailee
Office of PCT Legal Administration
Telephone (703) 308-6162
Facsimile (703) 308-6459

Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration
Telephone: (703) 308-3659
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29 SEP 2004

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Garron M Hobson
Thorpe North & Western
P O Box 1219
Sandy UT 84091-1219

In re Application of JENSEN et al. Application No.: 10/343,133 PCT No.: PCT/US01/23636 Int. Filing Date: 27 July 2001 Priority Date: 28 July 2000 Attorney's Docket No.: T8485.NP.PCT.US For: ISO-TRUSS STRUCTURE	DECISION ON PETITION UNDER 37 CFR 1.181

This is in response to applicant's "RENEWED PETITION UNDER 37 CFR 1.181" to withdraw holding of abandonment based on failure to receive Office action, filed in the United States Patent and Trademark Office (USPTO) on 23 August 2004 alleging that applicant did not receive the Notification of Missing Requirements mailed on 24 June 2003.

BACKGROUND

A review of the application file reveals that the NOTIFICATION OF MISSING REQUIREMENTS was mailed by the USPTO on 24 June 2003 indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required. Applicant was given two months to respond to the Notification or until 24 August 2003 with extensions of time (up to 5 months) available under 37 CFR 1.136(a).

No response to the Notification of Missing Requirements was received, and thus, the application was held to be **ABANDONED** as of midnight on 26 January 2004 (24 January 2004 was a Saturday and 25 January 2004 was a Sunday). On 19 February 2004, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant.

On 15 March 2004, applicants filed a petition under 37 CFR 1.181. On 06 August 2004, this office mailed its decision, which dismissed the petition without prejudice on the grounds that applicants had not provided the proper showing in order to establish that papers were not received. The decision indicated that applicants had not provided a copy of the docket record showing all responses docketed for the date a response was due showing that there was no record of a response for the present application being due on that date.

On 23 August 2004, applicants submitted the renewed Petition under 37 CFR 1.181 along with a copy of the docket record for the dates 22 August through 25 August 2003. Applicants submitted a proper reply, that is, a copy of the docket record for the date a response was due (24 August 2003 in this case) showing that there was no record of a response for the present application being due on that date. Applicant has now provided the proper showing necessary to withdraw the holding of abandonment and the petition is granted at this time.

CONCLUSION

For the reasons indicated above, the renewed petition is **GRANTED**. The Notification of Abandonment (Form PCT/DO/EO/909) mailed on 19 February 2004 is **VACATED**.

The application will be forwarded to the U.S. Designated/Elected Office for further processing including issuance of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) is required.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467
Facsimile: (703) 308-6459

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OFFICE OF PETITIONS

Morrison & Foerster LLP
1650 Tysons Boulevard
Suite 400
Mclean, VA 22102

In re Application of	:	
Hans Juergen Schwarzbauer et al.	:	
Application No. 10/343,153	:	DECISION ON PETITION
Filed: January 29, 2003	:	TO WITHDRAW
Attorney Docket No. 449122050900	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 18, 2007.

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

A review of the file record indicates that the power of attorney to Morrison & Foerster LLP has been revoked by the assignee of the patent application on September 5, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

T. Williams
Terri Williams
Petitions Examiner
Office of Petitions

cc: **Bell, Boyd & Lloyd, LLP**
P.O. Box 1135
Chicago, IL 60690

13 SEP 2004

#6

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Bennett J. Berson
Quarles & Brady
P.O. Box 2113
Madison, WI 53701-2113

In re Application of	:	
VYDEN, John K.	:	
Application No.: 10/343,161	:	DECISION ON PETITION
PCT No.: PCT/US01/23575	:	
Int. Filing Date: 26 July 2001	:	
Priority Date: 26 July 2000	:	
Attorney Docket No.: ATOPIC	:	
For: METHODS FOR TREATING ATOPIC DISORDERS		

This decision is in response to applicant's "Petition under 37 CFR 1.181 to Withdraw Holding of Abandonment" filed 08 September 2004. No petition fee is required.

BACKGROUND

On 26 July 2001, applicant filed international application PCT/US01/23575 which claimed a priority date of 26 July 2000. A Demand was filed for International Preliminary Examination prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 26 January 2003.

On 24 January 2003, applicant filed a Transmittal Letter for entry into the national stage accompanied, *inter alia,* by: the requisite basic national fee; a copy of the international application; and a preliminary amendment.

On 05 August 2003, the United States Designated Office (DO/EO/US) mailed a Notification Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a signed oath/declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) together with a surcharge payment were required. The notification set a two-month time limit in which to respond.

On 19 July 2004, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 05 August 2003 within the time period set therein.

On 08 September 2004, applicant filed the present petition which was accompanied, among other things: a copy of the declaration(s) and power of attorney(s) filed 15 August 2003; post card receipt dated 15 August 2003; and fee transmittal form.

DISCUSSION

Applicant states in their present petition that a declaration and power of attorney was received at the United States Patent and Trademark Office on 15 August 2003. A review of the present application reveals that the declaration and power of attorney filed 15 August 2003 is not located therein. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

> "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicant has provided a copy of their date-stamped filing receipt. The receipt identifies the application by applicant, title of invention, application number; and attorney docket number. The receipt itemizes declaration executed by the inventor. The receipt is stamped "Rec'd. OIPE 15 AUG 2003" across its face is sufficient to indicate that the declaration and power of attorney was in fact received in the Office on 15 August 2003.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

Deposit Account No. 17-0055 will be charged a $130.00 surcharge fee under 37 CFR 1.492(e) for supplying an oath or declaration later than 30 months from the earliest claimed priority date.

This application will be given an international filing date of 26 July 2001 and a date of **15 August 2003** under 35 U.S.C. 371. The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (703) 308-6314
Fax: (703) 308-6459

23 MAR 2004

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Joseph R. Schuh
PHARMACIA CORPORATION of Pfizer Inc.
P.O. Box 1027
Chesterfield, MO 63006

In re Application of ALEXANDER, J.C. ET AL. Application No.: 10/343,166 PCT Application No.: PCT/US01/23670 International Filing Date: 27 July 2001 Priority Date: 27 July 2000 Attorney Docket No.: SO3355/OZ/US For: EPOXY-STEROIDAL ALDOSTERONE ANTAGONIST AND BETA-ADRENERGIC ANTAGONIST COMBINATION THERAPY FOR TREATMENT OF CONGESTIVE HEART FAILURE	DECISION ON PETITION UNDER 37 CFR 1.137(b)

Applicant's "Petition To Revive Under 37 CFR 1.137," filed in the United States Patent and Trademark Office on 02 February 2004 is GRANTED. This has been treated as a petition to revive under 37 CFR 1.137(b).

BACKGROUND

On 27 July 2001, applicant filed international application number PCT/US01/23670, claiming priority of an earlier U.S. provisional application, filed on 27 July 2000. The United States of America was designated in the Request and elected in the Demand filed on 26 February 2002. Accordingly, the thirty month period for paying the basic national fee in the United States expired at midnight on Monday, 27 January 2003.

On 07 August 2003, applicant was mailed FORM PCT/DO/EO/909 (371 Abandonment Notice) that informed applicant that applicant had "failed to provide the full U.S. Basic National Fee by 30 months," with the result that the international application became abandoned as to the United States of America on the thirty month date.

On 02 February 2004, the present petition to revive was submitted. Applicant has explained that sufficient funds are now available to pay the full U.S. Basic National fee. Applicant has authorized charging additional fees associated with this petition to applicant's deposit account.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) a proposed response, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

With regard to item (1) above, applicant has stated that "[t]he entire delay in filing the required response until the filing of this Petition Under 1.137(b), was unintentional." Applicant's statement is satisfactory for meeting the requirements of 37 CFR 1.137(b)(3).

With regard to item (2) above, applicant has explained in the Petition of 02 February 2004 that sufficient funds are present in the deposit account to pay the basic national fee, meeting the requirement of item (2).

With regard to item (3) above, applicant has authorized payment of the required petition fee.

With regard to item (4), a terminal disclaimer is not required as application was filed after 08 June 1995.

Accordingly, all of the requirements under 37 CFR 1.137(b) have been satisfied.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is GRANTED as to National Stage in the United States of America.

This application has an international filing date of 27 July 2001 under 35 USC 363.

This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing, including sending out a Notice of Missing Requirements for applicant's failure to provide an oath or declaration.

Michael La Villa
Detailee
Office of PCT Legal Administration
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Facsimile: (703) 308-6459

Richard Cole
PCT Legal Examiner
Office of PCT Legal Administration
Telephone: (703) 308-6639
Facsimile: (703) 308-6459

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 1/25/10

Paper No.: ——

TO SPE OF : ART UNIT 1793

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/343168 Patent No.: 7594973 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

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

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

Comments: _____

Roy V. Cing 1793

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KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

Mail Date: 04/21/2010

Applicant	: Kazuhiro Takahashi	: DECISION ON REQUEST FOR
Patent Number	: 7594973	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/343,168	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/27/2003	: 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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JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
ATLANTA, GA 30309

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JUN 16 2006

OFFICE OF PETITIONS

In re Application of	:	
Toshie Ootsuka	:	DECISION ON REQUEST
Application No. 10/343,169	:	TO WITHDRAW FROM
Filed: January 23, 2003	:	RECORD
Attorney Docket No. 44471/282516	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed by facsimile transmission on February 28, 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 CFR § 1.136(a).

The request was signed by Brenda O. Holmes, on behalf of all attorneys/agents of record who are associated with Customer No. 23370.

All the attorneys/agents associated with the Customer No. 23370 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 sole inventor; or (2) the intervening assignee of the entire interest. All future communications from the Office will be directed to the sole inventor at the first copied address below until otherwise properly notified by the applicant.

This application file is being referred to Technology Center Art Unit 3611, for review of the response to the Office action filed April 13, 2006.

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

Andrea Smith
Petitions Examiner
Office of Petitions

Conferee:

cc: Toshie Ootsuka
c/o Dentsu Tec. Inc., 8-9
Tsukiji 1-Chome
Chuo-ku, Tokyo 104-8411
JAPAN

Marvin Motsenbocker, Ph.D.
NDQ&M Watchstone, LLP
1300 I Street, NW
400 East Tower
Washington, DC 20005

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/343,176	06/19/2003	Erich Zimmer	70769	8328

23872 7590 05/02/2005

MCGLEW & TUTTLE, PC
P.O. BOX 9227
SCARBOROUGH STATION
SCARBOROUGH, NY 10510-9227

EXAMINER
HEINRICH, SAMUEL M

ART UNIT	PAPER NUMBER
1725	

DATE MAILED: 05/02/2005

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

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5/2/05

In re Application of	:	
Erich Zimmer	:	
Serial Number : 10/343176	:	WITHDRAWAL
Filed : June 19, 2003	:	FROM
For : METHODFOR PRODUCTION OF A	:	ISSUE
VEHICLE DOOR AND A FRAMELESS	:	
DOOR MADE BY THE SAID METHOD	:	

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR 1.313.

The application is being withdrawn to permit reopening of prosecution. The reasons therefore will be communicated to you by the examiner.

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

The application is being forwarded to the examiner for action.

JMStone

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

MCGLEW & TUTTLE, PC
P.O. BOX 9227
SCARBOROUGH STATION
SCARBOROUGH NY 10510-9227

Cc: Allowed Files, Pk3-910

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FOLEY & LARDNER LLP
P.O. BOX 80278
SAN DIEGO, CA 92138-0278

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OFFICE OF PETITIONS

In re Application of	:	
Olli PIIRAINEN, et al	:	
Application No. 10/343,197	:	DECISION ON PETITION
Filed: July 17, 2003	:	TO WITHDRAW
Attorney Docket No. 061604-0200		FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 15, 2009.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request cannot be approved because the attorneys of record were not appointed by Customer Number 30542, as indicated.

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

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-6735.

Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: MR. HARRY SMITH
HARRINGTON & SMITH, LLP
4 RESEARCH DRIVE
SHELTON, CT 06484-6212

03 AUG 2005

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Connelly Bove Lodge & Hutz LLP
P.O. Box 2207
Wilmington, DE 19899-2207

In re Application of	:	
BREVES et al.	:	
Application No.: 10/343,212	:	
PCT No.: PCT/EP01/08359	:	
Int. Filing Date: 19 July 2001	:	DECISION
Priority Date: 28 July 2000	:	
Attorney Docket No.: H4713 PCT/US	:	
For: NOVEL AMYLOLYTIC ENZYME EXTRACTED FROM BACILLUS SP.A 7-7 (DSM 12368) AND WASHING AND CLEANING AGENTS CONTAINING THIS NOVEL AMYLOLYTIC ENZYME	:	

This decision is in response to applicants' "Petition under 37 CFR 1.181 to Vacate 'Notice of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495' and to Issue Corrected Papers" filed in the United States Patent and Trademark Office (USPTO) on 23 July 2003.

BACKGROUND

On 28 January 2003, applicants timely filed a request to enter into the national stage under 35 U.S.C. 371 along with the appropriate basic national filing fee, a copy of the international application, an executed declaration; and a preliminary amendment.

On 16 July 2003, a Notification of Acceptance was issued identifying the 35 U.S.C. 371(c) date as 29 January 2003. Subsequently, an Official Filing Receipt was issued indicating a "FILING DATE" of 29 January 2003.

On 23 July 2003, applicants filed the present request to correct the filing date to 28 January 2003. The request to correct the filing date included a copy of the Customer Receipt of the United States Postal Service "Express Mail" mailing label #EV192784358US.

DISCUSSION

On 23 July 2003, applicants filed the present petition requesting that the filing date on the filing receipt be corrected to indicate the correct date on which the transmittal letter for entry into the national stage in the United States and accompanying papers were filed and on which the requirements under 35 U.S.C. 371 (c) were completed; i.e., 28 January 2003.

A copy of the Customer Copy of the "Express Mail" label No. EV192784358US filed with the petition bears a "Date In" of 28 January 2003, and further information obtained from the United States Postal Service (USPS) Express Mail database shows that "EV192784358US" was accepted by the USPS on 28 January 2003. The same "Express Mail" label number was placed on the transmittal letter located in the application file, but was date stamped as received in the PTO on 29 January 2003.

Pursuant to 37 CFR 1.10 (c), the promptly presented evidence is convincing that the transmittal letter and executed declaration together with the other listed items on the transmittal letter were filed on 28 January 2003. Thus, the application met the requirements of 35 U.S.C. 371(c) and thus entered the national stage in the United States on 28 January 2003, and therefore the indication of a filing date of 29 January 2003, on the NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 and the Official Filing Receipt are incorrect.

CONCLUSION

Applicants' request for issuance of a corrected Notification of Acceptance and Official Filing Receipt is **GRANTED**.

The Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903) mailed on 16 July 2003 is hereby **VACATED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision, that is, for mailing of a NOTIFICATION OF ACCEPTANCE OF APPLICATION (Form PCT/DO/EO/903) which identifies a date of **28 January 2003** U.S.C. 371(c) and preparation and mailing of a corrected Filing Receipt in accordance with this decision, that is a filing receipt that identifies a filing date of **28 January 2003**.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3298
Facsimile: (571) 273-0459

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Commissioner for Patents
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RADER FISHMAN & GRAUER PLLC
LION BUILDING
1233 20TH STREET N.W., SUITE 501
WASHINGTON DC 20036

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SEP 12 2006
OFFICE OF PETITIONS

In re Application of :
Usui, et al. :
Application No.: 10/343,226 :
Filed: January 30, 2003 : ON PETITION
Attorney Docket No.: SON-2420 :
For: OPTICAL DISK MEDIUM, AND DATA RECORDING METHOD AND DEVICE

This is a decision on the petition under 37 CFR 1.137(b), filed April 27, 2006, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to properly reply to the final Office action mailed October 7, 2005. An amendment, filed January 5, 2006 failed to place this application in *prima facie* condition for allowance, as was explained in the January 30, 2006 advisory action. No extensions of time were obtained pursuant to 37 CFR 1.136(a). Therefore, this application became abandoned on January 8, 2006. The filing of the present petition precedes the mailing of A Notice of Abandonment.

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, practitioner is required to provide a statement to that effect.

The Notice of Appeal filed April 27, 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 2627 to await receipt of the Appeal brief.

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

Shirene Willis Brantley

Shirene Willis Brantley
Petitions Attorney
Office of Petitions

OIPE JC112
MAY 05 2005
PATENT & TRADEMARK OFFICE

Attorney's Docket No.: 42390.P10702 Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Dong, et al.

Application No. 10/343,243

Int. Filing Date: 05/28/2001

For: PROVIDING SHORTER UNIFORM FRAME LENGTHS IN DYNAMIC TIME WARPING FOR VOICE CONVERSION

Examiner: Not yet assigned

Art Unit: Not yet assigned

FIRST CLASS CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450

on 5/3/05 Patricia Richard
Date

Mail Stop Petition
Commissioner For Patents
Alexandria VA 22313-1450

RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS
(FILING DATE GRANTED)

Sir:

In response to the Notification of Missing Requirements (Filing Date Granted) mailed 06/03/2003, please find enclosed:

(1) a duly executed Declaration and Power of Attorney with respect to the above-referenced patent application in compliance with 37 CFR 1.497(a)(3);

(2) a copy of the Notification of Missing Requirements;

(3) a copy of the Notice of Abandonment;

(4) a return receipt postcard; and

(5) a Renewed Petition to Revive under 37 C.F.R. § 37 CFR 1.137(b).

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. A duplicate of this Response is enclosed for deposit account charging purposes.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: 5/3/05

John P. Ward
Reg. No. 40, 216

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026
(408) 720-8300

03 JUN 2005

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Blakely Sokoloff Taylor & Zafman
12400 Wilshire Boulevard 7th Floor
Los Angeles, CA 90025-1026

In re Application of DONG et al. Serial No.: 10/343,243 PCT App. No.: PCT/CN01/00877 Int'l Filing Date: 28 May 2001 Priority Date: None Attorney Docket No.: 42390.P10702 For: PROVIDING SHORTER UNIFORM FRAME LENGTHS IN DYNAMIC TIME WARPING FOR VOICE CONVERSION	DECISION ON RENEWED PETITION UNDER 37 CFR 1.137(b)

This is a decision on applicants' "Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)", filed on 05 May 2005 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 03 June 2003, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that the oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required.

On 06 October 2004, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed indicating that applicant had failed to respond to the Notification of Missing Requirements within the time period set therein.

On 11 January 2005, applicants responded to the Notification of Abandonment with a petition to revive along with a 5 page executed declaration.

On 03 March 2005, a decision dismissing applicant's petition was mailed indicating that a new oath or declaration was required, in compliance with 37 CFR §1.497(a) &(b).

On 05 May 2005, applicant submitted a renewed petition accompanied by, *inter alia*, two complete declarations.

DISCUSSION

As previously stated, a petition under 37 CFR 1.137(b) must be accompanied by (1) a proper response unless it has been previously submitted, (2) the fee required by law for revival of an unintentionally abandoned application (1.17(m)), and (3) a statement that the "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".

Applicant previously satisfied Items (2) and (3)

With regard to Item (1), the proper reply has now been provided. Counsel has provided two executed declarations, which identify the inventors and state the citizenship, residency and mailing address of each of the inventors. Thus, the requirements of 37 CFR 1.497(a) and (b) have been met. The petition to revive under 37 CFR 1.1137(b) is granted.

CONCLUSION

For the reasons stated above, the petition to revive under 37 CFR 1.137(b) filed 09 May 2005 in the above-captioned application is **GRANTED**.

The application will be forwarded to the United States Designated/Elected Office for further processing. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is **05 May 2005.**

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
Office of PCT Legal Administration

Telephone: 571-272-3286
Facsimile: 571-273-0459

28 MAR 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

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

C. Bruce Hamburg
Jordan and Hamburg LLP
122 East 42nd Street
New York, New York 10168

In re Application of
MASON
Application No.: 10/343,252
PCT No.: PCT/AU01/00493
Int. Filing Date: 02 May 2001
Priority Date: 02 May 2000
Attorney Docket No.: F-7698
For: DATUM POINT ADAPTOR FOR VEHICLE GAUGING APPARATUS

DECISION ON PETITION UNDER 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 28 January 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has submitted the basic national fee of $530 and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration is required.

Anthony Smith

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JORDAN AND HAMBURG LLP
122 EAST 42ND STREET, SUITE 4000
NEW YORK, NY 10168

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JAN 07 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
James Herbert Mason :
Application No. 10/343,252 :
Filed: February 4, 2003 :
Attorney Docket No. F-7698

This is a decision on the petition, filed January 4, 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 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 Irvin Dingle at (571) 272-3210.

This matter will be forwarded to Technology Center AU 2859 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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JORDAN AND HAMBURG LLP
122 EAST 42ND STREET
NEW YORK, NY 10168

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MAR 12 2007

OFFICE OF PETITIONS

In re Patent No. 7,024,788	:	
Issue Date: April 11, 2006	:	
Application No. 10/343,252	:	NOTICE
Filed: February 4, 2003	:	
Attorney Docket No. F-7698		

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

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

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

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

12 JAN 2004

#10

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Gary D. Lueck
BINGHAM MCCUTCHEN LLP
Three Embarcadero Center, Suite 1800
San Francisco, CA 94111-4067

In re Application of :
NEOGI, Jayant :
U.S. Application No.: 10/343,255 :
PCT No.: PCT/US01/23669 :
Int. Filing Date: 28 July 2001 : **DECISION**
Priority Date: 28 July 2000 :
Attorney's Docket No.: 42359/GDL :
For: METHOD AND ARTICLE OF :
MANUFACTURE FOR IDENTIFYING :
AND TRACKING GEMSTONES :

The decision is in response to applicant's "Petition Under 37 CFR 1.47(b) and MPEP 409.03" ("Pet.") and associated documents submitted on 10 November 2003.

BACKGROUND

On 07 July 2003, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required. Petitioners were given two-months to respond with extensions of time available pursuant to 37 CFR 1.136(a).

On 10 November 2003, the 37 CFR 1.47(b) applicant submitted the instant petition which was accompanied by, *inter alia*, authorization to charge all fees including a two-month extension fee to Deposit Account No. 50-2518; a declaration signed on behalf of the nonsigning sole inventor; copies of assignments for patent application Nos. 60/221,453, 60/244,671, and PCT/US01/23669; a declaration by John L. Bishop; a declaration of Gary D. Lueck ("Lueck Decl."); and Exhibits 1 - 12.

DISCUSSION

Petitioner claims that the sole inventor, Mr. Jayant Neogi, refuses to execute a declaration in this application. Accordingly, the present petition was submitted pursuant to the requirements of 37 CFR 1.47(b).

A petition under 37 CFR 1.47(b) must be accompanied by (1) the requisite petition fee, (2) factual proof that the inventor cannot be reached after diligent effort or refuses to cooperate, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the

non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

The appropriate petition fee and two-month extension fee have been charged to Deposit Account 50-2518 as authorized.

With regard to item (2) of 37 CFR 1.47(b), section 409.03(d) of the Manual of Patent Examining Procedure (MPEP) discusses the requirements needed to show that an inventor refuses to join in an application and states, in part:

> When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

Here, the 37 CFR 1.47(b) applicant has provided proof showing that a complete copy of the application, including specification, claims and drawings were sent to the sole inventor. *See* Exhibits # 1, 4, 7, and 10. The 37 CFR 1.47(b) applicant has also provided copies of certified mail receipts showing that the documents were received by the sole inventor. *See* Exhibits # 3, 6, 9, and 12. The first document was signed as received on 31 March 2003. Finally, counsel claims that "[a]s of the date of this Declaration, I have not received an executed Declaration from Mr. Neogi in connection with this U.S. application. Lueck Decl. at ¶ 13. Counsel's declaration was dated 07 November 2003. This evidence demonstrates that the conduct of Mr. Neogi constitutes a refusal to cooperate in the above-captioned application. Thus, item (2) of 37 CFR 1.47(b) has been satisfied.

The 37 CFR 1.47(b) applicant satisfies item (3) by recording the last known address of the sole inventor in the petition as:

19150 SW Leanne Court
Aloha, OR 97007

With regards to item (4), section 409.03(b) of the MPEP states, in part:

> The 37 CFR 1.47(b) applicant must make the oath required by 37 CFR 1.63 and 1.64 or 1.175. Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary, Treasurer, or Chief Executive Officer) thereof should normally sign the necessary oath

> or declaration . . . Where the oath or declaration is being signed on behalf of an assignee, see MPEP § 324 . . . Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).

In this case, the petitioner has submitted a Declaration signed by John L. Bishop as President, Norsam Technologies, Inc. President is a position recognized as having the authority to sign for a corporation. The 37 CFR 1.47(b) applicant also provided a copy of the executed assignment as required by section 324 of the MPEP. The declaration included the last known address, residence and citizenship of the sole inventor and Mr. Bishop. The declaration is in compliance with 37 CFR 1.497(a) and (b).

Concerning item (5) of 37 CFR 1.47(b), section 409.03(f) of the MPEP discusses the proof required to show the requisite proprietary interest required by the 37 CFR 1.47(b) applicant and states, in part:

> When an application is deposited pursuant to 37 CFR 1.47(b), the 37 CFR 1.47(b) applicant must prove that:
>
> (A) the invention has been assigned to the applicant, or
> (B) the inventor has agreed in writing to assign the invention to the applicant, or
> (C) the applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application.
>
> If the application has been assigned, a copy of the assignment (in the English language) must be submitted. The assignment must clearly indicate that the invention described in the 37 CFR 1.47(b) application was assigned to the 37 CFR 1.47(b) applicant. A statement under 37 CFR 3.73(b) by the assignee must also be submitted (see MPEP § 324). (Emphasis added).

Here, the 37 CFR 1.47(b) applicant claims proprietary interest in the above-captioned national stage application of PCT/US01/23669 through an assignment. The 37 CFR 1.47(b) applicant submitted a copy of an "Assignment of International Application" for a PCT international patent application entitled "Method and Article of Manufacture for Identifying and Tracking Gemstones" with claims of priority of United States provisional application Nos. 60/221,453, filed 28 July 2000 and 60/244,671, filed 31 October 2000. This document assigned "the entire right, title and interest" in "national applications for patents and related rights on said improvements under and via the patent Cooperation Treaty in and in respect to such countries (including the United

States)." The assignment was executed by the sole inventor, Mr. Jayant Neogi, on 26 July 2001 and notarized. The petitioner also included copies of assignments for the United States provisional application No. 60/221,453, filed 28 July 2000 and signed by Mr. Neogi on 15 November 2000, and United States provisional application No. 60/244,671, filed 31 October 2000 signed by Mr. Neogi on 26 July 2001. The PCT application claimed priority to these applications.

This evidence is sufficient to meet item (5) of 37 CFR 1.47(b).

With regard to item (6), section 409.03(g) of the MPEP states that "[i]rreparable damage may be established by a showing (a statement) that a filing date is necessary to preserve the rights of the party or to prevent irreparable damage."

In the declaration filed with the instant petition, counsel states that "a response to the Notice must be filed with the United States Patent and Trademark Office before these deadlines to preserve Norsam's rights in the application and prevent abandonment of the U.S. application." Lueck Decl. at ¶ 8. This statement is sufficient to meet item (6).

Accordingly, the 37 CFR 1.47(b) applicant has now met all of the requirements of 37 CFR 1.47(b).

CONCLUSION

Applicant's petition under 37 CFR 1.47(b) is **GRANTED**.

A notice of the filing of this application will be forwarded to the non-signing inventor at the last known address of record and a notice of the filing of the application under 37 CFR 1.47(b) will be published in the Official Gazette.

Applicant has completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 28 July 2001, under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 10 November 2003.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (703) 308-6457

12 JAN 2004

#10

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Jayant Neogi
19150 SW Leanne Court
Aloha, OR 97007

In re Application of
NEOGI, Jayant
U.S. Application No.: 10/343,255
PCT No.: PCT/US01/23669
Int. Filing Date: 28 July 2001
Priority Date: 28 July 2000
Attorney's Docket No.: 42359/GDL
For: METHOD AND ARTICLE OF MANUFACTURE FOR IDENTIFYING AND TRACKING GEMSTONES

Mr. Neogi:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

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

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (703) 308-6457

Gary D. Lueck
BINGHAM MCCUTCHEN LLP
Three Embarcadero Center, Suite 1800
San Francisco, CA 94111-4067

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Director's Office
Group 3700

In re Application of: Chang-Jin Kim et al. :
Appl. No.: 10/343,261 : DECISION ON PETITION
Filed: January 27, 2003 :
For: ELECTROWETTING-DRIVEN MICROPUMPING :

This is a decision on the petition filed on May 27, 2005 by which petitioners request supervisory review of the denial of consideration of petitioner's Declaration under 37 CFR 1.131 based upon a lack of signature of all inventors as set forth in the final Office Action dated May 19, 2005. Petitioner seeks withdrawal of the final rejection and a substantive consideration of his Declaration under 37 CFR 1.131. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is Dismissed.

Review of the application indicates applicant timely filed a Declaration under 37 CFR 1.131 in response to the first Office Action on February 4, 2005. The Declaration is signed by Mr. Kim, one of two joint inventors. The Declaration is not signed by co-inventor Mr. Lee. A statement is included in the Remarks section that "Co-inventor Junghoon Lee was contacted by email in South Korea, but did not return an executed Declaration". The examiner refused consideration of the Declaration under 37 CFR 1.131 based upon improper signature. While the office action does state that the Declaration under "37 CFR 1.131 has been considered but is ineffective to overcome the Shenderov reference" in can only be concluded that this statement is inapt in that no substantive review of the contents of the Declaration under 37 CFR 1.131 is discussed on the record by the examiner. It appears the examiner never considered the merits of the Declaration under 37 CFR 1.131 due to the lack of signature by all inventors.

MPEP 715.04 states, in pertinent part, "Affidavits or declarations to overcome a rejection of a claim or claims must be made by the inventor or inventors of the subject matter of the rejected claims(s), a party qualified under 37 CFR 1.42, 1.43 or 1.47, or the assignee or other party in interest when it is not possible to produce the affidavit or declaration of the inventor(s)." Continuing, the MPEP states "Further, where it is shown that a joint inventor is deceased, refuses to sign, or is otherwise unavailable, the signatures of the remaining joint inventors are sufficient." Thus the question turns on whether petitioner's mere statement that Mr. Lee was contacted by email constitutes a *showing*. Guidance for this may be gleaned from the standards for granting a petition under 37 CFR 1.47. A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers; (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. As a Declaration

filed under 37 CFR 1.131 does not require elements (2) and (3) per se, these are not applicable herein. However, requirements (1) and (4) remain germane to the question of a non-signing inventor of a declaration filed for establishing priority of invention.

Requirements (2) and (4) have not been met by petitioner. Petitioner provides no evidence of the efforts in contacting Mr. Lee. Further, petitioner does not state whether Mr. Lee was not reached or found, after diligent effort, or whether Mr. Lee refused to sign the Declaration after being presented with the papers. Petitioner's provided statement is ambiguously worded possibly covering both situations: It is not known, for example, if a read-return receipt was received by petitioner indicating the sent electronic message sent to Mr. Lee was in fact opened. Lack of such a receipt would support a conclusion that Mr. Lee was not reached or found. Possession of such a receipt would be evidence to support a conclusion that Mr. Lee refused to sign the Declaration, if it could be concluded that Mr. Lee actually opened the electronic message. It is not know how many emails were sent by Petitioner, and to what email addresses, or if multiple addresses were known. It is not know if any attempts to reach Mr. Lee via postal correspondence were made. These questions illuminate the extent of petitioner's diligent effort. It is not known if correspondence actually occurred between petitioner and Mr. Lee with Mr. Lee refusing to sign, therefore "did not result in a signed Declaration being returned." Further guidance as to what types of factual evidence may be used for establishing a showing that a joint inventor is deceased, refuses to sign, or is otherwise unavailable may be found at MPEP 409.03(d). Furthermore, none of the Declaration, remarks, or petition includes the last know address of Mr. Lee.

For the foregoing reasons, the examiner's refusal to consider the Declaration filed under 37 CFR 1.131 based upon incomplete signatures appears proper at this time. Petitioner is entitled to file a renewed petition providing the evidence is support of requirements (2) and (4) outlined above, provided the renewed petition is filed within two months of the date of this decision. However, the filing of any renewed petition will not stay the time for taking appropriate action with respect to the final rejection. The time period for taking appropriate action in response to the final rejection continues to run as set in the final rejection pursuant to 37 CFR 1.134 and 37 CFR 1.136.

PETITION DISMISSED

Richard A. Bertsch, Director
Technology Center 3700

George H. Gates
GATES & COOPER LLP
Howard Hughes Center
6701 Center Drive West, Suite 1050
Los Angeles, CA 90045

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Director's Office
Group 3700

GATES & COOPER LLP
HOWARD HUGHES CENTER
6701 CENTER DRIVE WEST, SUITE 1050
LOS ANGELES CA 90045

In re Application of:
KIM, CHANG-JIN ET AL.
Serial No.: 10/343,261
Filed: January 27, 2003
Docket: 30435.95USWO
Title: ELECTROWETTING-DRIVEN MICROPUMPING

DECISION ON REQUEST FOR RECONSIRATION TO WITHDRAW FINALITY OF OFFICE ACTION

This is a decision on the request for reconsideration filed on November 14, 2005 to reconsider the decision on petition of November 9, 2005 and renewed petition filed on May 27, 2005.

The request for reconsideration is **DISMISSED as moot**.

In his November 14, 2005 request for reconsideration the applicant requested a reconsideration of the decision on petition of November 9, 2005. In support of his request for reconsideration, the applicant argues that the November 9, 2005 decision applied an improper standard for showing the unavailability of a co-inventor under MPEP 715.04 towards the February 2, 2005, 37 C.F.R. 1.131 Declaration.

The record shows that:

1) On October 5, 2004 the examiner issued a first Office Action rejecting Claims 1-28.
2) On February 4, 2005 the applicant submitted a response including a Declaration by one of the inventors under 37 C.F.R. 1.131 to overcome a reference.
3) On May 19, 2005 the examiner issued a final Office Action rejecting Claims 1-28. In particular, the examiner did not apply the Declaration against the reference because the Declaration was invalid under MPEP 715.04 since it was only signed by one of the co-inventors.
4) On May 27, 2005 the applicant submitted a petition to withdraw the finality of the May 19, 2005 Office Action. Specifically, the applicant alleged that the Declaration overcame the reference used in the Office Action. Moreover, the applicant alleged the examiner incorrectly found the Declaration invalid because the February 4, 2005 Declaration "stated that co-inventor Junghoon Lee was contacted by email in South Korea, but did not return an executed Declaration."

5) In a November 9, 2005 decision on petition, the Office dismissed the May 27, 2005 petition stating that the applicant did not carry his burden to show why the email showed the co-inventor's unavailability under MPEP 715.04.
6) On November 14, 2005 the applicant filed the present petition asking for reconsideration of the November 9, 2005 dismissal of the previous petition. The applicant alleged that an improper standard was applied to MPEP 715.04 for showing that the co-inventor was unavailable.
7) On November 21, 2005 the applicant filed a Request for Continued Examination. The applicant's attorney also signed a 37 C.F.R. 1.131 Declaration which cited more details concerning the unavailability of the co-inventor.
8) On December 27, 2005 the examiner issued a non-final Office Action. The examiner considered the 37 C.F.R. 1.131 Declaration, stating "A Declaration under 37 C.F.R. 1.131 by an Applicant's Patent Attorney, Mr. George H. Gates, filed on November 28, 2005 has been received and carefully considered."

In view of the history, the relief the applicant requested, namely the withdrawal of the finality of the May 19, 2005 Office Action and the acceptance of the February 4, 2005 Declaration, has already occurred. On December 27, 2005 the examiner withdrew the finality of the Office Action and specifically allowed the 37 C.F.R. 1.131 Declaration by the inventor. Accordingly, the petition is dismissed as moot.

Any inquiry regarding this decision should be directed to Henry Yuen, Special Program Examiner, at (571) 272-4856.

Karen M. Young

Karen M. Young, Director
Technology Center 3700

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OFFICE OF PETITIONS

In re Application of
Chang-Jin Kim et al
Application No. 10/343,261
Filed: January 27, 2003
Attorney Docket No. 30435.95USWO

DECISION ON PETITION

This is a decision on the petition, filed June 11, 2009, 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 November 26, 2008, which set a three (3) month period for reply. Three month (3) extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, a reply was due on or before May 26, 2009.

Office record show a timely reply was received via certificate of mailing or transmission under 37 CFR 1.8 on May 26, 2009, which included the following papers: Request for Continued Examination; amendment; and three month (3) extension of time. Petitioner has submitted a copy of the previously mailed correspondence.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of November 26, 2008 is hereby withdrawn and the application restored to pending status.

This application is being referred to Technology Center AU 3748 for appropriate action in the normal course of business on the reply received on May 26, 2008.

Irvin Dingle
Petitions Examiner
Office of Petitions

02 MAR 2004

#4

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Michael C. King
LAW OFFICES OF ROANLD M. ANDERSON
600 108th Avenue N.E., Suite 507
Bellevue, Washington 98004

In re Application of	:	
Harald Schuppich, et al.	:	
Application No.: 10/343,275	:	DECISION
PCT No.: PCT/EP01/08622	:	ON PETITION
Int. Filing Date: 25 July 2001	:	UNDER 27 CFR 1.182
Priority Date: 27 July 2000	:	
Attorney Docket No.: CELL0025	:	
For: MICRO-REACTOR FOR REACTIONS	:	
BETWEEN GASES AND LIQUIDS	:	

This is a decision on the "PETITION TO CORRECT TRANSMITTAL LETTER UNDER 37 CFR 1.182" filed 27 January 2004 in the above-captioned application. The petition fee under 37 CFR 1.17(h) has been paid

BACKGROUND

On 25 July 2001, applicants filed international application PCT/EP01/08622, which claimed priority of an earlier German application filed 27 July 2000.

On 27 January 2003, applicants filed papers for entry into the national stage in the United States under 35 U.S.C. 371. However, the Transmittal Letter erroneously identified the international application as PCT/US01/08622.

On 19 December 2003, the Office issued a communication to notify applicants of the error and requested applicants to correct the inconsistency noticed in the national stage papers filed 27 January 2003.

On 27 January 2004, applicants filed the present petition requesting that "the Transmittal Letter of 27 January 2003 be corrected to reflect the international application number as being **PCT/EP01/08622**".

DISCUSSION

A review of the application papers filed 27 January 2003 reveals that the title of the invention, the International Filing date, the names of the applicants, the description and claims all pertain to the data published by the International Bureau for PCT/EP01/08622. Since all the application papers submitted 27 January 2003, except for the Transmittal letter, reference the correct PCT application number, namely PCT/EP01/08622, applicants' request for correction of the PCT application number identified on the Transmittal letter of 27 January 2003 from PCT/US01/08622 to PCT/EP01/08622 is accepted.

DECISION

In view of the discussion above, the petition under 37 CFR 1.182 for correction of the international application number on the Transmittal Letter submitted 27 January 2003 from PCT/US01/08622 to PCT/EP01/08622 is GRANTED.

The application is being returned to the DO/EO/US for further processing.

Leonard E. Smith
PCT Legal Examiner
PCT Legal Office

Nguyên Ngoc-Hô
Paralegal Specialist
PCT Legal Office

NNH/LES:hn

Tel: (703) 308-6508

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RESEARCH TRIANGLE PARK NC 27709-3398

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OFFICE OF PETITIONS

In re Application of	:	
Bryan James Goodwin, et al.	:	
Application No. 10/343,289	:	DECISION GRANTING PETITION
Filed: January 28, 2003	:	UNDER 37 CFR 1.313(c)(3)
Attorney Docket No. PU4041USW	:	

This is a decision on the petition, filed June 11, 2007, and Supplemented on June 19, 2007 under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

Petitioner requests that the above-identified application be withdrawn from issue for express abandonment. *See* 37 CFR 1.313(c)(3).

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

Telephone inquiries regarding this decision should be directed to April Wise at (571) 272-1642.

Karen Creasy
Petitions Examiner
Office of Petitions

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Paper No.

ORGANON USA, INC.
C/O MERCK
2000 GALLOPING HILL ROAD
MAIL STOP: K-6-1, 1990
KENILWORTH NJ 07033

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OFFICE OF PETITIONS

In re Application of	:	
Mestres et al.	:	
Application No. 10/343,293	:	ON APPLICATION FOR
Filed: July 17, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 2000.570US	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 CFR § 1.705(B) filed on September 1, 2009. Applicant requests that the determination of patent term adjustment be corrected from 0 days to 199 days. Applicant requests this correction, in part, on the basis that the Office will take in excess of three years to issue this patent. Applicant additionally requests review of the patent term adjustment with regards to the 96 day period from the filing of a notice of appeal to the mailing of a notice of allowance.

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, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of

issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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 **DISMISSED**.

Applicants request review of the 96 day period of adjustment from the filing of a notice of appeal on October 29, 2008, to the mailing of a notice of allowance on June 4, 2009.

On April 30, 2008, a final Office action was mailed. On October 29, 2008, an amendment after final rejection and a notice of appeal were filed. On June 4, 2009, four (4) months and 96 days after the filing of the reply filed on October 29, 2008, a notice of allowance was mailed.

As there was no subsequent reply prior to the mailing of the notice of allowance on June 4, 2009, the mailing of the notice of allowance on June 4, 2009, indicates that the amendment filed on October 29, 2008, was determined by the examiner to be a reply in compliance with 37 CFR 1.113(c). As such, the 96 period of adjustment for Office delay is warranted pursuant to § 1.703(a)(3) and will not be removed.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance will remain 0 days.

The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

Applicants state that the patent is subject to a terminal disclaimer.

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.

Christina Tartera Donnell for

Anthony Knight
Supervisor
Office of Petitions

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30 JUL 2003

Gerald T. Gray
Townsend and Townsend and Crew LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834

In re Application of	:	
DE CANNIERE, Bernard	:	
Application No.: 10/343,312	:	
PCT No.: PCT/BE01/00211	:	
Int. Filing Date: 12 December 2001	:	DECISION
Priority Date: 26 December 2000	:	
Attorney Docket No.: 20306-000300	:	
For: CLAMPING DEVICE FOR AN ANATOMICAL STRUCTURE		

This decision is in response to applicant's "Petition under 37 CFR 1.10(e) to Consider U.S. National Phase Filing under 35 USC 371 as Filed on U.S.P.S. Deposit Date" filed 30 January 2003, which is being treated as a request for corrected filing receipt.

BACKGROUND

On 12 December 2001, applicant filed international application PCT/BE01/00211, which claimed a priority date of 26 December 2000. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 04 July 2002. A Demand for international preliminary examination was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 26 June 2003.

On 28 June 2002, applicant filed a Transmittal Letter (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee; copy of the international application; a translation of the international application; an executed declaration; and a preliminary amendment. These application papers were assigned application number 10/169,295.

On 30 January 2003, applicant filed "Petition under 37 CFR 1.10(e) to Consider U.S. National Phase Filing under 35 USC 371 as Filed on U.S.P.S. Deposit Date" requesting that the copy of the application papers accompanying the communication and purportedly filed by Express Mail on 28 June 2002 be accepted as having been received on 28 June 2002 and processed. This submission was treated as a new application and assigned application number 10/343,312.

On 04 March 2003, the United States Designated Office (DO/EO/US) mailed a Notification Missing Requirements under 35 CFR 371 (Form PCT/DO/EO/905) indicating that a signed oath/declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) together with a surcharge payment were required.

On 15 April 2003, applicant filed a declaration in response to the Notification of Missing Requirements.

On 30 April 2003, a Notification of Acceptance was issued identifying the 35 U.S.C. 371(c) date as 15 April 2003. Subsequently, an Official Filing Receipt was issued indicating a "FILING DATE" of 15 April 2003.

On 12 June 2003, the United Stated Designated/Elected Office mailed a Notice of Cancellation of Assigned Serial Number (Form PCT/DO/EO/908) indicating that application no. 10/169,295 had been cancelled and that all papers were subsequently moved to the correct application no. 10/343,312.

DISCUSSION

Upon review of both application files, it is concluded that the papers filed 30 January 2002 were processed as a purported new application and assigned application no. 10/343,312. Accordingly, the papers filed on 28 June 2002 have been placed in application number 10/343,312. Purported application 10/169,295 is no longer an active application number and should not be used in any future correspondence regarding this application.

A review of the application file reveals that the basic national fee and declaration were filed with the USPTO on 28 June 2002, the date which the requirements set forth in 35 U.S.C. 371(c) for entry into the national stage were completed. Therefore, the "FILING DATE" on the Filing Receipt and the Notification of Acceptance will indicate a date of 28 June 2002 since applicant completed the requirements set forth in 35 U.S.C. 371(c) on 28 June 2002.

Applicant should use application number **10/343,312** in all future communications with the Patent and Trademark Office in regards to the U.S. national stage of international application PCT/BE01/00211.

CONCLUSION

Applicant's request for the issuance of a corrected filing receipt indicating a "Filing Date" of 28 June 2002 is **GRANTED**.

The papers filed on 28 June 2002 have been placed in application number 10/343,312.

The Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903) and Official Filing Receipt identifying the 35 U.S.C. 371(c) date as 15 April 2003 is hereby **VACATED**.

The application has an international filing date of 12 December 2001 under 35 U.S.C. 363 and a date of **28 June 2002** under 35 U.S.C. 371.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for mailing of a Notification of Acceptance of Application (Form PCT/DO/EO/903) which identifies a date of **28 June 2002** under 35 U.S.C. 371.

This application will then be returned to Art Unit 3761 for further prosecution.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (703) 308-6314
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26 AUG 2003

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FOLEY & LARDNER
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3000 K Street, NW
Washington, DC 20007-8696

In re Application of	:	
MAKI, Noboru, et al.	:	
Application No.: 10/343424	:	DECISION ON PETITION
PCT No.: PCT/JP01/06947	:	UNDER 37 CFR 1.182
Int. Filing Date: 10 August 2001	:	
Priority Date: 11 August 2000	:	
Attorney Docket No.: 053466-0348	:	
For: METHOD OF DETECTING OR ASSAYING HBV	:	

This decision is in response to applicants' "Letter" filed on 06 February 2003, which is being treated as a petition under 37 CFR 1.182 to change the name of the inventor Yoko SAKAMOTO due to marriage. Deposit Account No. 19-0741 will be charged the required petition fee.

BACKGROUND

On 06 February 2003, applicants filed materials initiating this national stage application, including an executed declaration. However, the name of the third inventor in the declaration differed from the international application. Specifically, this inventor was identified as Yoko SAKAMOTO in the international application and as YOKO ODA in the declaration.

The 06 February submission also included the "Letter" considered herein which explains that the name change was "due to marriage."

DISCUSSION

In instances where an inventor has changed his or her name after the application has been filed, the Manual of Patent Examining Procedure at § 605.04(c) requires a petition under 37 CFR 1.182. The petition must include the appropriate petition fee and an affidavit signed by the inventor with both names setting forth the procedure whereby the change of name was effected, or certified copy of the court order. Here, applicants' 06 February 2003 submission included the authorization to charge Deposit Account No. 19-0741 for required fees. Based on this authorization, Deposit Account No. 19-0741 will be charged the required $130 petition fee. However, applicants have not submitted the required affidavit signed by the inventor identified in the international application as Yoko SAKAMOTO (and in the declaration as Yoko ODA) using both her former and present names and stating that the name change resulted from marriage. Applicants have therefore not provided the requirements for a grantable petition to change the inventor's name.

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Based on the above, the name-of-record for the third inventor here remains Yoko SAKAMOTO, as set forth in the international application. The declaration filed on 06 February 2003 is therefore defective (on the present record) for failure to properly identify all the inventors herein.

CONCLUSION

The petition under 37 CFR 1.182 to change the inventor's name from Yoko SAKAMOTO to Yoko ODA is **DISMISSED** without prejudice.

Applicants have **TWO (2) MONTHS** from the mail date of this decision to file a renewed petition under 37 CFR 1.182. Such renewed petition must include the required affidavit from the inventor whose name has changed, as discussed above.

Failure to file a timely and proper response will result in abandonment of the application.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

17 MAR 2004

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17 MAR 2004

#9

FOLEY & LARDNER
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3000 K Street, NW
Washington, DC 20007-8696

In re Application of	:	
MAKI, Noboru, et al.	:	
Application No.: 10/343424	:	DECISION ON RENEWED PETITION
PCT No.: PCT/JP01/06947	:	
Int. Filing Date: 10 August 2001	:	
Priority Date: 11 August 2000	:	
Attorney Docket No.: 053466-0348	:	
For: METHOD OF DETECTING OR ASSAYING HBV	:	

In a decision issued by this Office on 26 August 2003, applicants were informed that a petition under 37 CFR 1.182 was required to correct the name of applicant Yoko SAKAMOTO to Yoko ODA, the name in which she executed the filed declaration.

On 23 October 2003, applicant filed the renewed petition considered herein. The petition includes the required statement from the inventor explaining that the name change resulted from marriage and confirming that her current name is Yoko ODA . Applicants had previously been charged the required petition fee. Applicants have therefore now provided all the requirements for a grantable petition.

The petition under 37 CFR 1.182 is **GRANTED**. The name of record for the pertinent inventor is corrected to Yoko ODA. Based on this correction, the declaration filed by applicants on 06 February 2003 is now acceptable under 37 CFR 1.497.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 06 February 2003.

Richard M. Ross
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Paper No.

In re Application of FALCO, TONY
Appl. No.: 10/343,336
Filed: August 25, 2003
For: Method and Apparatus for Lesion Localization, Definition and Verification

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed September 11, 2003, to expunge information from the above identified application.

The petition is granted.

Petitioner requests that a document entitled "MINUTE BOOK E-LYSUM TRANSACTION SYSTEMS, INC., (Volume 1)", filed May 29, 2003, be expunged from the record. The document in question consists of nine pages that are intertwined with one of two copies of European Patent Application 0 647 457 A1 filed as part of an Information Disclosure Statement. Petitioner states that either (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The information in question has been determined by the undersigned to not be material to the examination of the instant application.

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

The paper copy of the expunged material has been removed from the official file and is being returned herewith. The electronic image of the material in question will be removed from the public record of the file.

John E. Kittle

John E. Kittle, Director
Technology Center 3700
Phone (703) 308-0873

Daniels Daniels & Verdonik, P.A.
Suite 200 Generation Plaza
182 N.C. Highway 54 East
Durham, NC 27713

Enclosure: European Patent Application 0 647 457 A1 that includes document titled "MINUTE BOOK E-LYSUM TRANSACTION SYSTEMS, INC., (Volume 1)".

ak 11/5/03

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Paper No. 7

In re Application of FALCO, TONY
Appl. No.: 10/343,336
Filed: August 25, 2003
For: Method and Apparatus for Lesion Localization, Definition and Verification

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed September 11, 2003, to expunge information from the above identified application.

The petition is granted.

Petitioner requests that a document entitled "MINUTE BOOK E-LYSUM TRANSACTION SYSTEMS, INC., (Volume 1)", filed May 29, 2003, be expunged from the record. The document in question consists of nine pages that are intertwined with one of two copies of European Patent Application 0 647 457 A1 filed as part of an Information Disclosure Statement. Petitioner states that either (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The information in question has been determined by the undersigned to not be material to the examination of the instant application.

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

The paper copy of the expunged material has been removed from the official file and is being returned herewith. The electronic image of the material in question will be removed from the public record of the file.

John E. Kittle, Director
Technology Center 3700
Phone (703) 308-0873

Daniels Daniels & Verdonik, P.A.
Suite 200 Generation Plaza
182 N.C. Highway 54 East
Durham, NC 27713

Enclosure: European Patent Application 0 647 457 A1 that includes document titled "MINUTE BOOK E-LYSUM TRANSACTION SYSTEMS, INC., (Volume 1)".

ak 11/5/03

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

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

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OCT 1 2 2004

OFFICE OF PETITIONS

In re Application of	:	
Yingjie Jay Guo et al	:	
Application No. 10/343,343	:	ON PETITION
Filed: January 29, 2003	:	
Attorney Docket No. FUJL 20.054	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 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 non-final Office action mailed February 23, 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 24, 2004.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $950 extension of time submitted with the petition on August 25, 2004 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

The application file is being referred to Technology Center AU 3662.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

AUG 18 2004

In re Application of
John W. Addink *et al*
Application No. 10/343,350
Filed: June 6, 2003
Attorney Docket No. 100302.0045US1

DECISION ON PETITION

This is a decision on the petition to make special filed on August 28, 2003. The $130.00 petition fee has been received.

The petition is granted.

The petition to make special is based upon the existence of an actual infringement. A review of the petition shows that all of the requirements established in MPEP § 708.02(II) for a petition on that grounds have been satisfied. Therefore, petitioner is entitled to have this application handled special in accordance with MPEP § 708.02, subsection styled "Handling of Petitions to Make Special".

Accordingly, the examiner will treat this application as special throughout its prosecution. Prior to the first action on the merits, the examiner will conduct a rigorous search for potentially interfering applications. The interference search will be brought up to date prior to each successive action.

The Supervisory Patent Examiner of Patent Examining Art Unit 3752 is being advised of the granting of the instant petition, and will in turn advise the examiner to whom the application is assigned of the special status of this application and the need for action consistent with this Decision.

PETITION GRANTED.

Stephen Marcus, Special Program Examiner,
Technology Center 3700

Robert D. Fish
Rutan & Tucker LLP
611 Anton Blvd.
14th Floor
Costa Mesa, CA 92626-1931

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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LOWRIE, LANDO & ANASTASI
RIVERFRONT OFFICE
ONE MAIN STREET, ELEVENTH FLOOR
CAMBRIDGE MA 02142

COPY MAILED

JUL 03 2007

OFFICE OF PETITIONS

In re Application of	:	
Jeffrey Alexander Wilmer et al	:	
Application No. 10/343,360	:	DECISION ON PETITION
Filed: September 17, 2003	:	
Attorney Docket No. K0476.70008	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 10, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed June 15, 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 September 16, 2006. A Notice of Abandonment was mailed on December 29, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of a request for continued examination, $790 filing fee, and submission as required by 37 CFR 1.114, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the final Office action of June 15, 2006 is accepted as being unintentionally delayed.

This application is being referred to Technology Center AU 1723 for processing the request for continued examination, which further requests suspension of action for a period of three months.

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

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MICHAEL O. SCHEINBERG
P.O. BOX 164140
AUSTIN TX 78716-4140

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APR 27 2009

OFFICE OF PETITIONS

In re Application of Michael Scheinberg et al. Application No. 10/343,360 Filed: September 17, 2003 Attorney Docket No. K0476-7008	: : : : :	DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 25, 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 Notice of Non-Compliant Amendment mailed, February 26, 2008, which set a shortened statutory period for reply of one (1) month or thirty (30) days whichever is longer. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 27, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a properly identified Drawing Sheet, (2) the petition fee of $1,540, and (3) a proper statement of unintentional delay.

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

The application file indicates a Notice of Acceptance of Power of Attorney was mailed on July 31, 2008 and the address was changed in the application. However at the time of filing of the instant petition the address on the petition was that of the old attorneys of record. Therefore, a courtesy copy of this decision is being mailed to the address noted on the petition. Accordingly, as indicated in the Notice of Acceptance of Power of Attorney all future correspondence will be mailed to address above (address of record).

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to Technology Center AU 1797 for appropriate action by the Examiner in the normal course of business on the reply received.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: Lisa E. Winsor
Lowrie, Lando & Anastai, LLP
Riverfront Office Park
One Main Street, 11th Floor
Cambridge MA 02142

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Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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AUG 2 5 2005

OFFICE OF PETITIONS

Michael Striker
Striker Striker & Stenby
103 East Neck Road
Huntington NY 11743

In re Application of	:	
SAUR et al.	:	DECISION
Application No. 10/343,365	:	ON PETITION
Filed: January 30, 2003	:	
Attorney Docket No. 2425	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 9, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 25, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 26, 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 pursuant to 37 CFR 1.111; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final action of August 25, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Denise Pothier at (571) 272-4787.

The application matter is being forwarded to Technology Center Art Unit 3721.

Brian Hearn, for

Frances Hicks
Petitions Examiner
Office of Petitions

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MAIL

NOV 25 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Paper No. 11

ROBERT D. FISH
RUTAN & TUCKER, LLP
P.O. BOX 1950
611 ANTON BLVD., 14TH FLOOR
COSTA MESA, CA 92628-1950

In re Application of:	)
John ADDINK, et al	) DECISION ON PETITION TO MAKE
Application No.: 10/343,384	) SPECIAL UNDER 37 C.F.R. §1.102(c)
Filed: April 25, 2003	) AND MPEP § 708.02 (IV):
For: MODIFYING IRRIGATION SCHEDULES OF EXISTING IRRIGATION CONTROLLERS	) APPLICANT'S AGE

This is a decision on the petition, filed November 13, 2003, under 37 C.F.R. §1.102(c) and M.P.E.P. §708.02(IV): Applicant's Age, to make the above-identified application special.

A grantable petition to make special under 37 C.F.R. § 1.102 and in accordance with M.P.E.P. § 708.02, Section IV must include a showing, as by a birth certificate or the applicant's statement, that the applicant is sixty five (65) years of age or more. No fee is required for this petition.

The petition includes declaration by John Addink, one of the applicants, asserting that declarant/applicant is sixty five (65) years of age or more.

Accordingly, the petition is **GRANTED.**

The application is being forwarded to the examiner for expedited prosecution and to consider the change of inventorship.

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

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CONNOLLY BOVE LODGE & HUTZ LLP
1875 EYE STREET, N.W.
SUITE 1100
WASHINGTON DC 20036

COPY MAILED

OCT 1 1 2007

OFFICE OF PETITIONS

Applicant: Blamey et al.
Appl. No.: 10/343,396
Filing Date: February 21, 2003
Title: Sound Processing Strategy for Cochlear Implants
Attorney Docket No.: COCH-0036-US1
Pub. No.: US2003/0167077-A1
Pub. Date: September 4, 2003

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), received on December 14, 2006, for the above-identified application.

This is a decision on the request for republication received on May 10, 2007, and the Notice of Acceptance of Publication Request mailed by the Office on May 15, 2007. The Notice of Acceptance of Publication Request is vacated, as the application has already issued as .S. Patent No. 7,171,272 on January 30, 2007.

Applicant requests that the application be republished because the patent application publication contains material errors, as the publication is incorrect.

The request is DISMISSED as moot.

Since the application has already issued as U.S. Patent No. 7,171,272 on January 30, 2007, the request is deemed.

Applicant may make a request for the publication fees previously paid by making a request to MailStop: PGPUB.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/23/06

TO SPE OF : ART UNIT 3661

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/343407** Patent No.: **7072765**

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.

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: _____

_____

_____

_____

_____

Thomas G. Black — 3661

SPE — **Art Unit**

#3

Docket No.: FKLR-0001US PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Roseanne LUTH and Charles T. ROSEN

Serial No.: 10/343,418
Intl. Appln. No. PCT/US01/21123

International Filing Date: July 31, 2001
U.S. Natl. Phase Filing Date: January 31, 2003

Customer No.: 34610

RECEIVED
24 SEP 2003
Legal Staff
International Division

For: MULTI-LAYER SURVEYING SYSTEMS AND METHODS WITH MULTI-LAYER INCENTIVES

RESUBMISSION OF PETITION TO REVIVE

Attn: Mr. Harry Kim, PCT Legal Staff
Mail Stop PCT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant received a Notification of Abandonment dated July 25, 2003. In response to the Notice, Applicant filed a Petition to Revive Unintentionally Abandoned Application, along with refiling the U.S. National Phase application on August 18, 2003. In several telephone conversations with PCT Specialist, Mr. Harry Kim, Mr. Kim located the file for the above-identified application, but determined that the Petition papers had been misplaced. Accordingly, in accordance with Mr. Kim's request, attached are true and correct copies of the following documents that were filed on August 18, 2003:

(1) New Application Return Card date stamped on August 18, 2003 by the U.S. Patent and Trademark Office

(2) Early Serial Number Postcard date stamped on August 18, 2003 by the U.S. Patent and Trademark Office PCT Receiving Office

(3) Check No. 10041 in the amount of $650.00 for the Petition Fee

(4) Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)

(5) Check No. 10040 in the amount of $259.00 for the U.S. National Phase Filing Fee

(6) Transmittal Letter to the U.S. Designated/Elected Office (DO/EO/US) Concerning A Filing Under 35 U.S.C. 371

(7) Authorization to Treat A Reply As Incorporating An Extension of Time Under 37 C.F.R. §1.136(a)(3)

(8) PCT Request

(9) Specification and drawings as filed in the PCT

(10) Declaration and Power of Attorney executed by the inventors

(11) International Search Report

(12) Chapter II Demand

(13) Published Application

(14) International Preliminary Examination Report

(15) Notice Informing the Applicant of the Communication of the International Application to the Designated Offices

(16) Preliminary Amendment

CONCLUSION

Based on the foregoing and the Exhibits attached hereto, it is respectfully requested the Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b) be granted. It is believed that no fees are required for this Resubmission. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
FLESHNER & KIM, LLP

Mark L. Fleshner
Registration No. 34,596
Carl R. Wesolowski
Registration No. 40,372
John C. Eisenhart
Registration No. 38,128

P.O. Box 221200
Chantilly, VA 20153-1200
703 502-9440 MLF/CRW:jld
Date: September 24, 2003

23 DEC 2003
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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Fleshner & Kim, LLP
P.O.Box 221200
Chantilly, VA 20153-1200

In re Application of
Luth et al.
US Application No.: 10/343,418
PCT Application No.: PCT/US01/21123
International Filing Date: 31 July 2001
Priority Date: 31 July 2000
Attorney's Docket No.: FKLR-0001US
For: MULTI-LAYER SURVEYING SYSTEMS AND METHODS WITH MULTI-LAYER INCENTIVES

DECISION ON PETITION FOR REVIVAL UNDER 37 CFR 1.137(b)

The resubmission of petition to revive under 37 CFR 1.137(b), first filed on 18 August 2003 and refiled on 24 September 2003 in the above-captioned application, is hereby **GRANTED** as follows:

On 31 July 2001, Applicants filed international application PCT/US01/21123, which claimed priority of an earlier application filed on 31 July 2000. A demand for international preliminary examination, in which the United States was elected, was filed on 28 February 2002, prior to the expiration of nineteen months from the priority date. The thirty-month period for entering the national stage ended on 31 January 2003.

The basic national fee required by 37 CFR 1.495(b) was not submitted on or before 31 January 2003 (Friday). Accordingly, the international application became abandoned as to the United States on 01 February 2003.

Applicants received a Notice of Abandonment dated 25 July 2003. In response to the Notice, Applicants filed a petition to revive under 37 CFR 1.137(b), along with refiling the U.S. Nation Stage application on 18 August 2003. However, the petition and attached papers were apparently misplaced. Accordingly, Applicants resubmitted the petition to revive on 24 September 2003.

The instant petition is accompanied by:

(1) New Application Return Card date stamped on 18 August 2003 by OIPE;

(2) Early Serial Number postcard date stamped 18 August 2003 by PCT/PTO;

(3) Photocopy of check No. 10041 in the amount of $650.00 for the Petition fee;

(4) Photocopy of check No. 10040 in the amount of $259.00 for the U.S. National Stage filing fee;

(5) Transmittal Letter to the U.S. Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371;

(6) Authorization to Treat a Reply as Incorporating an Extension of Time Under 37 CFR 1.136(a)(3);

(7) PCT Request (PCT/RO/101);

(8) Specification and Drawings as filed in PCT/US01/21123;

(9) Declaration and Power of attorney executed by the inventors;

(10) International Search Report (PCT/ISA/210);

(11) Chapter II Demand (PCT/IPEA/401) with Annex;

(13) Published Application, WO 02/15050;

(14) International Preliminary Examination Report (PCT/IPEA/409);

(15) PCT/IB/308;

(16) Preliminary Amendment;

(17) A statement to the effect that the entire delay in filing the basic national fee from its due date until the filing of the instant petition under 37 CFR 1.137(b) was unintentional.

Moreover, a terminal disclaimer is not applicable in the instant case.

The request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the national stage in the United States of America.

Applicants' claim for priority is acknowledged. The application has an international filing date of 31 July 2001 under 35 U.S.C. 363.

The application is being returned to the National Stage Processing Division of the Office of PCT Operations for continued processing.

Boris Milef
PCT Legal Examiner
PCT Legal Office

David Reip
PCT Legal Detailee
PCT Legal Office
Telephone: 703-308-1315
Facsimile: 703-308-6459

Pet. Dec.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JUL 1 1 2005

td

Mailed:
In re application of :
James E. Hall et al. : DECISION ON
Serial No. 10/343,420 : PETITION
Filed: June 9, 2003 :
For: RUBBER COMPOSITIONS AND VULCANIZATES INCLUDING COMB-BRANCHED POLYMERS

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION mailed November 17, 2004.

The instant petition was filed on February 22, 2005. In the petition, it is urged that the final office action mailed November 17, 2004 was improperly made final.

DECISION

It is noted that the instant application has been allowed. A notice of allowance was mailed on March 18, 2005 thereby making the instant petition moot. Accordingly the petition is **DISMISSED.**

JMStone

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

John M Vasuta
Chief IP Counsel
Bridgestone Americas Holding Inc
1200 Firestone Parkway
Akron OH 44317

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9-3-08 Paper No.: _____

TO SPE OF : ART UNIT 1633

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/343448 Patent No.: 7342002

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

Should claims be entered?

E Blomes
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: _____

JOSEPH WOITACH, PH.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600 SPE

1633
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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MAY 06 2009

OFFICE OF PETITIONS

Foley Hoag, LLP (w/JHV)
World Trade Center West
155 Seaport Blvd
Boston MA 02210-2600

In re Patent No. 7,342,002	:	
Wu et al.	:	DECISION ON REQUEST
Issue Date: March 11, 2008	:	FOR RECONSIDERATION OF
Application No. 10/343,448	:	PATENT TERM ADJUSTMENT
Filed: August 4, 2003	:	
Attorney Docket No. JHV-045.01	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION," filed Monday, May 12, 2008. Patentees request that the Patent Term Adjustment for the above-identified patent be set at 328 days.

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

On March 11, 2008, the above-identified application matured into U.S. Patent No. 7,342,002. The instant request for reconsideration was timely filed on Monday, May 12, 2008. The patent issued with a revised Patent Term Adjustment of 308 days.

Patentees assert that the patent term adjustment should be reduced by 86 days instead of 106 days for filing corrected drawings on November 27, 2007, after the mailing of the notice of allowance. Patentees do not dispute that the filing of the drawings is a proper basis for a reduction under 37 CFR 1.704(c)(10). However, patentees argue that the Office should calculate the period of reduction from the date of submission of the drawings, November 27, 2007, to the mailing date of the Issue Notification, February 20, 2008, instead of the date the patent issued, March 11, 2008.

Patentees' argument has been considered but is not persuasive. Pursuant to 37 CFR 1.704(c):

> (10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or
>
> (ii) Four months

It is clear from the language of 37 CFR 1.704(c)(10) that the period for reduction will end on the mailing date of an Office action or Notice in response to the paper. The Issue Notification is not an Office action or notice in response to the drawings. Moreover, the record reveals that no Office action or notice was mailed in response to the drawings before the issuance of the patent. Therefore, the Office properly reduced the period of adjustment by 106 days, the lesser period of the number of days beginning on the date the drawings were filed, November 27, 2007, and ending on the date the patent issued, March 11, 2008.

The requested patent term adjustment cannot be granted as it is not correct.

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

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1-22-07

TO SPE OF : ART UNIT 2618

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/342171 Patent No.: 7149526

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 Drawings

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: _____

NAY MAUNG
SUPERVISORY PATENT EXAMINER
SPE

2618
Art Unit

03 SEP 2004

#9

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Janice L. Rouse
Pioneer Hi-Bred International, Inc.
Corporate Intellectual Property
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P.O. Box 1000
Johnston, Iowa 50131-1000

In re Application of DANILEVSKAYA, et al. U.S. Application No.: 10/343,477 PCT No.: PCT/US01/43750 Int. Filing Date: 21 November 2001 Priority Date: 28 November 2000 Attorney's Docket No.: DD0014-PCT-US-R For: FLORAL DEVELOPMENT GENES	DECISION ON PETITION UNDER 37 CFR 1.497(d)

This decision is in response to applicant's "Petition to Correct Inventorship Under 1.497(d)(1), 1.17(i) & 1.48(c)" filed 24 June 2003.

BACKGROUND

On 21 November 2001, applicant filed international application PCT/US01/43750, which claimed priority of an earlier application filed 28 November 2000. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 28 May 2003.

On 30 January 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 17 April 2003, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 26 February 2003, applicant filed an unexecuted declaration of the inventors.

On 21 May 2003, applicant was mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) informing applicant that the filed declaration was not

executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68 and that the declaration identified inventors not listed on the published international application. Applicant was afforded one month to respond.

On 24 June 2003, applicant responded with the present petition accompanied by signed statements from the added inventors and the assignees, E.I. du Pont de Nemours and Company and Pioneer Hi-Bred International, Inc.

DISCUSSION

A request under 37 CFR 1.497(d) [formally, 37 CFR 1.48] to correct an error in naming inventorship requires:

(1) a petition including a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part;

(2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.63;

(3) the fee set forth in 37 CFR 1.17(i); and

(4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

As to Item (1), applicant has provided statements from Olga Danilevskaya, Pedro Hermon, Edward Bruggemann, David M. Shirbroun and Evgueni Ananiev declaring that the errors in inventorship occurred without deceptive intent.

Regarding Item (2), applicant has filed a combined declaration and power of attorney executed by the inventors named in the published international application, as well as the added inventors, Olga Danilevskaya, Pedro Hermon, Edward Bruggemann, David M. Shirbroun and Evgueni Ananiev.

As Item (3), applicant has authorized the charging of the $130.00 petition fee to Deposit Account No.: 16-1852.

Regarding Item (4), applicant has provided the written consent of the assignees, E.I. du Pont de Nemours and Company and Pioneer Hi-Bred International, Inc.

As such, applicant has satisfied all four items detailed above and it is proper to grant applicant's petition at this time.

CONCLUSION

For the reasons discussed above, the request under 37 CFR 1.497(d) is **GRANTED**.

A review of the application papers reveals that applicant has now completed all the requirements of 35 U.S.C. 371 for entry into the national stage. This application will be given an international application filing date of 21 November 2001 and a date of **24 June 2003** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: 703-305-0130
Fax: 703-308-6459

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 7, 2006

TO SPE OF : ART UNIT 1732

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/343482 patent No.: 7,094,371

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: _____

Christina Johnson — 1732

SPE — **Art Unit**

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Alexandria, VA 22313-1450
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15 SEP 2003

Robert L. Stearns
5291 Colony Drive North
Saginaw MI 48603

In re Application of	:	
Parker et al.	:	
US Application No.: 10/343,499	:	
PCT Application No.: PCT/GB01/03361	:	DECISION ON PETITION
International Filing Date: 26 July 2001	:	UNDER 37 CFR 1.47(a)
Priority Date: 2 August 2000	:	
Attorney's Docket No.: 1970.3016	:	
For: ENGINE PISTON AND MANUFACTURE	:	

This decision is in response to the "Petition for Filing Application Without All Inventors Signing" filed on 22 April 2003, requesting that Assignee be allowed to file the above-referenced application on behalf of, and as agent for, two non-signing inventors. The petition is being properly treated as a petition under 37 CFR 1.47(a) that three of the five inventors named in the application be allowed to file this application on behalf of themselves and the two non-signing inventors.

BACKGROUND

On 26 July 2001, Applicants filed international application PCT/GB01/03361, which claimed priority of an earlier application filed on 2 August 2000. A copy of the international application was communicated from the International Bureau to the USPTO on 2 February 2002. A demand for international preliminary examination, in which the United States was elected, was filed on 12 February 2002, prior to 2 March 2002, the end of the nineteen-month period from the 2 August 2000 priority date. The period for entering the national stage is thus thirty months and ended at midnight on 2 February 2003.

On 31 January 2003, Applicants filed a transmittal letter for entry into the national stage in the United States (Form PTO-1390), accompanied by, *inter alia*, the $900 basic national fee required by 35 U.S.C. 371(c)(1) and 37 CFR 1.492(a)(5). Although in the 31 January 2003 Form PTO-1390, the box for item 9 (oath or declaration) is checked, an oath or declaration apparently was not filed with the national stage papers on 31 January 2003.

On 7 February 2002, a "Declaration of inventorship (Rules 4.17(iv) and 51*bis*.1(a)(iv)) for the purposes of the designation of the United States of America," signed by the available inventors, was communicated to the USPTO from the International Bureau.

19 MAY 2004

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Robert L Stearns
The Pinehurst Office Center, Suite 101
39400 Woodward Avenue
Bloomfield Hills, MI 48304-5151

In re Application of	:	
PARKER et al.	:	
Application No.: 10/343,499	:	DECISION
PCT No.: PCT/GB01/03361	:	
Int. Filing Date: 26 July 2001	:	
Priority Date: 02 August 2000	:	
Attorney Docket No.: 1970.3016	:	
For: ENGINE PISTON AND MANUFACTURE	:	

This is a decision on applicants' "RENEWED PETITION UNDER 37 CFR 1.47(a)" filed in the United States Patent and Trademark Office (USPTO) on 15 March 2004.

BACKGROUND

On 26 July 2001, applicants filed international application PCT/GB01/03361, which claimed priority of an earlier application filed on 02 August 2000. A copy of the international application was communicated from the International Bureau to the USPTO on 02 February 2002. A Demand for International Preliminary Examination, in which the United States was elected, was filed on 12 February 2002, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 03 February 2003 (02 February 2003 being a Sunday).

On 31 January 2003, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 07 February 2002, a "Declaration of inventorship (Rules 4.17(iv) and 51bis.1(a)(iv)) for the purposes of the designation of the United States of America)" signed by the three of the five inventors was communicated to the USPTO from the International Bureau.

On 22 April 2003, applicants submitted a petition under 37 CFR 1.47(a) requesting that three of the five inventors named in the application be allowed to file this application on behalf of themselves and the two non-signing inventors. The petition was accompanied by, inter alia, three declarations of inventors, each signed by one of the signing inventors.

On 15 September 2003, the USPTO mailed a decision dismissing applicants' petition under 37 CFR 1.47(a) without prejudice. Specifically, it was noted that it was not clear that the non-signing inventor Duncan Parker had been presented with a copy of the entire application

before refusing to join in the application and that a reasonably diligent effort had not been established to locate non-signing inventor David James Tharratt.

On 15 March 2004, applicants submitted the instant renewed petition.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Items (1), (3), and (4) were previously satisfied. Item (2) has now been satisfied regarding Mr. Parker. Applicants have provided a showing that Mr. Parker has been supplied with a complete copy of the application papers. Regarding Mr. Tharrat, a declaration of inventors executed by him was submitted with the renewed petition filed 15 March 2004.

The declarations filed 22 April 2003 and 15 March 2004 satisfy 37 CFR 1.497(a)-(b) and 1.47(a).

CONCLUSION

For the reasons set forth above, applicants' renewed petition under 37 CFR 1.47(a) is **GRANTED**.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application, including the accordation of a 35 U.S.C. §§371(c)(1), (c)(2), and (c)(4) date of **15 March 2004**.

Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (703) 308-2066
Facsimile: (703) 308-6459

19 MAY 2004

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Duncan Parker
Joiners Cottage
The Green
Snitterfield
Stratford-Upon-Avon
Warwickshire CV37 0JG
Great Britain

In re Application of
PARKER et al.
Application No.: 10/343,499
PCT No.: PCT/GB01/03361
Int. Filing Date: 26 July 2001
Priority Date: 02 August 2000
Attorney Docket No.: 1970.3016
For: ENGINE PISTON AND MANUFACTURE

Dear Mr. Parker:

You are named as an inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

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

Daniel Stemmer
PCT Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (703) 308-2066
Facsimile: (703) 308-6459

Robert L Stearns
The Pinehurst Office Center, Suite 101
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Bloomfield Hills, MI 48304-5151

19 MAY 2004

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Duncan Parker
Doris Cottage
61 Banbury Road
Ettington
Stratford-Upon-Avon
Warwickshire CV37 7SR
Great Britain

In re Application of
PARKER et al.
Application No.: 10/343,499
PCT No.: PCT/GB01/03361
Int. Filing Date: 26 July 2001
Priority Date: 02 August 2000
Attorney Docket No.: 1970.3016
For: ENGINE PISTON AND MANUFACTURE

Dear Mr. Parker:

You are named as an inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

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

Daniel Stemmer
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PCT Legal Affairs
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FEB 01 2005

OFFICE OF PETITIONS

RATNERPRESTIA
P O BOX 980
VALLEY FORGE PA 19482-0980

Applicant: Shen et al.
Application No. 10/343,516
International Filing Date: July 31, 2001
For: CONDUCTING REMOTE INSTRUCTOR-CONTROLLED EXPERIMENTATION
Attorney Docket No: RPI-030US
Pub. No.: US 2003/0207243 A1
Pub. Date: November 6, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on November 26, 2004, for the above-identified application.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication includes an error on the front page of the publication as Tor Fjeldly's residence "Oslo (NO) is misprinted as "Oulu (NO)."

37 CFR 1.221(b) states "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." .[1]

The request for corrected publication received on November 26, 2004, was not timely filed under 37 CFR 1.221(b), and has not been considered because it was not timely filed.

The typographical error on the front page of the patent application publication, wherein the inventor's residence "Oslo (NO) is misprinted as "Oulu (NO)." is not clearly an Office error and not a material error under 37 CFR 1.221(b). The mistake is not clearly an Office error, as it is not readily apparent from the Office records, the text as originally filed by Applicant is of a very poor quality and difficult to read. The mistake is a minor typographical error. The mistake does not affect the public's ability to appreciate the technical disclosure of the patent application publication, or determine the scope of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

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

On April 30, 2003, a Filing Receipt was mailed by the Office. To avoid this type of problem in the future, applicants' representative should make a request for a Corrected Filing Receipt using the facsimile number (703-746-9195) on the Filing Receipt.

Applicant's request for a corrected patent application publication on November 26, 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.

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

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

Any request for reconsideration of this decision, should be addressed as follows:

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

By facsimile: (703) 872-9306

Inquires concerning this communication should be directed to Mark Polutta at (571) 272-7709.

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

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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JUL 07 2005

OFFICE OF PETITIONS

In re Patent No. 6,788,620 :
Issue Date: September 7, 2004 :
Application No. 10/434,516 : DECISION ON PETITION
Filed: May 17, 2003 :
Attorney Docket No. 1873.1209US01 :

This is a decision on the petition under 37 CFR 1.183, filed April 8, 2005, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignment information on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **granted**.

The Office finance records indicate that petitioner's Deposit Account was overcharged in the amount of $270.00. Accordingly, Deposit Account No. 13-2725 will be credited the $270.00.

The matter is being referred to the Certificate of Correction Branch to issue the Certificate of Correction.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

[1] See Official Gazette of June 22, 2004

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Ronald R Santucci
Frommer Lawrence & Haug
745 Fifth Avenue
New York, NY 10151

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DEC 0 4 2006
OFFICE OF PETITIONS

In re Application of :
Engelbrecht, et al. :
Application No. 10/343,527 : DECISION ON PETITION
Received: April 24, 2003 :
Docket No.: 930008-2093 :

This is a decision on the petition under 37 CFR 1.181, filed November 15, 2006, to withdraw the holding of abandonment.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit a properly reply to the Office action mailed March 27, 2006. The Notice set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed October 4, 2006.

Petitioners assert that a response to the Office action was timely submitted on September 27, 2006.

The original response received September 29, 2006 has been located in the official application file. The response bears a certificate of mailing date of September 27, 2006 in accordance with 37 CFR 1.8 and is thus deemed to have been timely submitted.

In view of the evidence thereof, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

The application file is being forwarded to Technology Center 1700 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at 571-272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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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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Ronald R Santucci
Frommer Lawrence & Haug
745 Fifth Avenue
New York, NY 10151

Mail Date: 04/22/2010

Applicant	: Jürgen Engelbrecht	: DECISION ON REQUEST FOR
Patent Number	: 7625442	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/343,527	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/24/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1058** 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.

#3

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25 AUG 2003

Baker & Hostetler LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036

In re Application of	:	
Runciman	:	
US Application No.: 10/343,549	:	
PCT Application No.: PCT/ZA00/00091	:	**DECISION ON PETITION**
International Filing Date: 5 May 2000	:	**UNDER 37 CFR 1.181**
Priority Date: 7 May 1999	:	
Attorney's Docket No.: 87256.1500	:	
For: SOUNDERS FOR FIRE ALARM	:	
SYSTEMS	:	

This decision is in response to the "Petition under 37 CFR 1.181 for Entry of Substitute Sheets in Lieu of Originals" filed on 31 January 2003. The petition is **GRANTED** as explained below.

BACKGROUND

On 5 May 2000, Applicant filed international application PCT/ZA00/00091, which claimed priority of an earlier application filed on 7 May 1999. A copy of the international application was communicated from the International Bureau to the USPTO on 16 November 2000. A demand for international preliminary examination, in which the United States was elected, was filed on 1 August 2000, prior to 7 December 2000, the end of the 19th month from the 7 May 1999 priority date. The period for paying the basic national fee is thus 30 months and ended at midnight on 7 November 2001.

The USPTO has no record of the basic national fee for this application being paid on or before 7 November 2001. Accordingly, the international application was abandoned as to the United States on 8 November 2001.

DISCUSSION

The petition, asserting timely filing of the basic national fee, is accompanied by copies of: a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 (Form PTO-1390); and a postcard receipt date-stamped "7 November 2001" by the USPTO.

The postcard identifies the international application by application number and title of invention, and indicates that on 7 November 2001, the USPTO received for this international application a $890 check for paying the basic national fee and a Form PTO-1390. However, there is no evidence in the USPTO of the check or the Form PTO-1390 filed on that day.

CONCLUSION

In view of the above, the basic national fee for this application along with the Form PTO-1390 had been timely filed in the USPTO but was misplaced. Therefore, the international application did not become abandoned as to the United States. The petition is thus **GRANTED**.

The holding of abandonment in the application as to the United States is hereby withdrawn.

No petition fee is owed.

As authorized, the $890 basic national fee required by 35 U.S.C. 371(c)(1) and 37 CFR 1.492(a)(5) has been charged to Deposit Account No. 50-2036.

Applicant's claim for priority is acknowledged. The application has an international filing date of 5 May 2000 under 35 U.S.C. 363.

The application is being returned to the National Stage Processing Division of the Office of PCT Operations for continued processing, including mailing of a Notification of Missing Requirements under 35 U.S.C. 371, requiring an oath or declaration in compliance with 37 CFR 1.497(a)-(b), and the surcharge under 37 CFR 1.492(e).

Leonard Smith
PCT Legal Examiner
PCT Legal Office

RC Tang
Petitions Attorney
PCT Legal Office
Telephone: 703-308-1315
Facsimile: 703-308-6459

26 JUN 2003

#3

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Eric T. Jones
Reising Ethington Barnes Kisselle
Learman and McCulloch
P O Box 4390
Troy, MI 48099-4390

In re Application of	:
MOON et al.	:
Serial No.: 10/343,553	:
PCT No.: PCT/US00/33231	: DECISION ON PETITION
Int. Filing Date: 08 December 2000	:
Priority Date: 08 December 1999	: UNDER 37 CFR 1.137(b)
Attorney's Docket No.: 1374.3001.006	:
For: ELECTRONIC LOCK	:

The petition to revive under 37 CFR 1.137(b) filed 31 January 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that the "the entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

A review of the application file reveals that the basic national fee of $720 has been paid. The required petition fee of $1300 has also been paid. Thus, the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

This application is being forwarded to the United States Designated/Elected Office for further processing including the issuance of a Notification of Missing Requirements indicating that an oath or declaration in compliance 37 CFR 1.497(a) and (b) and the $130 surcharge for filing the declaration after the thirty month period is required.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

11 FEB 2004

#4

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Glaxosmithkline
Corporate Intellectual Property - UW2220
P.O. Box 1539
King of Prussia, PA 19406-0939

In re Application of	:	
BERTHET, Francois-Xavier Jacques, et al.	:	
Application No.: 10/343,561	:	
PCT Application No.: PCT/EP01/08857	:	DECISION ON
International Filing Date: 31 July 2001	:	
Priority Date: 31 July 2000	:	PETITION
Attorney Docket No.: B45260	:	
For: VACCINES COMPRISING	:	UNDER 37 CFR 1.137(b)
OUTER MEMBRANE VESICLES	:	
FROM GRAM NEGATIVE	:	
BACTERIA	:	

Applicant's "Petition For Revival of an International Application For Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)," filed in the United States Patent and Trademark Office on 15 September 2003 is **MOOT**.

BACKGROUND

On 31 July 2001, applicant filed international application number PCT/EP01/08857. On 31 January 2003, applicant filed a transmittal letter for entry into the national stage in the United States, accompanied by, *inter alia,* the international application and the basic national fee.

On 16 April 2003, a "Notification of Missing Requirements Under 35 U.S.C. 371" was mailed to the applicant, requiring that applicant furnish an oath or declaration of the inventors, in compliance with 37 C.F.R. 1.497(a) and (b).

On 15 September 2003, applicant filed an oath or declaration, fees for extension of time, and a petition for revival.

DISCUSSION

On the basis that applicant failed to file fees and documents required by 35 U.S.C. 371(c), "prior to the expiration of the time set in 37 CFR 1.494(b) or (c) or 1.495(b) or (c), as applicable," applicant believes that the application has become abondoned. Particularly, applicant considers the failure to have filed the Demand at the nineteenth month date to have rendered the application abandoned.

Under 37 CFR 1.494(a) and (b), prior to its removal effective on 1 April 2002, applicant, when failing to file the Demand by nineteen months, had a non-extendable twenty months from the priority date to furnish applicant's application materials to the United States Patent and Trademark Office.

The twenty month date was 31 March 2002, which was a Sunday. Hence, according to PCT Rule 80.2, the effective twenty month date is 1 April 2002.

Despite not furnishing the Demand at nineteen months or application materials at twenty months, applicant's application was therefore never abondoned on the grounds of failing to meet the time limit requirements of 37 CFR 1.494, prior to its removal effective on 1 April 2002.

Starting on 1 April 2002, entry to the national stage in the United States is available under 37 CFR 1.495. To prevent abandonment, 37 CFR 1.495(a) requires "[t]he applicant in an international application must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section." Paragraph (b) demands that applicant furnish to the United States Patent and Trademark Office, no later than the expiration of thirty months from the priority date: (1) a copy of the international application; and (2) the basic national fee. The terms of 37 CFR 1.495, as effective on 1 April 2002, are not predicated on filing the Demand.

Applicant furnished applicant's application materials and basic national fee on 31 January 2003, which is thirty months from the priority date, preventing abandonment according to 37 CFR 1.495(b). Moreover, applicant's provision of an oath or declaration and time extension fee meets the time limit requirements of 37 CFR 1.495(c).

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CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **MOOT** as to the National Stage in the United States of America. The application was never abandoned.

The application has an international filing date of 31 July 2001 under 35 U.S.C. §363 and a date of 15 September 2003 under 35 U.S.C. §371(c)(1), (c)(2), and (c)(4). This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.

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02 [illegible] 120.00 DA

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21 APR 2003

#3

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Klarquist Sparkman, LLP
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121 S.W. Salmon Street
Portland, OR 97204-2988

In re Application of REBHOLTZ et al	:	
U.S. Application No.: 10/343,578	:	DECISION
Int. Application No.: PCT/US01/41561	:	
Int. Filing Date: 01 August 2001	:	
Priority Date: 01 August 2000	:	
Attorney Docket No.: 6346-64183	:	
For: SELECTION AND CLONING METHODS	:	

This is in response to the correspondence filed 30 January 2003, which is being treated as a request for status under 37 CFR 1.42. No fee is due.

BACKGROUND

On 01 August 2001, applicant filed international application PCT/US01/41561, which claimed priority of an earlier United States application filed 01 August 2000. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 01 February 2003.

On 30 January 2003, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, inter alia, the basic national fee required by 35 U.S.C. 371(c)(1) and executed declarations.

DISCUSSION

37 CFR 1.42 provides, "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent."

Effective 07 November 2000, 37 CFR 1.497(b)(2) specifies that, where a person making the declaration is the legal representative of a deceased inventor, the declaration shall state the

following: (1) the relationship of the person to the inventor, (2) the facts the inventor would have been required to state, upon information and belief, (3) that the person is the legal representative of the deceased inventor, and (4) the citizenship, residence, and mailing address of the legal representative.

The declarations filed 30 January 2003 are in compliance with 37 CFR 1.42.

CONCLUSION

For the reasons above, the request for status under 37 CFR 1.42 is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 01 August 2001 and a date under 35 U.S.C. 371(c) of 30 January 2003.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
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317 MADISON AVENUE
NEW YORK NY 10017

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JUL 19 2007

OFFICE OF PETITIONS

In re Application of	:	
Wehage et al.	:	DECISION ON PETITION TO
Application No. 10/343580	:	WITHDRAW HOLDING OF
Filed: 05/23/2003	:	ABANDONMENT
Attorney Docket No. HM-505PCT	:	

This is a decision on the petition filed on 25 May, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely reply to the final Office action mailed on 3 October, 2006, which set a three (3)-month shortened statutory period for reply. Notice of Abandonment was mailed on 1 May, 2007.

Petitioners assert that the final Office action mailed on 3 October, 2006, was never received.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53

(November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the Office action was properly mailed to petitioners at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioners' counsel, registered patent attorney Freidrich Kueffner, asserts that no entry for the final Office action was found in counsel's logbook. A copy of the logbook for the period from 2 October through 1 November, 2006, is attached to and referenced in the petition. Additionally, petitioner has stated that a search of the file jacket of the application was performed by counsel, but the Office action was not found.

The petitioners have made a sufficient showing of nonreceipt of the Office action. Accordingly, the holding of abandonment is withdrawn.

The petition is **GRANTED.**

The application file is being referred to the Technology Center's Technical Support Staff for remailing of the final Office action. The period for reply will be reset from the mailing date thereof.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

26 AUG 2003

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#5

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Leslie Meyer-Leon
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Centerville, MA 02632-1210

In re Application of SAUL et al. Application No.: 10/343,582 PCT No.: PCT/US01/24054 Int. Filing Date: 01 August 2001 Priority Date: 01 August 2000 Attorney Docket No.: 0656-018US For: HYGIENE MONITORING	DECISION ON PETITION UNDER 37 CFR 1.182

This decision is in response to applicants' "Petition Pursuant to 37 CFR 1.182 Seeking Change in Name of Inventor" filed on 01 August 2003. Applicants are requesting to change the name of the second named inventor from Cheryl A. Boyer to Cheryl A. Francisco due to marriage. The petition was accompanied by an affidavit signed by Cheryl A. Francisco using both her former name and present name.

DISCUSSION

The Manual of Patent Examining Procedure at § 605.04(c) requires in instances where an inventor has changed his or her name after the application has been filed to submit a petition under 37 CFR 1.182. The petition must include the appropriate petition fee and an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or certified copy of the court order.

The petition has been reviewed and is approved. The declaration submitted on 01 August 2003 is accepted.

CONCLUSION

The petition under 37 CFR 1.182 to change the inventor's name from Cheryl A. Boyer to Cheryl A. Francisco is **GRANTED**. This application is being forwarded to United States/Elected Office for further processing in accordance with this decision. The 35 U.S.C. 371(c) date is **01 August 2003**.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (703) 308-6314
Fax: (703) 308-6459

07 MAY 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

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Diana Hamlet-Cox
Incyte Genomics Inc.
3160 Porter Drive
Palo Alto, CA 94304

In re Application of	:	DECISION ON
Baughn et al.	:	
Application No.: 10/343,593	:	PETITION UNDER
PCT No.: PCT/US01/24382	:	
Int. Filing Date: 03 August 2001	:	37 CFR 1.182
Priority Date: 04 August 2000	:	
For: DRUG METABOLIZING ENZYMES	:	

This is a decision on applicants' "Communication Re: Inventor Name Change" treated as a petition under 37 CFR 1.182, filed with the United States Patent and Trademark Office (USPTO) on 29 January 2003. Applicants request that the application reflect joint inventors Narinder K. Walia and Chandra Patterson's family name changes from Narinder K. Walia to Narinder K. Chawla and from Chandra Patterson to Chandra S. Arvizu. The $130 petition fee was authorized to be paid from applicants' deposit account.

On 29 January 2003, within 30 months from priority date of the international application, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*,: the requisite basic national fee and an executed declaration. The published international application indicated that the inventors/applicants for the United States of America included Narinder K. Walia and Chandra Patterson as named joint inventors.

On 29 January 2003, applicants also filed the instant communication indicating that Chandra Patterson married and changed her family name to Chandra S. Arvizu subsequent to the filing of the international application along with an affidavit signed by Chandra Patterson indicating the reason for the name change. Likewise, the communication indicated that joint inventor Narinder K. Walia married and changed her family name to Narinder K. Chawla subsequent to the filing of the international application along with an affidavit signed by Narinder K. Walia indicating the reason for the name change.

DISCUSSION

As explained in MPEP 605.04(c), applicants must provide a signed affidavit setting forth both names and the procedure whereby the change of name was effected, or a certified copy of

the court order. Here, applicants submitted the statements of Chandra Patterson and Narinder K. Walia regarding their respective change of name. Applicants submitted their respective signed affidavits setting forth the procedure whereby the change of name was effected and identifying both names of applicants, Chandra Patterson to Chandra Arvizu and for Narinder K. Walia to Narinder K. Chawla. Thus, the evidence is sufficient to conclude that Chandra Patterson changed her name by marriage to Chandra Arvizu and Narinder K. Walia changed her name by marriage to Narinder K. Chawla.

CONCLUSION

The petition under 37 CFR 1.182 to change the inventor's name from Chandra Patterson to Chandra Arvizu and for Narinder K. Walia to Narinder K. Chawla is **GRANTED**.

The declaration submitted on 29 January 2003 is acceptable as filed. The application will be forwarded to the United States Designated/Elected Office for further processing. The 35 U.S.C. 371 date is **29 January 2003**.

Applicant is advised that any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: 703-306-5467

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Date : December 9, 2009

Patent No. :7220425
Inventor(s) :Georgy Nikolacvich
Issued :May 22, 2007
Title :METHOD FOR THERAPY OF LIVER TUMORS

Re: Request for Certificate of Correction

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

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

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

A. state that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent;

B. include a request for a certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); and

C. include the processing fee set forth in 37 CFR 1.17(i).

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

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

Applicant has not included items A and or C above, accordingly, the request for Certificate of Correction to add or change the assignee data is dismissed.

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
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

EBC Filing: E-mail to efs@uspto.gov
Electronic Business Center 1-866-217-9197
571-272-4100

Any inquiry concerning this communication should be directed to Ms. A. Green at (703) 308-9380 ext. 123.

Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 308-9390 or (703) 308-1541

Stanley R. Moore
Winstead, P.C.
P.O. Box 50784
Dallas, TX 75250-0784

/arg

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APR 21 2005

OFFICE OF PETITIONS

In re Application of
Alexander Julien VERSTRAETEN
Application No. 10/343,611
Filed: July 24, 2003
Attorney Docket No. 370123.90017

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed January 18, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 7, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 8, 2004. A Notice of Abandonment was mailed on January 14, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of July 7, 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 3673 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

19 MAR 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

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Chad D. Tillman
Morris, Manning & Martin, LLP
6000 Fairview Road, Suite 1125
Charlotte, NC 28210

In re Application of WHEELER et al	:	
U.S. Application No.: 10/343,618	:	
Int. Application No.: PCT/US01/24567	:	DECISION
Int. Filing Date: 06 August 2001	:	
Priority Date: 04 August 2000	:	
Attorney Docket No.: 10399-34399	:	
For: METHOD AND APPARATUS FOR ACCESS	:	
AUTHENTICATION ENTITY	:	

This is in response to applicant's "Request to Withdraw Holding of Abandonment and for Accelerated Examination" filed 17 March 2002, which is being treated as a petition under 37 CFR 1.181. No petition fee is due.

BACKGROUND

On 06 August 2001, applicant filed international application PCT/US01/24567, which claimed priority of an earlier United States application filed 04 August 2000. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 February 2003.

On 03 February 2003, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, a payment of $100.00 towards the basic national fee required by 35 U.S.C. 371(c)(1).

On 05 March 2003, the DO/EO/US mailed a Notice of Abandonment, which indicated that the application is abandoned for failure to supply the full basic national fee.

On 17 March 2003, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

37 CFR 1.496(b) states,

> A national stage application filed under 35 U.S.C. 371 may have paid therein the basic national fee as set forth in § 1.492(a)(4) if it contains, or is amended to contain, at the time of entry into the national stage, only claims which have been indicated in an international preliminary examination report prepared by the United States Patent and Trademark Office as satisfying the criteria of PCT Article 33(1)-(4) as to novelty, inventive step and industrial applicability. Such national stage applications in which the basic national fee as set forth in § 1.492(a)(4) has been paid may be amended subsequent to the date of entry into the national stage only to the extent necessary to eliminate objections as to form or to cancel rejected claims. Such national stage applications in which the basic national fee as set forth in § 1.492(a)(4) has been paid will be taken up out of order. (Emphasis added.)

In the present case, applicant filed a preliminary amendment on 03 February 2003 which canceled all claims which were found by the United States International Preliminary Examining Authority (IPEA/US) to not satisfy one or more of the criteria of novelty, inventive step, and industrial applicability, as defined in PCT Article 33(1)-(4). Accordingly, applicant supplied the requisite basic national fee set forth in 37 CFR 1.492(a)(4).

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is GRANTED.

The Notice of Abandonment mailed 05 March 2003 is hereby VACATED.

The application has an International Filing Date of 06 August 2001 and a date under 35 U.S.C. 371(c) of 03 February 2003.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

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

Bryan Tung
PCT Legal Examiner
PCT Legal Office

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11 FEB 2004

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In re Application of WHEELER et al.	:	
U.S. Application No.: 10/343,618	:	
Int.. Application No.: PCT/US01/24567	:	DECISION ON
Int. Filing Date: 06 August 2001	:	
Priority Date: 04 August 2000	:	PETITION
Attorney Docket No.: 10399-34399	:	
For: METHOD AND APPARATUS FOR	:	UNDER 37 CFR 1.181
ACCESS AUTHENTICATION ENTITY	:	

This is a decision in response to applicant's letter of July 28, 2003, which is being treated as a petition under 37 CFR 1.181.

BACKGROUND

On 03 February 2003, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, a payment of $100.00 towards the basic national fee required by 35 U.S.C. 371(c)(1) and a preliminary amendment which canceled claims 1 – 51, 61 – 113 and 116 – 120.

On 05 March 2003, the DO/EO/US mailed a Notice of Abandonment, which indicated that the application is abandoned for failure to supply the full basic national fee.

A petition for withdrawal of the holding of abandonment was filed on 17 March 2003. In a Decision on Petition mailed on 19 March 2003: the request for withdrawal of the holding of abandonment was granted; the 05 March 2003 Notice of Abandonment was vacated; and the application was forwarded to DO/EO/US "for further processing in accordance with this decision."

On 24 April 2003 a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 and 37 CFR 1.495 (Form DO/EO/903) was mailed which indicated that additional claim fees of $3,684.00 were due in this application ($1,848 for a total of 32 independent claims

over 3 and $ 1836 for total claims over 20). In addition, a Filing Receipt was also mailed on 24 April 2003 which indicated a total of 122 claims present in this application with a total of 35 independent claims.

On 28 July 2003, applicant filed the present petition requesting a corrected Filing Receipt and Notice of Acceptance Under 35 U.S.C. 371 and 37 CFR 1.495.

DISCUSSION

The processing in DO/EO/US does not appear to have been in accordance with the decision on petition mailed on 19 March 2003. This decision concluded that applicant had supplied the requisite basic national fee on 03 February 2003 and directed that the application be processed with a date under 35 U.S.C. 371(c) of 03 February 2003.

The NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 and 37 CFR 1.495 (Form DO/EO/903) and the Filing Receipt both indicate an incorrect number of claims in this application. The correct number of claims (after consideration of the preliminary amendment filed on 03 February 2003) is 13 independent claims and no dependent claims.

DECISION

For the reasons discussed above, applicant's petition is **GRANTED**.

The 24 April 2003 NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 and 37 CFR 1.495 (Form DO/EO/903) is **VACATED**. A new Notice will be issued. A corrected Filing Receipt will also be issued, indicating the presence of 13 independent claims in this application.

This application has an International Filing Date of 06 August 2001 and a date under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) of 03 February 2003.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Any further correspondence with respect to this mater should be addressed to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.

Richard Cole
PCT Legal Examiner
PCT Legal Office

Paul A. Bell
PCT Special Programs Examiner
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6000 FAIRVIEW ROAD
CHARLOTTE NC 28210

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OFFICE OF PETITIONS

In re Application of	:	
Lynn H. WHEELER et al.	:	
Application No. 10/343,618	:	DECISION ON PETITION
Filed: February 03, 2003	:	
Attorney Docket No. 10399-34399	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 21, 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, October 04, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 05, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1540, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) 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. The request for a change of correspondence address filed with the instant petition is improper as no power of attorney has been given to petitioner. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

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

This application is being referred to Technology Center AU 2137 for appropriate action on the concurrently filed amendment.

David Bucci
Petitions Examiner
Office of Petitions

cc: **MORRIS, MANNING AND MARTIN, LLP**
1600 ATLANTA FINANCIAL CENTER
3343 PACHTREE ROAD, N.E.
ALANTA, GA 30326

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

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JUL 10 2009

OFFICE OF PETITIONS

Rogalsky & Weyland, LLP
P.O. Box 44
Livonia, NY 14487-0044

In re Application of
Simon Dowler et al.
Application No. 10/343,663
Filed: September 5, 2003
Attorney Docket No. 002.00220

DECISON ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 6, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to file a proper reply in a timely manner to the non-final Office action mailed June 18, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 19, 2008. A Notice of Abandonment was mailed on January 29, 2009.

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

The form PTO/SB/64 indicates that the response submitted with the instant petition is in the form of a continuation application; however, the papers filed with the instant petition and purporting to be a continuing application do not constitute a complete application within the meaning of 37 CFR § 1.53(b).

37 CFR § 1.53(b) states, in pertinent part:

"Application filing requirements – Nonprovisional application. The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. § 112 containing a description pursuant by § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office.

As such, petitioner will not obtain the desired copendency of applications until papers meeting the minimum requirements of 37 CFR § 1.53(b) to obtain a filing date are received by the Office.

Application number 12/383,942 has been assigned to the papers accompanying the instant petition. Any papers attempting to comply with 37 CFR § 1.53(b) should be addressed to the '942' application. Any reply to the instant decision in the form of a renewed petition should be directed to parent file 10/343,663.

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

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

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

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

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

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Knobbe, Martens, Olson & Bear, LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

In re Application of	:	
Simon Dowler et al.	:	DECISON ON PETITION
Application No. 10/343,663	:	
Filed: September 5, 2003	:	
Attorney Docket No. 002.00220		

This is a decision on the renewed petition under 37 CFR 1.137(b), filed July 30, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a proper reply in a timely manner to the non-final Office action mailed June 18, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 19, 2008. A Notice of Abandonment was mailed on January 29, 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 continuing application under 37 CFR 1.53(b), (2) the petition fee of $1,620 and (3) a proper statement of unintentional delay. Accordingly, the filing of a continuing application under 37 CFR 1.53(b) is accepted as being unintentionally delayed.

The petition decision mailed July 10, 2009, dismissed the petition filed April 6, 2009 for failure to provide a proper reply. The renewed petition includes a proper reply.

The application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the application, the application is again abandoned in favor of a continuing application under 37 CFR 1.53(b).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

Carl Friedman
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 NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/343,663	09/05/2003	Simon Dowler	ERP05.000GEN

CONFIRMATION NO. 6086

POA ACCEPTANCE LETTER

20995
KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

OC000000038692134

Date Mailed: 11/10/2009

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/30/2009.

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

/kainabinet/

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

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OFFICE OF PETITIONS

Knobbe, Martens, Olson & Bear, LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

In re Application of :
Simon Dowler et al. :
Application No. 10/343,663 :
Filed: September 5, 2003 :
Attorney Docket No. 002.00220

DECISON ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed July 30, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a proper reply in a timely manner to the non-final Office action mailed June 18, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 19, 2008. A Notice of Abandonment was mailed on January 29, 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 continuing application under 37 CFR 1.53(b), (2) the petition fee of $1,620 and (3) a proper statement of unintentional delay. Accordingly, the filing of a continuing application under 37 CFR 1.53(b) is accepted as being unintentionally delayed.

The petition decision mailed July 10, 2009, dismissed the petition filed April 6, 2009 for failure to provide a proper reply. The renewed petition includes a proper reply.

The application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the application, the application is again abandoned in favor of a continuing application under 37 CFR 1.53(b).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

Carl Friedman
Petitions Examiner
Office of Petitions

15 JUN 2004

#9

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Stephen P. McNamara
St. Onge Steward Johnston & Reens, LLC
986 Bedford Street
Stamford, CT 06905-5619

In re Application of POTTER, et al. U.S. Application No.: 10/343,667 PCT No.: PCT/GB01/03440 Int. Filing Date: 21 July 2001 Priority Date: 04 August 2000 Attorney Docket No.: 9575.US For: NAADP ANALOGUES FOR MODULATING T-CELL ACTIVITY	DECISION ON PETITION UNDER 37 CFR 1.181

This decision is in response to applicant's "Petition to Withdraw Holding of Abandonment (37 CFR 1.181(a))" filed 14 October 2003.

BACKGROUND

On 21 July 2001, applicant filed international application PCT/GB01/03440, which claimed priority of an earlier application filed 04 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 14 February 2002. The deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 04 February 2003.

On 03 February 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by a declaration of the inventors, an Information Disclosure Statement and a First Preliminary amendment.

On 14 August 2003, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that applicant had failed to provide the full U.S. Basic National Fee by 30 months from the priority date and that above-identified application was abandoned as to the United States.

On 14 October 2003, applicant filed the present petition to withdraw the holding of abandonment.

DISCUSSION

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of the date-stamped postcard receipt. The postcard identifies the application by title, applicants and international application number. Among the items listed on the receipt is "credit card form PTO-2038" The postcard is stamped "DT17 Rec'd PCT/PTO 03 FEB 2003." The evidence is sufficient to establish that the credit card form containing payment of the U.S. Basic National Fee for this application was received in the USPTO on 03 February 2003. It appears that the form was misplaced during the transition of receipt of papers to their processing in the Designated/Elected Office.

It is noted that an examination of the combined declaration and power of attorney filed 03 February 2003 finds that the document does not comply with 37 CFR 1.497(a)-(b). The Manual of Patent Examination Procedure (MPEP) states at section 201.03: "An oath or declaration under 37 CFR 1.63 by each actual inventor must be presented. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration." The filed declaration contains four signature pages listing and signed individually by inventors Potter, Guse, Mayr and Berg. It appears that the filed declaration was assembled from numerous declarations or the inventors only returned the signature pages, either alternative renders he declaration non-compliant. Applicant will be afforded two months to file a compliant oath or declaration of the inventors.

For the reasons stated above, it is proper to **GRANT** applicant's petition at this time.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

As authorized the Basic National fees will be charged to Deposit Account No.: 19-4516.

The NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) mailed 14 August 2003 is hereby **VACATED**.

A compliant oath or declaration of the inventors as discussed above must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

03 SEP 2004

#11

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Stephen P. McNamara
St. Onge Steward Johnston & Reens, LLC
986 Bedford Street
Stamford, CT 06905-5619

In re Application of	:	
POTTER, et al.	:	
U.S. Application No.: 10/343,667	:	
PCT No.: PCT/GB01/03440	:	COMMUNICATION
Int. Filing Date: 21 July 2001	:	
Priority Date: 04 August 2000	:	
Attorney Docket No.: 9575.US	:	
For: NAADP ANALOGUES FOR MODULATING	:	
T-CELL ACTIVITY	:	

This communication is in response to applicant's "Response to Petition Decision of June 15, 2004" filed 18 August 2004.

BACKGROUND

On 15 June 2004, applicant was mailed a decision granting applicant's petition under 37 CFR 1.181 to withdraw the holding of abandonment. Applicant was advised that the filed declaration did not comply with 37 CFR 1.497(a)-(b) and afforded two months to file a compliant oath or declaration of the inventors.

On 18 August 2004, applicant filed the present response including a new combined declaration and power of attorney. Applicant has certified pursuant to 37 CFR 1.8 that the response was deposited for mailing on 13 August 2004 and thus is considered to be timely filed.

DISCUSSION

Applicant's response is defective. An examination of the combined declaration and power of attorney filed 18 August 2004 finds that the document does not comply with 37 CFR 1.497(a)-(b). As detailed in the decision of 15 June 2004, the Manual of Patent Examination Procedure (MPEP) states at section 201.03: "An oath or declaration under 37 CFR 1.63 by each actual inventor must be presented. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. **Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration.**" The filed declaration contains three copies of "page 3." Inventor Guse executed a declaration on 04 August 2004 while inventors Mayr and Berg executed declarations on 20 July 2004. Thus, it is clear that the filed declaration

was assembled from numerous declarations or the inventors only returned the signature pages, either alternative renders the declaration non-compliant.

CONCLUSION

A compliant oath or declaration of the inventors as discussed above must be filed within **ONE (1) MONTH** from the mail date of this decision or within the response period provided in the decision mailed 15 June 2004. (Two months extendable an additional five months pursuant to 37 CFR 1.136(a) accompanied by the appropriate extension of time payment.) Failure to provide a complaint oath or declaration of the inventors within these time frames will result in abandonment of the application as to the United States of America.

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

18 NOV 2004

#13

UNITED STATES PATENT AND TRADEMARK OFFICE

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Stephen P. McNamara
St. Onge Steward Johnston & Reens, LLC
986 Bedford Street
Stamford, CT 06905-5619

In re Application of	:	
POTTER, et al.	:	
Application No.: 10/343,667	:	
PCT No.: PCT/GB01/03440	:	
Int. Filing Date: 21 July 2001	:	COMMUNICATION
Priority Date: 04 August 2000	:	
Attorney Docket No.: 9575.US	:	
For: NAADP ANALOGUES FOR MODULATING	:	
T-CELL ACTIVITY	:	

This communication is in response to applicant's correspondence filed 27 September 2004 in the United States Patent and Trademark Office (USPTO).

On 03 September 2004, applicant was mailed a communication indicating that the filed declaration failed to comply with 37 CFR 1.497(a)-(b). Applicant was afforded one month to file a proper reply.

On 27 September 2004, applicant filed the present response.

A review of the filed declaration finds that the previous errors have been rectified. As such, it is proper for National stage processing to continue.

The application will be given an international filing date of 21 July 2001 under 35 U.S.C. 363 and a date of **27 September 2004** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the United States Designated/Elected Office (US/DO/EO) for further processing in accordance with this decision, namely the issuance of a "Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495" (Form PCT/DO/EO/903) indicating a 371 date as detailed above.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3294
Fax: (571) 273-0459

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NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

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JUL 21 2006

OFFICE OF PETITIONS

In re Application of	:	
Hedman et al.	:	
Application No. 10/343,681	:	DECISION ON PETITION
Filed: June 12, 2003	:	TO WITHDRAW
Attorney Docket No. 1916-48	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 10, 2006.

The request is **NOT APPROVED**.

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

The request cannot be approved because there remains less than 30 (thirty) days between the date of this decision and the maximum extendable time period for filing a response to the Office action mailed on January 30, 2006.

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

Telephone inquiries concerning this decision should be directed to Petitions Examiner Liana Chase at 571-272- 3206. All other inquiries should be directed to the Technology Center.

David Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 5, 2006

TO SPE OF : ART UNIT 1633

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/343692 Patent No.: 7,115,360 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: _____

_____

_____

_____

_____

SPE — 1633 Art Unit

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8000 TOWERS CRESCENT DRIVE, 14TH FLOOR
VIENNA, VA 22182-6212

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OCT 08 2008

OFFICE OF PETITIONS

In re Application of	:	
HURTTA, et al.	:	
Application No. 10/343,706	:	DECISION GRANTING PETITION
Filed: September 8, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 060282.00309	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 3, 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 September 23, 2008 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2616 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

Monica A. Graves
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.*

22 APR 2005

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Donald D. Evenson
Crowell & Moring, LLP
Intellectual Property Group
P.O. Box 14300
Washington, D.C. 20044-4300

In re Application of :
PFANNEN-MUELLER et al. :
Serial No.: 10/343,712 :
PCT No.: PCT/EP01/08807 : DECISION
Int. Filing Date: 30 July 2001 :
Priority Date: 01 August 2000 :
Atty. Docket No.: 056226/51857US :
For: ALUMINUM-BASED ALLOY AND METHOD OF FABRICATION OF SEMIPRODUCTS THEREOF

This decision is in response to applicants' "Petition to Withdraw Notification of Abandonment under 37 CFR 1.181" filed 14 September 2004. No petition fee is required.

BACKGROUND

On 30 July 2001, applicants filed international application no. PCT/EP01/08807 which claimed a priority date of 01 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 07 February 2002. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 03 February 2003.

On 03 February 2003, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a translation of the international application; a preliminary amendment; and an application data sheet.

On 06 March 2003, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) and a Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917) indicating that the declaration was not in compliance with 37 CFR 1.497(a) and (b), and that a new oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required.

On 03 November 2003, applicants filed "Status Request."

On 19 November 2003, applicants filed an executed declaration and power of attorney which included a "Request to Reset Period for Reply Due to Late Receipt of Notification."

On 03 May 2004, applicants filed "Status Request."

On 12 August 2004, the Office PCT Legal Administration responded to applicants' status request(s) indicating that the above identified application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 06 March 2003 within the time period set therein.

On 14 September 2004, applicants filed the present "Petition to Withdraw Notification of Abandonment under 37 CFR 1.181."

On 12 October 2004, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 06 March 2003 within the time period set therein.

On 09 December 2004, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 06 March 2003 within the time period set therein.

DISCUSSION

The above-identified application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 06 March 2003, in that, an oath or declaration had not been submitted within the time period set therein. Applicants state in the present petition, "the U.S. PTO erred by sending the Notification of Missing Requirements to an incorrect address, not the address associated with representative Customer no. 23911, as shown in the Application Data Sheet."

37 CFR 1.76(d)(2) states,

> The information in the application data sheet will govern when the inconsistent information is supplied at the same time by an amendment to the specification, a designation of correspondence address, or a §1.63 or §1.67 oath or declaration . . .

Although the Transmittal Letter (Form PTO-1390), executed by Donald D. Evenson, indicated the correspondence address as "1200 G Street, N.W., Suite 700, Washington, D.C. 20005," the Patent and Trademark should have mailed all correspondences to the customer number listed on the application data sheet, not the transmittal letter (form PTO-1390). Therefore, applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181 is granted.

The correspondence address will be corrected in the PALM Database to read: Crowell & Moring, LLP, Intellectual Property Group, P.O. Box 14300, Washington, D.C., 20044-4300.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **GRANTED**.

Applicants' "Request to Reset Period for Reply Due to Late Receipt of Notification" filed 19 November 2003 is dismissed as moot.

The Notification of Abandonment mailed on 12 October 2004 and 09 December 2004 are hereby vacated.

The application has an international filing date of 30 July 2001 under 35 U.S.C. 363 and a 35 U.S.C. 371(c) date of **19 November 2003**.

This application is being returned to the United States/Elected Office for processing in accordance with this decision.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: 571-272-3298
Fax: 571-273-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

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

12 SEP 2003

Oliff & Berridge, PLC
PO Box 19928
Alexandria, VA 22320

In re Application of	:	
Moyes et al.	:	
US Application No.: 10/343,713	:	
PCT Application No.: PCT/GB01/03491	:	
International Filing Date: 02 August 2001	:	DECISION ON PETITION
Priority Date: 04 August 2000	:	UNDER 37 CFR 1.47(a)
Attorney's Docket No.: 114894	:	
For: SYSTEM AND METHODS FOR	:	
MONITORING ITEMS	:	

This decision is in response to the "Petition under 37 CFR 1.47(a)" filed on 13 August 2003, which is being **DISMISSED** as follows.

BACKGROUND

On 02 August 2001, Applicants filed international application PCT/GB01/03491, which claimed priority of an earlier application filed on 04 August 2000. A copy of the international application was communicated from the International Bureau to the USPTO on 14 February 2002. The period for paying the basic national fee is 30 months and ended at midnight on 04 February 2003.

On 03 February 2003, Applicants filed a transmittal letter for entry into the national stage in the United States (Form PTO-1390), along with, *inter alia*, the $900 basic national fee required by 35 U.S.C. 371(c)(1) and 37 CFR 1.492(a)(5), but not an oath or declaration.

On 14 March 2003, a "Notification of Missing Requirements under 37 CFR 371 in the United States Designated/Elected Office (DO/EO/US)" (Form PCT/DO/EO/905) was mailed, stating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was missing, and requesting submission of such an oath or declaration within the later of 2 months from the mailing date of the notification, or, 32 months from the priority date.

The instant petition then followed, accompanied by a request for a 3-month extension of time and the requisite extension-of-time fee. The petition asserts that the non-signing inventor, Jeremy Paul MOYES, refused to join in the application.

DISCUSSION

A petition under 37 CFR 1.47(a) must include (1) the $130 petition fee required by 37 CFR 1.17(h); (2) a statement of facts showing that the non-signing inventor(s) refused to join in the application or cannot be reached after diligent effort; (3) the last known address of the non-signing inventor(s); and (4) an oath or declaration executed by each available inventor on behalf of his or her own behalf as well as the non-signing inventor(s).

The petition encloses the $130 petition fee (item (1)) and Jeremy Paul MOYES' last known address (item (3)).

As to item (4), the instant petition indicates enclosure of a declaration signed by the available inventor. However, the Office was only able to locate 2 unexecuted declarations filed with the petition, presented in Exhibits A and B as copies of the blank declarations mailed to Jeremy Paul MOYES for signature.

Also, the requirements in item(2) have not been met. The petition and the accompanying "Declaration of Derek M. Wallace under 37 CFR 1.47" set forth that:

(A) A copy of the application, a declaration, and an assignment document had been mailed to Jeremy Paul MOYES at the latter's last known address on 03 April 2003, and were subsequently confirmed to have been delivered to that address;

(B) A phone call made on 25 July 2003 to, apparently, the last known telephone number of Jeremy Paul MOYES revealed that Jeremy Paul MOYES did not reside at the address corresponding to that telephone number;

(C) As of 28 July 2003, when this statement of facts by Derek M. Wallace was executed, Jeremy Paul MOYES did not respond concerning the papers mailed to his last known address.

While the application papers might have been mailed in April of 2003 to Jeremy Paul MOYES' last known address, there is no evidence that any effort was made to confirm that he indeed received the papers. In fact, the copy of delivery confirmation submitted with the petition indicates that the papers mailed on 03 April 2003 to Jeremy Paul MOYES' last known address were received and signed by a person named "A.J. Salmon."

Moreover, there is no showing that a reasonably diligent effort was made to locate Jeremy Paul MOYES through, e.g., Internet search, after it had been discovered that Jeremy Paul MOYES no longer resided at the address associated with his last known telephone number. MPEP 409.03(d) (Rev. 1, Feb. 2003).

CONCLUSION

In view of the above, the petition is **DISMISSED without prejudice.**

To avoid abandonment of this application, **either of** the following must be filed within **TWO MONTHS** of the mailing date of this decision:

(I) An oath or declaration in compliance with 37 CFR 1.497(a) and (b);

(II) A renewed §1.47(a) petition (no petition fee) that includes a proper oath or declaration signed by the available inventor, and meets the requirements of item (2) as stated above.

The 2-month period may be extended under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to:

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
PO Box 1450
Alexandria, VA 22313-1450

Boris Milef
PCT Legal Examiner
PCT Legal Office

RC Tang
Petitions Attorney
PCT Legal Office
Telephone: 703-308-1315
Facsimile: 703-308-6459

24 FEB 2004

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OLIFF & BERRIDGE
P.O. BOX 19928
ALEXANDRIA, VA 22320

In re Application of MOYES et al. Application No.: 10/343,713 PCT No.: PCT/GB01/03491 Int. Filing: 02 August 2001 Priority Date: 04 August 2000 Attorney Docket No.: 114894 For: SYSTEM AND METHODS FOR MONITORING ITEMS	DECISION ON RENEWED PETITION UNDER 37 CFR 1.47(a)

This is a decision on applicant's Response to Notification of Missing Requirements, treated as a renewed petition under 37 CFR 1.47(a), which was filed in the United States Patent and Trademark Office (USPTO) on 12 January 2004. Applicant requests a two month extension of time, which is granted.

On 13 August 2003, applicants, in response to 14 March 2003 Notification of Missing Requirements, filed a petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4), requesting the acceptance of the application without the signature of inventor, Jeremy P. Moyes. On 12 September 2003, a decision dismissing the petition was issued.

On 12 January 2004, applicant filed the instant Response to Notification of Missing Requirements including two complete declarations, each executed by joint inventors Jeremy Paul Moyes and Heiko Olaf Haasler respectively. The declarations are in compliance with 37 CFR 1.497. The $130 surcharge for filing the declaration after the 30 month period has been paid.

With the filing of the executed declarations, the petition under 37 CFR §1.47(a) is **MOOT**. The application will be forwarded to the U.S. Designated/Elected Office for further processing. The 35 U.S.C. 371 date is **12 January 2004.**

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

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KEATING & BENNETT LLP
8180 GREENSBORO DRIVE, SUITE 850
McLEAN, VA 22102

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OCT 20 2005

OFFICE OF PETITIONS

In re Application of	:
Masaru Yata	:
Application No. 10/343,715	: DECISION GRANTING PETITION
Filed: June 11, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. June 11, 20034	:

This is a decision on the petition, filed October 18, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 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 2817 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 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).*

UNITED STATES DEPARTMENT OF COMMERCE
COMMISSIONER FOR PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

Date	: 10/21/2009
Patent No.	: 7,569,351 B2
Serial No.	: 10/343,733
Inventor(s)	: Nakamura et al.
Issue Date	: August 4, 2009
Title	: **P53 DEPENDENT APOPTOSIS-ASSOCIATED GENE AND PROTEIN**
Doc./File No.	: **2144.0050000/RWE**

Re: Certificate of Correction

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

Respecting the alleged error(s) in your request It is the practice to exclude words such as "A", "IMPROVED", "IMPROVEMENTS IN," "NEW", or "NOVEL" as the first word in the title of the invention. Therefore, no correction is in order here under Rule 1.322 or 1.323.

In column 53, line 4, the alleged amendment cannot be located, it appears that it has been misplacd and not entered into record. You may fax or email a copy copy of that amendment fa no. 571 270-9943.

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

Future correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (703) 756-1590
ernest.white@uspto.gov
Mary F. Diggs, *Supervisor* (703) 756-1580
Decisions & Certificates of Correction Branch

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

ecw

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OFFICE OF PETITIONS

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

In re Patent No. 7,569,351	: DECISION ON REQUEST FOR
Nakamura et al.	: RECONSIDERATION OF PATENT
Issue Date: August 4, 2009	: TERM ADJUSTMENT and
Application No. 10/343,733	: NOTICE OF INTENT TO ISSUE
Filing or 371(c) Date: May 19, 2003	: CERTIFICATE OF CORRECTION
Attorney Docket No.	:
2144.00500000/RWE	:
Title: A P53 Dependent Apoptosis-	:
Associated Gene and Protein	:

This is a decision on the "Request for Reconsideration of Patent Term Adjustment under 37 C.F.R § 1.705(d)", filed September 14, 2009. Patentees request the final Patent Term Adjustment calculation to increase from 25 days to 463 days.

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

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one hundred twenty-nine (129) days**.

The above-identified application matured into U.S. Patent No. 7,569,351 on August 4, 2009. The patent issued with a patent term adjustment of 25 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See, 37 CFR 1.705(d).

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 maintain that the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), 482 days, does not overlap with the 333 day period of adjustment due to examination delay, pursuant to 37 CFR §1.702(a), as these periods do not occur on

the same day. Thus, patentees request that the determination of patent term adjustment be increased to a total of four hundred sixty-three (463 days (the sum of the period of three-year delay (482 days) and the period of examination delay (333 days) less 352 days of applicant delay). Patentees do not dispute the 352-day reduction for applicant delay.

As stated in 37 CFR 1.703(b), the period of adjustment under § 1.702(b) is the number of days in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the periods under § 1.703(b)(1)-(4). While the date of completion of all 35 U.S.C. 371 requirements, May 19, 2003, is the date used in calculating examination delay under 37 CFR 1.703(a), the date the national stage commenced under 35 U.S.C. 371(f), Monday, February 3, 2003, is used in determining the Three Year Delay under 37 CFR 1.703(b).

National stage commenced February 3, 2003. Thus, at the time of filing of the request for continued examination on May 31, 2007, the application was pending three years and 481 days (from February 4, 2006 to May 30, 2007). At issue is whether patentees should accrue 481 days of patent term adjustment for the Office taking in excess of three years to issue the patent, as well as 333 days for Office failure to take certain actions within specified time frames (or 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 national stag commenced 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 national stage commenced, February 3, 2003, to May 30, 2007, the day before filing of the RCE on May 31, 2007. 333 days of patent term adjustment were accorded prior to the issuance for Office delay pursuant to 37 CFR §1.702(a)(1). Entry of both 481 days pursuant to 37 CFR §1.702(b) and 333 days pursuant to 37 CFR §1.702(a) is neither permitted nor warranted. The Office did not delay 333 days and then delay another 481 days. The greater period, 481 days, is the actual number of days issuance of the patent was delayed by the Office. Accordingly, at issuance the Office should have entered an additional 148 days instead of 44 days of patent term adjustment for taking in excess of three months to issue the patent for a total Office delay of 481 days.

Thus, at the time of issuance, the patent was entitled to an overall adjustment of 129 days (481 days of adjustment less 352 days of applicant delay).

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e).

Patentees are given THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer, from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one hundred twenty-nine (129) days.**

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant, at (571) 272-3215.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,569,351 B2

DATED : August 4, 2009

INVENTOR(S) : Nakamura 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 (25) days

Delete the phrase "by 25 days" and insert – by 129 days--

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TEN SOUTH FIFTH STREET
MINNEAPOLIS MN 55402

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JAN 12 2007

OFFICE OF PETITIONS

In re Application of	:	
Jackson, David P.	:	
Application No. 10/343,734	:	ON PETITION
Filed: January 30, 2003	:	
Attorney Docket No. D01.12-08	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 4, 2006, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to Technology Center 1700 for further examination on the merits.

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

Liana Walsh
Petitions Examiner
Office of Petitions

Drodge, Joseph

From: McRobbie, Craig A. [CAM@bskb.com]
Sent: Tuesday, March 10, 2009 11:42 AM
To: Drodge, Joseph
Cc: McRobbie, Craig A.; Lane, Kimberly M.
Subject: Examiner's Amendments for 10/343,735 and 12/068,185
Attachments: Claims for Examiner's Amendment in 12-068,185.doc; Claims for Examiner's Amendment in 10-343,735.doc

Dear Examiner Drodge:

Pursuant to recent communication, the Applicant would like agree to your proposed amendments. To facilitate entry, attached please find two Word documents (one for each application), wherein the amendments to the claims are clearly set forth.

In order to better understand the "new" claims added to each claim set I have included a slight annotation for each claim to explain the origin of the claim language. This can be removed from the final Examiner's Amendment.

It is understood that this email and these attachments will be entered on the record.

Please confirm receipt.

Sincerely, Craig A. McRobbie (Reg. No. 42,874)

From: Drodge, Joseph [mailto:Joseph.Drodge@USPTO.GOV]
Sent: Wednesday, March 04, 2009 4:32 PM
To: Lewis, Paul
Subject: RE:

Applicant's representative Paul Lewis requested e-mail correspondence concerning prosecution of these applications during a telephonic interview initiated on 3-4-2009.

It is acknowledged and recognized that E-mail communication is not secure and may be made of record, under Patent Internet Usage Policy Article 5.

12/068,185 is docket 1617-0106PUS3 AND 10/343,735 is docket 1617-0106PUS2. In general, affadavits were persuasive concerning membrane properties when taken together with other method or apparatus features specifically directed to forward osmosis/pressure retarded osmosis or features facilitating such process.

Additional searching was also conducted concerning membranes utilized for reverse osmosis & desalination and properties of porosity, water permeability & salt permeability in particular and found the following: McLain et al patent 3,423,491; Cantor et al patent 3,332,894; White et al patent 3,763,055 and Kimura patent 3,762,136. These were looked at

in combination with review of the Moaddeb and Koros publication of record that gives tortuosity & related properties of prior art membranes employed in desalination. This new prior art in combination is considered to make claims directed only to the membrane and it's properties, per se., including claims dealing with pressure retarded osmosis in the preamble only as obvious.

There is also concern with double patenting between the 2 applications and this could be dealt with/mitigated by primarily eliminating method claims from one case and apparatus claims from the other case. The following is thus proposed:

For PUS2 (10/343,735): Following apparatus claims would be allowable: 69,71-73,75-78,88,90,104-109,123-133 and 138-143.

Cancel the following apparatus claims (& combination method/apparatus claims) as obvious over the newly found prior art: 110-114,116-118,120,121,134,135

The following method claims are allowable over the prior art; to mitigate double patenting issues, cancel & ***move them as new claims to PUS3 (12/068,185): 122,136,137.***

For PUS3 (12/068,185): Following apparatus claims can both be rejected over the newly found prior art and would present double patenting issues, thus propose to cancel: 33-42,45,46,68,69,71,73, and 75.

Also cancel method claims 80-84 that depend from apparatus claims (these are largely redundant over below method clms 47-51,56-65 anyway)

Dependent claims 43-44 distinguish (dependency in 44 is wrong) : Thus options are either to cancel all of claims 33-46,68,69,71,73, and 75 or incorporate limitations of claim 43 into one or more of independent claims 33,34,46 and 68 and ***then move them as new claims to PSU2 (10/343,735).

The following method claims are allowable over the prior art: 47-51,56-65,76,77

In claim 66, replace "is used for driving" with "drives" and in claim 67 replace "is used for creating" with "creates". (otherwise allowable over prior art).

In claim 79, change dependency from canceled claim 78 to claim 76. (otherwise allowable).

** Canceling 15 claims from PUS2 ('735) would enable adding up to15 new apparatus claims without incurring additional fees.

**Canceling 21 claims from PUS3 ('185) would enable adding up to 21 new method claims without incurring additional fees.

Primary Examiner of record in both cases: Joseph Drodge

571-272-1140 (8-12 & 2-6 M-F).

From: Lewis, Paul [mailto:pcl@bskb.com]
Sent: Wednesday, March 04, 2009 4:29 PM
To: Drodge, Joseph
Subject:

test

Paul C. Lewis
Birch, Stewart, Kolasch & Birch, LLP
pcl@bskb.com
tel.: 703-205-8000
fax.: 703-205-8050

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AMENDMENTS TO THE CLAIMS

Please amend the claims as follows:

1-46. (Cancelled).

47. (Previously Presented) A method for providing an elevated pressure by forward osmosis in a system using pressure retarded osmosis through at least one semi-permeable membrane, which is built up of several layers, where at least one part of the osmotic pressure is maintained in the system, comprising contacting a first water feed stream containing salt with a non-porous material as a diffusion skin of said at least one semi-permeable membrane; where at the same time a second water feed stream containing less salt is contacted with a porous material in a porous layer of said at least one semi-permeable membrane, where the porous layer has, when water wetted, a porosity φ, thickness x (m), and tortuosity τ related to one another as given by the expression

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

where S has a value of 0.0015 meter or lower,

the porosity φ has an average value of more than 50%,

the tortuosity τ is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s, and

whereby water from the second water feed stream is driven through the semi-permeable membrane by forward osmosis and creates an osmotic hydraulic elevated pressure on a permeate side of the membrane defined by the diffusion skin.

48. (Previously Presented) The method according to claim 47, wherein the porous layer of the membrane, when the first water feed stream is contacted with the diffusion skin, has properties related to a salt permeability parameter B defined by:

$$B = (\varphi \cdot D \cdot (dc/dx) / \tau - J \cdot c) \cdot 1/\Delta c_s \qquad \text{Equation (2)}$$

wherein:

A is the water permeability and is greater than 1×10^{-11} m/s/Pa,

B is the salt permeability (m/s) and is less than 3×10^{-8} m/s,

Δc_s is the salt concentration difference over the diffusion skin (moles/cm^3),

φ is the porosity and has an average value of more than 50%,

x is the thickness of the porous layer (m),

J is the water flux (m/s),

C is the salt concentration (moles/cm^3),

D is the diffusion coefficient of the salt (m^2/s),

τ is the tortuosity and is less than 2.5,

where the efficiency of the membrane in pressure retarded osmosis for a given value of a water permeability, A (m/s/Pa), can be expressed by an integration of Equation (2) to yield:

$$\Delta c_s / c_b = \exp(-d_s \cdot J/D) / \{ 1 + B \cdot [(\exp(d_f \cdot J/D + S \cdot J/D) - \exp(-d_s \cdot J/D)] / J \}$$

wherein:

C_b is the difference in salt concentration between the second water feed stream and the first water feed stream, wherein said second water feed stream contains less salt than said first water feed stream (moles/cm^3),

d_f and d_s are the thickness (μm) of the diffusion films on a side of the membrane contacting the second water feed stream and a side of the membrane contacting the first water feed stream, respectively, and

Δc_s / c_b is the efficiency of the membrane in pressure retarded osmosis for a given value of the water permeability.

49. (Previously Presented) The method according to claim 47, wherein at least a part of the osmotic pressure over the membrane is directly hydraulic transferred to the incoming first water feed stream.

50. (Previously Presented) The method according to claim 47, wherein the membrane has a thickness of less than 150 μm.

51. (Previously Presented) The method according to claim 47, wherein the membrane has a thickness of less than 100 μm.

52-55. (Cancelled).

56. (Previously Presented) The method according to claim 47, comprising a diffusion film thickness of less than 60 μm.

57. (Previously Presented) The method according to claim 47, comprising a diffusion film thickness of less than 30 μm.

58. (Previously Presented) The method according to claim 47, wherein the amount of the first water feed stream is 1-3 times higher than the amount of the second water feed stream.

59. (Previously Presented) The method according to claim 47, wherein a channel for the first water feed stream between the membranes comprises flow breakers consisting of threads of polymer which form a net with square or rhombic pattern which fills the channel by 10-50%.

60. (Previously Presented) The method according to claim 47, wherein several membranes are packed together in layers to form modules where the distance between adjacent membranes is from 0.4 to 0.8 mm.

61. (Previously Presented) The method according to claim 47, wherein the ratio between the length of a flow path of the first water feed stream and the second water feed stream is from 0.3 to 1.0.

62. (Previously Presented) The method according to claim 47, wherein the porous layer of the membrane comprises hollow fibers with an outside diameter from 0.05 to 0.5 mm.

63. (Previously Presented) The method according to claim 47, wherein the semi-permeable membrane has a permeability for salt, B, from the first water feed stream, of less than $3 \cdot 10^{-8}$ m/s.

64. (Previously Presented) The method according to claim 47, wherein the semi-permeable membrane has a water permeability, A, from the second water feed stream, which is more than $1 \cdot 10^{-11}$ m/s/Pa.

65. (Previously Presented) The method according to claim 47, wherein the pressure of the first water feed stream flowing into the membrane or membrane module is in the range of 6-16 bars.

66. (Currently Amended) The method according to claim 47, wherein the osmotic hydraulic elevated pressure ~~is used for driving~~ drives at least one power turbine.

67. (Currently Amended) The method according to claim 66, wherein the power turbine ~~is used for creating~~ creates electric power.

68-74. (Cancelled).

75. (Currently Amended) The method according to claim 47 ~~claim 74~~, wherein the membrane has a thickness which is less than 150 μm.

76. (Previously Presented) A method for providing elevated hydraulic pressure, comprising

i) contacting a first water feed stream with a diffusion skin of a semi-permeable membrane;

ii) and at the same time contacting a second water feed stream with a porous layer of the semi-permeable membrane;

wherein the second water feed stream has less salt than the first water feed stream;

wherein the semi-permeable membrane comprises one thin layer of a non-porous material as the diffusion skin, and at least one layer of a porous material as the porous layer, wherein the porous layer has, when water wetted, a porosity φ, thickness x (m), and tortuosity τ in relation to one another as given by

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

where S has a value of 0.0015 meter or lower,

the porosity φ has an average value of more than 50%,

the tortuosity τ is less than 2.5,

a water permeability of the porous layer is of greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s, and

whereby water from the second water feed stream is driven through the semi-permeable membrane by forward osmosis to create elevated hydraulic pressure.

77. (Previously Presented) The method of claim 76, wherein the elevated hydraulic pressure is used to drive at least one turbine.

78. (Cancelled).

79. (Currently Amended) The method according to claim 76 ~~claim 78~~, wherein the membrane has a thickness which is less than 150 μm.

80-84. (Cancelled).

85. (**New – corresponds to Claim 122 from '735 application**) A method for producing electric power comprising providing a first water feed stream and a second water feed stream to a plant for providing elevated osmotic pressure through use of pressure retarded osmosis, wherein the plant comprises at least one semi-permeable membrane or membrane module where the membrane or membrane module comprises a non-porous material as a diffusion skin, and at least one layer of a porous material, wherein the porous layer has, when water wetted, a porosity φ, thickness x, and tortuosity τ related to one another as given by the expression:

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

wherein S has a value of 0.0015 meter or lower,

the porosity, φ, has an average value of more than 50%,

the tortuosity, τ, is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s, and

the membrane has a thickness which is less than 150 μm,

the method comprising:

delivering the first water stream to the non-porous material side of the membrane or membrane module, and delivering the second water feed stream to the porous layer side of the membrane or membrane module, the second water feed stream containing less salt than the first water feed stream and having less pressure than the first water feed stream; and

applying a third water feed stream, being a combination of the first water feed stream and a part of the second water feed stream having passed through the membrane and mixed with the first water feed stream, to at least one turbine for creating said electric power.

86. (**New – corresponds to Claim 136 from '735 application**) The method according to claim 85, wherein the first water stream is pressurized water in the range of 6 - 16 bar.

87. (**New – corresponds to Claim 137 from '735 application**) The method according to claim 86, wherein the first water stream is pressurized water at 13 bar.

AMENDMENTS TO THE CLAIMS

Please amend the claims as follows:

Claims 1-68. (Cancelled).

Claim 69 (Previously Presented) A plant for providing elevated osmotic pressure through use of pressure retarded osmosis, wherein the plant comprises at least one semi-permeable membrane or membrane module where the membrane or membrane module comprises a non-porous material as a diffusion skin, and at least one layer of a porous material, wherein the porous layer has, when water wetted, a porosity φ, thickness x, and tortuosity τ related to one another as given by the expression:

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

wherein S has a value of 0.0015 meter or lower,

the porosity φ has an average value of more than 50%,

the tortuosity τ is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s, and

a pressure exchange arrangement connected to an outlet of the membrane or membrane module configured to receive direct hydraulic transfer of osmotic pressure at elevated pressure branched off therefrom to provide increased pressure to water delivered to an inlet of the membrane or membrane module at a diffusion skin side.

Claim 70 (Cancelled).

Claim 71 (Previously Presented) The plant according to claim 69, wherein the porous layer of the membrane, when a first water feed stream containing salt is contacted with the diffusion skin, has properties related to a salt permeability parameter B defined by:

$$B = (\varphi \cdot D \cdot (dc/dx) / \tau - J c) \cdot 1/\Delta c_s \qquad \text{Equation (2)}$$

wherein:

A is the water permeability and is greater than 1×10^{-11} m/s/Pa,

B is the salt permeability (m/s) and is less than 3×10^{-8} m/s,

Δc_s is the salt concentration difference over the diffusion skin (moles/cm^3),

φ is the porosity and has an average value of more than 50%,

x is the thickness of the porous layer (m),

J is the water flux (m/s),

C is the salt concentration (moles/cm^3),

D is the diffusion coefficient of the salt (m^2/s),

τ is the tortuosity and is less than 2.5,

where the efficiency of the membrane in pressure retarded osmosis for a given value of a water permeability, A (m/s/Pa), can be expressed by an integration of Equation (2) to yield :

$$\Delta c_s / c_b = \exp(-d_s \cdot J/D) / \{ 1 + B \cdot [(\exp(d_f \cdot J/D + S \cdot J/D) - \exp(-d_s \cdot J/D)] / J\}$$

wherein:

c_b is the difference in salt concentration between a second water feed stream and the first water feed stream, wherein said second water feed stream contains less salt than said first water feed

stream (moles/cm^3),

d_f and d_s are the thickness (μm)of the diffusion films on a side of the membrane contacting the second water feed stream and a side of the membrane contacting the first water feed stream, respectively, and

Δc_s / c_b is the efficiency of the membrane in pressure retarded osmosis for a given value of the water permeability.

Claim 72 (Previously Presented) The plant according to claim 69, wherein at least one power providing turbine is located downstream of a location where said pressure transfer is branched off from the outlet.

Claim 73 (Previously Presented) A plant for providing an elevated osmotic pressure through use of pressure retarded osmosis, wherein the plant comprises at least one semi-permeable membrane or membrane module where the membrane or membrane module comprises a non-porous material as a diffusion skin, and at least one layer of a porous material forming a porous layer which, when water wetted, has a porosity φ, thickness x, and tortuosity τ related to one another as given by the expression:

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

wherein S has a value of 0.0015 meter or lower,

the porosity φ has an average value of more than 50%,

the tortuosity τ is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11}m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s, and

at least one power providing turbine operably linked with the membrane or membrane module.

Claim 74 (Cancelled).

Claim 75 (Previously Presented) The plant according to claim 73, wherein the porous layer of the membrane, when a first water feed stream containing salt is contacted with the diffusion skin, has properties related to a salt permeability parameter B defined by:

$$B = (\varphi \cdot D \cdot (dc/dx) / \tau - J c) \cdot 1/\Delta c_s \qquad \text{Equation (2)}$$

wherein:

A is the water permeability and is greater than 1×10^{-11}m/s/Pa,

B is the salt permeability (m/s) and is less than 3×10^{-8} m/s,

Δc_s is the salt concentration difference over the diffusion skin (moles/cm^3),

φ is the porosity and has an average value of more than 50%,

x is the thickness of the porous layer (m),

J is the water flux (m/s),

C is the salt concentration (moles/cm^3),

D is the diffusion coefficient of the salt (m^2/s),

τ is the tortuosity and is less than 2.5,

where the efficiency of the membrane in pressure retarded osmosis for a given value of a water permeability, A (m/s/Pa), can be expressed by an integration of (2):

$$\Delta c_s / c_b = \exp(-d_s \cdot J/D) / \{ 1 + B \cdot [(\exp(d_f \cdot J/D + S \cdot J/D) - \exp(-d_s \cdot J/D)] / J\}$$

wherein:

c_b is the difference in salt concentration between a second water feed stream and the first water feed stream, wherein said second water feed stream contains less salt than said first water feed stream (moles/cm^3),

d_f and d_s are the thickness (μm) of the diffusion films on a side of the membrane contacting the second water feed stream and a side of the membrane contacting the first water feed stream, respectively, and

Δc_s / c_b is the efficiency of the membrane in pressure retarded osmosis for a given value of the water permeability.

Claim 76 (Previously Presented) The plant according to claim 73,

wherein the plant is located 0 - 200 m below ground level,

wherein fresh water is passed through pipelines downwards to at least one turbine,

wherein the fresh water is further passed from the turbine into a low pressure side of at least one membrane or membrane module,

wherein sea water is passed into a high pressure side of said at least one membrane or membrane module, said sea water having been pressurized by hydrostatic power, wherein the sea water is allowed to circulate through said high pressure side of said at least one membrane or membrane module,

wherein the fresh water is transported through said at least one membrane or membrane module by osmotic power, and

wherein water leaving the plant is the fresh water mixed with the sea water.

Claim 77 (Previously Presented) The plant according to claim 69, wherein the osmotic hydraulic elevated pressure is applied to at least one turbine which is used for creating electric power.

Claim 78 (Previously Presented) The plant according to claim 73, wherein said at least one turbine is used for creating electric power.

Claims 79-87 (Cancelled).

Claim 88 (Previously Presented) The plant according to claim 69, wherein the membrane has a thickness which is less than 150 μm.

Claim 89 (Cancelled).

Claim 90 (Previously Presented) The plant according to claim 73, wherein the membrane has a thickness which is less than 150 μm.

Claims 91-103 (Cancelled).

Claims 104 (Previously Presented) The plant according to claim 69, wherein the diffusion skin side is configured to be contacted with a first water feed stream and the porous

layer of the membrane is configured to be contacted with a second water feed stream, the second water feed stream having less salt content than the first water stream, and wherein the first water stream is at a pressure higher than that of the second water stream.

Claim 105 (Previously Presented) The plant according to claim 73, wherein a diffusion skin side of the membrane or membrane module is configured to be contacted with a first water feed stream and the porous layer of the membrane is configured to be contacted with a second water feed stream, the second water feed stream having less salt content than the first water stream, and wherein the first water stream is at a pressure higher than that of the second water stream.

Claim 106 (Previously Presented) The plant according to claim 87, which is operably linked to at least one turbine and wherein the membrane or membrane module is configured to provide elevated osmotic pressure to drive the at least one turbine.

Claim 107 (Previously Presented) The plant according to claim 106, wherein the at least one turbine is used for creating electric power.

Claim 108 (Previously Presented) The plant according to claim 88, which is operably linked to at least one turbine and wherein the membrane or membrane module is configured to provide elevated osmotic pressure to drive the at least one turbine.

Claim 109 (Previously Presented) The plant according to claim 108, wherein the at least one turbine is used for creating electric power.

Claim 110-122 (Cancelled).

Claim 123 (Previously Presented) A plant for providing elevated osmotic pressure through use of pressure retarded osmosis, wherein the plant comprises

at least one semi-permeable membrane or membrane module where the membrane or membrane module comprises a non-porous material as a diffusion skin, and at least one layer of a porous material, wherein the porous layer has, when water wetted, a porosity φ, thickness x, and tortuosity τ related to one another as given by the expression:

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

wherein S has a value of 0.0015 meter or lower,

the porosity, φ, has an average value of more than 50%,

the tortuosity, τ, is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s, and

the membrane has a thickness which is less than 150 μm,

a pressure exchange arrangement connected to an outlet of the membrane or membrane module configured to receive direct hydraulic transfer of osmotic pressure at elevated pressure branched off therefrom to provide increased pressure to water delivered to an inlet of the membrane or membrane module at a diffusion skin side,

wherein the diffusion skin side is configured to be contacted with a first water feed stream and the porous layer of the membrane is configured to be contacted with a second water feed stream, the second water feed stream having less salt content than the first water stream, and wherein the first water stream is at a pressure higher than that of the second water stream, and

at least one power providing turbine is located downstream of a location where said pressure transfer is branched off from the outlet, and the osmotic hydraulic elevated pressure is applied to the at least one turbine which is used for creating electric power.

Claim 124 (Previously Presented) A plant for providing an elevated osmotic pressure through use of pressure retarded osmosis, wherein the plant comprises at least one semi-permeable membrane or membrane module where the membrane or membrane module comprises a non-porous material as a diffusion skin, and at least one layer of a porous material forming a porous layer which, when water wetted, has a porosity φ, thickness x, and tortuosity τ related to one another as given by the expression:

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

wherein S has a value of 0.0015 meter or lower,

the porosity, φ, has an average value of more than 50%,

the tortuosity, τ, is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s, and

the membrane has a thickness which is less than 150 μm,

wherein a diffusion skin side of the membrane or membrane module is configured to be

contacted with a first water feed stream and the porous layer of the membrane is configured to be contacted with a second water feed stream, the second water feed stream having less salt content than the first water stream, and wherein the first water stream is at a pressure higher than that of the second water stream, and

at least one power providing turbine operably linked with the membrane or membrane module is used for creating electric power.

Claim 125 (Previously Presented) A plant for providing elevated osmotic pressure through use of pressure retarded osmosis, wherein the plant comprises at least one semi-permeable membrane or membrane module where the membrane or membrane module comprises a non-porous material as a diffusion skin, and at least one layer of a porous material, wherein the porous layer has, when water wetted, a porosity φ, thickness x, and tortuosity τ related to one another as given by the expression:

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

wherein S has a value of 0.0015 meter or lower,

the porosity, φ, has an average value of more than 50%,

the tortuosity, τ, is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s,

the membrane has a thickness which is less than 150 μm,

an inlet of a first water feed stream for delivery to the non-porous material side of the membrane or membrane module and an inlet of a second water stream for delivery to the porous layer side

of the membrane or membrane module, the second water feed stream containing less salt than the first water feed stream and having less pressure than the first water feed stream, and

an outlet from the membrane or membrane module on the non-porous side thereof for delivery of a combination of a part of the second water feed stream having passed through the membrane mixed with the first water feed stream, connected to at least one turbine for creating said electric power.

Claim 126 (Previously Presented) The plant according to claim 69, wherein the water delivered at the diffusion skin side of the membrane is pressurized water in the range of 6 - 16 bar.

Claim 127 (Previously Presented) The plant according to claim 126, wherein the water delivered at the diffusion skin side of the membrane is pressurized water at 13 bar.

Claim 128 (Previously Presented) The plant according to claim 76, wherein the water delivered at the diffusion skin side of the membrane is pressurized water in the range of 6 - 16 bar.

Claim 129 (Previously Presented) The plant according to claim 128, wherein the water delivered at the diffusion skin side of the membrane is pressurized water at 13 bar.

Claim 130 (Previously Presented) The plant according to claim 104, wherein the water

delivered at the diffusion skin side of the membrane is pressurized water in the range of 6 - 16 bar.

Claim 131 (Previously Presented) The plant according to claim 130, wherein the water delivered at the diffusion skin side of the membrane is pressurized water at 13 bar.

Claim 132 (Previously Presented) The plant according to claim 105, wherein the water delivered at the diffusion skin side of the membrane is pressurized water in the range of 6 - 16 bar.

Claim 133 (Previously Presented) The plant according to claim 132, wherein the water delivered at the diffusion skin side of the membrane is pressurized water at 13 bar.

Claim 134-137 (Cancelled).

Claim 138 (Previously Presented) The plant according to claim 123, wherein the first water stream is pressurized water in the range of 6 - 16 bar.

Claim 139 (Previously Presented) The method according to claim 138, wherein the first water stream is pressurized water at 13 bar.

Claim 140 (Previously Presented) The plant according to claim 124, wherein the first water feed stream is pressurized water in the range of 6 - 16 bar.

Claim 141 (Previously Presented) The plant according to claim 140, wherein the first water feed stream is pressurized water at 13 bar.

Claim 142 (Previously Presented) The plant according to claim 125, wherein the first water feed stream is pressurized water in the range of 6 - 16 bar.

Claim 143 (Previously Presented) The plant according to claim 142, wherein the first water feed stream is pressurized water at 13 bar.

144. (New – corresponds to claim 33 (including claim 43) of the '185 application) A semi-permeable membrane for forward osmosis or pressure retarded osmosis, the membrane comprising one thin layer of a non-porous material as a diffusion skin, and at least one layer of a porous material, wherein the porous layer has, when water wetted, a porosity φ, thickness x (m), and tortuosity τ in relation to one another as given by

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

where S has a value of 0.0015 meter or lower,

the porosity φ has an average value of more than 50%,

the tortuosity τ is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s,

wherein said membrane is used to form a set of several membranes with flow breakers located between the membranes of the set of membranes, said flow breakers consisting of threads of polymer which form a net with square or rhombic pattern.

145. (New – corresponds to claim 34 (including claim 43) of the '185 application) A semi-permeable membrane for pressure retarded osmosis, the membrane comprising one thin layer of a non-porous material as a diffusion skin, and at least one layer of a porous material, wherein the porous layer has, when water wetted, a porosity φ, thickness x (m) and tortuosity τ in relation to one another as given by

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

where S has a value of 0.0015 meter or lower,

wherein the porous layer, when an amount of a first water feed stream containing salt is contacted with the diffusion skin, has properties related to a salt permeability parameter B defined by:

$$B = (\varphi \cdot D \cdot (dc/dx) / \tau - J \cdot c) \cdot 1/\Delta c_s \qquad \text{Equation (2)}$$

wherein:

A is the water permeability and is greater than 1×10^{-11} m/s/Pa,

B is the salt permeability (m/s) and is less than 3×10^{-8} m/s,

Δc_s is the salt concentration difference over the diffusion skin (moles/cm^3),

φ is the porosity and has an average value of more than 50%,

x is the thickness of the porous layer (m),

J is the water flux (m/s),

C is the salt concentration (moles/cm^3),

D is the diffusion coefficient of the salt (m^2/s),

τ is the tortuosity and is less than 2.5,

where the efficiency of the membrane in pressure retarded osmosis for a given value of a water permeability, A (m/s/Pa), can be expressed by an integration of Equation (2) to yield:

$$\Delta c_s / c_b = \exp(-d_s \cdot J/D) / \{ 1 + B \cdot [(\exp(d_f \cdot J/D + S \cdot J/D) - \exp(-d_s \cdot J/D)] / J \}$$

wherein:

c_b is the difference in salt concentration between a second water feed stream and said first water feed stream, wherein said second water feed stream contains less salt than said first water feed stream (moles/cm^3),

d_f and d_s are the thickness (μm) of the diffusion films on a side of the membrane contacting the second water feed stream and a side of the membrane contacting the first water feed stream, respectively, and

$\Delta c_s / c_b$ is the efficiency of the membrane in pressure retarded osmosis for a given value of the water permeability,

wherein said membrane is used to form a set of several membranes with flow breakers located between the membranes of the set of membranes, said flow breakers consisting of threads of polymer which form a net with square or rhombic pattern.

146. (New – corresponds to claim 35 of the '185 application) The membrane according to claim 144, wherein the membrane has a thickness of less than 150 μm.

147. (New – corresponds to claim 71 of the '185 application) The semi-permeable membrane according to claim 145, wherein the membrane has a thickness which is less than 150 μm.

148. (New – corresponds to claim 36 of the '185 application) The membrane according to claim 144, wherein the membrane has a thickness of less than 100 μm.

149. (New – corresponds to claim 41 of the '185 application) The membrane according to claim 145, comprising a diffusion film thickness of less than 60 μm.

150. (New – corresponds to claim 42 of the '185 application) The membrane according to claim 145, comprising a diffusion film thickness of less than 30 μm.

151. (New – corresponds to claim 44 of the '185 application) The membrane according to claim 144, wherein said several membranes have been packed together in layers to form modules where the distance between adjacent membranes is from 0.4 to 0.8 mm.

152. (New – corresponds to claim 45 of the '185 application) The membrane according to claim 144, wherein the porous layer of the membrane comprises hollow fibers with an outside diameter from 0.05 to 0.5 mm.

153. (New – corresponds to claim 46 (including claim 43) of the '185 application) A semi-permeable membrane for pressure retarded osmosis, the membrane comprising one thin layer of a non-porous material as a diffusion skin, and at least one layer of a porous material, wherein the porous layer has, when water wetted, a porosity φ, thickness x (m) and tortuosity τ in relation to one another as given by

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

where S has a value of 0.0015 meter or lower,

the porosity φ has an average value of more than 50%,

the tortuosity τ is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s, and

wherein the membrane is configured for creating electric power through use of osmotic hydraulic elevated pressure created by said pressure retarded osmosis for driving at least one power turbine,

wherein said membrane is used to form a set of several membranes with flow breakers located between the membranes of the set of membranes, said flow breakers consisting of threads of polymer which form a net with square or rhombic pattern.

154. (New – corresponds to claim 68 (including claim 43) of the '185 application) A semi-permeable membrane for forward osmosis or pressure retarded osmosis,

the membrane comprising one thin layer of a non-porous material as a diffusion skin, and at least one layer of a porous material,

wherein the porous layer, when water wetted, has a porosity φ, thickness x (m), and tortuosity τ in relation to one another as given by

$$x \cdot \tau = \varphi \cdot S \qquad \text{Equation (1)}$$

where S has a value of 0.0015 meter or lower,

wherein the porosity, φ, has an average value of more than 50%,

the tortuosity, τ, is less than 2.5,

a water permeability of the porous layer is greater than 1×10^{-11} m/s/Pa, and

a salt permeability of the porous layer is less than 3×10^{-8} m/s,

wherein said membrane is used to form a set of several membranes with flow breakers located between the membranes of the set of membranes, said flow breakers consisting of threads of polymer which form a net with square or rhombic pattern.

155. (New – corresponds to claim 73 of the '185 application) The semi-permeable membrane according to claim 153, wherein the membrane has a thickness which is less than 150 μm.

156. (New – corresponds to claim 69 of the '185 application) The semi-permeable membrane of claim 154, wherein the membrane has a thickness which is less than 150 μm.

157. (New – corresponds to claim 44 of the '185 application) The membrane according to claim 145, wherein said several membranes have been packed together in layers to form modules where the distance between adjacent membranes is from 0.4 to 0.8 mm.

158. (New – corresponds to claim 44 of the '185 application) The membrane according to claim 153, wherein said several membranes have been packed together in layers to form modules where the distance between adjacent membranes is from 0.4 to 0.8 mm.

159. (New – corresponds to claim 44 of the '185 application) The membrane according to claim 154, wherein said several membranes have been packed together in layers to form modules where the distance between adjacent membranes is from 0.4 to 0.8 mm.

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In re Application of	:	
KOIKE, et al.	:	
Application No.: 10/343,742	:	DECISION ON REQUEST
PCT No.: PCT/JP01/06779	:	UNDER 37 CFR 1.497(d)
Int. Filing Date: 07 August 2001	:	
Priority Date: 08 August 2000	:	
Attorney Docket No.: 233632US0PCT	:	
For: OIL/FAT COMPOSITION		

This decision is in response to "Submission under 37 CFR 1.497" filed 03 October 2003, which is being treated as a request under 37 CFR 1.497(d). The $130 petition fee under 37 CFR 1.17(i) will be charged to Deposit Account no. 15-0030.

BACKGROUND

On 07 August 2001, applicants filed the above-captioned international application, which claimed a priority date of 08 August 2000 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 14 February 2003. The international application named Shin Koike; Takeshi Yasumasu; Tadashi Hase; Takatoshi Murase; and Takuji Yasukawa as applicant/inventors. A Demand for international preliminary examination was filed prior to 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee expired at midnight on 08 February 2003.

On 06 February 2003, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, a basic national fee of $900; a copy of the international application; and an executed declaration.

On 11 August 2003, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that the declaration filed 06 February 2003 was defective because the declaration was not executed by the fifth inventor, Takuji Yasukawa.

On 03 October 2003, applicants filed "Submission under 37 CFR 1.497" which included: a statement of from the deleted inventor; a Written Consent of Assignee to Change in Inventorship; and an assignment.

DISCUSSION

In the instant case, the international application named Shin Koike; Takeshi Yasumasu; Tadashi Hase; Takatoshi Murase; and Takuji Yasukawa as applicants/inventors. Applicants request to delete Takuji Yasukawa as an applicant/inventor. In order to correct an error in naming the inventor(s) made during the international stage in the national stage, a submission under 37 CFR 1.497(d) is required.

A submission under 37 CFR 1.497(d) to correct an error in naming inventorship requires: (1) a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part; (2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.497(a); (3) the fee set forth in 37 CFR 1.17(i); and (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

Items (1), (2), (3), and (4) have been satisfied.

CONCLUSION

The request under 37 CFR 1.497(d) is **GRANTED**.

A review of the application papers reveals that applicants have completed all the requirements of 35 U.S.C. 371 for entry into the national stage. This application will be given an international application filing date of 07 August 2001 and a date of **06 February 2003** under 35 U.S.C. 371.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: (703) 308-6314
Facsimile: (703) 308-6459

27 OCT 2003

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Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

In re Application of KOIKE et al
U.S. Application No.: 10/343,748
PCT Application No.: PCT/JP01/06777
Int. Filing Date: 07 August 2001
Priority Date Claimed: 08 August 2000
Attorney Docket No.: 233628US0PCT
For: OIL/FAT COMPOSITION

DECISION

This is in response to applicant's "Submission Under 37 C.F.R. § 1.497" filed 03 October 2003.

BACKGROUND

On 07 August 2001, applicant filed international application PCT/JP01/06777, which claimed priority of an earlier Japan application filed 08 August 2000. A copy of the international application was communicated to the USPTO from the International Bureau on 14 February 2002. A Demand for international preliminary examination, in which the United States was elected, was filed on 05 February 2002, prior to the expiration of nineteen months from the priority date. The thirty-month period for paying the basic national fee in the United States expired on 08 February 2003.

On 06 February 2003, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and an executed declaration.

On 11 August 2003, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that the declaration filed 06 February 2003 is not in compliance with 37 CFR 1.497.

On 03 October 2003, applicant filed the present response, which is being treated as a petition under 37 CFR 1.497(d).

DISCUSSION

The response states that Takuji Yasukawa should be removed as an inventor.

37 CFR 1.497(d) (effective 07 November 2000) states,

> If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by: (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (2) the processing fee set forth in § 1.17(i); and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

With regard to item (1) above, applicant has provided the requisite statement.

With regard to item (2) above, the requisite processing fee has been provided.

With regard to item (3) above, applicant has provided the written consent of the assignee.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.497(d) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 07 August 2001, and a date under 35 U.S.C. 371(c) of 06 February 2003.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459

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
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/343,758	09/02/2003	Heinz-Juergen Mueller	4002-1027	5827

466 7590 05/02/2005
YOUNG & THOMPSON
745 SOUTH 23RD STREET
2ND FLOOR
ARLINGTON, VA 22202

EXAMINER
HEINRICH, SAMUEL M

ART UNIT	PAPER NUMBER
1725	

DATE MAILED: 05/02/2005

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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5/2/05

In re Application of	:	
Heinz-Juergen Mueller	:	
Serial Number : ~~10/34758~~ 10/343,758	:	WITHDRAWAL
Filed : September 2, 2003	:	FROM
For : DEVICE FOR PARTING AND/OR	:	ISSUE
PERFORATING	:	

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR 1.313.

The application is being withdrawn to permit reopening of prosecution. The reasons therefore will be communicated to you by the examiner.

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

The application is being forwarded to the examiner for action.

JMStone

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

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

cc:Allowed Files, Pk3-910

17 APR 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

#3

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WASHINGTON, D.C. 20231
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Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004

In re Application of DOUDNA et al	:	
U.S. Application No.: 10/343,766	:	
Int. Application No.: PCT/US01/18620	:	DECISION ON PETITION
Int. Filing Date: 11 June 2001	:	
Priority Date: 15 June 2000	:	UNDER 37 CFR 1.137(b)
Attorney Docket No.: 44574-5062	:	
For: MUTANT NIA PROTEINASE WITH	:	
REDUCED SELF-CLEAVAGE ACTIVITY	:	
AND METHOD OF PURIFICATION	:	

This is in response to applicant's "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 C.F.R. § 1.137(b)" filed 04 February 2003.

BACKGROUND

On 11 June 2001, applicant filed international application PCT/US01/18620, which claimed priority of an earlier United States application filed 15 June 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 11 January 2002, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 15 December 2002.

International application PCT/US01/18620 became abandoned as to the United States for failure to timely pay the basic national fee.

On 04 February 2003, applicant filed the present petition. The petition states that it is accompanied by a proper response under 35 U.S.C. 371, the petition fee set forth in 37 CFR 1.17(m), and a statement that abandonment of the application was unintentional.

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless

previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required basic national fee under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), applicant has provided the required statement.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be submitted.

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459

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Commissioner for Patents
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VENABLE LLP
P.O. BOX 34385
WASHINGTON DC 20043-9998

Applicant: Patrick Gerard Maher
Appl. No.: 10/343,787
Filing Date: August 3, 2001
Title: Attachment System
Attorney Docket No.: 31848-186724
Pub. No.: US 2004/0060435 A1
Pub. Date: April 1, 2004

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SEP 18 2007
OFFICE OF PETITIONS

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), received on September 26, 2006, for the above-identified application.

Applicant requests that the application be republished because the patent application publication contains the contents of another application.

The request is DISMISSED as moot.

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]

Since the application has already issued as U.S. Patent No. 7,219,454 on May 22, 2007, the request is deemed moot and untimely.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20090226

DATE : February 26, 2009

TO SPE OF : ART UNIT 2617

SUBJECT : Request for Certificate of Correction on Patent No.: 7,299,053

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

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

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/Charles N. Appiah/
Supervisory Patent Examiner, Art Unit 2617

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Andrew N Parfomak
NORRIS McLAUGHLIN & MARCUS
30th Floor
220 East 42nd Street
New York NY 10017

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MAY 13 2005
OFFICE OF PETITIONS

Applicant: Acher et al.
Appl. No.: 10/343,808
International Filing Date: August 9, 2001
Title: EPILATORY COMPOSITIONS
Attorney Docket No.: 102792-53 (10501P1)
Pub. No.: US 2005/0019292 A1
Pub. Date: January 27, 2005

This is in response to the "Request for Republication of Patent Application under 37 CFR 1.221," which is being treated as a Request for Corrected Publication under 37 CFR 1.221(b), as argued, which was received on March 17, 2005.

The request is DISMISSED.

The instant request is that the patent application publication be republished because the publication includes a material error in that it did not include the preliminary amendment to the claims, which was filed on February 6, 2003.

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 patent application publication does not include a mistake in the publication by the Office because patent application publications are not required to include preliminary amendments,

[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).

according to 37 CFR 1.215(a)[2], which says the following, in part:

> (a) ... The patent application publication will be based upon the specification and drawings 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 may also be based upon amendments to the specification (other than the abstract or the claims) that are reflected in a substitute specification under Sec. 1.125(b), amendments to the abstract under Sec. 1.121(b), amendments to the claims that are reflected in a complete claim listing under Sec. 1.121(c), and amendments to the drawings under Sec. 1.121(d), provided that such substitute specification or amendment is submitted in sufficient time to be entered into the Office file wrapper of the application before technical preparations for publication of the application have begun.

§ 1.215(c) says the following:

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

Until this past year, patent application publications were published as originally filed, which would include the international filing date. The Office has recently changed the procedures for publication of patent applications so as to publish applications as amended, when possible. See Patent Application Publications May Now Include Amendments, 1281 Off. Gaz. Pat. Office Notices 53 (April 13, 2004). While the patent application publication may now include a preliminary amendment to the claims, the Office is not required to use the preliminary amendment. The applicant did not supply a copy of the application in compliance with § 1.215(c). The Office correctly published the application in accordance with § 1.215(a).

Applicant is reminded of his duty to conduct a reasonable inquiry before filing a paper before the Office. See MPEP 410.

Applicant's request for a corrected patent application publication on March 17, 2005, 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.

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)

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[2] Changes to Suport Implementation of the United States Patent and Trademark Office 2st Century Strategic Plan; Final Rule, 69 FR 56482 (Sept. 21, 2004).

will be refunded. The processing fee will be retained.

The request for republication under 37 CFR 1.221 is being treated as request for corrected publication under 37 CFR 1.221(b), as argued by applicant not a request under 37 CFR 1.221(a). The publication fee ($300) paid by applicant for a request for republication under 37 CFR 1.221(a) will be refunded to applicant's deposit account (14-1263).

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system and questions should be addressed as follows:

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

Inquires concerning this communication should be directed to Mark Polutta at (571) 272-7709.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

#4

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24 JUL 2003

Malcolm J. MacDonald
Dennison, Schultz & Dougherty
612 Crystal Square Four
1745 Jefferson Davis Highway
Arlington, Virginia 22202-3417

In re Application of
BRU-MAGNIEZ et al.
Application No.: 10/343,822
PCT No.: PCT/FR01/02554
Int. Filing Date: 06 August 2001
Priority Date: 07 August 2000
Attorney Docket No.: 03004
For: NOVEL PHARMACEUTICAL FORM COMPRISING A SUPPORT MATERIAL AND AT LEAST ONE CELL . . .

DECISION ON PAPERS UNDER 37 CFR 1.42

This is a response to the declaration filed 08 May 2003 which is being treated as a Petition under 37 CFR 1.42. No petition fee is required.

BACKGROUND

On 06 August 2001, applicants filed international application PCT/FR01/02554, which claimed a priority date of 07 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 14 February 2002. The international application named Nicole Bru-Magniez; Evgueni Mysiakine; Elias Fattal; Patrick Couvreur; and Pascal Breton as applicants/inventors. A Demand was filed with the International Preliminary Examining Authority. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, 07 February 2003.

On 07 February 2003, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a translation of the international application; and a preliminary amendment.

On 08 May 2003, applicants filed a declaration executed by: Nicole Bru-Magniez; Elias Fattal; Patrick Couvreur; and Pascal Breton as inventors and Sergueevna Myssiakina and Alexander Evguenievich Myssiakine on behalf of deceased inventor, Evgueni Mysiakine.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

> In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by "all of the heirs" of the deceased inventor, where no legal representative has been appointed.

The declaration submitted on 08 May 2003 was executed by Sergueevna Myssiakina and Alexander Evguenievich Myssiakine as "first legal heir" and "second legal heir" to the deceased inventor, Evgueni Mysiakine. However, the declaration does not state that Sergueevna Myssiakina and Alexander Evguenievich Myssiakine are the sole heirs of the deceased inventor. Absent a statement that the signing heirs are the sole heirs of the deceased inventor, the declaration cannot be accepted under 37 CFR 1.42.

In addition, it is noted that revised 37 CFR 1.497(b)(2) states the following:

> (2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to revised 37 CFR 1.497(b)(2), in addition to the citizenship and former residence and post office address of the deceased inventor referenced under 37 CFR 1.497(a)(3) and 37 CFR 1.63, the declaration must also provide residence, citizenship, and post office address for the signing heir. The declaration filed on 08 May 2003 provides this information with respect to the signing heirs, but not the inventor. Accordingly, the declaration is not in compliance with 37 CFR 1.497(a)(3) and 37 CFR 1.63.

The submission of the declaration executed by all of the heirs of the deceased inventor is hereby construed as an indication that no legal representative of the deceased's estate has been appointed or is statutorily required to be appointed. If this interpretation is incorrect applicant is required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to this decision.

The declarations filed 08 May 2003 are not acceptable under 37 CFR 1.497. Specifically, the declaration lists the deceased inventor as Evgueni Myssiakine, whereas the international application lists the inventor as Evgueni Mysiakine. As stated in MPEP 201.03,

> a request under 37 CFR 1.48 will not be required: (B) Where a typographical or transliteration error in the spelling of an inventor's name is discovered, the Office should simply be notified of the error. A new oath or declaration is not required.

Applicants are required to provide an explanation of the typographical or transliteration error in the name of the deceased inventor, Evgueni Mysiakine.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicant is required to provide an oath/declaration in compliance with 37 CFR 1.497(a)-(b) within **TWO (2) MONTH** from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and must include an acceptable declaration under 37 CFR 1.497 which has been executed by either the legal representative of the deceased inventor or, if no legal representative has been appointed, all of the heirs of the deceased inventor.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (703) 308-6314
Fax: (703) 308-6459

08 DEC 2003

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Dennison, Schultz & Dougherty
612 Crystal Square Four
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Arlington, Virginia 22202-3417

In re Application of	:	
BRU-MAGNIEZ et al.	:	DECISION ON
Application No.: 10/343,822	:	PAPERS UNDER 37 CFR 1.42
PCT No.: PCT/FR01/02554	:	
Int. Filing Date: 06 August 2001	:	
Priority Date: 07 August 2000	:	
Attorney Docket No.: 03004	:	
For: NOVEL PHARMACEUTICAL FORM COMPRISING A SUPPORT MATERIAL AND AT LEAST ONE CELL . . .		

This is in response to the "Renewed Petition under 37 CFR 1.47(a)" filed 24 October 2003 which is being treated as a renewed petition under 37 CFR 1.42. No petition fee is due.

BACKGROUND

On 06 August 2001, applicants filed international application PCT/FR01/02554, which claimed a priority date of 07 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 14 February 2002. The international application named Nicole Bru-Magniez; Evgueni Mysiakine; Elias Fattal; Patrick Couvreur; and Pascal Breton as applicants/inventors. A Demand was filed with the International Preliminary Examining Authority. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, 07 February 2003.

On 07 February 2003, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a translation of the international application; and a preliminary amendment.

On 08 May 2003, applicants filed a declaration executed by: Nicole Bru-Magniez; Elias Fattal; Patrick Couvreur; and Pascal Breton as inventors and Sergueevna Myssiakina and Alexander Evguenievich Myssiakine on behalf of deceased inventor, Evgueni Mysiakine. In a decision dated 24 July 2003, applicants' request under 37 CFR 1.42 was dismissed without prejudice.

On 24 October 2003, applicants filed the present renewed submission under 37 CFR 1.42 and a one-month extension of time.

DISCUSSION

A. Renewed Petition under 37 CFR 1.42

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

> In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by "all of the heirs" of the deceased inventor, where no legal representative has been appointed.

The declaration provided on 24 October 2003 states that Sergueevna Myssiakina and Alexander Evguenievich Myssiakine are the sole heirs of the deceased inventor. The above application and papers have been reviewed and have been found in compliance with 37 CFR 1.42.

The submission of the declaration executed by all of the heirs of the deceased inventor is hereby construed as an indication that no legal representative of the deceased's estate has been appointed or is statutorily required to be appointed. If this interpretation is incorrect applicant is required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to this decision.

B. Correction of Inventorship Under MPEP 201.03

Applicants state, "that the difference between the two spellings of Mysiakine and Myssiakine in the declaration and in the international application is due to the pronunciation and transcription rules of the same Russian family name." As indicated in Section 201.03 of the Manual of Patent Examining Procedure, where a typographical or transliteration error in the spelling of an inventor's name is discovered, a petition is not required. Accordingly, applicants' explanation of the difference in the spelling of the deceased inventor's name is accepted and noted for the record.

CONCLUSION

The declaration filed under 37 CFR 1.42 is ACCEPTED.

The application has an international filing date of 06 August 2001, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **24 October 2003**.

This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (703) 308-6314
Fax: (703) 308-6459

06 NOV 2003
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JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON, DC 20004

In re Application of GOTTLIEB LOOSER (deceased) Application No.: 10/343,823 PCT No.: PCT/EP01/08869 Int. Filing Date: 31 July 2001 Priority Date: 07 August 2000 Attorney's Docket No.: P68512US0 For: METHOD AND DEVICE FOR CUTTING THROUGH: A RUNNING WEB OF MATERIAL...	DECISION ON REQUEST FOR STATUS UNDER 37 CFR 1.42

This is a decision on applicant's "Response to Notification of Missing Requirements" filed in the United States Patent and Trademark Office (USPTO) on 03 October 2003, and is being treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 31 July 2003, applicant filed international application PCT/EP01/08869, which claimed priority of an earlier German application filed 07 August 2000. On 06 February 2002, a Demand for international preliminary examination was filed and accordingly, the thirty month period for paying the basic national fee for processing in the United States expired at midnight on 07 February 2003.

On 07 February 2003, applicant filed a Transmittal Letter for entry into the national stage in the United States of America along with a basic national fee. Filed with the Transmittal Letter were, *inter alia*: the basic national fee.

On 05 September 2003, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration in compliance with 37 CFR 1.497.

On 03 October 2002, applicant filed a response to the Notification of Missing Requirements including an executed declaration. The declaration indicate that inventor Gottlieb Looser is deceased. The declaration is signed by joint inventor Fritz Achepohl, as named in the originally filed international application and by Iris Looser, legal representative of deceased joint inventor Gottlieb Looser.

DISCUSSION

Pursuant to 37 CFR 1.42, first sentence:

> "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

The legal representative of a deceased inventor must make the application for patent "on the same terms and conditions applicable to the inventor." 35 U.S.C. 117. To this end, 37 CFR

1.497(b)(2) states, in pertinent part,:

"If the person making the oath or declaration is not the inventor, the oath or declaration shall state the relationship of the person to the inventor....". (Emphasis added.)

The declaration submitted on 03 October 2002 identifies the signatory and states the relationship of the person signing to the inventor as the legal representative for deceased inventor, Gottlieb Looser and is acceptable under 37 CFR 1.42. (See MPEP §409.01(a)). Thus, the declaration satisfies 37 CFR 1.497(b)(2) and is acceptable. Accordingly, it is appropriate, at this time, to accord the application status under 37 CFR 1.42.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **GRANTED**.

The application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing. The 35 U.S.C. 371(c) date is **03 October 2003.**

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

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12 SEP 2003

Mark D. Wieczorek
P.O. Box 70072
San Diego, CA 92167

In re Application of	:	
VILLANI et al.	:	
Application No.: 10/343,849	:	DECISION ON PETITION
PCT No.: PCT/AU01/00945	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 03 August 2001	:	
Priority Date: 04 August 2000	:	
Attorney Docket No.: None	:	
For: COMPOSITE LIGHT WEIGHT BUILDING PANEL AND CORE MATERIAL THEREFOR		

The petition to revive under 37 CFR 1.137(b) filed 24 July 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicants' statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicants have submitted the basic national fee of $530 and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration along with the $65 surcharge for filing the oath or declaration after the thirty-month period is required.

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WESTFIELD NJ 07090

MAILED

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OFFICE OF PETITIONS

In re Application of :
VILLANI et al. :
Application No. 10/343,849 : ON APPLICATION FOR
Filed: 11/19/2003 : PATENT TERM ADJUSTMENT
Atty. Docket No. 00144/003001 :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION UNDER 37 CFR § 1.705(b) filed January 6, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand eight hundred twenty-five (1825) days, not one thousand one hundred fifty-six (1156) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants seek this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined.

Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

---

[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 5, 2006

TO SPE OF : ART UNIT 2815

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/343851 Patent No.: 6,891,199

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: Changes approved

SPE

2823

Art Unit

2 8 MAY 2003

#3

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Burns, Doane, Swecker & Mathis, LLP
P.O. Box 1404
Alexandria, VA 22313-1404

In re Application of REHO et al	:	
U.S. Application No.: 10/343,858	:	
Int. Application No.: PCT/FI01/00455	:	DECISION ON PETITION
Int. Filing Date: 11 May 2001	:	
Priority Date: 11 May 2000	:	UNDER 37 CFR 1.137(b)
Attorney Docket No.: 003277-045	:	
For: WEARABLE PROJECTOR AND	:	
INTELLIGENT CLOTHING	:	

This is in response to applicant's "Petition To Revive International Application and Accept Late Filing of National Stage Application" filed 05 February 2003.

BACKGROUND

On 11 May 2001, applicant filed international application PCT/FI01/00455, which claimed priority of an earlier Finland application filed 11 May 2000. A copy of the international application was communicated to the USPTO from the International Bureau on 15 November 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 20 November 2001, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 November 2002.

International application PCT/FI01/00455 became abandoned as to the United States for failure to timely pay the basic national fee.

On 05 February 2003, applicant filed the present petition. The petition states that it is accompanied by a proper response under 35 U.S.C. 371, the petition fee set forth in 37 CFR 1.17(m), and a statement that abandonment of the application was unintentional.

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless

previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required basic national fee under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), applicant has provided the required statement.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 must be submitted.

Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459

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MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO CA 92130-2040

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In re Application of	:	
Hendrik L. Bijl, et al.	:	
Application No. 10/343,861	:	DECISION ON PETITION
Filed: August 1, 2001	:	TO WITHDRAW
Attorney Docket No. 251502007900	:	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 27, 2006.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Morrison & Foerster has been revoked by the assignee of the patent application on December 8, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: Mr. Bryan H. Davidson
Nixon & Vanderhye, P.C.
901 North Glebe Road
11th Floor
Arlington, VA 22203-1808

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/343,861	10/10/2003	Hendrik Louis Bijl	251502007900

CONFIRMATION NO. 8025

OC000000021763822

OC000000021763822

25225
MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-2040

Date Mailed: 12/28/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/08/2006.

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

APRIL M WISE
OP (571) 272-1642

FORMER ATTORNEY/AGENT COPY

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Morrison & Foerster LLP
12531 High Bluff Drive
Suite 100
San Diego, CA 92130-2040

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In re Application of	:	
Hendrik Louis Bijl et al.	:	
Application No. 10/343,863	:	DECISION ON PETITION
Filed: February 3, 2003	:	TO WITHDRAW
Attorney Docket No. 4662-337	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 30, 2006.

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

A review of the file record indicates that the power of attorney to the attorneys and/or agents associated with the firm Morrison & Foerster has been revoked by the assignee of the patent application on October 2, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Nixon & Vanderhye, PC**
901 North Glebe Road, 11th Floor
Arlington, VA 22203

19 JUL 2004

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WesternGeco
Intellectual Property Department
P.O. Box 2469
Houston, TX 77252-2469

In re Application of GOUJON et al	:	
U.S. Application No.: 10/343,868	:	
PCT Application No.: PCT/GB01/03612	:	
Int. Filing Date: 13 August 2001	:	DECISION
Priority Date Claimed: 16 August 2000	:	
Attorney Docket No.: 14.0170-PCT-US	:	
For: A HOUSING FOR A SEISMIC SENSING	:	
ELEMENT AND A SEISMIC SENSOR	:	

This is in response to applicant's "Petition Under 37 C.F.R. § 1.47(A)" filed 19 September 2003.

In view of the declaration executed by Johan Fredrik Naes filed 08 October 2003, the petition under 37 CFR 1.47(a) is DISMISSED AS MOOT.

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

Bryan Tung
PCT Legal Examiner
Office of PCT Legal Administration

Telephone: 703-308-6614
Facsimile: 703-308-6459

27 MAY 2004

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Michael S. Leonard
BELL, BOYD & LLOYD
P.O. Box 1135
Chicago, Illinois 60690-1135

In re Application of:	:	
NONIEWICZ, Zbigniew	:	DECISION ON PETITION TO
U.S. Application No.: 10/343,875	:	WITHDRAW HOLDING OF
PCT No.: PCT/EP01/08840	:	ABANDONMENT
International Filing Date: 31 July 2001	:	
Priority Date: 03 August 2000	:	
Atty Docket No.: 113642-009	:	
For: SUPPORT STRUCTURE,	:	
ESPECIALLY A ROLLER	:	
BRACKET	:	

This decision is issued in response to the "Petition For Withdrawal Of Abandonment" filed 05 May 2004. No petition fee is required.

BACKGROUND

On 31 July 2001, applicant filed international application PCT/EP01/08840 which claimed a priority date of 03 August 2000 and which designated the United States. On 14 February 2002, a copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 03 February 2003.

In early February 2003, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee, a translation of the international application into English, and an unexecuted declaration. The materials were accorded a filing date of 04 February 2003 by the United States Designated/Elected Office (DO/EO/US).

On 02 July 2003, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure "to provide the Copy of the International Application by 30 months."

On 05 May 2004, applicant filed by facsimile the petition considered herein. The petition asserts that applicant filed the requirements for the national stage by "Express Mail" on 03 February 2003, prior to the expiration of thirty months from the priority date, and that such submission included a copy of the international application.

DISCUSSION

Applicant's February 2003 submission initiating this national stage application included a "Certificate Of Mailing By Express Mail Under 37 CFR 1.10" that: (1) itemized the filed materials (including an English translation of the international application and a check for the basic national fee); (2) identified the "Express Mail" label number (EV160634649US); and (3) identified the deposit date (03 February 2003). The present petition includes a copy of the "Express Mail" label number EV160634649US; this label identifies the present application's docket number and bears a "date in" of 03 February 2003. The USPTO's "Express Mail" database confirms that this "Express Mail" envelope was accepted by the USPS on 03 February 2003. Based on the above, it is concluded that the materials filed by applicant to initiate this national stage application were deposited with the USPS as "Express Mail" on 03 February 2003. Pursuant to 37 CFR 1.10(c), these materials are accorded a filing date of 03 February 2003, prior to the expiration of thirty months from the priority date. The 03 February 2003 filing included payment of the basic national fee and properly identified the international application.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 02 July 2003, based as it was on applicant's purported failure to provide the materials required to initiate the national stage before expiration of the thirty month deadline, is appropriately vacated.

It is noted that the application file does not contain an executed declaration in compliance with 37 CFR 1.497 and 35 U.S.C. 371(c)(4).

CONCLUSION

Applicant's petition for withdrawal of the abandonment is **GRANTED**.

Pursuant to 37 CFR 1.10, the original national stage materials (including payment of the basic national fee and the translation of the international application into English) are treated as having been filed on 03 February 2003, prior to the expiration of thirty months from the priority date.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 02 July 2003 is hereby **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing, including mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an executed oath or declaration in compliance with 37 CFR 1.497 and the surcharge for late filing of the declaration.

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13 JAN 2005

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Glenn E.J. Murphy
Henkel Corporation
Patent Law Department
2200 Renaissance Blvd., Suite 200
Gulph Mills, PA 19406

In re Application of	:	
SPECKMANN, et al.	:	DECISION ON PETITION
Application No.: 10/343,877	:	
Filing Date: 04 February 2003	:	UNDER 37 CFR 1.181
Atty. Docket No.: H 4983 PCT/US	:	
For: ENCLOSED BLEACH ACTIVATORS	:	

This is a decision on applicant's "Petition Under 37 C.F.R. § 1.181" filed on 12 January 2005 in the United States Patent and Trademark Office (USPTO) seeking correction of the Image File Wrapper (IFW) for the present National stage application.

A review of the application file finds the subject paper, application 09/969,169, contained therein identified as an English translation to one of the cited references to the filed Information Disclosure Statement. As such, applicant's petition under 37 CFR 1.181 is **GRANTED**.

The three entries identified in applicant's petition have been combined into a single 32 page "foreign reference" entry with a mail room date of 04 February 2004 and a document category listing as "Prior Art."

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Glenn E J Murphy
Henkel Corporation
Suite 200
2500 Renaissance Boulevard
Gulph Mills PA 19406

COPY MAILED
MAR 23 2005
OFFICE OF PETITIONS

Applicant: Speckmann et al.
Appl. No.: 10/343,877
International Filing Date: July 25, 2001
Title: ENCLOSED BLEACH ACTIVATORS
Attorney Docket No.: H 4983 PCT/US
Pub. No.: US 2004/0067863 A1
Pub. Date: April 8, 2004

This is a decision on the request for corrected patent applications publication under 37 CFR 1.221 (b), filed on January 12, 2005, for the above-identified application.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication includes the abstract, specification and claims of another application.

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."

The request for corrected publication received on January 12, 2005, was not timely filed under 37 CFR 1.221 (b).

Due to the nature of the errors in this publication, the office will *sua sponte* publish a corrected patent application publication. The corrected patent application publication will be published in due course, unless the application is allowed and 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 Polutta
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
For Patent Examination Policy

#3

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25 AUG 2003

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GlaxoSmithKline
Corporate Intellectual Property - UW2220
PO Box 1539
King of Prussia, PA 19406-0939

In re Application of	:	
BONDINELL, William E. et al.	:	
Application No.: 10/343,880	:	DECISION
PCT No.: PCT/US01/22529	:	
Int. Filing Date: 13 July 2001	:	ON PETITION UNDER
Priority Date: 15 July 2000	:	
Docket No.: P51156	:	37 CFR 1.137(b)
For: COMPOUNDS AND METHODS	:	

Applicant's "Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," filed in the above-captioned application on 05 February 2003 is **GRANTED**.

Applicant states that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional, as required by 37 CFR 1.137(b)(3). The appropriate national fee has been submitted. The petition fee will be charged to deposit account no. 19-2570, as authorized. A terminal disclaimer is not required as the application was filed on or after 08 June 1995. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

A declaration in compliance with 37 CFR 1.497(a)-(b) has been submitted. The fee for late filing of the oath or declaration will be charged to deposit account no. 19-2570, as authorized.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for continued processing in accordance with this decision. The application has a date of 05 February 2003 under 35 U.S.C. §371.

Erin M. Pender

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: (703) 305-0455
Facsimile: (703) 308-6459

28 NOV 2003

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In re Application of AZAMBRE et al. Application No.: 10/343,893 PCT No.: PCT/FR01/02420 Int. Filing Date: 24 July 2001 Priority Date: 04 August 2000 Attorney's Docket No.: 103722-373-NP For: VIRTUAL STORAGE SYSTEM	DECISION ON PETITION UNDER 37 CFR 1.47(b)

This is a decision on applicant's petition under 37 CFR 1.47(b), filed in response to the Notification of Missing Requirements, on 10 September 2003 to permit petitioner (applicant) to file the above-captioned application on behalf of the non-signing inventors, Hubert Azambre, Jean-Marc Delbosc and Claude Blanchet. Applicant also requests a two month extension of time, which is granted.

BACKGROUND

On 24 July 2001, applicant filed international application No. PCT/FR01/02420 which claimed a priority date of 04 August 2000, and which designated the United States. A copy of the international application was communicated to the United States by the International Bureau on 14 February 2002.

On 01 March 2002, a Demand was filed with the International Preliminary Examining Authority electing the United States. The deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee was to expire 30 months from the priority date, at midnight 04 February 2003.

On 04 February 2003, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*,: basic national filing fee and an unsigned declaration.

On 30 May 2003, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS indicating that the oath or declaration of the inventor must be furnished within two months from the mail date of the notice or the application would be abandoned. Extensions of time were available.

On 10 September 2003, petitioner filed the instant petition requesting that the above-identified application be accepted under the provisions of 37 CFR 1.47(b). The petition was accompanied by a Declaration and Power of Attorney signed by Steven Bagby, Vice President for 37 CFR 1.47(b) applicant Neartek, Inc. on behalf of the non-signing inventors, a request for two month extension of time, authorization to charge all required fees to applicant's deposit account and the Declaration of Steven Bagby in Support of Petition for Filing on Behalf of Nonsigning Inventor(s).

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by (1) the requisite petition fee, (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

With the petition and supporting documents, applicant has satisfied items (1), (3), (4) and (6).

With regard to item (2), petitioner has not provided adequate proof that the nonsigning inventors could not be found or reached as alleged.

At the outset, it is noted that the "Declaration of Steven Bagby in Support of Petition for Filing on Behalf of Nonsigning Inventor(s)" is incomplete. Specifically, the last sentence of paragraph 5 on page 2 does not continue onto page 3. Instead, it appears that the last two pages of his declaration are the actually the last two pages of the petition, attached to his statement and bearing the signature of the attorney of record. Moreover, the Declaration is not signed by Mr. Bagby.

With respect to attempts to reach or locate inventor Azambre, Mr. Bagby's statement is not detailed and is incomplete. With regard to his attempts to locate Inventor Blanchet, Mr. Bagby indicates that Mr. Blanchet did not respond to his correspondence. No evidence of a returned envelope is produced. No detail of the "other efforts to contact Mr. Blanchet to execute the application" were detailed. Mr. Bagby indicates that inventor Blanchet no longer resides at this address but does not explain the source of his information concerning Mr. Blanchet's whereabouts or whether efforts to locate Mr. Blanchet via E-mail, Internet searches or the like were conducted. Finally, with respect to inventor Delbosc, Mr. Bagby's inability to locate or reach inventor Delbosc is not addressed anywhere in his declaration.

Copies of documentary evidence such as Internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions. *See* MPEP Section 409.03(d).

Mr. Bagby's declaration does not provide any detail of the attempts to reach or locate the nonsigning inventors. No evidence of the attempts to deliver the correspondence to any of the inventors was provided; i.e. a tracking shipment statement indicating what attempts were made to deliver the correspondence to the nonsigning inventors at their respective last known addresses. Thus, an acceptable reason for filing under 37 CFR 1.47 has not been provided. Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

Regarding item (5), Section 409.03(f) of the MPEP, **Proof of Proprietary Interest**, states, in part:

> When an application is deposited pursuant to 37 CFR 1.47(b), the 37 CFR 1.47(b) applicant must prove that

(A) the invention has been assigned to the applicant, or
(B) the inventor has agreed in writing to assign the invention to the applicant, or
(C) the applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application.

No evidence has been presented regarding an assignment or agreement to assign the invention. Where the invention has not been assigned, and there is no written agreement to assign, the 37 CFR 1.47(b) applicant must demonstrate that he or she otherwise has a sufficient proprietary interest in the matter. A proprietary interest obtained other than by assignment or agreement to assign may be demonstrated by an appropriate legal memorandum to the effect that a court of competent jurisdiction (federal, state, or foreign) would by the weight of authority in that jurisdiction award title of the invention to the 37 CFR 1.47(b) applicant. The facts in support of any conclusion that a court would award title to the 37 CFR 1.47(b) applicant should be made of record by way of an affidavit or declaration of the person having firsthand knowledge of same. The legal memorandum should be prepared and signed by an attorney at law familiar with the law of the jurisdiction involved. A copy (in the English language) of a statute (if other than the United States statute) or a court decision (if other than a reported decision of a federal court or a decision reported in the United States Patents Quarterly) relied on to demonstrate a proprietary interest should be made of record.

Here, Petitioner has not provided sufficient evidence to show that Messrs. Azambre, Delbosc and Blanchet assigned or agreed to assign their rights in the present application to the petitioner. The legal memorandum of Francois Hellot relies on Mr. Bagby's statement, which has not been provided as indicated above. While Mr. Hellot provides what he describes as pertinent French patent law, he does not conclude that "a court of competent jurisdiction (federal, state, or foreign) would by the weight of authority in that jurisdiction award title of the invention to the 37 CFR 1.47(b) applicant. The facts in support of any conclusion that a court would award title to the 37 CFR 1.47(b) applicant should be made of record by way of an affidavit or declaration of the person having firsthand knowledge of same.

Accordingly items (2), and (5) above have not been satisfied and applicant's petition must be dismissed.

CONCLUSION

The petition under 37 CFR 1.47(b) is **DISMISSED WITHOUT PREJUDICE**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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23 AUG 2004

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In re Application of AZAMBRE et al. Application No.: 10/343,893 PCT No.: PCT/FR01/02420 Int. Filing Date: 24 July 2001 Priority Date: 04 August 2000 Attorney's Docket No.: 103722-373-NP For: VIRTUAL STORAGE SYSTEM	:	DECISION ON RENEWED PETITION UNDER 37 CFR 1.47(b)

This is a decision on applicant's renewed petition under 37 CFR 1.47(b), filed 28 June 2004 to permit petitioner (applicant) to file the above-captioned application on behalf of the non-signing inventors, Hubert Azambre, Jean-Marc Delbosc and Claude Blanchet. Applicant also requests a five month extension of time, which is granted.

BACKGROUND

On 10 September 2003, petitioner filed a petition requesting that the above-identified application be accepted under the provisions of 37 CFR 1.47(b). The petition was accompanied by a Declaration and Power of Attorney signed by Steven Bagby, Vice President for 37 CFR 1.47(b) applicant Neartek, Inc. on behalf of the non-signing inventors, a request for two month extension of time, authorization to charge all required fees to applicant's deposit account and the Declaration of Steven Bagby in Support of Petition for Filing on Behalf of Nonsigning Inventor(s).

On 28 November 2003, a decision dismissing the petition was mailed to applicant indicating that (1) Petitioner had not provided adequate proof that the nonsigning inventors could not be found or reached as alleged and (2) Petitioner had not shown sufficient proprietary interest in the application.

On 28 June 2004, applicant filed this renewed petition under 37 CFR 1.47(a) along with the statements of Steven Bagby, Kurt R. Redfield and François Hellot. Counsel states that as of 28 June 2004, the nonsigning inventors have not provided executed declarations for the above referenced application.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by (1) the requisite petition fee,

(2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Petitioner has previously satisfied items (1), (3), (4) and (6).

With regard to item (2), petitioner has now submitted a complete signed statement of Steven Bagby dated 06 August 2003. Mr. Bagby states that he is Vice President of Neartek, Inc. (Neartek) and has personal knowledge that inventors Azambre, Delbosc and Blanchet made the invention disclosed and claimed in the above application during the course of their employment with Neartek.

Mr. Bagby further states that he sent a copy of the declaration and related papers to Mr. Blanchet at his last known address, but received no response. Mr. Bagby states that further attempts to contact Mr. Blanchet were unsuccessful and that Blanchet moved from his last known address without providing a forwarding address. As to inventors Azambre and Delbosc, Mr. Bagby sent a copy of the declaration and related application papers to both Mr. Azambre's and Mr. Delbosc's respective last known addresses, without response from either of them.

However, Mr. Bagby's declaration does not provide any detail of the attempts to reach or locate the nonsigning inventors. No evidence of the attempts to deliver the correspondence to any of the inventors was provided (i.e. a tracking shipment statement indicating what attempts were made to deliver the correspondence to the nonsigning inventors at their respective last known addresses.) No evidence of a returned envelope is produced. With respect to inventor Delbosc, Mr. Bagby indicates that inventor Delbosc is suing Neartek for unfair termination.

In support of the renewed petition, Petitioner now submits the statement of facts under 37 CFR 1.47(b) of Kurt R. Redfield, Chief Financial Office for Neartek. Mr. Redfield states that on 09 April 2004, he "caused an Internet name and address search to be conducted using Mr. Blanchet's last known contact information", which confirmed Mr. Blanchet's last known address (copy provided). On 15 April 2004, Mr. Redfield states that another copy of the declaration and application papers were forwarded to Mr. Blanchet's last known address via Federal Express. According to the Federal Express Tracking Results detail (copy provided), the package was delivered to Mr. Blanchet on 19 April 2004, without response from Mr. Blanchet. This is sufficient evidence to conclude that Mr. Blanchet refuses to sign the application.

Likewise, Mr. Redfield states that an Internet name and address search for the last known address of Hubert Azambre was conducted, confirming his last known address (copy provided). A package containing the declaration and application papers was sent to Mr. Azambre at his last known address on 15 April 2004. According to Federal Express Tracking Results detail (copy provided), the package delivery was attempted but failed on 20 April 2004, with the comment "Customer not available or Business closed." The Tracking Detail also notes that on 21 April 2004, the package was "On FedEx vehicle for delivery". The result of any further attempts to deliver the package to Mr. Azambre was not provided. It is unclear that the package was delivered to Mr. Azambre. Thus, this is not sufficient evidence to conclude that Mr. Azambre refuses to sign the application papers since it can not be confirmed that he ever received these papers.

As for Mr. Delbosc, Mr. Redfield states that an Internet name and address search for his last known name and address was conducted; however this search was unsuccessful (copy provided). Mr. Redfield states that Mr. Delbosc is involved in litigation against Neartek and

provided a copy and English translation of the "Labor Relations Board Council of Longjumeau". As stated in MPEP §409.03(d), if the nonsigning inventor is represented by counsel, a copy of the application papers should be sent to the address of the nonsigning inventor's attorney. Thus, it cannot be concluded at this time that Mr. Delbosc refuses to sign the application. Petitioner is advised that with respect to inventor Delbosc, a copy of the complete application should be forwarded to his attorney, requesting a response within a reasonable time period.

Regarding item (5), the 37 CFR 1.47(b) applicant must prove that (A) the invention has been assigned to the applicant, or (B) the inventor has agreed in writing to assign the invention to the applicant, or (C) the applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application.

Since no evidence has been presented regarding an assignment or written agreement to assign the invention, the 37 CFR 1.47(b) applicant must demonstrate that he or she otherwise has a sufficient proprietary interest in the matter. A proprietary interest obtained other than by assignment or agreement to assign may be demonstrated by an appropriate legal memorandum to the effect that a court of competent jurisdiction (federal, state, or foreign) would by the weight of authority in that jurisdiction award title of the invention to the 37 CFR 1.47(b) applicant. The facts in support of any conclusion that a court would award title to the 37 CFR 1.47(b) applicant should be made of record by way of an affidavit or declaration of the person having firsthand knowledge of same. The legal memorandum should be prepared and signed by an attorney at law familiar with the law of the jurisdiction involved. A copy (in the English language) of a statute (if other than the United States statute) or a court decision (if other than a reported decision of a federal court or a decision reported in the United States Patents Quarterly) relied on to demonstrate a proprietary interest should be made of record.

Here, Petitioner has now provided the legal memorandum of François Hellot, who states that he is duly recognized to practice law in France and familiar with the law thereof. The legal memorandum of François Hellot relies on Mr. Bagby's and Mr. Redfield's statements and is attached to a copy (in the English language) of the pertinent French statute. Mr. Hellot provides what he describes as pertinent French patent law, and concludes that "by the weight of authority in France, and on the basis of the factual elements set forth in the Statements, it is my opinion that a French court of competent jurisdiction would likely, by weight of authority in France award title of the invention to Neartek", the 37 CFR 1.47(b) applicant. Mr. Hellot's legal memorandum provides sufficient evidence to show that Messrs. Azambre, Delbosc and Blanchet assigned or agreed to assign their rights in the present application to the petitioner. Item (5) above has been satisfied.

Accordingly, Item (5) is now satisfied. However, as set forth above, Item (2) with respect to inventors Azambre and Delbosc has not been satisfied and applicant's petition must be dismissed.

CONCLUSION

The petition under 37 CFR 1.47(b) is **DISMISSED WITHOUT PREJUDICE**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail

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25 MAY 2005

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In re Application of	:	
AZAMBRE et al.	:	DECISION ON SECOND
Application No.: 10/343,893	:	
PCT No.: PCT/FR01/02420	:	RENEWED PETITION
Int. Filing Date: 24 July 2001	:	
Priority Date: 04 August 2000	:	UNDER 37 CFR 1.47(b)
Attorney's Docket No.: 103722-373-NP	:	
For: VIRTUAL STORAGE SYSTEM	:	

This is a decision on applicant's second renewed petition under 37 CFR 1.47(b), filed 28 June 2004 to permit petitioner (applicant) to file the above-captioned application on behalf of the non-signing inventors, Hubert Azambre, Jean-Marc Delbosc and Claude Blanchet. Applicant also requests a five month extension of time, which is granted.

BACKGROUND

On 10 September 2003, petitioner filed a petition requesting that the above-identified application be accepted under the provisions of 37 CFR 1.47(b). The petition was accompanied by a Declaration and Power of Attorney signed by Steven Bagby, Vice President for 37 CFR 1.47(b) applicant Neartek, Inc. on behalf of the non-signing inventors, a request for two month extension of time, authorization to charge all required fees to applicant's deposit account and the Declaration of Steven Bagby in Support of Petition for Filing on Behalf of Nonsigning Inventor(s).

On 28 November 2003, a decision dismissing the petition was mailed to applicant indicating that (1) Petitioner had not provided adequate proof that the nonsigning inventors could not be found or reached as alleged and (2) Petitioner had not shown sufficient proprietary interest in the application.

On 28 June 2004, applicant filed a renewed petition under 37 CFR 1.47(a) along with the statements of Steven Bagby, Kurt R. Redfield and François Hellot.

On 23 August 2004, a decision dismissing the petition was mailed to applicant indicating that applicant had insufficient evidence to conclude that inventors Azambre and Delbosc refused to sign the application papers.

On 23 March 2005, applicant filed a second renewed petition under 37 CFR 1.47(b).

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by (1) the requisite petition fee, (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Petitioner has previously satisfied items (1), (3), (4), (5) and (6).

With regard to item (2), it was previously demonstrated that a package containing the declaration and application papers was sent to Mr. Azambre at his last known address on 15 April 2004. According to Federal Express Tracking Results detail, the package delivery was attempted but failed on 20 April 2004, with the comment "Customer not available or Business closed." The Tracking Detail also noted that on 21 April 2004, the package was "On FedEx vehicle for delivery". The result of any further attempts to deliver the package to Mr. Azambre was not provided. However, the decision on the 28 June 2004 petition indicated that it was unclear that the package was delivered to Mr. Azambre. Petitioner has now submitted a Supplement to the FedEx Express Track Shipment "Detailed Results" indicating a delivery date of 27 April 2004 for the package sent to inventor Azambre. Petitioner has now provided sufficient evidence to conclude that Mr. Azambre, by his conduct, refuses to sign the application papers since it has been shown that inventor Azambre received but has not returned the executed documents.

With respect to inventor Delbosc, petitioner previously indicated that inventor Delbosc is suing Neartek for unfair termination (28 June 2004 petition). In the second renewed petition, petitioner now states "Mr. Redfield was informed that when approached by Neartek about the need to return the executed application papers, Mr. Delbosc had stated to Neartek that he had reviewed and discussed the matter with his attorney who had advised him not to execute the Declaration of Inventorship given the pending lawsuit." No statement from one having first hand knowledge of this refusal has been provided. Furthermore, as previously stated in the 23 August 2004 decision, MPEP §409.03(d) clearly states that, *if the nonsigning inventor is represented by counsel, a copy of the application papers should be sent to the address of the nonsigning inventor's attorney*. No evidence has been presented that a copy of the application papers was sent to Mr. Delbosc's attorney. Thus, it cannot be concluded at this time that Mr. Delbosc refuses to sign the application. Petitioner is again advised that with respect to inventor Delbosc, a copy of the complete application should be forwarded to his attorney, requesting a response within a reasonable time period. Item (2) with respect to inventor Delbosc has not been satisfied and applicant's petition must be dismissed.

CONCLUSION

The petition under 37 CFR 1.47(b) is **DISMISSED WITHOUT PREJUDICE**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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In re Application of AZAMBRE et al. Application No.: 10/343,893 PCT No.: PCT/FR01/02420 Int. Filing Date: 24 July 2001 Priority Date: 04 August 2000 Attorney's Docket No.: 103722-373-NP For: VIRTUAL STORAGE SYSTEM	DECISION ON SECOND RENEWED PETITION UNDER 37 CFR 1.47(b)

This is a decision on applicant's third renewed petition under 37 CFR 1.47(b), filed 27 December 2005 to permit petitioner (applicant) to file the above-captioned application on behalf of the non-signing inventors, Hubert Azambre, Jean-Marc Delbosc and Claude Blanchet. Applicant also requests a five month extension of time, which is granted.

BACKGROUND

On 10 September 2003, petitioner filed a petition requesting that the above-identified application be accepted under the provisions of 37 CFR 1.47(b). The petition was accompanied by a Declaration and Power of Attorney signed by Steven Bagby, Vice President for 37 CFR 1.47(b) applicant Neartek, Inc. on behalf of the non-signing inventors, a request for two month extension of time, authorization to charge all required fees to applicant's deposit account and the Declaration of Steven Bagby in Support of Petition for Filing on Behalf of Nonsigning Inventor(s).

On 28 November 2003, a decision dismissing the petition was mailed to applicant indicating that (1) Petitioner had not provided adequate proof that the nonsigning inventors could not be found or reached as alleged and (2) Petitioner had not shown sufficient proprietary interest in the application.

On 28 June 2004, applicant filed a renewed petition under 37 CFR 1.47(a) along with the statements of Steven Bagby, Kurt R. Redfield and François Hellot.

On 23 August 2004, a decision dismissing the petition was mailed to applicant indicating that applicant had insufficient evidence to conclude that inventors Azambre and Delbosc refused to sign the application papers.

On 23 March 2005, applicant filed a second renewed petition under 37 CFR 1.47(b). On 25 May 2005, a decision on the renewed petition was mailed indicating that applicant had insufficient evidence to conclude that inventor Delbosc refused to sign the application papers.

On 27 December 2005, applicant filed the instant renewed petition.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by (1) the requisite petition fee, (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Petitioner has previously satisfied items (1), (3), (4), (5) and (6).

With regard to item (2) and inventor Delbosc, MPEP §409.03(d) clearly states that, if the nonsigning inventor is represented by counsel, a copy of the application papers should be sent to the address of the nonsigning inventor's attorney. Petitioner has presented evidence that a copy of the application papers were sent to Mr. Delbosc's attorney. Ms. King specifically states that on 22 September 2005, she sent a copy of the application papers via International Federal Express to Mr. Delbosc's attorney, M. Pieter-Jan Peeters, asking the attorney to forward the papers to Mr. Delbosc and requesting his signature on the declaration. The Federal Express Tracking Results Detail indicates that the package was delivered on 26 September 2005 at 10:49 am. Further, according to Ms. King, as of the date of her statement (27 December 2005), no response has been received from Mr. Delbosc or his attorney. Under these circumstances, it can now be concluded that Mr. Delbosc refuses to sign the application. Item (2) with respect to inventor Delbosc has been satisfied.

The evidence submitted supports a finding that the nonsigning inventor refuses to sign the application for the reasons set forth above. The requirements of 37 CFR 1.47(b) have been met. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(b).

CONCLUSION

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

As provided in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the non-signing inventors at their last known address of record as set forth in the papers filed 28 June 2004, and a notice of the filing of the application under 37 CFR 1.47(b) will be published in the Official Gazette.

Applicant has completed the requirements for acceptance under 35 U.S.C. § 371(c). The application has an international filing date of 24 July 2001, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **10 September 2003**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

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17 MAR 2006

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In re Application of AZAMBRE et al. Application No.: 10/343,893 PCT No.: PCT/FR01/02420 Int. Filing Date: 24 July 2001 Priority Date: 04 August 2000 Attorney's Docket No.: 103722-373-NP For: VIRTUAL STORAGE SYSTEM	DECISION ON SECOND RENEWED PETITION UNDER 37 CFR 1.47(b)

Dear Mr. Delbosc:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

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

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17 MAR 2006

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In re Application of AZAMBRE et al. Application No.: 10/343,893 PCT No.: PCT/FR01/02420 Int. Filing Date: 24 July 2001 Priority Date: 04 August 2000 Attorney's Docket No.: 103722-373-NP For: VIRTUAL STORAGE SYSTEM	DECISION ON SECOND RENEWED PETITION UNDER 37 CFR 1.47(b)

Dear Mr. Blanchet:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

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

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7 Becker Farm Road
Roseland, NJ 07068

17 MAR 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

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HUBERT AZAMBRE
10 RUE DE VALOIS
LES ULIS
F9149 FRANCE

In re Application of AZAMBRE et al. Application No.: 10/343,893 PCT No.: PCT/FR01/02420 Int. Filing Date: 24 July 2001 Priority Date: 04 August 2000 Attorney's Docket No.: 103722-373-NP For: VIRTUAL STORAGE SYSTEM	DECISION ON SECOND RENEWED PETITION UNDER 37 CFR 1.47(b)

Dear Mr. Azambre:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

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

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (571)272 -3286

Goodwin Procter, LLP
7 Becker Farm Road
Roseland, NJ 07068

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EMC CORPORATION
OFFICE OF THE GENERAL COUNSEL
176 SOUTH STREET
HOPKINTON, MA 01748

Mail Date: 04/21/2010

Applicant	: Delbosc Jean-Marc	: DECISION ON REQUEST FOR
Patent Number	: 7660954	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/343,893	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **612** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

ALFRED J MANGELS
4729 CORNELL ROAD
CINCINNATI OH 45241-2433

In re Application of
Ahlstrom, et al. :
Application No. 10/343,904 : DECISION ON
Filed: June 10, 2003 : PETITION
Attorney Docket No. 9281-4425 :

This is in response to the petition to revive under 37 CFR 1.137(b), filed October 20, 2006.

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

The above application became abandoned for failure to timely submit corrected drawings as required by the Notice of Allowability mailed on June 2, 2006. This notice set a non extendable period for reply of three months. No corrected drawings having been received, the application became abandoned on September 3, 2006. A Notice of Abandonment was mailed on September 20, 2006.

With the instant petition, petition paid the petition fee, submitted corrected drawings, and made the proper statement of unintentional delay.

The application file is being forwarded to Group Art Unit 3761 for consideration of the replacement drawing filed October 20, 2006.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/343,924	02/06/2003	Wataru Ishimaru	088473-0124	5350

22428 7590 12/27/2004

FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER
LE, DAVID D

ART UNIT	PAPER NUMBER
3681	

DATE MAILED: 12/27/2004

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Application of
Wataru Ishimaru et al
Serial No: 10/343,924
Filed: February 6, 2003
For: GEAR SHIFT CONTROL APPARATUS FOR AUTOMATIC TRANSMISSION

: DECISION ON REQUEST
: UNDER 37 CFR 1.97
: FOR CONSIDERATION
: OF INFORMATION
: DISCLOSURE STATEMENT

The request under 37 CFR 1.97(d) for consideration of an information disclosure statement filed on November 3, 2004 after allowance has been:

( ) GRANTED.

(X) DENIED.

The request lacks:

( ) The required fee under 37 CFR 1.97(d)(2) and 1.17(p).

(X) A proper certification as specified in 37 CFR 1.97(e)(1) or 1.97(e)(2). 37 CFR 1.97(e)(1) requires statement to include that each item of information contained in the IDS was **first** cited in **any** communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the IDS.

The information disclosure statement has been placed of record in the file and will not be considered by the examiner. See Federal Register 65 Fed. Reg. 54603 (September 8, 2000); Official Gazette 1238 Off. Gaz. Pat Office 77 (September 19, 2000) for rule changes fo 37 CFR 1.97.

Charles A. Marmor

Charles A. Marmor, SPE
Art Unit 3681
(703) 308-0830

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date : March 13, 2007

Patent No. : 7,033,724 B2
Inventor(s) : Knoll, et al.
Issued : April 25, 2006
Title : **METHOD FOR PRODUCING ORGANICALLY DEVELOPABLE, PHOTOPOLYMERIZABLE FLEXOGRAPHIC PRINTING ELEMENTS ON FLEXIBLE METALLIC SUPPORTS**
Docket No. : 0087000037

Re: Request for Certificate of Correction

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

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

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

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

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

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

Applicant has not included items A and or C above, accordingly, the request for Certificate of Correction to add or change the assignee data is denied.

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

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

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

Elisha Evans
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 ext. 110

NOVAK DRUCE DELUCA & QUIGG, LLP
1300 EYE STREET NW
SUITE 1000 WEST TOWER
WASHINGTON DC 20005

CBN/eme

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NOVAK DRUCE DELUCA & QUIGG, LLP
1300 EYE STREET NW
SUITE 1000 WEST TOWER
WASHINGTON, DC 20005

In re Patent No. 7,033,724	:	
Issue Date: April 6, 2006	:	
Application No. 10/343,927	:	ON PETITION
Filed: February 6, 2003	:	
Attorney Docket No. 0087000037	:	

This is a decision on the petition filed April 18, 2007, 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 $130 processing fee set forth in § 1.17(i) is being charged to counsel's deposit account as authorized.

The request is **GRANTED**.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

24 AUG 2005

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Gerald M. Murphy, Jr.
BIRCH, STEWART, KOLASCH & BIRCH, L.L.P.
P.O. Box 747
Falls Church, VA 22040-0747
Arlington, Virginia 22201

In re Application of Tomoko UEDA et al.	:	
U.S. Application No.: 10/343,931	:	
Int.. Application No.: PCT/JP01/07763	:	DECISION ON
Int. Filing Date: 07 September 2001	:	
Priority Date: 06 June 2001	:	PETITION
Attorney Docket No.: 1422-0575P	:	
For: COMPOSITIONS FOR AMELIORATING ATTENTION-DEFFICIT/HYPERACTIVITY DISORDER	:	UNDER 37 CFR 1.182

This is a decision in response to applicant's letter of 13 June 2003, which is being treated as a petition under 37 CFR 1.182.

BACKGROUND

On 07 September 2001, applicants filed international application PCT/JP01/07763, which designated the U.S. and claimed the priority of an application filed on 06 June 2003. Accordingly the 30-month deadline for entry into the U.S. national stage expired at midnight on 08 December 2003 (06 December 2003 was a Saturday).

On 05 February 2003, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, a payment of $900.00 for the basic national fee required by 35 U.S.C. 371(c)(1), an English translation of the International application, a preliminary amendment and an executed declaration of the inventors.

The inventor/applicants for the United States of America named in the published international application were Tomoko Ueda, Makoto Ozeki, Tsutomu Okubo and Lekh Raj Juneja. The first named inventor on the declaration submitted on 05 February 2003 was Tomoko Kumagai while the other named inventors were the same as in the published international application.

On 28 May 2003, DO/EO/US mailed a Form PCT/DO/EO/905 (NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)). This form required an Oath or Declaration of the Inventors and also required clarification regarding a different inventor's name.

On 13 June 2003 applicants responded to the Notification of Missing Requirements with the instant letter and explained that the name of inventor Tomoko Ueda had been changed to Tomoko Kumagai due to marriage.

DISCUSSION

The instant letter indicates that the last name of the first mentioned inventor is different on the 05 February 2003 declaration than the name appearing on the published international application because this inventor's name was changed, due to marriage.

The situation where an inventor's name has changed during prosecution of an application with no actual change of inventorship is covered by 37 CFR 1.497 and MPEP § 1893.01(e).

MPEP§ 1893.01(e) provides in part:

> "Where there has been no change of inventorship but the name of an inventor indicated in the international application is different from the corresponding name indicated in an oath or declaration submitted under 37 CFR 1.497, for example, on account of marriage, then a petition under 37 CFR 1.182 will be required to accept the oath or declaration with the changed name. See MPEP § 605.04(c)."

MPEP § 605.04(c) requires in part:

> "In cases where an inventor's name has been changed after the application has been filed and the inventor desires to change his or her name on the application, he or she must submit a petition under 37 CFR 1.182. Applicants are also strongly encouraged to submit an application data sheet (37 CFR 1.76) showing the new name. The petition should be directed to the attention of the Office of Petitions. The petition must include an appropriate petition fee and an affidavit signed with both names and setting forth the procedure whereby the change of name was effected or a certified copy of the court order.
>
> If an application data sheet is not submitted, the petition may still be granted, but the patent may not reflect the correct spelling of the inventor's name."

In this application, there has been no actual change of inventorship but the name of one of the inventors has changed after the U.S. application was filed. Note that the filing date of the instant application (10/343,931) ***is*** the international filing date as per 35 U.S.C. 363

Under the provisions of MPEP§ 1893.01(e), for the 05 February 2003 declaration be considered satisfactory under 37 CFR 1.497, applicant is required to file a petition under 37 CFR

1.182 with the appropriate petition fee as specified in 37 CFR 1.17(h). The letter of 13 June 2003 is considered to be a petition under 37 CFR 1.182.

This letter authorizes the Commissioner to "... charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17... ."

MPEP § 605.04(c) sets forth detailed requirements for the petition required by MPEP § 1893.01(e) in a name change situation such as this one. In this application, the statements by applicants' counsel, the submission of the copy of the family record of the Kumagias and the English translation of the family record are considered to satisfy the above-noted requirements.

DECISION

For the reasons discussed above, applicant's petition is **GRANTED.**

The $130.00 fee required by 37 CFR 1.17(h) will be charged to Deposit Account No. 02-2448.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of this letter marked to the attention of the PCT Legal Office.

This application is being forwarded to DO/EO/US for further processing under 35 U.S.C. 371

Boris Milef
PCT Legal Examiner
PCT Legal Office

Paul A. Bell
PCT Special Programs Examiner
Telephone (571) 272-3278

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OFFICE OF PETITIONS

OLIFF & BERRIDGE
P.O. BOX 19928
ALEXANDRIA VA 22320

In re Application of :
Hisashi Iechika et al :
Application No. 10/343,939 : ON PETITION
Filed: February 5, 2003 :
Attorney Docket No. 114880 :

This is a decision on the petition, filed March 20, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on March 13, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2851 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 : 10/05/07

TO SPE OF : ART UNIT 1794

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/343944** Patent No.: **7226660**

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**.

A. Green

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: There are no errors. Claims have been renumbered after allowance (see Issue Classification Sheet) to place dependent claims immediately subsequent to their respective independent claims. Applicant's request attempts to return claims to the order as originally presented, which is not ~~the~~ according to the allowance procedure in claim numbering.

[signature] 1794

SPE **Art Unit**

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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Date Mailed : May 28, 2008

Patent No. :7,226,660
Inventor : Hiroshi Kuroda, et al.
Patent Issued : June 5, 2007
Title :CONDUCTIVE FINE PARTICLES, METHOD FOR PLATING FINE PARTICLES AND
:SUBSTRATE STRUCTURAL BODY

Re: Request for Certificate of Correction

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

Inspection of the application for the patent reveals, however, that in connection with the alleged error pertaining to column 32, line 3, claim 2: printed data as reflected in the column and line areas of which applicant has referred is in accordance with the records in the Patent and Trademark Office in that claims have been renumbered after allowance. (See Issue Classification Sheet) to place dependent claims immediately subsequent to their respect independent claims. Applicant's request attempts to return claims to the order as originally presented which is not according the allowance procedure in claims renumbering. There being no fault on the part of the Patent and Trademark Office, it has no authority to a issue certificate of correction under the provisions of 35 U.S.C. 254 and Rule 322 of the Rules of Practice of the United States Patent and Trademark Office in Patent Cases.

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

Any telephone inquiry concerning this communication should be directed to Ms. A. Green at (703) 308-9390 ext. 123.

Cheryl A. Green
for Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 308-9390 or (703) 308-9390 Ext. 123

KENYON & KENYON
1500 K. Street, N.W. Suite 700
Washington, DC 20005-1257

/arg

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Glenn Patent Group
3475 Edison Way, Suite L
Menlo Park, CA 94025

In re Application of	:	DECISION ON
KELLY, Hugh-Peter, Granville	:	
Application No.: 10/343,951	:	
PCT No.: PCT/GB01/03513	:	PETITION UNDER
Int. Filing Date: 03 August 2001	:	
Priority Date: 03 August 2000	:	37 CFR 1.137(b)
Attorney's Docket No.: KEMP0013	:	
For: Electrical Short Stroke Linear Actuator	:	

This decision is in response to applicants' "Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137," filed on 04 February 2003. The petition fee of $650.00 has been charged to Deposit Account No.: 07-1445.

BACKGROUND

On 03 August 2001, this international application was filed, claiming an earliest priority date of 03 August 2000. A copy of the intentional application was transmitted on 14 February 2002 to the USPTO from the International Bureau.

A Demand electing the United States was filed in this international application on 04 March 2002. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.494 was 03 February 2003. This international application became abandoned with respect to the United States at midnight on 03 February 2003 for failure to pay the required basic national fee.

On 04 February 2003, applicants filed the instant petition under 37 CFR 1.137(b) and Transmittal letter for entry into the national stage in the United States, which was accompanied by the petition fee, and basic national fee. No executed declaration or oath was submitted at such time.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a

grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, and (2) the petition fee set forth in §1.17(m). In this application, no terminal disclaimer is required.

With respect to item (3), there appears to be a question whether the delay was unintentional and additional information will be necessary to explain the filing the petition. The record indicates that due to conflicting instructions, this date was unintentionally missed. It is unclear what were these conflicting instructions and how these instruction caused an unintentional delay in filing of the application. Accordingly, pursuant to 37 CFR 1.137(b)(3), applicant is required to provide an explanation why the entire delay in filing the petition should be construed as an unintentional delay.

Consequently, the petition is deemed to not to satisfy requirement (3) under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.137(b) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Failure to timely submit the proper reply will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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30 SEP 2003

Glenn Patent Group
3475 Edison Way, Suite L
Menlo Park, CA 94025

In re Application of	:	DECISION ON
KELLY, Hugh-Peter, Granville	:	
Application No.: 10/343,951	:	
PCT No.: PCT/GB01/03513	:	PETITION UNDER
Int. Filing Date: 03 August 2001	:	
Priority Date: 03 August 2000	:	37 CFR 1.137(b)
Attorney's Docket No.: KEMP0013	:	
For: Electrical Short Stroke Linear Actuator	:	

This is in response to the " Renewed Petition Under 37 C.F.R. § 1.137(b)" filed on 05 September 2001.

BACKGROUND

In a decision dated 08 July 2003, the Office dismissed the petition submitted on 04 February 2003. The decision stated that petitioner had not satisfied requirement (3) of 137(b) because there appeared to be a question on whether the delay was unintentional since the record indicated that due to conflicting instructions, the date was unintentionally missed.

On 05 September 2003, applicant filed the instant renewed petition under 37 C.F.R. § 1.137(b). Accompanied the petition, inter alia, is a request for reconsideration of petition decision.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

The petition of 04 February 2003 was deemed to satisfy requirements (1), (2) and, (4) under 37 CFR 1.137(b). The instant petition satisfies requirement (3) under 37 CFR 1.137(b) because applicant has provided an explanation on how the conflicting instructions caused the unintentional delay in the filing of the above application.

Accordingly, applicant has now satisfied requirements (1), (2), (3) and, (4) under 37 CFR 1.137(b).

DECISION

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

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing under 35 U.S.C. 371.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

SPE D. Martin

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/8/06

TO SPE OF : ART UNIT 2837

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/343,954 Patent No.: 6825631

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

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

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

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

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

SPE

2837
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,825,631 B1
APPLICATION NO. : 10/343,954
ISSUE DATE : November 30, 2004
INVENTOR(S) : Hiroshi NAKAMURA

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the title page: Item [73], After "Kitakyushu" insert --shi--.

On the Sheet 4 of 5, At the bottom of figure 6 insert --Prior Art--.

Column 3/line 23-24, Delete "

$$Y(z)=\{(b_1z^{-1}+\ldots+b_{Nb}z^{-Nb})U(z)+(d_1z^{-1}+\ldots+d_{Nd}z^{-Nd})FF_1(z)+(c_1z^{-1}+\ldots+c_{Nc}z^{-Nc})FF_2(z)\}/(1-a_1z^{-1}31\ldots-a_{Na}z^{-Na}),$$

" and insert

--

$$Y(z)=\{(b_1z^{-1}+\cdots+b_{Nb}z^{-Nb})U(z)+(d_1z^{-1}+\cdots+d_{Nd}z^{-Nd})FF_1(z)+(c_1z^{-1}+\cdots+c_{Nc}z^{-Nc})FF_2(z)\}/(1-a_1z^{-1}-\cdots-a_{Na}z^{-Na}),$$

--, therefor.

Column 4/line 35-44, Delete "

$$\Delta u(i)=\sum_{m=-K+1}^{M} v_m\Delta r(i+m)-\sum_{n=0}^{Na-1} p_n\Delta y(i-K-n)+Ee(i-K)-\sum_{n=1}^{Nb+K-1} g_n\Delta u(i-n)-\sum_{n=0}^{Nd+K-1} x_n\Delta FF_1(i-n)-\sum_{n=0}^{Nc+K-1} t_n\Delta FF_2(i-n)-Fu(i-1)$$

"

and insert --

$$\Delta u(i)=\sum_{m=-K+1}^{M} v_m\Delta r(i+m)-\sum_{n=0}^{Na-1} p_n\Delta y(i-K-n)+Ee(i-K)-\sum_{n=1}^{Nb+K-1} g_n\Delta u(i-n)-\sum_{n=0}^{Nd+K-1} x_n\Delta FF_1(i-n)-\sum_{n=0}^{Nc+K-1} t_n\Delta FF_2(i-n)-Fu(i-1)$$

--, therefor.

MAILING ADDRESS OF SENDER:

Katsuhiro Arai
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, California 92614

DOCKET NO. WAKAB78.003APC

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,825,631 B1
APPLICATION NO. : 10/343,954
ISSUE DATE : November 30, 2004
INVENTOR(S) : Hiroshi NAKAMURA

Column 5/line 10-13, Delete " $Y(z)=\{(b_1z^{-1}+\ldots+b_{Nb}z^{-Nb})U(z)+(d_1z^{-1}+\ldots+d_{Nd}z^{-Nd})FF_1(z)+(c_1z^{-1}+\ldots+c_{Nc}z^{-})FF_2(z)\}/\{(1-z^{-1})(1-a_1z^{-1}-\ldots-a_{Na}z^{-Na})\}$ " and insert

$$Y(z)=\{(b_1z^{-1}+\cdots+b_{Nb}z^{-Nb})U(z)+(d_1z^{-1}+\cdots+d_{Nd}z^{-Nd})FF_1(z)$$
-- $+(c_1z^{-1}+\cdots+c_{Nc}z^{-Nc})FF_2(z)\}/\{(1-z^{-1})(1-a_1z^{-1}-\cdots-a_{Na}z^{-Na})\}$ --, therefor.

Column 9/line 34-35, Delete " $Y(z)=\{(b_1z^{-1}+\ldots+b_{Nb}z^{-Nb})U(z)+(d_1z^{-1}+\ldots+d_{Nd}z^{-Nd})V_{FF}(z)+(c_1z^{-1}+\ldots++c_{Nc}z^{-Nc})T_{FF}(z)\}/(1-a_1z^{-1}-\ldots-a_{Na}z^{-Na})$ " and insert

$$Y(z)=\{(b_1z^{-1}+\cdots+b_{Nb}z^{-Nb})U(z)+(d_1z^{-1}+\cdots+d_{Nd}z^{-Nd})V_{FF}(z)$$
-- $+(c_1z^{-1}+\cdots+c_{Nc}z^{-Nc})T_{FF}(z)\}/(1-a_1z^{-1}-\cdots-a_{Na}z^{-Na})$ --, therefor.

Column 10/line 34, Delete " $\hat{b}_{m0}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{b}_{(m-j)0}+\sum_{j=1}^{m} b_j$ " and insert-- $\hat{b}_{m0}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{b}_{(m-j)0}+\sum_{j=1}^{m} b_j$ --, therefor.

Column 10/line 39, Delete " $\hat{b}_{mn}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{b}_{(m-j)n}+b_{n+m}$ " and insert -- $\hat{b}_{mn}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{b}_{(m-j)n}+b_{n+m}$ --, therefor.

Column 10/line 46, Delete " $\hat{d}_{m0}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{d}_{(m-j)0}+\sum_{j=1}^{m} d_j$ " and insert -- $\hat{d}_{m0}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{d}_{(m-j)0}+\sum_{j=1}^{m} d_j$ --, therefor.

Column 10/line 51, Delete " $\hat{d}_{mn}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{d}_{(m-j)n}+d_{n+m}$ " and insert -- $\hat{d}_{mn}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{d}_{(m-j)n}+d_{n+m}$ --, therefor.

Column 10/line 59, Delete " $\hat{c}_{m0}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{c}_{(m-j)0}+\sum_{j=1}^{m} c_j$ " and insert -- $\hat{c}_{m0}=\sum_{j=1}^{m+K-1} a_j\cdot\hat{c}_{(m-j)0}+\sum_{j=1}^{m} c_j$ --, therefor.

MAILING ADDRESS OF SENDER:

Katsuhiro Arai
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, California 92614

DOCKET NO. WAKAB78.003APC

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,825,631 B1
APPLICATION NO. : 10/343,954
ISSUE DATE : November 30, 2004
INVENTOR(S) : Hiroshi NAKAMURA

Column 10/line 64, Delete "$\hat{c}_{mn} = \sum_{j=1}^{m+K-1} a_j \cdot \hat{c}_{(m-j)n} + c_{n+m}$" and insert -- $\hat{c}_{mn} = \sum_{j=1}^{m+K-1} a_j \cdot \hat{c}_{(m-j)n} + c_{n+m}$ --, therefor.

Column 11/line 2, Delete "$c_n O$" and insert --$c_n=0$--, therefore.

Column 11/line 28, Delete "$A_{mn}=\hat{a}_{mn} \cdot a_{n-K}$" and insert -- $A_{mn} = \hat{a}_{mn} \cdot a_{n-K}$ --, therefor.

Column 11/line 30, Delete "$B_{mn}=\hat{b}_{mn} \cdot b_{n-K}$" and insert -- $B_{mn} = \hat{b}_{mn} \cdot b_{n-K}$ --, therefor.

Column 11line 32, Delete "$D_{mn}=\hat{d}_{mn} \cdot d_{n-K}$" and insert -- $D_{mn} = \hat{d}_{mn} \cdot d_{n-K}$ --, therefor.

Column 11line 34, Delete "$C_{mn}=\hat{c}_{mn} \cdot c_{n-K}$" and insert -- $C_{mn} = \hat{c}_{mn} \cdot c_{n-K}$ --, therefor.

Column 12/line 5, Delete "$g_1 = \sum_{m=1}^{M} q_m B_{m1} \cdot c_d / W$," and insert -- $g_1 = \sum_{m=1}^{M} q_m B_{m1} \cdot c_d / W$,--, therefor.

Column 13/line 60, Delete "$\beta_s = \sum_{j=1}^{s} B_{j0}$, $W = \sum_{s=1}^{M} w_s \beta_s^2 + c_a + c_d$," and insert

-- $\beta_s = \sum_{j=1}^{s} B_{j0}$, $W = \sum_{s=1}^{M} w_s \beta_s^2 + c_a + c_d$, --, therefor.

MAILING ADDRESS OF SENDER:

Katsuhiro Arai
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, California 92614

DOCKET NO. WAKAB78.003APC

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,825,631 B1
APPLICATION NO. : 10/343,954
ISSUE DATE : November 30, 2004
INVENTOR(S) : Hiroshi NAKAMURA

Column 16/line 5, Delete " $\beta_s \sum_{j=1}^{s} B_{j0}, W = \sum_{s=1}^{M} w_s \beta_s^2 + c_s + c_d,$ " and insert

-- $\beta_s = \sum_{j=1}^{s} B_{j0}, \quad W = \sum_{s=1}^{M} w_s \beta_s^2 + c_s + c_d,$ --, therefor.

Column 19/ line 19, In Claim 2, delete "Fare" and insert --F are--, therefor.

2557502
042606

MAILING ADDRESS OF SENDER:

Katsuhiro Arai
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, California 92614

DOCKET NO. WAKAB78.003APC

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ALEXANDRIA, VA 22313-1450
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David J Kulik
Wiley Rein & Fielding
Patent Administration
1776 K Street N W
Washington DC 20006

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FEB 14 2005

OFFICE OF PETITIONS

Applicant: Kuhlemann et al.
Appl. No.: 10/343,977
Filing Date: February 6, 2003
Title: TWO COLOURED FLUORIMETRIC PROTEASE ASSAY
Attorney Docket No.: 80977.0002
Pub. No.: US 2004/0109593 A1
Pub. Date: June 10, 2004

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), filed on March 10, 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 republishes.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

7-23-2010

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Patent No. : 7,732,450
Ser. No. : 10/343,984
Inventor(s) : Whitefield, et. al.
Issued : June 8, 2010

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.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
40l Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Eva James
For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) 756-1583 or 1580

Carol L. Cole, esq.
11240 Waples Mill road, Suite 300
Fairfax, Va 22030

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

YOUNG & THOMPSON
745 SOUTH 23RD STREET
2ND FLOOR
ARLINGTON, VA 22202

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OCT 31 2007

OFFICE OF PETITIONS

In re Application of Horst Hartmann et al Application No. 10/343,992 Filed: February 6, 2003 Attorney Docket No. 4020-1001	DECISION GRANTING PETITION UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition, filed October 30, 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 October 3, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 1774 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\Oct11\343992.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). Petitioner is advised that the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/17/08

TO SPE OF : ART UNIT 1794 Hendericks, Keith (spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/343992 Patent No.: 7357989

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

Certificates of Correction Branch
703-308-9390 ext. _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

/D. Lawrence Tarazano/ 1786

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/10/09

TO SPE OF : ART UNIT 1794 Thompson, Camie

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/343992 Patent No.: 7357989

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

H. Riley

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: _____

/D. Lawrence Tarazano/ — **SPE**

1786 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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OBLON SPIVAK McCLELLAND
MAIER & NEUSTADT PC
1940 DUKE STREET
ALEXANDRIA, VA 22314

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FEB 1 8 2005

OFFICE OF PETITIONS

In re Application of	:
Kiyoshi Ishibashi et al	:
Application No. 10/344,006	: DECISION GRANTING PETITION
Filed: February 13, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 233469US2PCT	:

This is a decision on the petition, filed February 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 October 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 2813 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

20 MAY 2003

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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Hayden A. Carney
Christie, Parker & Hale
P.O. Box 7068
Pasadena, California 91109

In re Application of	:	
ADELMAN, George Kenneth	:	
Application No.: 10/344,012	:	DECISION ON PETITION
PCT No.: PCT/US01/18567	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 08 June 2001	:	
Priority Date: 13 June 2000	:	
Attorney Docket No.: 45424/HAC/A737	:	
For: FLOOR COVERING REMOVAL TOOL	:	

The petition to revive under 37 CFR 1.137(b) filed 05 February 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has submitted the basic national fee of $450 and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

Deposit Account No. 03-1728 has been charged a $65.00 surcharge fee under 37 CFR 492(e) for supplying an oath or declaration later than 30 months from the earliest claimed priority date.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision. The 35 U.S.C. 371(c) date is **05 February 2003.**

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: (703) 308-6314
Facsimile: (703) 308-6459

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No. 7

MAIL

OCT - 8 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Robert D. Fish
RUTAN & TUCKER, LLP
P.O. Box 1950
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92628-1950

In re Application of:
John ADDINK et al
Application No.: 10/344,013
Filed: February 5, 2003
For: AUTOMATIC IRRIGATION FREQUENCY ADJUSTMENT FOR DEEP WATERING

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed on August 28, 2003 under 37 C.F.R. §102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

> A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:
>
> (A) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(i);
>
> (B) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
>
> (C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;
>
> (D) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
>
> (E) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

> In those instances where the request for this special status does not meet all the prerequisites set forth above, applicant will be notified and the defects in the request will be stated. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Group Special Program Examiner.

Applicant's submissions of August 28, 2003 meet all the criteria set out above. Accordingly, the petition is **GRANTED**. The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. § 708.02. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. § 1309.

Vincent A. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and
Information Security
(703) 305-9750

23 JAN 2004

#4

UNITED STATES PATENT AND TRADEMARK OFFICE

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John R. Lastova
Nixon & Vanderhye, PC
1100 North Glebe Road
8th Floor
Arlington, VA 22201

In re Application of	:	
PARSON et al.	:	
Application No.: 10/344,039	:	DECISION VACATING
PCT No.: PCT/AU02/00691	:	NOTIFICATION OF MISSING
Int. Filing Date: 30 May 2002	:	REQUIREMENTS
Priority Date: 09 July 2001	:	
Attorney Docket No.: 4154-4	:	
For: LASER ALIGNMENT APPARATUS AND METHOD		

This is a response to applicants' "Response to Notification of Missing Requirements under 35 U.S.C. 371" filed 12 December 2003, which has been treated as a request to vacate the Notification of Missing Requirements (PCT/DO/EO/905) mailed 16 October 2003 in view of the filing of a declaration on 28 May 2003.

On 30 May 2002, applicants filed international application PCT/AU02/00691 which claimed a priority date of 09 July 2001. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 09 January 2004.

On 07 February 2003, applicants filed a Transmittal Letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. 371. Filed with the Transmittal Letter were, *inter alia*, the requisite basic national fee of $1060 and a copy of the international application.

On 16 October 2003, the United States Designated/Elected Office mailed a Notification of Missing Requirements (PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge under 37 CFR 1.492(e).

On 12 December 2003, applicants filed "Response to Notification of Missing Requirements under 35 U.S.C. 371" which was accompanied by a copy of the declaration filed on 28 May 2003 and a postcard receipt evidencing its receipt in the Patent and Trademark Office on 28 May 2003 and requests, in effect, that the copy of the declaration be accepted as a true copy of the declaration filed 28 May 2003.

Applicants have provided a copy of their date-stamped postcard receipt. The receipt identifies the application by applicants, serial number, title of invention, and the docket number. The receipt itemizes, among other things, a declaration. The receipt is stamped "OIPE MAY 28, 2003" across its face is sufficient to indicate that the declaration was in fact received in the Office on 28 May 2003. Therefore, applicants' request to vacate the Notification of Missing Requirements is **GRANTED**.

In view of the declaration filed 28 May 2003, the Notification of Missing Requirements (Form PCT/DO/EO/905) dated 16 October 2003 is hereby **VACATED**.

This application is being returned to the United States/Elected Office for processing in accordance with this decision.

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22 APR 2004

#6

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Richard P. Berg
Ladas & Parry
5670 Wilshire Blvd, Suite 2100
Los Angeles, CA 90069-5679

In re Application of	:	
LEE et al.	:	
Application No.: 10/344,062	:	DECISION ON PETITION
PCT No.: PCT/GB01/03667	:	UNDER 37 CFR 1.47(a)
Int. Filing: 16 August 2001	:	
Priority Date: 18 August 2000	:	
Attorney Docket No.: B-4954PCT620632-9	:	
For: TRUSTED DEVICE	:	

This decision is in response to applicants' "Petition and Fee for Filing By Other Than All the Inventor (37 CFR 1.47(a))" filed 07 January 2004 to accept the application without the signature of joint inventor, Calvin Lap-Kei Lee. The $130 petition fee has been submitted.

BACKGROUND

On 16 August 2001, applicants filed international application PCT/GB01/03667, which claimed a priority date 18 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 February 2002. Pursuant to 37 CFR 1.495, the period for paying the basic national fee in the United States expired 30 months from the priority date, 18 February 2003.

On 06 February 2003, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and a preliminary amendment.

On 07 August 2003, the United Stated Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 07 January 2004, applicants filed the present petition under 37 CFR 1.47(a) and a three month extension of time.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Items (1),(3) and(4) have been satisfied.

As to item (2), petitioner states that Calvin Lap-Kei Lee cannot be found or reached after diligent effort. Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

> Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.
>
> The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47. Such a petition will be dismissed as inappropriate.
>
> The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.
>
> Where a refusal of the inventor to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

As to Item (2), petitioner has not provided an acceptable showing that a diligent effort was made to locate the nonsigning inventor, Calvin Lap-Kei Lee. Petitioner has provided copies of letters to Mr. Lee and a deliver certificate which is stamped "addressee has gone away." However, a review of the petition reveals that all attempts to locate the nonsigning have been conducted by Tony Judd and cannot be considered as firsthand knowledge. Further, petitioner states, "telephone directory inquires both online and by telephone to ascertain the current address for Calvin Lap-Kei Lee have also been unsuccessful," however, no documentary evidence has been provided. As stated above, documentary evidence to show that alternative means were employed, such as a search of telephone and/or Internet directories, telegrams, etc., should be supplied by a person having

firsthand knowledge of the facts.

Lastly, the mailings to Arindam Das-Purkayshtha cannot be considered because the application papers were not sent to the proper person. Pursuant to MPEP 409.03(d), the complete application should be mailed to the last known address of the non-signing inventor or if the nonsigning inventor is represented by counsel, to the address of the non-signing inventor's attorney. Arindam Das-Purkayshtha does not appear to be the non-signing inventors counsel and the application does not appear to have been mailed to the non-signing inventors last known address.

For the above reasons, it would not be appropriate to accept this application without the signature of Calvin Lap-Kei Lee at this time.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith

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Facsimile: 703-308-6459

27 JUL 2004

#8

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Los Angeles, CA 90069-5679

In re Application of	:	
LEE et al.	:	
Application No.: 10/344,062	:	DECISION ON RENEWED
PCT No.: PCT/GB01/03667	:	PETITION UNDER
Int. Filing: 16 August 2001	:	37 CFR 1.47(a)
Priority Date: 18 August 2000	:	
Attorney Docket No.: B-4954PCT620632-9	:	
For: TRUSTED DEVICE	:	

This decision is in response to applicants' "Renewed Petition under 37 CFR 1.47(a)" filed 24 June 2004 to accept the application without the signature of joint inventor, Calvin Lap-Kei Lee.

BACKGROUND

On 16 August 2001, applicants filed international application PCT/GB01/03667, which claimed a priority date 18 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 February 2002. Pursuant to 37 CFR 1.495, the period for paying the basic national fee in the United States expired 30 months from the priority date, 18 February 2003.

On 06 February 2003, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and a preliminary amendment.

On 07 August 2003, the United Stated Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 07 January 2004, applicants filed a petition under 37 CFR 1.47(a) and a three month extension of time. In a decision dated 22 April 2004, the petition under 37 CFR 1.47(a) was dismissed without prejudice.

On 24 June 2004, applicants filed a renewed petition under 37 CFR 1.47(a).

Application No.: 10/344,062

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Items (1),(3) and(4) have been satisfied.

With regards to Item (2), the application and papers have been reviewed and have been found to be in compliance with 37 CFR 1.47(a). The steps taken by Anthony Trevor Judd are sufficient to establish that the missing inventor, Calvin Lap-Kei Lee, could not be found or reached after diligent effort.

CONCLUSION

The renewed petition under 37 CFR 1.47(a) is **GRANTED**.

The application will be given an international filing date of 16 August 2001 under 35 U.S.C. 363, and a date of **07 January 2004** under 35 U.S.C. 371(c).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.

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Facsimile: 703-308-6459

27 JUL 2004

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Calvin Lap-Kei Lee
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In re Application of
LEE et al.
Application No.: 10/344,062
PCT No.: PCT/GB01/03667
Int. Filing: 16 August 2001
Priority Date: 18 August 2000
Attorney Docket No.: B-4954PCT620632-9
For: TRUSTED DEVICE

Dear Mr. Lee:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.497.

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Counsel of Record:
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MAR 14 2008

OFFICE OF PETITIONS

In re Application of	:	
Chen et al.	:	DECISION ON PETITION
Application No. 10/344,062	:	
Filed: January 7, 2004	:	
Atty Docket No. B-4954PCT	:	
620632-9	:	

This is a decision on the PETITION UNDER 37 C.F.R. §1.26(a) REQUESTING REFUND OF FEES PAID BY MISTAKE filed August 10, 2007.

The request is **GRANTED**.

Applicants request refund of the Notice of Appeal fee paid together with the Notice of Appeal submitted on June 11, 2007. Applicants state that this fee was not in fact due because this is the second appeal in the case, and appeal fees are therefore not due pursuant to 37 CFR §41.31 and §41.37.

§ 1.26 Refunds.
(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic

funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Director may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

The instant request for refund was timely filed within two years of the date the fee was paid. See 37 CFR 1.26(b). Moreover, petitioner's argument is persuasive. Under the circumstances, refund of the fee paid by mistake is appropriate.

As stated in MPEP 1207.04, if the examiner reopens prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed, then applicant may initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. This section further provides that under these circumstances, the previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

In this instance, a Notice of Appeal and appeal fee of $500 were paid on April 24, 2006. Then, on June 19, 2006, an Appeal Brief and brief fee of $500 were paid. Thereafter, on September 25, 2006, the examiner reopened prosecution with the mailing of a non-final Office action. In response, on June 14, 2007 (certificate of mailing dated June 11, 2007), applicants filed a new appeal and appeal fee of $500. It is further noted that on August 10, 2007, applicants filed an appeal brief with a request that the previously paid Brief fee be applied to the instant brief fee (As of August 10, 2007, the Brief fee had not increased. Office finance records support a conclusion that the brief fee was so applied).

In view thereof, the appeal fee of $500 filed June 14, 2007 is being refunded to Deposit Account No. 08-2025, as authorized.

Technology Center AU 2617 has been advised of this decision. The application file is, thereby, forwarded to the examiner for consideration of the Appeal Brief filed August 10, 2007.

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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JUN 18 2009

OFFICE OF PETITIONS

In re Patent No. 7,425,251	:
Sideris	:
Issue Date: September 16, 2008	:
Application No. 10/344,070	: DECISION ON REQUEST FOR
Filed: June 27, 2003	: RECONSIDERATION OF
Attorney Docket No. 53029-7004	: PATENT TERM ADJUSTMENT
Title: System and Method	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed November 17, 2008.

The application for reconsideration of patent term adjustment is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 7,425,251 on September 16, 2008. The patent issued with a patent term adjustment of 641 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See, 37 CFR 1.705(d). Patentee requests that the patent term adjustment determination for the above-identified patent be changed from 641 days to 1032 days.

Patentee requests 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.

The petition submitted by patentee sets forth a period of adjustment for Office delays totaling 1032 days (Three Year Delay under 37 CFR 1.703(b) of 811 days *plus* a period of adjustment due to examination delay pursuant to 37 CFR 1.702(a) of 768 days). The petition also sets forth an overlap of 99 days. The petition also reflects a reduction of patent term adjustment totaling 127 days for applicant's failure to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704. Thus, patentees assert entitlement to an overall adjustment of 1032 days (1579 minus 99 for overlap minus 127 for applicant's delay minus 321 days for the time between filing an RCE and the issuance of the patent). The filing of a 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. 37 CFR §1.703(b)(1).

Patentee's petition acknowledges the adjustments under 37 CFR 1.702(a) totaling 768 days. Patentee's petition also acknowledges the reductions for applicant's failure to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704. These reductions total 127 days.

Under 37 CFR 1.703(f), patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR 1.702 reduced by the period of time during which patentees failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704.

The Office agrees that the total period of Office delay is the sum of the period of Three Years Delay terminated by the filing of a RCE (491 days) and the period of Examination Delay (768 days) to the extent that these periods of delay are not overlapping. Patentee contends that 99 days of the period of delay were overlapping running from June 27, 2006 to October 4, 2006.

The Office agrees that because certain actions were not taken within specified time frames, the patent is entitled to an adjustment of 768 days pursuant to 37 CFR 1.702(a). At issue is whether patentees should accrue an additional 491 days of patent term adjustment for the Office taking in excess of three years to issue the patent, as well as 768 days for Office failure to

take a certain action within a specified time frame (or examination delay).

The Office contends that 491 days overlap. 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, 35 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).

The current wording of § 1.703(f) was revised in response to the misinterpretation of this provision by a number of Patentees. The rule was slightly revised to more closely track the corresponding language of 35 U.S.C. 154(b)(2)(A). The relevant portion differs only to the extent that the statute refers back to provisions of the statute whereas the rule refers back to sections of the rule. This was not a substantive change to the rule nor did it reflect a change of the Office's interpretation of 35 U.S.C. 154(b)(2)(A). As stated in the Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A), the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding § 1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed. The grounds specified in these sections cover the A) guarantee of prompt Patent and Trademark Office responses, B) guarantee of no more than 3-year application pendency, and C) guarantee or adjustments for delays due to interference, secrecy orders and appeals. A section by

section analysis of 35 U.S.C. 154(b)(2)(A) specifically provides that:

> Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)-(C), total adjustments granted for restorations under [35 U.S.C. 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under [35 U.S.C.] 181 and administrative delay under [35 U.S.C.] 154(b)(1)(A)), the term should not be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed; See 145 Cong. Rec. S14,718[1]

As such, the period for over three-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 other words, consideration of the overlap does not begin three years after the filing date of the application.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the entire period during which the application was pending before the Office, June 27, 2003, to the date the RCE was filed on October 31, 2007. Prior to the issuance of the patent, 768 days of patent term adjustment were accorded for the Office failing to respond within specified time frames during the pendency of the application. The 491 days accorded pursuant to 37 CFR 1.702(a) overlap with the 768 days of Office delay under 37 CFR 1.702(b).

The Office did not delay 491 days and then delay an additional 768 days. Accordingly, 768 days of patent term adjustment (not 491 days and 768 days) was properly entered because the period of delay of 491 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 768 days attributable to grounds specified in § 1.702(a). Entry of both

---

[1] The AIPA is title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948), which was incorporated and enacted as law as part of Pub. L. 106-113. The Conference Report for H.R. 3194, 106th Cong. 1st Sess. (1999), which resulted in Pub. L. 106-113, does not contain any discussion (other than the incorporated language) of S. 1948. A section-by-section analysis of S. 1948, however, was printed in the Congressional Record at the request of Senator Lott, See 145 Cong. Rec. S14,708-26 (1999)(daily ed. Nov. 17, 1999).

periods is not warranted. Thus, 768 days, which includes the 491 days pursuant to 37 CFR 1.702(a), is determined to be the actual number of days that the issuance of the patent was delayed.

Accordingly, at issuance, the Office properly entered an overall adjustment of 768 days of patent term adjustment for the Office taking in excess of three years to issue the patent.

In view thereof, no adjustment to the patent term will be made because the correct adjustment of 641 days is properly set forth in the Letters Patent (adjustments totalling 768 days less reductions totalling 127 days).

The Office acknowledges submission of the required $200.00 application fee. See, 37 CFR 1.18(e).

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant, at (571) 272-3215.

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration

2 7 JUL 2009

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In re Application of:	:	
GRIFFIN, Martin, et al.	:	DECISION ON PETITION
U.S. Application No.: 10/344,084	:	
PCT No: PCT/GB01/03574	:	
International Filing Date: 08 August 2001	:	
Priority Date Claimed: 08 August 2000	:	
Atty Docket No.: 404172001600	:	
For: TRANSGLUTAMINASE FOR	:	
INHIBITING ANGIOGENESIS	:	

This is a decision on the "Petition To Accept Benefit Claim Under 35 U.S.C. 120 Where Benefit Claim Is Untimely And Amendment Of Specification filed 29 January 2009. The petition seeks acceptance of a benefit claim directed to foreign application GB 0019302.9, filed 08 August 2000.

The petition is **DISMISSED AS MOOT**.

A request to add a foreign priority claim is not properly made under 35 U.S.C. 120, which pertains only to prior-filed U.S. applications or international applications designating the United States. Moreover, the regulation applicable for the addition of a delayed claim of benefit to a foreign application, 37 CFR 1.55, is inapplicable to applications filed under 35 U.S.C. 371, such as the present application (see 37 CFR 1.55(a)(1)(ii) and 37 CFR 1.55(c)).

It is also noted that the claim of benefit to foreign application GB 0019302.9, filed 08 August 2000, was properly made in international application PCT/GB01/03574 (as evidenced by the published international application), and such claim was properly raised during the pendency of the present application (i.e., in the declaration filed 11 June 2003). The claim was also listed on the first filing receipt issued by the USPTO herein, and it is currently contained in USPTO records for the present application. Thus, the benefit claim which applicants seek to add by the present petition is already present in the application.

The petition fee filed with the present petition will be refunded to Deposit Account No. 03-1952.

The application is being referred to GAU 1642 for further processing in accordance with this decision.

Any questions concerning this decision may be directed to Richard M. Ross at (571) 272-3296.

Bryan Lin

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

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MAILED

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OFFICE OF PETITIONS

In re Application of Griffin et al. :
Application No. 10/344,084 :
International Filing Date: August 8, 2001 :
Attorney Docket No. 404172001600 :

On Application For
Patent Term Adjustment

This is in response to the "Application for Patent Term Adjustment Under 37 CFR 1.705" filed October 27, 2009. Applicants submit the correct patent term adjustment to be indicated on the patent is eight hundred fifty-four (854) days, not three hundred forty-six (346) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, an applicant may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent,

the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Anthony Knight
Supervisor
Office of Petitions

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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2000 M STREET NW SUITE 700
WASHINGTON DC 20036-3307

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JUN 26 2006
OFFICE OF PETITIONS

In re Application of :
Masanori Tomonari :
Application No. 10/344,100 : ON PETITION
Filed: February 10, 2003 :
Attorney Docket No. 46/181 :

This is a decision on the petition under 37 CFR 1.137(b)[1], filed May 30, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office Action mailed August 12, 2005. A response was filed November 14, 2005, however by Advisory Action of November 28, 2005, petitioner was advised that the response did not place the application in condition for allowance. Although this application became abandoned on November 14, 2005 the instant petition and this decision precede the mailing of the Notice of Abandonment.

On February 23, 2006, petitioner filed a Request for Continued Examination (RCE) with a three month extension of time and requests that the previously filed amendment, filed November 14, 2005, be used as the submission required under 37 CFR 1.114.

The RCE is accepted however, pursuant to 37 CFR 1.136, an extension of time must

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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)).

be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $1020.00 extension of time fee submitted with the RCE on February 23, 2006, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 50-0687.

This matter is being referred to Technology Center 1762 for processing of the RCE and to have the amendment filed November 14, 2005 entered.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

2 FEB 2004

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Larson & Taylor
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Alexandria, Virginia 22314

In re Application of HOHN Application No.: 10/344,102 PCT No.: PCT/EP01/09113 Int. Filing Date: 07 August 2001 Priority Date: 09 August 2000 Attorney Docket No.: P07849US00/DEJ For: METHOD FOR PRODUCING CONCRETE, OR MORTAR USING A . . .	DECISION ON PETITION UNDER 37 CFR 1.47(b)

This is a decision on applicant's "petition under 37 CFR 1.47(b)" filed 25 November 2003, to accept the application without the signature of inventor, Heribert Hohn.

BACKGROUND

On 07 August 2001, applicant filed international application PCT/EP01/09113 which claimed a priority date of 09 August 2000. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. Accordingly, the thirty-month time period for submitting the requisite basic national fee in the United States of America was to expire 30 months from the priority date, 10 February 2003.

On 10 February 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a copy of international application.

On 28 May 2003, the United Stated Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed. The notification set a two-month time limit in which to respond.

On 25 November 2003, applicant filed the present petition and a four-month extension of time.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(i); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b) applicant has satisfied the requirements of item (1), (2), and (6). However, items (3), (4) and (5) have not been satisfied.

A review of the present petition and the accompanying papers reveal that applicant has satisfied item (2), in that the applicant has shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Heribert Hohn. The steps taken are sufficient to show that the missing inventor refuses to execute the application.

Regarding item (3) above, a clear statement of the last known address of the nonsigning inventor must be provided. See section 409.03(e) of the Manual of Patent Examining Procedure (MPEP)).

Regarding Item (4), an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor has not been provided. The declaration submitted with the present petition has not been executed by all assignees. The declaration submitted with the present petition includes the information for only one-half interest of the above-identified application. (See MPEP 301)

Concerning item (5), petitioner has not demonstrated that applicant has a propriety interest in the invention. Petitioner states that "this application is made on behalf of this assignee, the other assignee (not yet of record, but assignee of the other from the inventor made after filing of the international stage application), and the sole inventor who refuses to sign." Pursuant to MPEP 301, all parties having any portion of the ownership in the patent property must act **together** as a composite entity in patent matters before the Office. Since all assignee are not present, Mr. Matthias Trierweiler cannot establish a propriety interest in the invention.

For the reasons stated above, it would not be appropriate to accept the application without the signature of Heribert Hohn under 37 CFR 1.47(b) at this time.

CONCLUSION

The petition filed under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO MONTHS** from the mailing date of this decision. Extensions of time may

be obtained under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)."

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith

Anthony Smith
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25 JUN 2004

#7

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Alexandria, Virginia 22314

In re Application of	:	
HOHN	:	
Application No.: 10/344,102	:	
PCT No.: PCT/EP01/09113	:	DECISION ON PETITION
Int. Filing Date: 07 August 2001	:	UNDER 37 CFR 1.47(b)
Priority Date: 09 August 2000	:	
Attorney Docket No.: P07849US00/DEJ	:	
For: METHOD FOR PRODUCING	:	
CONCRETE, OR MORTAR USING A . . .		

This decision is in response to applicant's "Renewed Petition under 37 CFR 1.47(b)" filed 27 April 2004, to accept the application without the signature of inventor, Heribert Hohn.

BACKGROUND

On 07 August 2001, applicant filed international application PCT/EP01/09113 which claimed a priority date of 09 August 2000. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. Accordingly, the thirty-month time period for submitting the requisite basic national fee in the United States of America was to expire 30 months from the priority date, 10 February 2003.

On 10 February 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a copy of international application.

On 28 May 2003, the United Stated Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed. The notification set a two-month time limit in which to respond.

On 25 November 2003, applicant filed petition under 37 CFR 1.47(b) and a four-month extension of time. In a decision dated 02 February 2004, applicant's petition under 37 CFR 1.47(b) was dismissed without prejudice.

On 27 April 2004, applicant filed renewed petition under 37 CFR 1.47(b).

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(i); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b) applicant has satisfied the requirements of item (1), (2), (3), (5) and (6). However, item (4) has not been satisfied.

Regarding item (3) above, a clear statement of the last known address of the nonsigning inventor has been provided.

As to item (4), the declaration is executed by Mr. Matthais Trierweiler and an individual for Eifel Haus Luxembourg S.A. The declaration which accompanied the renewed petition is not in compliance with 37 CFR 1.497(b)(2) which states,"[i]f the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state." Additionally, section 409.03(b) of the MPEP states, "[w]here an application is executed by one other than the inventor. . .the title or position of the person signing must be stated if signing of behalf of a corporation under 37 CFR 1.47(b)." Here, the declaration does not identify the individual that is executing the declaration on behalf of assignee, Eifel Haus Luxembourg S.A. Therefore, a newly executed declaration, which identifies the individual (and title or position) signing on behalf of the corporate applicant (Eifel Haus Luxembourg S.A.), is required.

Concerning item (5), petitioner has demonstrated that applicant has a propriety interest in the invention.

For the reasons stated above, it would not be appropriate to accept the application without the signature of Heribert Hohn under 37 CFR 1.47(b) at this time.

CONCLUSION

The petition filed under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO MONTHS** from the mailing date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)."

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450,

Application No.: 10/344,102

Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith

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09 SEP 2004

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In re Application of	:	
HOHN	:	
Application No.: 10/344,102	:	
PCT No.: PCT/EP01/09113	:	DECISION ON PETITION
Int. Filing Date: 07 August 2001	:	UNDER 37 CFR 1.47(b)
Priority Date: 09 August 2000	:	
Attorney Docket No.: P07849US00/DEJ	:	
For: METHOD FOR PRODUCING CONCRETE, OR MORTAR USING A . . .	:	

This decision is in response to applicant's "Renewed Petition under 37 CFR 1.47(b)" filed 30 July 2004, to accept the application without the signature of inventor, Heribert Hohn.

BACKGROUND

On 07 August 2001, applicant filed international application PCT/EP01/09113 which claimed a priority date of 09 August 2000. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. Accordingly, the thirty-month time period for submitting the requisite basic national fee in the United States of America was to expire 30 months from the priority date, 10 February 2003.

On 10 February 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a copy of international application.

On 28 May 2003, the United Stated Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed. The notification set a two-month time limit in which to respond.

On 25 November 2003, applicant filed petition under 37 CFR 1.47(b) and a four-month extension of time. In a decision dated 02 February 2004, applicant's petition under 37 CFR 1.47(b) was dismissed without prejudice.

On 27 April 2004, applicant filed renewed petition under 37 CFR 1.47(b). In a decision dated 25 June 2004, applicant's petition under 37 CFR 1.47(b) was dismissed without prejudice.

Application No.: 10/344,102

On 30 July 2004, applicant filed the present renewed petition under 37 CFR 1.47(b).

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(i); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b) applicant has satisfied the requirements of item (1) - (6) have been satisfied.

Regarding Item (4), an oath or declaration executed by the 37 CFR 1.47(b) applicants on behalf of and as agents for the nonsigning inventor has been provided.

For the reasons stated above, it is appropriate to accept the application without the signature of Heribert Hohn under 37 CFR 1.47(b) at this time.

CONCLUSION

For the reasons above, applicant's renewed petition under 37 CFR 1.47(b) is **GRANTED**.

The application has an international filing date of 07 August 2001 under 35 U.S.C. 363, and will be given a date of 30 July 2004 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(b) will be published in the Official Gazette.

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09 SEP 2004

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Herbert Hohn
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7511 Rollinger
Luxembourg

In re Application of
HOHN
Application No.: 10/344,102
PCT No.: PCT/EP01/09113
Int. Filing Date: 07 August 2001
Priority Date: 09 August 2000
Attorney Docket No.: P07849US00/DEJ
For: METHOD FOR PRODUCING CONCRETE, OR MORTAR USING A . . .

Dear Mr. Hohn:

You are identified as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(b) and 35 U.S.C. 118. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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Counsel of Record:
Douglas E. Jackson
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16 DEC 2003

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OSRAM SYLVANIA INC
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In re Application of MISHA et al. Serial No.: 10/344,103 PCT No.: PCT/US01/24990 Int. Filing Date: 09 August 2001 Priority Date: 10 August 2000 Attorney's Docket No.: 00-1-231 For: HIGHLY LOADED FLUORESCENT LAMP	DECISION ON PETITION UNDER 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 20 November 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3) at the time of filing this petition.

A review of the application file reveals that the $10 underpayment of basic national fee of $720 has been paid. The required petition fee of $1330 has also been paid. Thus, the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

The application will be forwarded to the United States Designated/Elected Office for further processing including issuance of a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the declaration submitted with the national stage papers was unacceptable since the first inventor's name on the declaration was different than what appeared on the published international application. That is, the declaration did not identify the inventor named on the publication, Kailiah Misha, but identified and bore the signature of a Kailash Misha. As indicated in Section 201.03 of the Manual of Patent Examining Procedure, where a typographical or transliteration error in the spelling of an inventor's name is discovered, a petition under 37 CFR 1.48(a) is not required. However, the Office should be notified of the error accompanied by a petition under 37 CFR 1.182 to correct the name of the inventor.

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

17 MAR 2004

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OSRAM SYLVANIA INC
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DANVERS, MA 01923

In re Application of MISHRA et al. Serial No.: 10/344,103 PCT No.: PCT/US01/24990 Int. Filing Date: 09 August 2001 Priority Date: 10 August 2000 Attorney's Docket No.: 00-1-231 For: HIGHLY LOADED FLUORESCENT LAMP	DECISION ON RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS

This is a decision on applicant's "Response to Notification of Missing Requirements" filed on 17 February 2004 regarding the correction of an inventor's name.

On 13 January 2004, a Notification of Missing Requirements was mailed to applicant indicating that the declaration submitted was unacceptable since the first inventor's name on the declaration is different than what appears on the published international application.

The declaration filed on 10 February 2003 bore a correction to the spelling of the first name of the first inventor- changing the spelling from Kailiah, as it appears in the international application, to Kailash. The correction was not initialed and was not accompanied by any explanation. An explanation of the difference in the spelling of the inventor's first name was required.

On 17 February 2004, applicant filed a response to the Notification requesting the correction of inventor's name and notifying the Office that the correct spelling of first inventor's given name is as follows: **Kailash**. The present communication was filed explaining that the first name of Mr. Mishra was incorrectly spelled in the international application as the result of a typographical error. Applicant's explanation of the difference in the spelling of Mr. Mishra's given name is accepted and noted for the record.

For the reasons above, the Request is **GRANTED**. No petition fee is required.

This application is being forwarded to the National Stage Processing Branch of the International Division for further review and processing and, if appropriate, preparation and mailing of the Notification of Acceptance of Application under 35 U.S.C. 371(Form PCT/DO/EO/903) indicating a date of **10 February 2003** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

Cynthia M. Kratz
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#4

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Eli Lilly and Company
Patent Division
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Indianapolis, IN 46206-6288

In re Application of	:	
BABINE et al.	:	
U.S. Application No. 10/344,112	:	DECISION ON PETITION
PCT No.: PCT/US01/26008	:	AND
Int. Filing Date: 31 August 2001	:	NOTIFICATION OF DEFECTIVE
Priority Date: 31 August 2000	:	DECLARATION
Attorney Docket No.: X-14912M	:	
For: PEPTIDOMIMETIC PROTEASE INHIBITORS	:	

This decision is in response to applicants' "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.37(b)" filed 17 August 2004.

BACKGROUND

On 31 August 2001, applicants filed international application PCT/US01/26008 which claimed a priority date of 31 August 2000 and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 07 March 2002. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 03 March 2003.

On 05 February 2003, applicants filed a transmittal letter requesting entry into the national stage in the United States, which was accompanied by, inter alia: the basic national fee; a copy of the international application; and a preliminary amendment.

On 06 February 2004, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 was omitted. A new oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date were required. The notification set a TWO (2) MONTH period for response.

On 17 August 2004, applicants filed a petition under 37 CFR 1.137(b); a declaration and power of attorney; a four-month extension of time fee; and the surcharge for supplying an oath or declaration later than 30 months from the priority date.

DISCUSSION

A. Petition to Revive

The period to respond to the Notification of Missing Requirements was due on or before 06 April 2004. However, pursuant to the provisions of 37 CFR 1.136(a), extensions of time are allowable up to 17 September 2004. The executed declaration and surcharge fee required under 37 CFR 1.492(e) required in the Notification Requirements were received on 17 August 2004. Accordingly, the petition to revive was filed prematurely. In view thereof, the petition to revive is unnecessary and is dismissed as moot.

B. Defective Declaration

A review of the declarations filed on 17 August 2004 reveals that the declaration is not in an acceptable form. Applicants have provided a defective executed composite declaration. Section 201.03(II)(B) of the Manual of Patent Examining Procedure states, in part,

> While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. Where individual declarations are executed, they must be submitted as individual declaration rather than combined into one declaration.

Here, the composite declaration is defective because it contains multiple duplicate sheets of page 3, 4 and 5. This suggests that the enclosed declaration was constructed from numerous complete declarations or that the inventors forwarded to counsel only the signature pages of the declaration. Either alternative renders the submitted declaration defective under 37 CFR 1.497. As stated above, where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration.

CONCLUSION

The petition under 37 CFR 1.137(b) is **DISMISSED** as moot.

Since the response filed 17 August 2004 appears to be a bona fide response to the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) mailed 06 February 2004, applicants are hereby given **ONE MONTH** from the mail date of this Decision to file the proper response. The proper response would be a declaration in compliance with 37 CFR 1.497(a)-(b) executed by all of the named inventors. No extensions of this time limit may be obtained under 37 CFR 1.136(a). Failure to respond will result in abandonment of the application.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel.: (571) 272-3298
Fax: (571) 273-0459

cc: Lisa Dixon
Vertex Pharmaceuticals Incoporated
130 Waverly Street
Cambridge, Massachusetts 02139-4242

OIPE IAP91
JUL 28 2008
PATENT & TRADEMARK OFFICE

Patent
Attorney Docket No. 1034170-000012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	**MAIL STOP AF**
Paolo Canti et al.	Group Art Unit: 1791
Application No.: 10/344,133	Examiner: Mark A. Osele
Filing Date: February 7, 2003	Confirmation No.: 1783
Title: A METHOD FOR SPLICING LAMINATED MATERIAL FOR PACKAGING POURABLE FOOD PRODUCTS	

AMENDMENT/REPLY TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Enclosed is a reply for the above-identified patent application.

☒ A Petition for Extension of Time is enclosed.

☐ _____ Terminal Disclaimer(s) and the ☐ $ 65 ☐ $ 130 fee per Disclaimer due under 37 C.F.R. § 1.20(d) are enclosed.

☐ Also enclosed is/are: _____

☐ Small entity status is hereby claimed.

☐ Applicant(s) requests continued examination under 37 C.F.R. § 1.114 and enclose the ☐ $ 405 ☐ $ 810 fee due under 37 C.F.R. § 1.17(e).

☐ Applicant(s) requests that any previously unentered after final amendments not be entered. Continued examination is requested based on the enclosed documents identified above.

☐ Applicant(s) previously submitted _____ on _____ for which continued examination is requested.

☐ Applicant(s) requests suspension of action by the Office until at least _____, which does not exceed three months from the filing of this RCE, in accordance with 37 C.F.R. § 1.103(c). The required fee under 37 C.F.R. § 1.17(i) is enclosed.

☐ A Request for Entry and Consideration of Submission under 37 C.F.R. § 1.129(a) (1809/2809) is also enclosed.

☒ No additional claim fee is required.

☐ An additional claim fee is required, and is calculated as shown below:

AMENDED CLAIMS					
	No. of Claims	**Highest No. of Claims Previously Paid For**	**Extra Claims**	**Rate**	**Additional Fee**
Total Claims	8	20	0	x $ 50 (1202)	$ 0
Independent Claims	1	3	0	x $ 210 (1201)	0
☐ If Amendment adds multiple dependent claims, add $ 370 (1203)					$ 0
Total Claim Amendment Fee					**$ 0**
☐ Small Entity Status claimed - subtract 50% of Total Claim Amendment Fee					0
TOTAL ADDITIONAL CLAIM FEE DUE FOR THIS AMENDMENT					**$ 0**

☒ Charge $120.00 to Deposit Account No. 02-4800 for the fee due.

☐ A check in the amount of _____ is enclosed for the fee due.

☐ Charge_____ to credit card for the fee due. Form PTO-2038 is attached.

☒ The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date July 28, 2008

By: _____
Matthew L. Schneider
Registration No. 32814

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620

O I P E IAP91
JUL 28 2008
PATENT & TRADEMARK OFFICE

Patent
Attorney Docket No. 1034170-000012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	**MAIL STOP AF**
Paolo Canti et al.	Group Art Unit: 1791
Application No.: 10/344,133	Examiner: Mark A. Osele
Filing Date: February 7, 2003	Confirmation No.: 1783
Title: A METHOD FOR SPLICING LAMINATED MATERIAL FOR PACKAGING POURABLE FOOD PRODUCTS	

AMENDMENT/REPLY TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Enclosed is a reply for the above-identified patent application.

☒ A Petition for Extension of Time is enclosed.

☐ _____ Terminal Disclaimer(s) and the ☐ $ 65 ☐ $ 130 fee per Disclaimer due under 37 C.F.R. § 1.20(d) are enclosed.

☐ Also enclosed is/are: _____

☐ Small entity status is hereby claimed.

☐ Applicant(s) requests continued examination under 37 C.F.R. § 1.114 and enclose the ☐ $ 405 ☐ $ 810 fee due under 37 C.F.R. § 1.17(e).

☐ Applicant(s) requests that any previously unentered after final amendments not be entered. Continued examination is requested based on the enclosed documents identified above.

☐ Applicant(s) previously submitted _____ on _____ for which continued examination is requested.

☐ Applicant(s) requests suspension of action by the Office until at least _____, which does not exceed three months from the filing of this RCE, in accordance with 37 C.F.R. § 1.103(c). The required fee under 37 C.F.R. § 1.17(i) is enclosed.

☐ A Request for Entry and Consideration of Submission under 37 C.F.R. § 1.129(a) (1809/2809) is also enclosed.

☒ No additional claim fee is required.

☐ An additional claim fee is required, and is calculated as shown below:

AMENDED CLAIMS					
	No. of Claims	**Highest No. of Claims Previously Paid For**	**Extra Claims**	**Rate**	**Additional Fee**
Total Claims	8	20	0	x $ 50 (1202)	$ 0
Independent Claims	1	3	0	x $ 210 (1201)	0
☐ If Amendment adds multiple dependent claims, add $ 370 (1203)					$ 0
Total Claim Amendment Fee					**$ 0**
☐ Small Entity Status claimed - subtract 50% of Total Claim Amendment Fee					0
TOTAL ADDITIONAL CLAIM FEE DUE FOR THIS AMENDMENT					**$ 0**

☒ Charge $120.00 to Deposit Account No. 02-4800 for the fee due.

☐ A check in the amount of _____ is enclosed for the fee due.

☐ Charge_____ to credit card for the fee due. Form PTO-2038 is attached.

☒ The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date July 28, 2008

By: Matthew L. Schneider
Registration No. 32814

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620

14 JAN 2004

#5

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www.uspto.gov

Carlo S. Bessone
Osram Sylvania
100 Endicott Street
Danvers, MA 01923

In re Application of DUTTA, Arunava et al. Application No.: 10/344,150 PCT No.: PCT/US01/24991 Int. Filing Date: 09 August 2001 Priority Date: 10 August 2000 Docket No.: 00-1-232 For: DISPLAY DEVICE HAVING REDUCED COLOR SHIFT DURING LIFE	DECISION ON PETITION UNDER 37 CFR 1.137(b)

Applicant's "Petition To Revive Unintentionally Abandoned Application Under 37 CFR 1.137(b)," filed in the above-captioned application on 20 November 2003 is **GRANTED**.

Applicant states "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional," as required by 37 CFR 1.137(b)(3). The appropriate national fee and petition fee have been submitted. A terminal disclaimer is not required as the application was filed on or after 08 June 1995. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

A declaration in compliance with 37 CFR 1.497(a)-(b) has been submitted.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for continued processing in accordance with this decision. The application has a date of 20 November 2003 under 35 U.S.C. §371.

Erin M. Pender

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: (703) 305-0455
Facsimile: (703) 308-6459

06 FEB 2004

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ALEXANDRIA, VA 22313-1450
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Charles L. Dennis II
9385 Lake Jane Trl N
Lake Elmo, MN 55042

In re Application of CUNNINGHAM et al. Application No.: 10/344,173 PCT No.: PCT/US01/25394 Int. Filing: 14 August 2001 Priority Date: 15 August 2000 Attorney Docket No.: None For: GARDEN POND SAFETY GRATED	DECISION ON PETITION UNDER 37 CFR 1.47(a)

This is a decision on applicant's "Petition under 37 CFR 1.47"(a) filed in the United States Patent and Trademark Office (USPTO) on 14 October 2003. Applicant also requests a four month extension of time, which is granted.

BACKGROUND

On 14 October 2003, in response to the 12 May 2003 Notification of Missing Requirements, applicant filed a petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4). The petition requested the acceptance of the application without the signature of inventors, Ira M. Asher and Roberta S. Asher, on the grounds that the nonsigning inventors refused to execute the application.

DISCUSSION

A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(h), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

Applicant satisfied Items (1), (3) and (4) above.

With respect to item (2), Applicant filed the statement of facts under 37 CFR 1.47(a) of Constance Cunningham, co-inventor of the above referenced application, dated 07 October 2003. Ms. Cunningham states that the co-inventors, Ira Asher and Roberta Asher, received a copy of the application as filed and as published. Ms. Cunningham states that "following receipt of the search report, my co-inventors indicated to me that they had no further interest in pursuing the application." Ms. Cunningham further states that on 08 February 2003, she spoke to the co-inventors by phone and "they expressly refused to sign the Declaration, and again indicated that they had no further interest in pursuing the application." Ms. Cunningham's statement satisfies Item (3) above.

Petitioner has satisfied the requirements of 37 CFR 1.47(a). Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

Application No.: 10/344,173

CONCLUSION

The petition under 37 CFR §1.47(a) is **GRANTED**.

The U.S. Designated/Elected Office (DO/EO/US) is authorized to accept the application as a 37 CFR 1.47(a) application using the declaration filed 14 October 2003. The application has an international filing date of 14 August 2001 under 35 U.S.C. 363, and a date of 14 October 2003 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventors at their respective last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.

The application is being forwarded to the DO/EO/US for further processing.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

'06 FFR 2004

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

Roberta S. Asher
1439 N. Keystone Avenue
River Forest, IL 60305

In re Application of CUNNINGHAM et al. Application No.: 10/344,173 PCT No.: PCT/US01/25394 Int. Filing: 14 August 2001 Priority Date: 15 August 2000 Attorney Docket No.: None For: GARDEN POND SAFETY GRATED	DECISION ON PETITION UNDER 37 CFR 1.47(a)

Dear Ms. Asher:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
Office of PCT Legal Administration

Telephone: (703) 306-5467

Charles L. Dennis II
9385 Lake Jane Trl N
Lake Elmo, MN 55042

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James D. Stevens
Reising, Ethington, Barnes, Kisselle, P.C.
P.O. Box 4390
Troy, Michigan 48099

In re Application of	:
Dunning, et al.	:
Application No.: 10/344,174	:
PCT No.: PCT/GB01/03448	:
Int. Filing Date: 31 July 2001	: DECISION
Priority Date: 07 August 2000	:
Attorney's Docket No.: P-3821-1 FMO	:
For: MAGNETIC CLAMPING ARRANGEMENT	:

This decision is in response to applicant's communication filed on the 10 September 2003 requesting that the Patent Office formally acknowledge its receipt of applicant's declaration of inventorship in accordance with 35 U.S.C. § 115 and 18 U.S.C. § 1001. No petition fee is due.

BACKGROUND

On 31 July 2001, applicant filed international application PCT/GB01/03448 that claimed priority of an earlier British application filed 07 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 14 February 2002. A Demand for international preliminary examination, in which the United States was elected, was timely filed. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 08 February 2003.

On 06 February 2003, applicant filed a letter for entry into the national stage in the United States which was accompanied by, *inter alia*, a copy of the international application, a copy of the declaration filed with the Request form (PCT/RO/101), an information disclosure statement, a preliminary amendment, and the basic national fee of $900 as required by 35 U.S.C. 371(c). These papers were assigned application number 10/344,175.

On 29 April 2003, the United States Patent and Trademark Office in its capacity as an Elected Office mailed out a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35

U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and a surcharge fee.

On 10 September 2003, applicant filed the current communication requesting that the Patent Office formally acknowledge its receipt of applicant's declaration of inventorship in accordance with 35 U.S.C. § 115 and 18 U.S.C. § 1001.

DISCUSSION

37 CFR 1.497, states in part:

> (a) When an applicant of an international application desires to enter the national stage under 35 U.S.C. 371 pursuant to § 1.495, and a declaration in compliance with this section has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26 ter.1, he or she must file an oath or declaration that:
> (1) Is executed in accordance with either §§ 1.66 or 1.68;
> (2) Identifies the specification to which it is directed;
> (3) Identifies each inventor and the country of citizenship of each inventor; and
> (4) States that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

A review of the application file reveals that applicant provided the declaration of inventorship on filing of the international application. Further, all of the applicant/inventors signed the Request form (PCT/RO/101).

CONCLUSION

The "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and a surcharge fee mailed 29 April 2003 is hereby **VACATED**.

The application is being returned to the United States Designated/Elected Office for processing in accordance with this decision; and, if appropriate, a Notification of Acceptance of Application (Form PCT/DO/EO/903) will be mailed showing a 35 U.S.C. 371 date of **06 February 2003.**

Debra S. Brittingham
PCT Special Programs Examiner
PCT Legal Office

Conferee: Boris Milef
PCT Legal Examiner
PCT Legal Office

DSB/BM:dsb
Telephone: (703) 308-3401
Facsimile: (703) 308-6459

NOTICE RE: CERTIFICATES OF CORRECTION

DATE : 4/19/05 Paper No.: _____

TO : Supervisor, Art Unit 2832

SUBJECT : Certificate of Correction Request in Patent No.: 6,765,465 B2 10/344,174

A response to the following question is requested with respect to the accompanying request for a certificate of correction.

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

PLEASE COMPLETE THIS FORM AND RETURN WITH FILE, WITHIN 7 DAYS, TO CERTIFICATES OF CORRECTION BRANCH - PK 3-915/922 PALM LOCATION 7580 - TEL. N0. 305-8309

THANK YOU FOR YOUR ASSISTANCE!

Note your decision by placing a check mark in the appropriate box below, indicating whether all changes requested in the Request for Certificate of Correction should be applied. Please specify which changes should not be applied and indicate the reason(s) for denial, in the "Comments" section below.

☒ YES ☐ NO

☒ Comments: All changes, except for claim (12) is approved. The requested changes to claim 12 would change the scope of the claim.

Supervisor

AU-2832

Art Unit

PTOL-306 (REV. 2/02)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

PTO/SB/ 44 (02-01)
Approved for use through 01/30/2004. 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 : 6,765,465 B2

DATED : July 20, 2004

INVENTOR(S) : Kenneth Dunning; Ronald Ian Cotterill; David Michael Lomas

It is certified that error appears in the above-identified patent and that said Letters Patent are hereby corrected as shown below:

On the cover page, under Assignee, delete "Prouducts" and insert therein --Products--.

In column 1, line 65, after "abutment with" delete [a].

In column 3, line 44, after "and" delete [Magnetic] and insert --magnetic--.

In column 3, line 45, after "limb" delete [202] and insert -- --.

In column 6, line 11, after "leading" delete ['2'] and insert -- "2" --.

In column 6, line 30, after "which" delete [is] and insert --in --.

In column 6. line 36, after "may" insert --be--.

In Claim 1, after "abutment with" delete [a].

In Claim 10, after "relationship with" delete [a].

In Claim 12, after "of the core" delete [.] and insert --and the handle includes an electrical switch operable to permit control of the flow of current in the magnet coil during operation of the handle.--

In the Abstract, after "(26)", delete [.] and insert --,--.

MAILING ADDRESS OF SENDER: James D. Stevens
Reising, Ethington, Barnes, Kisselle
Learman & McCulloch, P.C.
P.O. Box 4390
Troy, MI. 48099-4390

PATENT NO. 6,765,465

No. of additional copies

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, 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.

Mar 2 1 2005

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#4

UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
www.uspto.gov

James D. Stevens
Reising, Ethington, Barnes, Kisselle, P.C.
P.O. Box 4390
Troy, Michigan 48099

In re Application of	:
Dunning, et al.	:
Application No.: 10/344,175	:
PCT No.: PCT/GB01/03424	:
Int. Filing Date: 31 July 2001	: DECISION
Priority Date: 08 August 2000	:
Attorney's Docket No.: P-3820-1 FMO	:
For: MEASUREMENT OF SURFACE WEAR	:

This decision is in response to applicant's communication filed on the 10 September 2003 requesting that the Patent Office formally acknowledge its receipt of applicant's declaration of inventorship in accordance with 35 U.S.C. § 115 and 18 U.S.C. § 1001. No petition fee is due.

BACKGROUND

On 31 July 2001, applicant filed international application PCT/GB01/03424 that claimed priority of an earlier British application filed 08 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 14 February 2002. A Demand for international preliminary examination, in which the United States was elected, was timely filed. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 08 February 2003.

On 06 February 2003, applicant filed a letter for entry into the national stage in the United States which was accompanied by, *inter alia*, a copy of the international application, a copy of the declaration filed with the Request form (PCT/RO/101), an information disclosure statement, a preliminary amendment, and the basic national fee of $900 as required by 35 U.S.C. 371(c). These papers were assigned application number 10/344,175.

On 12 May 2003, the United States Patent and Trademark Office in its capacity as an Elected Office mailed out a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35

U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and a surcharge fee.

On 10 September 2003, applicant filed the current communication requesting that the Patent Office formally acknowledge its receipt of applicant's declaration of inventorship in accordance with 35 U.S.C. § 115 and 18 U.S.C. § 1001.

DISCUSSION

37 CFR 1.497, states in part:

> (a) When an applicant of an international application desires to enter the national stage under 35 U.S.C. 371 pursuant to § 1.495, and a declaration in compliance with this section has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26 ter.1, he or she must file an oath or declaration that:
> (1) Is executed in accordance with either §§ 1.66 or 1.68;
> (2) Identifies the specification to which it is directed;
> (3) Identifies each inventor and the country of citizenship of each inventor; and
> (4) States that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

A review of the application file reveals that applicant provided the declaration of inventorship on filing of the international application. Further, all of the applicant/inventors signed the Request form (PCT/RO/101).

CONCLUSION

The "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and a surcharge fee mailed 12 May 2003 is hereby **VACATED**.

The application is being returned to the United States Designated/Elected Office for processing in accordance with this decision; and, if appropriate, a Notification of Acceptance of Application (Form PCT/DO/EO/903) will be mailed showing a 35 U.S.C. 371 date of **06 February 2003.**

Debra S. Brittingham
PCT Special Programs Examiner
PCT Legal Office

Conferee: Boris Milef
PCT Legal Examiner
PCT Legal Office

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UNITED STATES PATENT AND TRADEMARK OFFICE

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INTELLECTUAL PROPERTY GROUP - PATENTS
70 WEST MADISON STREET
SUITE 3500
CHICAGO IL 60602-4224

MAILED

SEP 17 2009

OFFICE OF PETITIONS

In re Patent No. 7,425,252	:
Dimitrious Sideris	:
Issue Date: September 16, 2008	:
Application No. 10/344,182	: DECISION ON REQUEST FOR
Filed: July 14, 2003	: RECONSIDERATION OF
Attorney Docket No. 53029-7003	: PATENT TERM ADJUSTMENT
Title: System and method For	:
Determining The Velocity of	:
Migrating Objects	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d) FOR U.S. PATENT No. 7,425,252", filed November 17, 2008. Patentees request the final PTA calculation to increase total PTA from 633 to 968.

The application for reconsideration of patent term adjustment is **Dismissed**.

The above-identified application matured into U.S. Patent No. 7,425,252 on September 16, 2008. The patent issued with a patent term adjustment of 633 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See, 37 CFR 1.705(d). Patentee requests that the patent term adjustment determination for the above-identified patent be changed from 633 days to 968 days.

Patentee requests 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, patentees are entitled to a difference of 335

additional days over the USPTO calculation for a total of 968 days. Patentees maintain that a portion of the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), 656 of the 733 days, does not overlap with the 745 day period of adjustment due to examination delay, pursuant to 37 CFR §1.702(a), as these periods do not occur on the same day.

Thus, patentees request that the determination of patent term adjustment be increased by 335 days to a total of nine hundred sixty-eight (968) days (the sum of the period of three-year delay (733 days) and the period of examination delay (745 days) less 77 days of overlap less 112 days of applicant delay less 321 days between the filing of the RCE and the issuance of the patent).

The Office notes that patentees incorrectly calculated the period of delay under 37 CFR 1.703(b) as 733 days. That is, patentees incorrectly used the date of completion of July 14, 2003, instead of the 35 U.S.C. 371(f) national stage commencement date of February 9, 2003, in calculating the period of adjustment under 37 CFR 1.703(b).

As stated in 37 CFR 1.703(b), the period of adjustment under § 1.702(b) is the number of days in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the periods under § 1.703(b)(1)-(4). While the date of completion of all 35 U.S.C. 371 requirements, July 14, 2003, is the date used in calculating examination delay under 37 CFR 1.703(a), the date the national stage commenced under 35 U.S.C. 371(f), February 9, 2003, is used in determining the Three Year Delay under 37 CFR 1.703(b).

Pursuant to 37 CFR 1.703(b)(1), the period of adjustment under 37 CFR 1.702(b) should be 630 days, counting the number of days beginning on the day after the date that is three years after the date on which the national stage commenced under 35 U.S.C. 371(f), February 9, 2003, and ending on the date the request for continued examination was filed, October 31, 2007.

The Office finds the following: under 37 CFR § 1.703(f), patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR §1.702 reduced by the period of time equal to the period of time during which applicants failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR §1.704. In other words, the period of Office delay reduced by the period of applicant delay.

At issue is whether patentees should accrue 630 days of patent term adjustment for the Office taking in excess of three years to issue the patent, as well as 745 days for Office failure to take certain actions within specified time frames (or examination delay).

The Office contends that 630 days overlap. 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 commenced 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 commenced, February 8, 2003, to the filing of the RCE on October 31, 2007. 745 days of patent term adjustment were accorded prior to the filing of the RCE for Office delay pursuant to 37 CFR §1.702(a)(1). Entry of both 630 days pursuant to 37 CFR §1.702(b) and 745 days pursuant to 37 CFR §1.702(a) is neither permitted nor warranted. The Office did not delay 745 days and then another 630 days. The greater period, 745 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.

In view thereof, the Office affirms that the revised determination of patent term adjustment indicated on the patent at issuance of the patent is 633 days (745- 112) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant, at (571) 272-3215.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

30 MAR 2005

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#6

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Thomas Hoxie
Novartis
Corporate Intellectual Property
One Health Plaza, Building 430
East Hanover, NJ 07936-1080

In re Application of	:
CARDINAUX, Francois et al.	:
US Application No.: 10/344,201	:
PCT Application No.: PCT/EP01/09134	: DECISION ON
Int. Filing Date: 07 August 2001	: PETITION UNDER
Priority Date: 09 August 2000	: 37 CRF 1.181
Attorney's File Reference: 4-31550A	:
For: LAT PEPTIDES AND THEIR USE IN	:
ASSAYS FOR IDENTIFYING	:
IMMUNOSUPPRESSANTS	:

This is a decision on applicants' "Petition To Withdraw Holding of Abandonment" filed on 01 December 2004.

BACKGROUND

On 29 July 2003, a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an executed oath or declaration of the inventors, a surcharge under 37 CFR 1.492 (e), and a substitute computer readable form of the "Sequence Listing". An extendable 2-month reply period was provided.

On 11 August 2003, applicants filed a Response to the Notification of Missing Requirements.

On 20 October 2004, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Notification of Missing Requirements.

On 01 December 2004, applicants filed the present petition.

DISCUSSION

A review of the application file reveals that all of the papers filed 11 August 2003 are located in the file, including, *inter alia,* an executed declaration of the inventors. However, applicants have failed to supply a substitute computer readable form of the "Sequence Listing",

as required by the Notification of Missing Requirements. Accordingly, the petition under 37 CFR 1.181 to withdraw the holding of abandonment is moot.

CONCLUSION

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is moot, and the holding of abandonment is hereby **WITHDRAWN**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 20 October 2004, is hereby **VACATED**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing, including mailing of a Notice of Defective Response (Form PCT/DO/EO/916) requiring submission of a substitute computer readable form of the "Sequence Listing".

Amy Vanatta
PCT Legal Administration Detailee
PCT Special Programs Office
Telephone: 571-272-6095

Leonard Smith
PCT Legal Examiner
PCT Legal Office

22 JUN 2006

#12

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Thomas Hoxie
Novartis
Corporate Intellectual Property
One Health Plaza
East Hanover, NJ 07936-1080

In re Application of	:	DECISION ON
CARDINAUX et al	:	
Application No.: 10/344,201	:	
PCT No.: PCT/EP01/09134	:	
Int. Filing Date: 07 August 2001	:	PETITION UNDER
Priority Date: 09 August 2000	:	
Attorney's Docket No.: 4-31550A	:	
For: LAT PEPTIDES AND THEIR USE IN ASSAYS	:	
FOR IDENTIFYING IMMUNOSUPPRESSANTS	:	37 CFR 1.137(b)

This decision is in response to applicants' "Petition To Revive Under 37 CFR 1.137(b)," filed on 03 February 2006.

BACKGROUND

In a decision from this Office on 30 March 2005, the holding of abandonment was withdrawn

On 10 May 2005, the United States Designated/Elected Office mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the nucleotide and/or amino acid sequence disclosure contained in the application did not comply with the requirements for such disclosure as set forth in 37 CFR .1821-1.825. And it did not include two copies of the compact disc in addition to the computer readable form. 37 CFR 1.821(e). The decision gave petitioner one (1) MONTH from the mail date of the Notification of Defective Response, or the time period set for the related Notification of Missing Requirements, which was mailed on 10 May 2005. The notification further stated that the time period for response set in the Notification of Missing Requirements may be extended under the provisions of 37 CFR 1.136(a).

On 01 June 2005, petitioners filed a paper and computer readable form of the Sequence Listing for this application.

On 21 June 2005, the USPTO issued a Raw Sequence Listing Error Report.

On 05 December 2005, the United States Designated/Elected Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that applicant had failed to file a proper diskette se attachment indicating errors.

On 03 February 2006, petitioners submitted the instant petition under 37 CFR 1.137(b), which was accompanied by, *inter alia*, a new sequence listing diskette and a 2nd supplemental preliminary amendment entering a new sequence listing into the application. Petitioner, also, indicates that applicants did respond in a timely manner.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

The petition is not deemed to satisfy items (1) and (3) under 37 CFR 1.137(b).

Petitioner has provided: (2) the petition fee set forth in §1.17(m) under 137(b)(3). In this application, no terminal disclaimer is required.

Petitioner has not met items (1) because the reply is not proper because the computer readable form the Sequence Listing is defective as indicated in the Raw Sequence Listing Error Report issued by STIC Biotechnology System Branch on 09 February 2006, and (3) a statement that the 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 has not been provided.

Thus, the petition is not deemed to satisfy the items under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.137(b) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Failure to timely submit the proper reply will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (571) 272-3276
Fax: (571) 273-0459

Enclosed: CRF Error Report by STIC on 2/9/06

12 JUL 2007

#14

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In re Application of	:	DECISION ON RENEWED
CARDINAUX et al	:	
Application No.: 10/344,201	:	
PCT No.: PCT/EP01/09134	:	
Int. Filing Date: 07 August 2001	:	PETITION UNDER
Priority Date: 09 August 2000	:	
Attorney's Docket No.: 4-31550A	:	37 CFR 1.181
For: LAT PEPTIDES AND THEIR USE IN ASSAYS	:	
FOR IDENTIFYING IMMUNOSUPPRESSANTS	:	and 37 FR 1.137(b)

This decision is in response to applicants' "RENEWED PETITION UNDER 37 C.F.R. 1.137(b)," filed on 23 May 2007, requesting acceptance of the renewed petition as filed in the USPTO on 26 September 2006. Applicants have submitted, inter alia, a copy of the 26 September 2006 PTO stamped itemized postcard receipt. The itemized postcard lists, *inter alia*, the following item: Renewed Petition.

BACKGROUND

In a decision from this Office on 22 June 2006, the petition filed on 03 February 2006 was dismissed because the reply was not proper because the computer readable form the Sequence Listing was defective as indicated in the Raw Sequence Listing Error Report issued by STIC Biotechnology System Branch.

On 23 May 2007, petitioners filed a copy of the renewed petition under 37 CFR 1.137(b), a paper copy of the Sequence listing with computer-readable form (CRF) and a copy of the USPTO stamped postcard that the renewed petition was filed on 26 September 2006.

DISCUSSION

37 CFR 1.181:

Applicants' present renewed petition accompanied by a copy of the following documents, filed purportedly, *inter alia*, with the PTO as indicated in the stamped postcard:

(1) Renewed Petition under 37 CFR 1.137(b)
(2) Paper copy of Sequence Listing with computer-readable form (CRF)
(3) Postcard

The postcard lists the above items and bears a USPTO date of stamp as 26 September 2006.

MPEP 503 provides:

> A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard is accepted as *prima facie* that a renewed petition was deposited with the U.S. Patent and Trademark Office on 26 September 2006.

DECISION

The petition under 37 CFR 1.181 is **GRANTED**.

37 CFR 1.137(b):

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting a substitute paper and computer readable form the Sequence Listing, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing. The 35 USC 371(c)(1), (c)(2) and (c)(4) date of this application is **08 November 2003**.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (571) 272-3276
Facsimile: (571) 273-0459

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : February 9, 2007

TO SPE OF : ART UNIT 3671

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/344203 patent No.: 7111686

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

3671
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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DAVID E. WIGLEY, PH.D.
SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, N.E.
ATLANTA GA 30309-3996

COPY MAILED

JUN 09 2009

OFFICE OF PETITIONS

In re Application of :

NAGEL, Stefan et al. :
Application No. 10/344,216 : DECISION ON PETITION
Filed: April 11, 2003 : TO WITHDRAW
Attorney Docket No. **28007-0118** : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 13, 2009.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by David Wigley on behalf of all attorneys of record who are associated with customer No. 29052. All attorneys/agents associated with the Customer Number 29052 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 December 12, 2008 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

cc: **CELONOVA BIOSCIENCES, INC.**
49 SPRING STREET
NEWNAN GA 30263-2768

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ELMAN TECHNOLOGY LAW,
P.C.
P. O. BOX 209
SWARTHMORE PA 19081

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AUG 2 8 2008

In re Application of

O'Connell, et al.

Application No. 10/344,219

Filed: July 7, 2008

Attorney Docket No. BAR.R1.P1621US

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 13, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on July 14, 2008, after no further action was taken after the decision rendered May 13, 2008, by the Board of Patent Appeals and Interferences affirming the examiner's determination as to the all pending claims which were either rejected or objected to.

The Request for Continued Examination filed August 13, 2008, is noted.

The application file is being forwarded to Technology Center 2800, GAU 2833 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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FEB 21 2008

OFFICE OF PETITIONS

In re Application of
Jean-Michel Itier, et al.
Application No. 10/344,223
Filed: July 25, 2003
Attorney Docket No. ST00024 US PCT

ON PETITION

This is a decision on the petition, filed November 7, 2007, to revive the above-identified application under 37 CFR 1.137(b).

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 March 27, 2007. A Notice of Abandonment was mailed on October 10, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). On November 7, 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 a Notice of Appeal and appeal fee of $510; (2) the petition fee of $1,540; and (3) an adequate statement of unintentional delay.

This application is being referred to Technology Center AU 1647 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. Inquiries relating to the prosecution of the application should be referred to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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2033 K STREET N. W.
SUITE 800
WASHINGTON DC 20006-1021

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OFFICE OF PETITIONS

In re Patent No. 7,015,020	:	
Issued: 21 March, 2006	:	
Application No. 10/344,236	:	ON PETITION
Filed: 11 February, 2003	:	
Atty Dckt No. 2003_0154A	:	

This is a decision on the petition filed on 30 March, 2006, styled under 37 CFR 1.183, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **granted**.

Telephone inquires concerning this matter may be directed to the undersigned at 571.272.3231. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at 703.305.8309.

The file is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

D Wood
Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[1] See Official Gazette of 22 June, 2004.

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APR 0 7 2008

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ELI LILLY & COMPANY
PATENT DIVISION
P.O.BOX 6288
INDIANPOLIS IN 46202-6288

In re Application of	:
Conrad	:Decision on Petition
Serial No.:10/344,246	:
Filed : 21 August 2001	:
Attorney Docket No.: X012648	:

This letter is in response to the Petition under 37 C.F.R. 1.144 filed on 28 January 2008 to request reconsideration of the restriction requirement mailed 1 October 2004. The delay in acting upon this petition is regretted. It is noted that applicants filed a Notice of Appeal Brief on 17 May 2007, prior to the filing of this petition.

37 CFR 1.144 states in part, with emphasis added: "... 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**....."

Accordingly, the petition filed under 37 CFR 1.144 is **DISMISSED** as untimely because it was filed after the filing of the Notice of Appeal.

The application will be forwarded to the Examiner to consider the Appeal Brief filed 30 January 2008.

Should there be any questions regarding this decision, please Quality Assurance Specialist Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 571-273-8300.

John Leguyader

George Elliott
Director, Technology Center 1600

JOHN LEGUYADER
DIRECTOR
TECHNOLOGY CENTER 1600

60SD831-5

FAX RECEIVED
MAY 1 5 2003
GROUP 1700

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Anthony, et al.
Serial Number: 10/344,249
Filing Date: 02/11/2003
Docket No: 60SD831-5
Title: HIGH PRESSURE AND HIGH TEMPERATURE PRODUCTION OF DIAMONDS

1754
Hendrickson 10-14-05

Commissioner of Patents and Trademarks
Washington, D.C. 20231

CERTIFICATE OF FACSIMILE TRANSMISSION (37 CFR 1.8a)
I hereby certify that this correspondence is being telephonically transmitted by facsimile transmission to 703-872-9310 to the attention of GROUP 1700 on the date shown below addressed to Honorable Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Date May 15, 2003

Hanh T. Pham

RECEIVED
AUG 1 1 2003
GROUP ~~3600~~ 1700

PETITION TO MAKE SPECIAL UNDER 37 CFR 1.102

Sir:

The Petitioner, Hanh T. Pham, Associate Attorney in the above-identified application, hereby petitions for the application to be advanced out of turn for examination because of actual infringement of the claimed invention. The Petitioner has reviewed the evidentiary documents and certifies that:

A) There is actual infringement on the market of the claimed invention.

B) A comparison of the infringing product(s) with the claimed invention has been made. and in my opinion, some of the claims are unquestionably infringed.

C) A careful and thorough search of the prior art had been made, and the references were submitted in various IDS submissions since the filing date.

The Commissioner is hereby authorized to charge any fees to Deposit Account 07-0860. A DUPLICATE OF THIS PETITION IS ATTACHED.

Respectfully submitted,

GE Plastics
One Plastics Avenue
Pittsfield, MA 01201
Date May 15, 2003

Hanh T. Pham, Registration No. 40,771
Attorney for Applicants,
Telephone No.: (413) 448-4664

PETITION GRANTED

William Krynski
Special Program Examiner
TC 1700

OCT 2 0 2005

Received from < 413 4485588 > at 5/15/03 12:11:02 PM [Eastern Daylight Time]

PTO/SB/83 (01-06)
Approved for use through 12/31/2008. OMB 0651-0035
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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	10/344,250
Filing Date	07/16/03
First Named Inventor	Jean-Paul Lecoupeau
Art Unit	1761
Examiner Name	Weier
Attorney Docket Number	1721-63

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Approved 4-20-06
Jacqueline M. Stone
Jacqueline M. Stone, Director
Technology Center 1700/2900

Please withdraw me as attorney or agent for the above identified patent application, and

- ☐ all the attorneys/agents of record.
- ☐ the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- ☑ the attorneys/agents associated with Customer Number 23117

NOTE: This box can only be checked when the power of attorney of record in the application is to all the practitioners associated with a customer number.

The reasons for this request are: The undersigned was advised March 7, 2006 by applicants overseas representative that the responsibility for U.S. prosecution had been transferred to the below-indicated firm.

CORRESPONDENCE ADDRESS

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☑ Change the correspondence address and direct all future correspondence to:

☐ The address associated with Customer Number:

OR

☑ Firm *or* Individual Name	Hoxie Tso LLP				
Address	374 Millburn Avenue Suite 300E				
City	Millburn	State	NJ	Zip	07041
Country	USA				
Telephone		Email			

Signature	/B. J. Sadoff/		
Name	B. J. Sadoff	Registration No.	36663
Date	March 22, 2006	Telephone No.	703-816-4000

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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HOXIE & ASSOCIATES LLC
75 MAIN STREET , SUITE 301
MILLBURN, NJ 07041

Mail Date: 04/21/2010

Applicant	: Jean-Paul Lecoupeau	: DECISION ON REQUEST FOR
Patent Number	: 7368144	: RECALCULATION of PATENT
Issue Date	: 05/06/2008	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/344,250	: OF WYETH
Filed	: 07/16/2003	:
		:

The Patentee's Request for Recalculation is **DISMISSED.**

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A). Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154 (b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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SCHWARTZ COOPER CHARTERED
IP DEPARTMENT
180 NORTH LASALLE STREET
SUITE 2700
CHICAGO IL 60601

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JUL 30 2007

OFFICE OF PETITIONS

In re Application of	:	
Dimitrios Sideris	:	
Application No. 10/344290	:	
Filing or 371(c) Date: 06/19/2003	:	
Attorney Docket Number:	:	
3877 P 005	:	ON PETITION

This is a decision on the Request to Withdraw the Holding of Abandonment Under 37 C.F.R. § 1.181, filed June 4, 2007. The request is properly treated as a petition.

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 29, 2006. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No response having been received, the application became abandoned on December 30, 2006. A Notice of Abandonment was mailed April 3, 2007.

Applicant's Assertion

Applicant files the present petition and asserts that a timely response to the Office action was filed on March 29, 2007, including a three (3) month extension of time. In support of this assertion, applicant files a copy of the reply, which includes a Certificate of Mailing under 37 CFR 1.8, along with a copy of a return-receipt postcard which acknowledges receipt by this Office of: a Transmittal and Extension of Time Petition; a Reply to the Non-Final office action mailed September 29, 2006; Supplemental Information Disclosure Statement Pursuant to 37 C.F.R. §§ 1.97 and 1.98; a 3 page foreign patent reference, Extension of time and Supplemental IDS fees totaling $690.00, and a Certificate of mailing.

Review of Office records

A review of Office records also reveals that the Office received the reply, including an Amendment and three-month Extension of Time and fee on April 2, 2007 (Certificate of Mailing dated March 29, 2007).

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn.

No petition fee has been charged and none is due.

The application will be referred to Technology Center Art Unit 1753 for continued examination in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

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UNGARETTI & HARRIS LLP
INTELLECTUAL PROPERTY GROUP - PATENTS
70 WEST MADISON STREET
SUITE 3500
CHICAGO IL 60602-4224

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OFFICE OF PETITIONS

In re Application of	:	
Dimitrios Sideris	:	
Application No. 10/344,290	:	ON APPLICATION
Filed: June 19, 2003	:	FOR
Atty Docket No. 53029-7005	:	PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 C.F.R. § 1.705(b) FOR U.S. APPLICATION SERIAL NO. 10/344,290," filed November 18, 2008. Applicant requests that the determination of patent term adjustment be increased by 431 days to a total of one thousand one hundred thirteen (1,113) 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).

To the extent that this 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 ordinarily required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See 37 CFR 1.703(b). It is noted that at the time of this decision, the patent has not issued. (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.

With respect to the over 3 year calculation, 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.

To the extent that applicant requests reconsideration of the determination of patent term adjustment at the time of the mailing of the notice of allowance, the application for patent term adjustment is DISMISSED.

On August 18, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 682 days. The instant application for patent term adjustment was timely filed.[1] Applicant disputes the entry of a period of reduction of 30 days for Applicant delay in responding to the non-final rejection of January 8, 2008. Applicant has argued that due to the fact that a Request

[1] PALM records indicate that the issue fee was paid on November 18, 2008.

for Continued Examination (RCE) was filed on October 31, 2007, "Applicant's delays after October 31, 2007 should not adversely affect the PTA total."

This argument is without merit. As stated in the Final Rule,

> Once a request for continued examination under 35 U.S.C. 132(b) and 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and 1.114. Nevertheless, if a request for continued examination is filed in an application, the applicant may still accrue patent term adjustment under 35 U.S.C. 154(b)(1)(A) or (C). See response to Comment 8, See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 65 Fed. Reg. 54366 (September 18, 2000).

In other words, the filing of an RCE cuts off any additional accrual of patent term adjustment based on the Office's failure to issue the patent within 3 years. However, the filing of the RCE does not otherwise effect the accrual of patent term adjustment in terms of entry of periods of adjustment for Office delay and entry of periods of reduction for applicant delay.

With respect to the disputed period of reduction of 30 days, 37 C.F.R. 1.704(b) sets forth, in pertinent part:

> "an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed."

Applicant did not file a response to the non-final Office action mailed January 8, 2008 until May 8, 2008, three months and 30 days later. Thus, a period of reduction of 30 days was entered pursuant to 37 CFR 1.704(b), for taking in excess of three

months to file a response to an Office action. The fact that a RCE was filed has no effect on the applicability of this Rule.

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 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 Attorney Paul Shanoski at (571) 272-3225.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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SUITE 3500
CHICAGO IL 60602-4224

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OFFICE OF PETITIONS

In re Patent No. 7,494,684	:	
Dimitrios Sideris	:	DECISION ON
Issue Date: March 3, 2009	:	REQUEST FOR
Application No. 10/344,290	:	RECONSIDERATION OF
Filed: June 19, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 53029-7005	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 CFR 1.705b FOR U.S. PATENT NO. 7,497,934," filed May 4, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from six hundred and eighty-two (682) days to one thousand and seventy-nine (1079) days.

The request for reconsideration of patent term adjustment is **DISMISSED**.

On November 18, 2008, Applicants filed a "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705 FOR U.S. APPLICATION SERIAL NO. 10/344,290." The Office mailed a decision on January 27, 2009, which indicated, *in pertinent part*, that the request for 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 was being held in abeyance, as the patent had yet to issue.

On March 3, 2009, the above-identified application matured into US Patent No. 7,494,684 with a patent term adjustment of 682 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 $200.00 fee set forth in 37 CFR 1.18(e) was preveniently submitted with the filing of November 18, 2008. No additional fees are required.

Patentees request recalculation of the patent term adjustment to include a 499-day period of adjustment pursuant to 37 C.F.R. § 1.703(b). Patentees maintain entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 499 days and the period of adjustment due to other examination delay, pursuant to 37 CFR §§ 1.702(a)(1) and (a)(2), of 806 days.

It is noted that a Request for Continued Examination (RCE) was filed 3 years and 499 days after the filing date of this application.[1] However, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap, with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b) (1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the period of delay of 499 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 806 days attributable to grounds specified in §§ 1.702(a)(1) and (a)(2). Thus, at issuance, no additional period of adjustment was entered.

---

[1] Pursuant to 37 C.F.R. § 1.702(b)(5), the term of a patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed, but not including "[a]ny delay in the processing of the application by the Office that was requested by the applicant."

It follows that the proper period of adjustment for Office delay was properly calculated to be 806 days.

In view thereof, the patent issued with a revised patent term adjustment of 682 (806 - 124 days of Applicant delay) days.

The period of 806 days of Office delay is not in dispute.

Under 37 CFR § 1.703(f), Patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR § 1.702 reduced by the period of time equal to the period of time during which Patentees failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR § 1.704. In other words, the period of Office delay reduced by the period of applicant delay.

The period of reduction of 124 days for applicant delay is not in dispute.

Patentees do not dispute that the total period of Office delay is the sum of the period of Three Years Delay (499 days) and the period of Examination Delay (806 days) to the extent that these periods of delay are not overlapping. However, Patentees contend that 102 days of the Three Year Delay period overlaps with the period of 14-month examination delay. Accordingly, Patentees submit that the total period of adjustment for Office delay is 1203 days, which is the sum of the period of Three Year Delay (499 days) and the period of Examination Delay (806 days), reduced by the period of overlap (102 days).

As such, Patentees assert entitlement to a patent term adjustment of 1079 days (499 + 806 reduced by 102 - 124 (applicant delay).

The Office agrees that as of the filing of the RCE on October 31, 2007, the application was pending 3 years and 499 days after its filing date. The Office agrees that the actions detailed above were not taken within the specified time frame, and thus, the entry of a period of adjustment of 806 days is correct. At issue is whether Patentees should accrue 499 days of patent term adjustment for the Office taking in excess of three years to issue the patent, as well as 806 days for Office failure to take certain actions within a specified time frame (or examination delay).

The Office contends that the entire 499-day period overlaps. Patentees' calculation of the period of overlap is inconsistent with the Office's interpretation of this provision. 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

> to the extent that the periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

Likewise, 37 CFR 1.703(f) provides that:

> To the extent that periods of delay attributable to the grounds specified in §1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed.

As explained in *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg.

> 54366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

The current wording of § 1.703(f) was revised in response to the misinterpretation of this provision by a number of Patentees. The rule was slightly revised to more closely track the corresponding language of 35 U.S.C. 154(b)(2)(A). The relevant portion differs only to the extent that the statute refers back to provisions of the statute whereas the rule refers back to sections of the rule. This was not a substantive change to the rule nor did it reflect a change of the Office's interpretation of 35 U.S.C. 154(b)(2)(A). As stated in the *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding §1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed. The grounds specified in these sections cover the A) guarantee of prompt Patent and Trademark Office responses, B) guarantee of no more than 3 year application pendency, and C) guarantee or adjustments for delays due to interference, secrecy orders and appeals. A section by section analysis of 35 U.S.C. 154(b)(2)(A) specifically provides that:

> Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)-(C), total adjustments granted for restorations under [35 U.S.C.

> 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under [35 U.S.C.] 181 and administrative delay under [35 U.S.C.] 154(b)(1)(A)), the term should not be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed; See 145 Cong. Rec. S14,718[2]

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 other words, consideration of the overlap does not begin three years after the filing date of the application.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the entire period during which the application was pending before the Office, June 19, 2003, as terminated by the filing of the RCE on October 31, 2007. 806 days of patent term adjustment were accorded prior to the filing of the RCE for the Office failing to respond within a specified time frame during the pendency of the application. <u>All of the 499 days for Office delay in issuing the patent overlap with the 806 days of Office delay. not delay 806 days and then an additional 397 days</u>. Accordingly, 806 days of patent term adjustment (not 806 and 397 days) was properly entered since the period of delay of 499 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 806 days attributable to grounds specified in §§ 1.702(a)(1) and (a)(2). Entry of both periods is not warranted. 806 days is determined to be the actual number of days that the issuance of the patent was delayed, considering the 499 days over three years to the filing of the RCE.

Accordingly, at issuance, the Office properly entered no additional days of patent term adjustment for the Office taking in excess of 3 years to issue the patent.

---

[2] The AIPA is title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948), which was incorporated and enacted as law as part of Pub. L. 106-113. The Conference Report for H.R. 3194, 106th Cong. 1st Sess. (1999), which resulted in Pub. L. 106-113, does not contain any discussion (other than the incorporated language) of S. 1948. A section-by-section analysis of S. 1948, however, was printed in the Congressional Record at the request of Senator Lott, See 145 Cong. Rec. S14,708-26 (1999)(daily ed. Nov. 17, 1999).

In view thereof, no adjustment to the patent term will be made.

Telephone inquiries specific to this matter should be directed to Paul Shanoski, Senior Attorney, at (571) 272-3225.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

STATUTE AND REGULATION

35 U.S.C. § 154(b) as amended by § 4402 of the American Inventors Protection Act of 1999[3] (AIPA) provides that:

> ADJUSTMENT OF PATENT TERM. —
>
> (1) PATENT TERM GUARANTEES. —
>
> (A) GUARANTEE OF PROMPT PATENT AND TRADEMARK OFFICE RESPONSES. — Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to —
>
> (i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after —
>
> (I) the date on which an application was filed under section 111(a) of this title; or
>
> (II) the date on which an international application fulfilled the requirements of section 371 of this title;
>
> (ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken;
>
> (iii) act on an application within 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 or a decision by a Federal court under section 141, 145, or 146 in a case in which allowable claims remain in the application; or
>
> (iv) issue a patent within 4 months after the date on which the issue fee was paid under section 151 and all outstanding requirements were satisfied, the term of the patent shall be extended 1 day for each day after the end of the period specified in clause (i), (ii), (iii), or (iv), as the case may be, until the action described in such clause is taken.
>
> (B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY. — 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 —

[3] Public Law 106-113, 113 Stat. 1501, 1501A-557 through 1501A-560 (1999).

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

(C) GUARANTEE OR ADJUSTMENTS FOR DELAYS DUE TO INTERFERENCES, SECRECY ORDERS, AND APPEALS. – Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to –

(i) a proceeding under section 135(a);

(ii) the imposition of an order under section 181; or

(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued under a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended 1 day for each day of the pendency of the proceeding, order, or review, as the case may be.

(2) LIMITATIONS. –

(A) IN GENERAL. – To the extent that 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.

The implementing regulation, 37 CFR § 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

(a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be

adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

(2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

(b) Failure to issue a patent within three years of the actual filing date of the application. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including[4]:

In pertinent part, 37 CFR § 1.703 provides for calculation of the periods, as follows:

Period of adjustment of patent term due to examination delay.

(a) The period of adjustment under § 1.702(a) is the sum of the following periods:

(1) The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day

---

[4] (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

> after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods[5]:

37 CFR 1.703(f) provides that:

> The adjustment will run from the expiration date of the patent as set forth in 35 U.S.C. 154(a)(2). 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. The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704. The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation.

---

[5] (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;

(2)(i) The number of days, if any, in the period beginning on the date an interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and (ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension;

(3)(i) The number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181; (ii) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 41.39 of this title in the application under secrecy order and ending on the date the secrecy order was removed; (iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order was removed; and (iv) The number of days, if any, in the period beginning on the date of notification under § 5.3(c) of this chapter and ending on the date of mailing of the notice of allowance under 35 U.S.C. 151; and,

(4) The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

04 DEC 2003

#5

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Michael E. Sellers
LUEDEKA, NEELY & GRAHAM, P.C.
P.O. Box 1871
Knoxville, TN 37901

In re Application of :
RACKHAM, Peter John *et al* :
U.S. Application No.: 10/344,295 :
PCT No.: PCT/GB01/03563 :
Int. Filing Date: 08 August 2001 : **DECISION**
Priority Date: 08 August 2000 :
Attorney Docket No.: 58121.US :
For: A GRILL FOR A LAND VEHICLE AND :
ALSO A LAND VEHICLE HAVING A :
GRILL :

This decision is in response to applicants' "Response to Notice of Missing Parts" filed 31 October 2003.

BACKGROUND

On 28 May 2003, the United States Designated/Elected Office mailed a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) (Form PCT/DO/EO/905) indicating that an oath/declaration in compliance with 37 CFR 1.497(a) and (b) and a $130.00 surcharge fee must be provided. Applicants were given two months to respond with extensions of time available under 37 CFR 1.136(a).

On 31 October 2003, applicants submitted a response which was accompanied by, *inter alia*, a declaration signed by one of the two joint inventors; a three-month extension request and $950.00 extension fee; a $130.00 surcharge fee; a "Statement Under 37 C.F.R. 1.47 and MPEP 409.01(d) Proof of Inventor's Refusal to Sign Declaration" ("Decl."); copies of letters dated 12 May 2003, 16 May 2003 and 09 June 2003; a copy of an investigative report dated 08 October 2003; a copy of the Request for PCT/GB01/03563; and authorization to charge any additional fees to Deposit Account No. 12-2355.

DISCUSSION

In the response filed 31 October 2003, applicants: (1) request withdrawal of the Form PCT/DO/EO/905 mailed 28 May 2003 because a declaration complying with 37 CFR 1.497(a) and (b) was filed pursuant to PCT Rule 4.17(iv); or in the alternative, (2) request to file a petition under 37 CFR 1.47(a).

Declaration Complying With 37 CFR 1.497(a) and (b) Filed in the International Application

A review of the underlying international application PCT/GB01/03563 reveals that a "Declaration of inventorship (PCT Rules 4.17(iv) and 51bis.1(a)(iv)) for the purposes of the designation of the United States of America" was filed pursuant to PCT Rule *26ter* on 10 October 2001.

This declaration was furnished after filing the international application. As such, the PCT number must be recorded on the declaration to identify the application. *See* PCT Administrative Instructions, section 214. In this case, the PCT number was not recorded on the declaration. Therefore, this declaration does not comply with the requirements of 37 CFR 1.497(a) and (b).

Accordingly, applicants' request that the Form PCT/DO/EO/905 mailed 28 May 2003 be vacated is **DISMISSED** without prejudice.

Petition Under 37 CFR 1.47(a)

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located, or refuses to cooperate; (3) a statement of the last known address of the missing joint inventor; (4) and an oath or declaration executed by the signing joint inventor on his behalf and on behalf of the non-signing joint inventor.

Concerning item (1), the $130.00 petition fee has been charged to Deposit Account No. 12-2355 as authorized.

With regard to item (3), the 37 CFR 1.47(a) applicant states that the last known address of the nonsigning joint inventor, Peter John Rackham, is:

Fairfield, Shop Street
Whinburgh, Dereham
Norfolk NR18 1QR
Great Britain

Regarding item (4), the 37 CFR 1.47(a) applicant has submitted a declaration signed by one of the two listed joint inventors on behalf of the nonsigning co-inventor. The nonsigning inventor's name, residence, post office address and citizenship are typed on this declaration as required by section 409.03(a) of the Manual of Patent Examining Procedure (MPEP). The declaration is also in compliance with 37 CFR 1.497(a) & (b).

For this reason, items (1), (3) and (4) are satisfied.

However, the 37 CFR 1.47(a) applicant has not yet met the requirements of item (2) of 37 CFR 1.47(a).

The 37 CFR 1.47(a) applicant claims that Mr. Rackham refuses to sign the declaration "by not responding to repeated requests to do so." Decl. at ¶ 1. The 37 CFR 1.47(a) applicant included documentary evidence such as a copy of an investigative agent's report dated 08 October 2003 and copies of the cover letters dated 16 May 2003 and 09 June 2003 sent to Mr. Rackham's last known address "via standard postal service" requesting that Mr. Rackham return a signed declaration. Id. at ¶ 6.

A review of the investigative report reveals that in a telephone call to Mr. Rackham's wife on 03 October 2003, it was learned that Mr. Rackham was currently in Croatia. He was expected to return in two days on 05 October 2003. Nonetheless, there is no indication that the 37 CFR 1.47(a) applicant attempted to contact Mr. Rackham after he returned despite the fact that the instant petition was not filed until 28 October 2003. In addition, there is no evidence that the mailings dated 16 May 2003 and 09 June 2003 were received by Mr. Rackham.

To satisfy item (2) of 37 CFR 1.47(a), the petitioner must attempt to contact Mr. Rackham to verify that he received a copy of the above-captioned application (including specification, claims and drawings) and request that he return an executed copy of the declaration. If Mr. Rackham refuses (either orally or in writing), or does not respond after a reasonable time period, this conduct may be interpreted as a refusal. If Mr. Rackham cannot be reached, than evidence that a diligent effort was made to locate him would be sufficient. Here, there is evidence that Mr. Rackham was located, yet no attempt to contact him after he returned from Croatia was made. This conduct does not meet the requirements of item (2) of 37 CFR 1.47(a).

CONCLUSION

For the reasons noted above, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia

22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (703) 308-6457

02 MAR 2004

#7

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Michael E. Sellers
LUEDEKA, NEELY & GRAHAM, P.C.
P.O. Box 1871
Knoxville, TN 37901

In re Application of
RACKHAM, Peter John *et al*
U.S. Application No.: 10/344,295
PCT No.: PCT/GB01/03563
Int. Filing Date: 08 August 2001
Priority Date: 08 August 2000
Attorney Docket No.: 58121.US
For: A GRILL FOR A LAND VEHICLE AND ALSO A LAND VEHICLE HAVING A GRILL

DECISION

This decision is in response to applicants' "Renewed Petition Under 37 CFR 1.47(A)" filed 26 January 2004.

BACKGROUND

On 24 November 2003, applicants purportedly filed a paper titled "Supplemental Response to Notice to File Missing Parts" along with a declaration executed by the nonsigning co-inventor, Peter John Rackham.

On 04 December 2003, a decision dismissing applicants' renewed petition was mailed because they failed to satisfy item (2) of 37 CFR 1.47(a).

On 26 January 2004, applicants submitted the instant request which was accompanied by, *inter alia*, an executed declaration signed by all of the joint inventors.

DISCUSSION

In the renewed petition under 37 CFR 1.47(a), applicants filed a declaration signed by both of the joint inventors, Peter John Rackham and Michael Tate. Applicants declare that "the second inventor decided to cooperate and has executed a declaration. The declaration was submitted to the Patent Office in a Supplemental Response to Notice to File Missing Parts dated November 24, 2003. Copies of the Supplemental Response and the declaration are enclosed for convenient reference."

A review of the above-captioned application shows that the Supplemental Response and declaration purportedly filed 24 November 2003 were not located in the file. The postcard receipt for those documents submitted with the renewed petition is not date stamped by the USPTO. Thus, the postcard receipt is not considered *prima*

facie evidence of receipt of all items listed thereon on the date staped thereon by the USPTO. *See* § 503 MPEP. Regardless, applicants submitted a copy of a declaration signed by both joint inventors with the renewed petition.

A review of the declaration provided shows it is in compliance with 37 CFR 1.497(a) and (b). The surcharge fee of $130.00 pursuant to 37 CFR 1.492(e) was previously paid.

CONCLUSION

Applicants' renewed petition under 37 CFR 1.47(a) is **DISMISSED** as **MOOT**.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 08 August 2001, under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 26 January 2003.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (703) 308-6457

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LUEDEKA, NEELY & GRAHAM, P.C.
P O BOX 1871
KNOXVILLE TN 37901

COPY MAILED
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OFFICE OF PETITIONS

In re Patent No. 6,921,117 :
Issued: July 26, 2005 :
Application No. 10/344,295 : ON PETITION
Filed: January 26, 2005 :
Attorney Docket Number: 58121.US :

This is a decision on the petition, filed December 28, 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 due to a clerical error, the incorrect name of assignee was provided on the Fee(s) Transmittal form PTOL-85(b). Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct name of the 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 September 23, 2005 and dismissed in a decision mailed October 13, 2005 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 Aston Martin Lagonda Limited 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.

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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SUGHRUE MION PLLC
2100 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20037-3213

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OFFICE OF PETITIONS

In re Application of Takashi Fujikawa et al Application No. 10/344,317 Filed: February 11, 2003 Attorney Docket No. Q74116	DECISION GRANTING PETITION UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition, filed September 17, 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 21, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 1764 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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Paper No. 7

Morrison & Foerster
425 Market Street
San Francisco, CA 94105-2482

MAILED

JUL 0 1 2004

Technology Center 2100

In re Application of:
Neill CAMERON, et al.
Application No. 10/344,328
Filed: February 10, 2003
For: COMPUTER BASED SYSTEM AND METHOD OF DETERMINING A SATISFACTION INDEX OF A TEXT

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed June 15, 2004.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED.**

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
703-305-9750

cc: Joel Benson
Brinks Hofer Gilson & Lione
455 N. Cityfront Plaza Drive
Chicago, IL 60611-5599

#4

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21 JUL 2003

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Mark D. Wieczorek
P.O. Box 70072
San Diego, CA 92167

In re Application of	:	
FURSTE, Jens P. *et al*	:	
U.S. Application No.: 10/344,335	:	
PCT No.: PCT/DE01/03067	:	**DECISION ON**
Int. Filing Date: 10 August 2001	:	**PETITION FOR REVIVAL**
Priority Date: 11 August 2000	:	**UNDER 37 CFR 1.137(b)**
Attorney Docket No.: 001408/007001	:	
For: NUCLEIC ACID LIBRARY OR	:	
PROTEIN OR PEPTIDE LIBRARY	:	

Applicants' "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed on 25 June 2003 in the above-captioned application is hereby **GRANTED** as follows:

The appropriate basic national fee and petition fee have been paid. Applicants state that "[t]he entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3). A terminal disclaimer is not required. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

A signed oath or declaration was not included with any of the papers submitted.

Accordingly, this application is being forwarded to the United States Designated/Elected Office for further processing including mailing a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee pursuant to 37 CFR 1.492(e) is required.

James Thomson

James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457

12 JUN 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

#6

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NIXON & VANDERHYE
1100 N. Glebe Road, 8th Floor
Arlington, VA 22201-4714

In re Application of:	:	
OSTROM, Ulf	:	DECISION ON PETITION TO
U.S. Application No.: 10/344,344	:	REVIVE ABANDONED
PCT No.: PCT/NO01/00273	:	APPLICATION UNDER 37
International Filing Date: 27 June 2001	:	CFR 1.137(b)
Priority Date: 06 July 2000	:	
Attorney's Docket No.: 2810-30	:	
For: AIRPORT BAGGAGE HANDLING	:	
CONVEYOR SYSTEM	:	

The petition to revive under 37 CFR 1.137(b) filed 11 February 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the U.S. national phase request for examination from the due date for filing until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional as the applicants did not intend to abandon the subject matter of the application" meets the requirements of 37 CFR 1.137(b)(3).

Applicants have now submitted the small entity basic national fee and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application is granted as to the national stage in the United States of America.

It is noted that applicants filed an executed declaration with the petition. However, the executed declaration (which appears to be a facsimile) is not completely legible. Accordingly, this declaration cannot be accepted in compliance with 37 CFR 1.497.

This application is being returned to the National Stage Processing Division of the Office of PCT Operations for further processing in accordance with this decision, including the issuance of a Notification Of Missing Requirements requiring submission of a legible oath or declaration in compliance with 37 CFR 1.497.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

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FEB - 9 2006

Nixon & Vanderhye, PC
1100 N. Glebe Road
8th Floor
Arlington, VA 22201-4714

In re Application of
Ulf Ostrom
Application No. 10/344,344
Filed: July 7, 2003
For: AIRPORT BAGGAGE HANDLING CONVEYOR SYSTEM

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to the Petition to Withdraw the Holding of Abandonment filed in the United States Patent and Trademark Office on December 7, 2004.

The petition is **GRANTED** in view of the following evidence of timely filing:

☐ Postcard receipt 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 November 23, 2004 has been found in the application file.

This application is being forwarded to the Supervisory Legal Instruments Examiner for withdrawal of the abandonment and then to the examiner for prompt action.

RAR/rwg: 2/08/06

Randolph A. Reese
Special Programs Examiner
Group 3600

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30 MAY 2003

#3

NIXON & VANDERHYE
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714

In re Application of	:	
MANZ *et al*	:	
U.S. Application No.: 09/856,710	:	
PCT No.: PCT/GB99/03892	:	
Int. Filing Date: 11 November 1999	:	**DECISION**
Priority Date: 11 November 1998	:	
Attorney Docket No.: 550-388	:	
For: PLASMA GENERATOR	:	

Applicants' "Petition to Revive Unintentionally Abandoned Application" filed with the national stage papers on 11 February 2003 in the above-captioned application has been treated as a petition to revive pursuant to 37 CFR 1.137(b) and is hereby **GRANTED** as follows:

Applicants state that "the entire delay in filing the required national phase application from the due date until the filing of this grantable petition pursuant to 37 CFR §1.137(b)(3) was unintentional." This statement meets the requirements of 37 CFR 1.137(b)(3). The petition fee, basic national fee and additional claim fees have been paid. The surcharge fee of $130.00 pursuant to 37 CFR 1.492(e) has been charged to Deposit Account No. 14-1140 as authorized in the transmittal letter. No terminal disclaimer is required. Thus, all requirements of 37 CFR 1.137(b) have been satisfied.

A declaration in compliance with 37 CFR 1.497(a) and (b) has been provided.

The requirements for acceptance under 35 U.S.C. 371(c) have been completed. The application has an international filing date of 11 November 1999, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **11 February 2003**.

This application is being forwarded to the National Stage Processing Division for continued processing.

06/04/2003 MKAYPAGH 00000006 141140 10344345
01 FC:1617 130.00 CH

James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457

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United States Patent and Trademark Office
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ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K STREET, N.W.
SUITE 800
WASHINGTON, DC 20005

Mail Date: 04/20/2010

Applicant	: David S Poor	: DECISION ON REQUEST FOR
Patent Number	: 7573616	: RECALCULATION of PATENT
Issue Date	: 08/11/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/344,377	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/11/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1925** 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.

26 AUG 03

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#3

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James H. Walters
Dellett & Walters
310 SW Fourth Avenue, Suite 1101
Portland, OR 97204

In re Application of	:	
Serebryakov et al.	:	
US Application No.: 10/344,399	:	
PCT Application No.: PCT/RU01/00265	:	DECISION ON REQUEST
International Filing Date: 3 July 2001	:	UNDER 37 CFR 1.42
Priority Date: 11 August 2000	:	
Attorney's Docket No.: V-246	:	
For: NITROGEN-POTASSIUM FERTILIZER	:	

This decision concerns the "Declaration and Power of Attorney for Patent Application" filed 11 February 2003 ("Declaration"), indicating that 1 of the 2 named inventors is deceased. The Declaration is being properly treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 3 July 2001, Applicants filed international application PCT/RU01/00265, which claimed priority of an earlier application filed 11 August 2000. The 30-month period for entering the national stage ended 11 February 2003.

On 11 February 2003, Applicants filed a transmittal letter for entry into the national stage in the United States (Form PTO-1390), along with the $530 (small entity) basic national fee required by 35 U.S.C. 371(c)(1) and 37 CFR 1.492(a)(5), and the Declaration.

DISCUSSION

When an inventor for the claimed invention in a patent application is deceased, the legal representative (executor, administrator, etc.) or one who has reason to believe that he/she will be appointed legal representative may make the necessary oath or declaration. 37 CFR 1.42; MPEP 409.01(a) (Rev. 1, Feb. 2003).

The Declaration, Form PTO/SB/107(5-96), is in both Russian and English, with the Russian version on the left side and its English translation on the right side. It names Alexander Ivanovich Serebryakov ("Serebryakov") and Vladimir Fedorovich Dukhanin ("Dukhanin"), the deceased. However, the status of Dukhanin is unclear. Specifically, the second inventor box on page 4 of the declaration has been modified to indicate "Full name of sole or first inventor" rather

than "Full name of second joint inventor, if any." As such, the declaration fails to comply with 37 CFR 1.497(a) and the USPTO approved form has been modified.

Also, it appears that the data provided in the second inventor's box relates to that of Serebryakov, rather than the deceased inventor, in view of the fact that the residence listed is identical to that of Serebryakov, and not that of the deceased inventor. 37 CFR 1.497 requires information for both the deceased inventor and the legal representative.

In addition, pursuant to 37 CFR 1.69(b), a statement that the translation is accurate is required for accepting the declaration.

Moreover, the notation "SEREBRYAKOV Alexander Ivanovich, legal representative of DUKHANIN Vladimir Fedorovich (departed)," in English, appears above the second signature. However, this notation apparently is not accompanied by a Russian translation. Therefore, it is unclear whether Serebryakov was aware of his role as Dukhanin's legal representative when making the second signature in the Declaration. The Office notes that, pursuant to 37 CFR 1.69(a), an individual is not permitted to make an oath or declaration in English if that individual does not understand English.

CONCLUSION

In view of the above, the request is **DISMISSED without prejudice.**

To avoid abandonment of this application, a renewed §1.42 request must be filed within **TWO MONTHS** of the mailing date of this decision, and must include an oath or declaration in compliance with 37 CFR 1.497, executed by Serebryakov in the language he understands, in accordance with 37 CFR 1.69(a)-(b).

Any further correspondence with respect to this matter should be addressed to:

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
PO Box 1450
Alexandria, VA 22313-1450

Boris Milef
PCT Legal Examiner
PCT Legal Office

RC Tang
Petitions Attorney
PCT Legal Office
Telephone: 703-308-1315
Facsimile: 703-308-6459

09 DEC 2004

#6

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James H. Walters
Dellett & Walters
310 SW Fourth Avenue, Suite 1101
Portland, OR 97204

In re Application of	:	
SEREBRYAKOV, et al.	:	DECISION ON PETITIONS
Application No.: 10/344,399	:	
PCT No.: PCT/RU01/00265	:	UNDER 37 CFR 1.181 AND
Int. Filing Date: 03 July 2001	:	
Priority Date: 11 August 2000	:	37 CFR 1.42
Attorney Docket No.: V-246	:	
For: NITROGEN-POTASSIUM FERTILIZER	:	

This decision is in response to applicant's "Request to Withdraw Holding of Abandonment" filed 21 September 2004 in the United States Patent and Trademark Office (USPTO). The filing is being treated asa petition under 37 CFR 1.181. No petition fee is required. For the reasons discussed below, also considered is applicant's renewed petition under 37 CFR 1.42.

BACKGROUND

On 26 August 2003, applicant was mailed a decision dismissing applicant's request for status under 37 CFR 1.42. Applicant was afforded two months to file any request for reconsideration and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 15 September 2004, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) advising applicant that the present application was abandoned as to the United States of America for failure to timely to the decision mailed 26 August 2003.

On 21 September 2004, applicant filed the present response.

DISCUSSION

I. Petition Under 37 CFR 1.181

A review of the application file finds applicant's original 24 October 2003 filing contained therein. As such, it is proper to grant applicant's petition under 37 CFR 1.181 to withdraw the holding of abandonment.

II. Renewed Petition Under 37 CFR 1.42

As detailed in the decision mailed 26 August 2003, 37 CFR 1.42 states:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

Applicant's previously filed declaration was rejected as it did not contain the residence, citizenship and post office address information for both the deceased inventor and the legal representative of his estate. On 24 October 2003, applicant filed a combined declaration and power of attorney providing the relevant information for both parties. A review of the combined declaration and power of attorney, as well as counsel's statement, finds that applicant has satisfied all of the concerns raised in the decision mailed 26 August 2003 and it is proper to grant applicant's renewed petition under 37 CFR 1.42 at this time.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

Applicant's renewed request for status under 37 CFR 1.42 is **GRANTED**.

The "Notification of Abandonment" (Form PCT/DO/EO/909) mailed 15 September 2004 is hereby **VACATED**.

This application will be given an international application filing date of 03 July 2002 and a date of **24 October 2003** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the DO/EO/US for processing in accordance with this decision.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: 571-272-3294
Fax: 571-273-0459

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/344,413	07/01/2003	Takashi Nomura	233305US6PCT	2956

7590 01/31/2008
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
2143	

NOTIFICATION DATE	DELIVERY MODE
01/31/2008	ELECTRONIC

DECISION DISMISSING PETITION UNDER 37 CFR 1.138(d)

The declaration of express abandonment will not be recognized

This is in response to the petition under 37 CFR 1.138(d), requesting for a refund of any previously paid search fee and excess claims fee in the above-identified application.

The petition is dismissed.

The express abandonment will **not** be recognized for the reason(s) indicated below:

1. ☐ The petition was not filed in sufficient time to permit the appropriate officials to recognize the abandonment before an examination has been made of the application. See 37 CFR 1.138(d).

2. ☐ The petition was not signed by a party authorized by 37 CFR 1.33(b)(1), (3) or (4).

3. ☑ The application is not an application filed under 35 U.S.C. 111(a) on or after December 8, 2004.

4. ☐ The petition for express abandonment under 1.138(d) is dismissed because the applicant did not pay any search fee and excess claims fees in the above-identified application.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Patent Publication Branch
Office of Data Management

FORM PET651D (Rev. 08/07)

30 JUN 2004

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22850
OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C.
1940 Duke Street
Alexandria 22314

In re Application of	:	
FUDER, Franz	:	
U.S. Application No.: 10/344,415	:	
PCT No.: PCT/EP01/09528	:	
Int. Filing Date: 17 August 2001	:	**DECISION**
Priority Date: 18 August 2000	:	
Attorney's Docket No.: 233656US0PCT	:	
For: MEMBRANE REACTOR AND PROCESS	:	
FOR THE GENERATION OF HIGH-PURITY	:	
HYDROGEN GAS	:	

This is a decision on the papers titled "Petition to the Commissioner Under 37 C.F.R. §1.181(a)" filed 25 February 2004 which is treated as a petition to withdraw a holding of abandonment. No fee is required.

BACKGROUND

On 05 June 2003, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) must be provided. A two-month time period for response was set.

On 05 August 2003, applicant purportedly filed a response which contained an executed declaration.

On 19 February 2004, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicant failed to respond to the Form PCT/DO/EO/905 within the time period set therein.

On 25 February 2004, applicant filed the instant petition which was accompanied by, *inter alia*, copies of the documents purportedly filed 05 August 2003 and a stamped postcard receipt for the 05 August 2003 documents.

DISCUSSION

MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. Applicant must enclose a self-addressed postcard identifying all of the papers filed. The USPTO will stamp the receipt date on the card and place it on the outgoing mail.

The identifying data on the card must clearly identify the paper for which receipt is requested. 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.

In this case, applicant has provided a copy of the date-stamped filing receipt for documents submitted 05 August 2003. The filing receipt records that a "Combined Declaration, Petition and Power of Attorney" were received in the USPTO. The filing receipt is stamped "Rec'd PCT/PTO 05 AUG 2003" across its face. The U.S. application number, docket number, title and name of the applicants are all listed on the postcard receipt. Applicant provided a copy of the executed declaration with the instant petition.

Accordingly, applicants have provided *prima facie* evidence that the declaration was received by the USPTO on 05 August 2003.

DECISION

For the reasons above, applicant's petition to withdraw the holding of abandonment is **GRANTED**.

The Form PCT/DO/EO/909 mailed 19 February 2004 is hereby **VACATED**.

Applicant has completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 17 August 2001, under 35 U.S.C. 363 and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 19 February 2004.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (703) 308-6457

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ALEXANDRIA, VA 22314

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MAR 0 7 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Hakan Wikstrom, et al. :
Application No. 10/344,420 :
Filed: July 15, 2003 :
Attorney Docket No. 232879US40XPCT :

This is a decision on the petition, filed March 7, 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 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 1625 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
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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1185 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

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MAR 2 2 2005

OFFICE OF PETITIONS

In re Application of
Yumiko Yatsui
Application No. 10/344,430
Filed: February 11, 2003
Attorney Docket No. 1141/68963

ON PETITION

This is a decision on the petition, filed December 6, 2004, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is found to comply with the requirements of 37 CFR 1.137(b). Accordingly, the petition is **GRANTED**.

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 $980 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 2859 for consideration of the amendment filed December 6, 2004.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Kenyon & Kenyon
One Broadway
New York NY 10004

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APR 27 2007

OFFICE OF PETITIONS

In re Application of :
Zimmermann et al. :
Application No. 10/344,437 : DECISION ON PETITION
Filed: 02-10-2003 :
Attorney Docket No. 12604/1 :

This is a decision on the petition under 37 CFR 1.181, filed March 27, 2007, to withdraw the holding of abandonment for the above-identified application.

On January 17, 2006, the Office mailed a final Office action, which set a three-month shortened statutory period for reply. On July 24, 2006 (certificate of mailing dated July 17, 2006), applicants filed a notice of appeal and a request for an extension of time for response within the third month, as well as paid the necessary fees. The filing of the notice of appeal set a two-month extendable period from July 24, 2006 (the date of receipt of the notice of appeal), for applicants to submit an appeal brief. Nevertheless, on November 15, 2006, the Office notified applicants that the application was abandoned. Specifically, the Office mailed a Notice of Abandonment, stating that the application became abandoned because of "Applicant's failure to timely file an Appeal Brief. Note the final rejection of 17 January 2006."

In the present petition, applicants asserted that the application was not abandoned and requested that the Office withdraw the holding of abandonment. Applicants stated that the final due date for filing the appeal brief, with a request for an extension of time for response within the fifth month, was Monday, February 26, 2007.

On March 3, 2007 (certificate of mailing dated Monday, February 26, 2007), applicants submitted a Request for Continued Examination, a submission, a request for an extension of time for response within the fifth month, and an authorization to charge the necessary fee to the Deposit Account.

The Office finds that applicants' assertions are correct. As previously stated, the filing of the notice of appeal set a two-month extendable period from July 24, 2006 (the date of receipt of the notice of appeal), for applicants to submit an appeal brief. Applicants could extend this period for response up

to five months under 37 CFR 1.136(a) (i.e. on or before Monday, February 26, 2007). Accordingly, the reply was timely filed.

The petition under 37 CFR 1.181 is **granted**. The Notice of Abandonment was mailed in error and is hereby withdrawn.

This matter is being referred to the Technology Center Art Unit 3672 for processing the RCE filed on Monday, February 26, 2007.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

30 APR 2003

#3

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WASHINGTON, D.C. 20231
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James B. Raden
JONES DAY
77 West Wacker
Chicago, Illinois 60601-1692

In re Application of:	:	
PIOFFET, Patrick, et al.	:	DECISION ON PETITION TO
U.S. Application No.: 10/344,444	:	REVIVE ABANDONED
PCT No.: PCT/US01/41591	:	APPLICATION UNDER 37
International Filing Date: 07 August 2001	:	CFR 1.137(b)
Priority Date: 09 August 2000	:	
Attorney's Docket No.: Pioffet 1-1	:	
For: METERING DEVICE FOR CONTAINER	:	

The petition to revive under 37 CFR 1.137(b) filed 22 April 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

On 11 February 2003, applicants submitted the required basic national fee (the application became abandoned despite this payment because the thirty month deadline for filing the basic national fee expired on 10 February 2003) and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application is granted as to the national stage in the United States of America.

It is noted that the 11 February 2003 submission also included an executed declaration in compliance with 37 CFR 1.497 and the authorization to charge Deposit Account No. 10-1202 any required fees. Based on this authorization, Deposit Account No. 10-1202 will be charged the $130 surcharge for filing the declaration later than thirty months after the priority date.

This application is being returned to the National Stage Processing Division of the Office of PCT Operations for further processing in accordance with this decision. The 35 U.S.C. 371 date is 11 February 2003.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

24 MAR 2004

#6

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Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street NW
Washington, DC 20037-1526

In re Application of NADAN, Joseph S., et al. Application No.: 10/344,450 PCT No.: PCT/US01/25093 Int. Filing Date: 13 August 2001 Priority Date: 13 August 2000 Attorney Docket No.: T7070.00002/P002 For: METHOD AND SYSTEM FOR CREATING MARKETPLACE VISIBILITY AND ADMINISTERING FREIGHT SHIPMENTS	DECISION ON PETITION UNDER 37 CFR 1.47(a)

This is a decision on applicants' "Petition to Make Application For Patent Under 37 CFR 1.47(A) On Behalf of Joint Inventor Who Cannot be Found," filed in the United States Patent and Trademark Office (USPTO) on 05 January 2004.

BACKGROUND

On 13 August 2001, applicants filed international application PCT/US01/25093, claiming a priority date of 13 August 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 12 March 2002, within nineteen months from the priority date. The thirty-month period for paying the basic national fee in the United States expired at midnight on 13 February 2003.

On 12 February 2003, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 03 June 2003, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 05 January 2003, applicants submitted the instant petition under 37 CFR 1.47(a) accompanied by the fee for a five month extension of time.

DISCUSSION

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign after being presented with the application papers or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Items (1) and (3) have been met. (1) The petition fee will be charged to deposit account no. 04-1073, as authorized. (3) The petition lists the last known address of non-signing inventor Robert Charles Watson as 14 Beacon Drive, Port Washington, NY 11050.

Item (2) has not been satisfied. When applicants are unable to locate the inventor after a diligent effort, "a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made." MPEP §409.03(d). "The statement must be signed where at all possible by a person having firsthand knowledge of the facts recited therein." MPEP §409.03(d). Mr. Grossman's statement indicates that he lacks the requisite first hand knowledge. It would appear that Mr. Wlody is the individual who attempted to contact the inventor. Additionally, applicants have not shown that they have attempted to determine inventor Watson's new location. Copies of documentary evidence, e.g. internet searches, that support a finding that the inventor could not be located after a diligent effort should be submitted. MPEP §409.03(d).

Item (4) has not been satisfied. Applicants must supply the full copy of the declaration executed by each inventor. Applicants may not piece together pages from different declarations to create a composite declaration. Here it appears only the signature page of the declaration was either sent or returned and it was attached to a printout of the first three sheets of the declaration. Applicants must supply a complete declaration in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Richard Cole
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
PCT Legal Administration

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23 SEP 2004

48

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street NW
Washington, DC 20037-1526

In re Application of NADAN, Joseph S., et al. Application No.: 10/344,450 PCT No.: PCT/US01/25093 Int. Filing Date: 13 August 2001 Priority Date: 13 August 2000 Attorney Docket No.: T7070.00002/P002 For: METHOD AND SYSTEM FOR CREATING MARKETPLACE VISIBILITY AND ADMINISTERING FREIGHT SHIPMENTS USING FUZZY COMMODITY TRANSPORTATION INSTRUMENTS	DECISION ON PETITION UNDER 37 CFR 1.47(a)

This is a decision on applicants' "Renewed Petition Under 37 CFR 1.47(a)," filed in the United States Patent and Trademark Office (USPTO) on 24 May 2004.

BACKGROUND

On 13 August 2001, applicants filed international application PCT/US01/25093, claiming a priority date of 13 August 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 12 March 2002, within nineteen months from the priority date. The thirty-month period for paying the basic national fee in the United States expired at midnight on 13 February 2003.

On 12 February 2003, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 03 June 2003, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 05 January 2004, applicants submitted a petition under 37 CFR 1.47(a) accompanied by the fee for a five month extension of time.

On 24 March 2004, the Office mailed Decision On Petition Under 37 CFR 1.47(a) dismissing applicants' petition without prejudice.

On 24 May 2004, applicants submitted "Renewed Petition Under 37 CFR 1.47,".

DISCUSSION

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign after being presented with the application papers or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Items (1) and (3) were previously satisfied.

Items (2) and (4) have now been satisfied. Applicants sent a complete copy of the application papers and a copy of the declaration to applicant at his last known address and have not received a response. The new declaration complies with 37 CFR 1.497(a)-(b) and 37 CFR 1.47(a)

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **GRANTED**.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application, including accordation of a 35 U.S.C. §§371(c)(1), (c)(2) and (c)(4) date of **24 May 2004**.

Richard Cole
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Erin M. Pender
Attorney Advisor
PCT Legal Administration

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23 SEP 2004

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Robert C. Watson
14 Beacon Drive
Port Washington, NY 11050

In re Application of
NADAN, Joseph S., et al.
Application No.: 10/344,450
PCT No.: PCT/US01/25093
Int. Filing Date: 13 August 2001
Priority Date: 13 August 2000
Attorney Docket No.: T7070.00002/P002
For: METHOD AND SYSTEM FOR CREATING MARKETPLACE VISIBILITY AND ADMINISTERING FREIGHT SHIPMENTS USING FUZZY COMMODITY TRANSPORTATION INSTRUMENTS

Dear Mr. Watson:

You are named as an inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. The counsel for the applicant is listed below. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Richard Cole
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Erin M. Pender
Attorney Advisor
PCT Legal Administration

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OFFICIAL GAZETTE NOTICE

37 CFR 1.47 Notice by Publication

Notice is hereby given of the filing of an application with a petition under 37 CFR 1.47 requesting acceptance of the application without the signature of the inventor. The petition has been granted. A notice has been sent to the last known address of the non-signing inventor. The inventor whose signature is missing (Robert Charles Watson) may join in the application by promptly filing an appropriate oath or declaration complying with 37 CFR 1.63. The international application number is PCT/US01/25093 and was filed on 13 August 2001 in the names of Joseph Stanley Nadan and Robert Charles Watson for the invention entitled METHOD AND SYSTEM FOR CREATING MARKETPLACE VISIBILITY AND ADMINISTERING FREIGHT SHIPMENTS USING FUZZY COMMODITY TRANSPORTATION INSTRUMENTS. The national stage application number is 10/344,450 and has a 35 U.S.C. §§371(c)(1), (c)(2) and (c)(4) date of 24 May 2004.

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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DAVIS WRIGHT TREMAINE, LLP/Seattle
1201 Third Avenue, Suite 2200
SEATTLE, WA 98101-3045

Mail Date: 04/26/2010

Applicant	: Gail M. Clinton	: DECISION ON REQUEST FOR
Patent Number	: 7608269	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/344,470	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1472** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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OFFICE OF PETITIONS

SCULLY, SCOTT , MURPHY & PRESSER , P.C.
400 GARDEN CITY PLAZA , SUITE 300
GARDEN CITY , NY 11530

In re Patent No. 7,541,354	: DECISION ON REQUEST
Issued: June 2, 2009	: FOR RECONSIDERATION
Application No. 10/344,480	: OF PATENT TERM ADJUSTMENT
Filed: February 10, 2003	: AND
Attorney Docket No. 17744Z	: NOTICE OF INTENT TO ISSUE
(PC26789B)	: CERTIFICATE OF CORRECTION

This is a decision on the PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d) filed on July 31, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 657 days to 1255 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred fifty-four (1254) days is **GRANTED to the extent indicated herein**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on February 11, 2006 and ends on June 2, 2009., the day before the RCE was filed, and the B delay considering the 143 days of overlap is 597 (not 598) days. See 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 1254, not 1255 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the

term of the above-identified patent is extended or adjusted by **one thousand two hundred fifty-four (1254)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Associate Commissioner
for Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,541,354 B2

DATED : June 2, 2009

INVENTOR(S) : Deniele Fancelli

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 (657) days

Delete the phrase "by 657 days" and insert – by 1254 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner of Patents

The Law Offices of John D. Gugliotta
202 Delaware Building
137 South Main Street
Akron, OH 44308

MAILED

APR 1 4 2005

Director's Office
Group 3700

In re Application of	:	
VASILIJEV ET AL.	:	
Serial No.10/344,486	:	Decision on
Filed February 11, 2003	:	Petition
For: Method of Utilization of Gas Expansion	:	
Energy and Utilization Power Installation	:	
For Implementation of this Method	:	

A Notice of Abandonment for the above-identified application was mailed July 1, 2004. Applicant filed a petition to withdraw the Holding of Abandonment under 37 CFR 1.181 on December 14, 2004. In the petition applicant provides a copy of the amendment asserted as filed April 9, 2004 including a copy of the Certificate of Mailing attached thereto. However, there is no statement from the individual mailing the response that the amendment was placed in an envelope properly addressed to Assistant Commissioner for Patents and deposited in outgoing US Mail/

In view of the above the petition is **Dismissed** until such time as a properly executed statement is received with regard to this application. This application will be held until such time as a proper response is received.

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

FEB 0 8 2006

John D. Gugliotta, Esq.
202 Delaware Building
137 South Main Street
Akron OH 44308

In re Application of: VASILJEV et al.	
Appl. No.: 10/344,486	DECISION ON PETITION
Filed: February 11, 2003	
For: METHOD FOR RECOVERING THE ENERGY OF GAS EXPANSION AN A RECOVERY DEVICE FOR CARYING OUT SAID METHOD	

This is a decision on the request for reconsideration filed May 22, 2004 by which petitioner requests reconsideration of the dismissal of petition to withdrawal of a holding of abandonment filed December 14, 2004 for failure to file a proper and timely response to the non-final Office Action of January 13, 2004. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

The petition of December 14, 2004 was dismissed for failure to include a statement from the individual mailing the response that the amendment was placed in an envelope properly addressed to Assistant Commissioner for Patents and deposited in outgoing US Mail. Said statement has been supplied in the request for consideration.

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 of Technology Center 3700 to have the status restored. The application will then be forwarded to the examiner of record for consideration of the response in due course.

PETITION GRANTED

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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PATENT, COPYRIGHT & TRADEMARK LAW GROUP
4199 Kinross Lakes Parkway
Suite 275
RICHFIELD, OH 44286

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OFFICE OF PETITIONS

In re Application of
Vladimir Yaroslavovich, et. al.
Application No. 10/344,486
Filed: February 11, 2003
Attorney Docket No. 03-1217

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 2, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Non-Final Rejection mailed, April 26, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136 (a) were obtained. Accordingly, the application became abandoned on July 27, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment After Non-Final Rejection, (2) the petition fee of $770, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

This application is being referred to Technology Center AU 3744 for appropriate action by the Examiner in the normal course of business on the reply received.

Brian Brown
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3-23-05

Paper No.: _____

TO SPE OF : ART UNIT 2816

SUBJECT : Request for Certificate of Correction on Patent No.: 6771099

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-915
Palm location 7580 - Tel. No. 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please check Drawings.

Thank You For Your Assistance

Certificates of Correction Branch

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes do not apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

Correction to figure 6 has been approved

/N. Drew Richards/
SPE

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Art Unit

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ERICSSON INC.
6300 LEGACY DRIVE
M/S EVR C11
PLANO, TX 75024

In re Application of BANG, Goran Application No.: 10/344,490 PCT No.: PCT/SE01/01492 Int. Filing Date: 28 June 2001 Priority Date: 14 September 2000 Attorney Docket No.: 53808-00004USPX For: SYNCHRONISATION OF AUDIO AND VIDEO SIGNALS	DECISION ON PETITION UNDER 37 CFR 1.47(b)

This is a decision on applicant's "Petition By Agent to Make Application Under CFR 1.47(b) Uncooperative Inventor," filed in the United States Patent and Trademark Office (USPTO) on 16 December 2003.

BACKGROUND

On 28 June 2001, applicant filed international application PCT/SE01/01492, which claimed a priority date of 14 September 2000. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 21 March 2002. A Demand for international preliminary examination, in which the United States was elected, was filed on 10 April 2002, within nineteen months from the priority date. The thirty-month period for paying the basic national fee in the United States expired at midnight on 14 March 2003.

On 12 February 2003, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 16 June 2003, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 16 December 2003, applicant submitted a petition under 37 CFR 1.47(b), a petition for a four month extension of time and a declaration.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Items (1) - (6) have been satisfied. Applicant has authorized that the petition fee be charged to deposit account no. 50-1379. Applicant sets forth in a statement from Lena Christina Lundholm Carlsson that applicant presented the non-signing inventor with a copy of the application and the declaration, and that on 11 December 2003, the inventor acknowledged receipt of the documents and he refused to sign the declaration. The non-signing inventor's, Göran Bång's, last known address is Operagränd 20; 175 56 Järfälla, Sweden. Applicant has furnished proof of proprietary interest and has made a showing that this action is necessary to protect applicant from irreparable harm.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(b) is **GRANTED**.

As provided in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A notice of the filing of the application under 37 CFR 1.47(b) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application, including accordation of a date under 35 U.S.C. §§371(c)(1), (c)(2) and (c)(4) of **16 December 2003**.

Boris Milef
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

STITES & HARBISON PLLC
1199 NORTH FAIRFAX STREET
SUITE 900
ALEXANDRIA VA 22314

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OFFICE OF PETITIONS

In re Application of	:	
Surya Moorthy	:	DECISION ON
Application No. 10/344,516	:	PETITION
Filed: July 9, 2003	:	
Atty Docket No. P07863US00/RFH	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b), filed September 30, 2008.

The petition is **GRANTED**.

The above-identified application was abandoned for failure to timely file a proper reply to the final Office action mailed September 7, 2007. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. A proposed reply was filed on March 4, 2008, made timely by an accompanying petition and extension of time for response within the third month. However, this reply did not place the application in condition for allowance. (See Advisory Action mailed April 10, 2008). No proper reply having been received and no further extension of time obtainable, the application became abandoned effective March 8, 2008. A courtesy Notice of Abandonment was mailed on May 1, 2008.

On petition, petitioner submitted a Request for Continued Examination (RCE), RCE fee and submission under §1.114; paid the petition fee; and made the required statement of unintentional delay.

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 September 30, 2008.

Telephone inquiries concerning 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

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JJGJr : 11-07

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
11TH FLOOR, SEVEN PENN CENTER
1635 MARKET STREET
PHILADELPHIA PA 19103-2212

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OFFICE OF PETITIONS

In re Application of	:	
Chung, et al.	:	
Application No. 10/344,545	:	DECISION
Filed: 11 February, 2003	:	
Attorney Docket No. S1011/20147	:	

This is a decision on the petition filed on 16 April, 2007, supplemented on 11 September, 2007, and considered as a request to withdraw the holding of abandonment 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]

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 16 August, 2006, with reply due on or before 16 November, 1006;
- the application went abandoned after midnight 16 November, 2006;

[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 Office mailed the Notice of Abandonment on 15 March, 2007;

- on 16 April, 2007, Petitioner filed the instant petition with, *inter alia*, an averment that the Office action in question (copy enclosed) had not been received by Counsel and that, while the Office action had been properly addressed, it apparently had been included in a mailing to another firm, in that an enclosed copy of a letter from the firm of Merchant & Gould (M&G), of Minneapolis, Indiana, indicated that the office action in question had been received by M&G and returned by M&G to the Office—and Office records so reflected;

- on 11 September, 2007, Petitioner supplemented the instant petition with averments of non-receipt and search, and included docket copies, consistent with the guidance at the Commentary in MPEP §711.03(c).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)), and that those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

---

[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—
(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;

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[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]

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;

(2) Returning papers;

(3) Precluding a party from filing a paper, or presenting or contesting an issue;

(4) Imposing a monetary sanction;

(5) Requiring a terminal disclaimer for the period of the delay; or

(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).

[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

[3] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[4] 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]))

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.[8]

The commentary at MPEP §711.03(c) provides in pertinent part:

* * *

A. Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in

---

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.

8 See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

> practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.
>
> * **
>
> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).
>
> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988). (Emphasis supplied.)
>
> * * *

And the regulation requires that relief be sought within two (2) months of the act complained of.

Petitioner appears to have satisfied the burdens herein.

CONCLUSION

Petitioner appears to have satisfied the burdens herein, and the petition as considered under 37 C.F.R. §1.181 is **granted**—the 15 March, 2007, Notice of Abandonment is **vacated**.

The instant application is released to Technology Center 3600 for further processing in due course—to include the re-mailing of the 16 August, 2006, Office action and resetting of the time for reply thereto.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[9]) and the 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

[9] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
10/344,545	10/28/2003	Thiam Eng Chung	S1011/20147	3066

3000 7590 08/16/2006

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
11TH FLOOR, SEVEN PENN CENTER
1635 MARKET STREET
PHILADELPHIA, PA 19103-2212

EXAMINER
BELLINGER, JASON R

ART UNIT	PAPER NUMBER
3617	

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/344,545	CHUNG ET AL.	
	Examiner	Art Unit	
	Jason R. Bellinger	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *14,15,17,19,21-23,25 and 26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14,15,17,19,21-23,25 and 26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 October 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the a complete wheel including the hub assembly, as set forth in claim 23; and the wheel including radial ply tires, as set forth in claim 25, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because it contains legal terminology (see following paragraph). Correction is required. See MPEP § 608.01(b).

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "comprises", "means", and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

5. Claim 14 is objected to because of the following informalities: The term "and" between the terms "portion" and "being" in line 9 of the claim should be removed for grammatical clarity. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> **The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.**

7. Claims 14-15, 17, 19, 21-23, and 25-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is indefinite due to the fact that it is unclear which "hub portion" is being referred to in line 10 of the claim. A pair of "hub portions" have been previously set forth in the claim, and the phrase "said hub portion" in line 10 of the claim does not clearly specify which "hub portion" is being referred to.

Claim 17 is indefinite due to the fact that it is unclear what properties are included in a washer formed from stainless steel according to British Standard BS 6580. The reliance of British Standard BS 6580 to describe the properties of a certain stainless steel renders the claim indefinite, due to the fact that the standard may change over time. Therefore, one of ordinary skill in the art would be unable to ascertain the meets and bounds of the claim, since it would be unclear which version of the standard was being referred to.

8. Regarding claim 14, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> **(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.**

10. Claims 14-15, 17, 19, 21-23, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canady et al in view of Plumer. Canady et al shows a wheel hub assembly including two axially adjacent hub portions (13' & 14') bolted together by circumferentially distributed fastening assemblies. The fastening assemblies include bolts 21 extending through boltholes (generally at 19-20). Each bolt 21 includes a head 23, a shank, and a threaded end 22 on which a threaded nut 32 is received. The boltholes in at least one hub portion 13' includes a circumferentially continuous, tapered countersunk portion 19 at an outer end. Washers 29 with a complementary shape to the countersunk portion 19 are located therein to reduce the maximum principal stress in the surrounding region of the hub portions (13' & 14') and to reduce relative movement between the washer/hub and huh/hub interfaces, thus reducing fretting damage.

Furthermore, the washers 29 are dispose adjacent to a fillet (namely the countersunk portions 19).

The washers 29 have a generally conical profile. Tires 17 are mounted on the wheel (13-14) formed by the hub assembly. The wheel (13-14) could be used on an aircraft. While Canady et al does not specify that the tires are radial ply tires, one of ordinary skill in the art at the time of the invention would have found it obvious to mount any type of tire on the wheel of Canady et al, dependent upon cost, availability, and the type of application the wheel would be used for (for example, heavy duty trucks, passengers vehicles, race cars, etc.).

Canady et al mentions that the mounting arrangement is suitable for aluminum wheels (see column 1, lines 18-22), but does not specify that the hub portions are actually formed from an aluminum alloy. Plumer teaches the use of a wheel 20, including hub portions formed from an aluminum alloy. Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the wheel assembly of Canady et al from an aluminum alloy, for the purpose of reducing the weight of the assembly.

Canady et al does not show the countersunk portion having an angle of between 85 and 150 degrees. Plumer teaches the use of a wheel 20 including countersunk portions with an angle between 60 and 168 degrees (see column 20, lines 15-22 and column 16, lines 55-59). Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the wheel assembly of Canady et al with countersunk portions having any angle suitable for receiving a

aircraft" are intended use limitations and do not set forth any physical characteristics of the wheel. The wheel of Canady et al meets the physical limitations of the claims.

The Applicant's argument of unexpected results, set forth in the last paragraph of page 5 through the last full paragraph of page 6 of the Arguments filed 27 January 2006, are not persuasive due to the fact that no evidence (such as an affidavit or declaration) have been provided. Arguments alone do not constitute evidence of unexpected results.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered to show aircraft wheels. For example, Hyland et al shows a wheel of the type described above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason R. Bellinger whose telephone number is 571-272-6680. The examiner can normally be reached on Mon - Thurs (9:00-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason R Bellinger
Primary Examiner
Art Unit 3617

JRB
8/14/06

PTO/SB/64 (11-07)
Approved for use through 11/30/2007. 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 at (571) 273-8300.

Date	Signature
	Typed or printed name of person signing certificate

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.