SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20090822

DATE : August 22, 2009

TO SPE OF : ART UNIT 2622

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

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

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

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/LIN YE/
Supervisory Patent Examiner.Art Unit 2622

03 MAR 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

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#3

NexPress Solutions, LLC
PATENT DEPARTMENT
1447 ST. PAUL STREET
ROCHESTER, NY 14653-7103

In re Application of DOBRINDT et al. Serial No.: 10/344,555 PCT No.: PCT/EP00/01424 Int. Filing Date: 22 February 2000 Priority Date: 25 February 1999 Attorney's Docket No.: 808251LPK For: DEVICE FOR DEPOSITING SHEETS ON A STACK:	DECISION ON PETITION UNDER 37 CFR 1.137(b) AND 37 CFR 1.181

This is a decision on applicant's "Petition under 37 CFR 1.181" originally filed in the United States Patent and Trademark Office in 16 October 2002 and "Petition for Revival under 37 CFR 1.137 (b)" filed in the United States Patent and Trademark Office originally filed on 20 April 2001. Applicant filed status inquiry on 10 February 2003 along with copies of the above referenced submissions.

The "Petition under 37 CFR 1.181" will be treated as a petition under 37 CFR 1.182 to correct the international application number on the petition to revive. A fee of $130.00 for the petition under 37 CFR 1.182, the fee of $1240 for the petition to revive and the basic national fee of $860 will be charged to applicant's deposit account per their authorization.

BACKGROUND

On 22 February 2000, applicant filed international application No. PCT/EP00/01424 which claimed priority of an earlier German application filed 25 February 1999.

No 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 twenty-month period for paying the basic national fee in the United States expired at midnight on 25 October 2000.

On 10 February 2003, applicant filed a status inquiry with a copy of a petition to revive under 37 CFR 1.137(b) originally filed on 20 April 2001 and a petition under 37 CFR 1.181 originally filed on 16 October 2002 along with the itemized post card receipts date-stamped by the USPTO with the respective dates. On 31 May 2002, applicants filed a status inquiry along with a copy of the petition to revive and itemized postcard receipt with USPTO date-stamp "20 April 2001".

DISCUSSION

Petition Under 37 CFR 1.182

On 20 April 2001, applicant filed a petition to revive under 37 CFR 1.137(b). On 16

October 2002, applicants filed a petition under 37 CFR 1.181, requesting correction of the international application number as it appeared on the petition to revive. This petition will be treated under 37 CFR 1.182. The petition to revive incorrectly indicated international application no. PCT/EP00/041424; it should have read PCT/EP00/01424. On 16 October 2002, applicants filed the instant petition requesting rectification of incorrect international application no. identifying the correct international application no. as PCT/EP00/01424. Applicant's request to correct the international application number on the petition to revive is granted.

Petition Under 37 CFR 1.137(b)

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".

The proper response is payment of the basic national fee of $840, which applicant has now authorized to be charged to his deposit account. The required petition fee of $1,240 has also been paid.

Applicant's statement that "the failure to complete the National stage filing of the above reference PCT application was unintentional" has been interpreted as meaning that "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. If this is an incorrect interpretation in view of the rules, petitioner is required to promptly notify this office.

Thus, the requirements of 37 CFR 1.137(b) have been satisfied. 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.

CONCLUSION

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

The application is being forwarded to the US Designated/Elected Office for further processing as the national stage of PCT/EP00/01424, assigned U.S. serial number 10/344,555 and for issuance of a Notification of Missing Requirements indicating that an oath or declaration executed by the inventors and the $130 surcharge for filing an oath or declaration after the twenty month period is required.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/14/08

TO SPE OF : **Technology Center** 3651 10/344566

SUBJECT : Request for Certificate of Correction on Patent No.: 6971508 B2

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

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

Thank You For Your Assistance

Elisha Evans
Certificates of Correction Branch
Tel. No. 703-308-9390 EXT 110

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

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

Comments:

Gene [signature]
SPE

3651
Art Unit

22 MAY 2003

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OIPE JC41 JUL 28 2003 PATENT & TRADEMARK OFFICE

MAY 29 2003

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SEP 15 2003

TECH CENTER 1600/2900

Kawai Lau
Morrison & Foerster, LLP
3811 Valley Centre Drive, Suite 500
San Diego, CA 92130-2332

In re Application of
SARDARYAN
Application No.: 10/344,567
PCT No.: PCT/CZ01/00039
Int. Filing Date: 23 July 2001
Priority Date: 10 August 2000
Attorney Docket No.: 321402000300
For: COMPOSITION FOR PROPHYLAXIS AND TREATMENT OF CANCER

DECISION ON PETITION UNDER 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 12 February 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that, "the entire delay was unintentional" is being interpreted to mean 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. If this is an incorrect reading of applicant's statement applicant should contact the PCT Legal Office immediately. Applicant's statement and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

A review of the application file reveals that the applicant has submitted the basic national fee of $450.00 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. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied. As a declaration was filed with the international application, the $65.00 surcharge for providing an oath or declaration later than 30 months from the priority date will be refunded.

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 **12 February 2003**.

Derek A. Putonen
Attorney-Advisor
Office of PCT Legal Administration
Telephone: (703) 305-0130
Facsimile: (703) 308-6459

No Docketing Required
Reviewed by Docketing
Initials

5/29/03

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OBLON SPIVAK McCLELLAND
MAIER & NEUSTADT PC
1940 DUKE STREET
ALEXANDRIA, VA 22314

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FEB 08 2005
OFFICE OF PETITIONS

CANCELLED

In re Application of
Masaki Kobayashi et al
Application No. 10/344,582
Filed: February 13, 2003
Attorney Docket No. 225273USOPCT

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

This is a decision on the petition, filed January 31, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 6, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2872 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).*

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#5

21 JUL 2003

Connolly Bove Lodge & Hutz, LLP
1990 M Street, N.W., Suite 800
Washington, DC 20036-3425

In re Application of	:	
Anderson	:	
US Application No.: 10/344,583	:	**DECISION ON**
PCT Application No.: PCT/AU01/00983	:	**PETITION FOR REVIVAL**
International Filing Date: 10 August 2001	:	**UNDER 37 CFR 1.137(b)**
Priority Date: 11 August 2000	:	
Attorney's Docket No.: 21854-00031-US	:	
For: OIL SEED PROCESSING	:	

The petition to revive under 37 CFR 1.137(b), filed on 13 February 2003 in the above-captioned application, is hereby **GRANTED** as follows.

On 10 August 2001, Applicant filed international application PCT/AU01/00983, which claimed priority of an earlier application filed on 11 August 2000. A demand for international preliminary examination, in which the United States was elected, was filed on 18 January 2002, prior to the expiration of nineteen months from the priority date. The thirty-month period for entering the national stage ended on 11 February 2003.

The basic national fee required by 37 CFR 1.495(b) was not submitted on or before 11 February 2003. Accordingly, the international application became abandoned as to the United States on 12 February 2003.

The instant petition is accompanied by:

(1) A transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371, along with a "Declaration for Patent Application" in compliance with 37 CFR 1.497(a) and (b), and a First Preliminary Amendment;

(2) An authorization to charge the $1,060 basic national fee and the $1,300 petition fee to Deposit Account No. 22-0185;

(3) A statement 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 petition is thus **GRANTED**.

Applicant has met the requirements of 37 CFR 1.495 for acceptance into the national stage under 35 U.S.C. 371(c). Consequently, the application has an international filing date of 10 August 2001, and a 35 U.S.C. 371 date of 13 February 2003.

The application is being returned to the National Stage Processing Division of the Office of PCT Operations for continued processing.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

RC Tang
Petitions Attorney
PCT Legal Office
Telephone: 703-308-1315
Facsimile: 703-308-6459

26 FEB 2003

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#3

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Martin Fleit
FLEIT KAIN GIBBONS
GUTMAN & BONGINI, P.L.
601 Brickell Key Drive, Suite 404
Miami, Florida 33131

In re Application of	:	
John Robert DODGSON, et al.	:	
Application No.: 10/344,597	:	DECISION ON
PCT No.: PCT/GB01/02084	:	PETITION
Int. Filing Date: 14 May 2001	:	UNDER 37 CFR 1.10(e)
Priority Date: 12 May 2000	:	
Attorney Docket No.: 722-X03-046	:	
For: METHOD OF FORMING A FLUID	:	
TIGHT SEAL	:	

Applicants' "STATUS REQUEST" filed 29 January 2003 is being treated as a petition under 37 CFR 1.10(e) requesting acceptance of copies of the national stage papers submitted with the petition as being submitted originally on 09 November 2002 and resubmitted on 12 November 2002 in the above-captioned application.

DISCUSSION

The evidence submitted by applicant as attachment B, which includes a copy of the United States Postal Service (USPS) receipt with a stamped date of 12 November 2002 and bearing "Express Mail" label No. EV 222576838 US is sufficient to establish that a package bearing applicants' docket number 722-X02-046 was sent in the Office on that date. A search in the USPS Track & Confirm database for "Express Mail" label No. EV 222576838 US indicates that the package was "delivered at 11:05 am on November 13, 2002 in WASHINGTON DC 20231 to PATENT OFFICE 20231" and was signed by G. Bethea. However those papers cannot be physically located in the Office at this time.

To expedite the processing of the national stage application, applicants' counsel resubmitted a copy of all the papers filed 12 November 2002. A review of the papers filed 29 January 2003 as Attachment B reveals that they contain a Certificate of Express mailing listing an "Express Mail" label No. EV 222576838 US, therefore, acceptance of copies of the

national stage application papers filed with the petition as being submitted originally on 12 November 2001 is appropriate.

With regard to Attachment A, it is undisputable that this submission identifies a different international application on the Transmittal letter. If applicants desire to have the 09 November 2002 submission considered as a national stage submission of PCT/GB01/02084, then a petition under 37 CFR 1.182 is required, showing how the 09 November 2002 submission adequately identified the present international application, notwithstanding the error on the transmittal letter.

CONCLUSION

In view of the discussion above, the petition under 37 CFR 1.10(e) requesting acceptance of copies of the national stage papers submitted as Attachment B on 29 January 2003 as being submitted on 12 November 2002 is **GRANTED**. The request for accepting copies of the national stage papers submitted as Attachment A on 29 January 2003 as being filed on 09 November 2002 is DISMISSED, without prejudice.

If reconsideration of this decision is desired, applicants are required to file a petition under 37 CFR 1.182 within **TWO (2) MONTHS** from the mail date of this Decision.

The application is being returned to the United States Designated/Elected Office for processing in accordance with this decision, that is, a) for entry of the national stage papers filed with the petition as Attachment B as being submitted on 12 November 2002, b) for charging the application fees to Deposit Account No. 50-0601 as authorized in the Transmittal letter, and c) for promptly processing those papers.

Nguyên Ngọc Hô

Boris Milef
PCT Legal Examiner
PCT Legal Office

Nguyên Ngoc-Hô
Paralegal Specialist
PCT Legal Office

Tel: (703) 308-6508

NNH/BM:hn

19 NOV 2003

#4

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Martin Fleit
Fleit, Kahn, Gibbons, Gutman & Bongini, P.L.
601 Brickell Key Drive, Suite 404
Miami, FL 33131

In re Application of	:	
DODGSON, et al.	:	
U.S. Application Nos.: 10/344,597 and 10/276,000	:	
PCT No.: PCT/GB01/02084	:	COMMUNICATION
Int. Filing Date: 14 May 2001	:	
Priority Date: 12 May 2000	:	
Attorney Docket No.: 722-X03-046	:	
For: METHOD OF FORMING A FLUID TIGHT SEAL	:	

The above-identified applications come before the Office of PCT Legal Administration for consideration of issues arising under 35 U.S.C. 371.

BACKGROUND

On 14 May 2001, applicant filed international application PCT/GB01/02084 which claimed a priority date of 12 May 2000 and which designated the United States. On 15 November 2001 a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). A Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 12 November 2002.

On 26 February 2003, applicant was mailed a decision granting applicant's petition under 37 CFR 1.10(e) assigning a receipt date of 12 November 2002 for the present application. An examination of USPTO records finds that the papers originally mailed 12 November 2002 were received and processed as application 10/276,000.

DISCUSSION

As is evident from the above recited facts, applicant in effect submitted two sets of papers to enter the national stage for the same international application. The end result for an international application designating the United States of America is a single U.S. national stage application.

The papers originally filed on 09 November 2002 and 12 November 2002 and assigned

U.S. application no. 10/276,000 have been placed in the file of application number 10/344,597. The $1212.00 paid by applicant on 12 November 2002 and applied to application number 10/276,000 will be applied to application no. 10/344,597.

Applicant should use application number **10/344,597** in all future communications with the USPTO in regard to the U.S. national stage of international application PCT/GB01/02084.

CONCLUSION

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, that is, for: (1) merging the application papers in application number 10/276,000 into the file of application number 10/344,597 and (2) mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring applicant to provide a signed 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 has pre-paid the $130.00 surcharge for providing an oath or declaration later than 30 months from the priority date.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

0 2 JUN 2003

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#4

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UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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0 2 JUN 2003

Perkins Smith & Cohen
One Beacon Street
Boston, MA 02108

In re Application of JAMES G. HAZARD Serial No.: 10/344,603 PCT No.: PCT/US01/23573 Int. Filing Date: 26 July 2001 Priority Date: 28 July 2000 Attorney's Docket No.: 12766 PO1 US For: TELECOMMUNICATION-BASED COMMON CONTRACTING	DECISION ON PETITION UNDER 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 13 February 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that the "the entire delay in filing the 35 U.S.C. 371 requirements from their due date 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 the basic national fee of $360 has been paid. The required petition fee of $650 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 with 37 CFR 1.497 and the $65 surcharge for filing the oath or declaration after the thirty month period is required.

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/344,608	09/11/2003	1614	1210	80977.0004		30	1

CONFIRMATION NO. 1220

FILING RECEIPT

OC000000010915247

David J Kulik
Wiley Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Date Mailed: 09/25/2003

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Charlotte Hauser, Munich, GERMANY;

Domestic Priority data as claimed by applicant

This application is a 371 of PCT/EP01/09409 08/15/2001

Foreign Applications

EUROPEAN PATENT OFFICE (EPO) 00202858.7 08/15/2000

Projected Publication Date: To Be Determined - pending completion of Security Review

Non-Publication Request: No

Early Publication Request: No

Title

Steroid hormones as transfer agents

Preliminary Class

514

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

GRANTED

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

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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

09 JUL 2003

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Smith-Hill & Bedell
12670 N. W. Barnes Road, Suite 104
Portland, OR 97229

In re Application of JANKKILA et al. Serial No.: 10/344,623 PCT No.: PCT/FI01/00676 Int. Filing Date: 19 July 2001 Priority Date: 19 July 2000 Attorney's Docket No.: OUTO 2613 For: APPARATUS FOR CONTROLLING A BELT USED IN THE CONTINUOUSLY OPERATED THERMAL TREATMENT OF A MATERIAL BED	DECISION ON PETITION UNDER 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 13 February 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 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).

A review of the application file reveals that the basic national fee of $1060 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. Per their authorization, applicants'deposit account will be charged the $130 surcharge for filing the declaration after the twenty month period.

This application is being forwarded to the United States Designated/Elected Office for further processing. The 35 U.S.C. 371 date is **13 February 2003.**

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

15 JAN 2004

#7

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

In re Application of PANDEY, Anjali *et al* Application No.: 10/344,625 PCT No.: PCT/US01/41750 Int. Filing Date: 17 August 2001 Priority Date: 18 August 2000 Attorney Docket No.: 021390-003610US For: NITROGENOUS HETEROCYCLIC COMPOUNDS	:	**DECISION**

This decision is in response to applicants' "Correction of Defective Response Under 35 U.S.C. 371" filed 05 December 2003. This is treated as a petition under 37 CFR 1.182. The $130.00 fee has been charged to Deposit Account No. 20-1430.

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. Applicants were given two months to respond with extensions of time available under 37 CFR 1.136(a).

On 02 September 2003, applicants filed a declaration signed by all eight inventors. However, the last name of one of the inventors was not the same as listed in the international publication, *i.e.*, Junko Sasaki and Junko Irie. There was no indication in the file that a name change was approved by the International Bureau.

On 25 November 2003, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the declaration does not comply with 37 CFR 1.497(a) and (b) because the last joint inventor's name was recorded different from the name listed on the international application. Applicants were given one month, or any time remaining in the Form PCT/DO/EO/905 to respond, whichever is longer.

On 05 December 2003, applicants filed the instant petition which was accompanied by, *inter alia*, a copy of a family register and English translation, and authorization to charge any required fees to Deposit Account No. 20-1430.

01/20/2004 SNAJARRO 00000004 201430 10344625

01 FC:1460 130.00 DA

DISCUSSION

It is first noted that applicants listed the wrong U.S. application number on the instant response, *i.e.,* 10/344,737. Nevertheless, the papers were routed to the proper application.

The Manual of Patent Examining Procedure at § 605.04(c) requires in instances where an inventor has changed his or her name after the application has been filed to submit a petition under 37 CFR 1.182. The petition must include the appropriate petition fee and an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or certified copy of the court order. As noted above, the $130.00 petition fee has been charged to counsel's Deposit Account No. 20-1430, and thus item (1) has been satisfied.

With regard to item (2), the abstract of the family register for inventor Junko Sasaki (nee Irie) does not appear to be a certified copy of the court order, but merely a photocopy of a family registry document and a translation of the relevant portion of the registry. If a certified copy of the court order is not available, applicants may file an affidavit signed by Mrs. Sasaki with both names setting forth the procedure whereby the change of name was effected. Therefore, item (2) has not been satisfied, and thus the petition may not be properly granted at this time.

In addition it is noted that the filed declaration does not comply with 37 CFR 1.497(a) and (b) in that the declaration contains numerous copies of various signature pages. This suggests that the enclosed declaration was constructed from numerous complete declarations or that the inventors forwarded to counsel only the signatures pages of the declaration. Either alternative renders the submitted declaration defective under 37 CFR 1.497. While each inventor need not execute the same oath or declaration, where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. *See* § 201.03 MPEP.

CONCLUSION

For the reasons noted above, applicants' petition under 37 CFR 1.182 is **DISMISSED** without prejudice.

Any reconsideration on the merits of this petition 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 1.182."

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.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (703) 308-6457

06 APR 2004

#9

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

In re Application of	:	
PANDEY, Anjali *et al*	:	
Application No.: 10/344,625	:	
PCT No.: PCT/US01/41750	:	
Int. Filing Date: 17 August 2001	:	**DECISION**
Priority Date: 18 August 2000	:	
Attorney Docket No.: 021390-003610US	:	
For: NITROGENOUS HETEROCYCLIC	:	
COMPOUNDS	:	

This decision is in response to applicants' "Renewed Petition Under 37 CFR § 1.182" filed 18 March 2004.

BACKGROUND

On 15 January 2004, a decision dismissing applicants' petition to change the name of an inventor was mailed. The decision was dismissed because applicants failed to meet the requirements outlined in the Manual of Patent Examining Procedures (MPEP). Applicants were also notified that the declaration provided failed to comply with 37 CFR 1.497(a) and (b).

On 18 March 2004, applicants filed the instant renewed petition which was accompanied by, *inter alia*, an affidavit of Junko Sasaki ("Decl.") and an executed declaration.

DISCUSSION

As previously stated, section 605.04(c), *Inventor Changes Name*, of the MPEP lists the procedures required to change the name of an inventor and states, in part:

> The petition must include an appropriate petition fee and an affidavit signed with both names and setting forth the procedure whereby the change of name was effected, or a certified copy of the court order.

In the renewed petition, applicants have submitted an affidavit signed by the co-inventor who states that "[o]n June 8, 1998 I was married to Takehiko Sasaki." Decl. at # 2. Later, the co-inventor writes "I desire to change my name on this US application to my married name, Junko Sasaki. I declare that my name was changed as a result of

marriage." Id. at 5.

This declaration signed by the co-inventor using her old surname and her new surname meets the requirements of the MPEP noted above.

Applicants have also submitted a new declaration which is in compliance with 37 CFR 1.497(a) and (b).

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.182 is **GRANTED**.

Applicants have 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 date under 35 U.S.C. 371(c)(1), (c)(2) and (c4) of 18 March 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 17, 2010

TO SPE OF : ART UNIT 1626 - SPE Joseph K. McKane.

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/344,625 Patent No.: 7,329,655 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 Building
2800 South Randolph Street
Arlington, VA 22206

Antonio Johnson

Should the changes in claim 1 be approved?
See COCIN dated 03-11-2010

Certificates of Correction Branch

(571)272-0483

Thank You For Your Assistance

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

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

Comments: _____

JOSEPH K. McKANE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

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WILLIAM COLLARD
COLLARD & ROE, P.C.
1077 NORTHERN BOULEVARD
ROSLYN NY 11576

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NOV 29 2004

OFFICE OF PETITIONS

Applicant: Behammer
Appl. No.: 10/344,653
International Filing Date: August 1, 2001
Title: METHODS FOR PRODUCING PASSIVE COMPONENTS ON A SEMICONDUCTOR SUBSTRATE
Pub. No.: US 2004/0080919 A1
Pub. Date: April 29, 2004

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on June 9, 2004.

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

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MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON, VA 22201

Mail Date: 04/20/2010

Applicant	: Jörg Meyer	: DECISION ON REQUEST FOR
Patent Number	: 7655624	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/344,669	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/14/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1816** 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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JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON, DC 20004

Mail Date: 04/21/2010

Applicant	: Nikolaj Deichmann	: DECISION ON REQUEST FOR
Patent Number	: 7625335	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/344,703	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **453** 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.

0 8 OCT 2003

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Daniel A. Scola, Jr.
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Syosset, NY 11791

In re Application of
MAX REY (deceased)
Application No.: 10/344,713
PCT No.: PCT/EP01/09519
Int. Filing Date: 17 August 2001
Priority Date: 17 August 2000
Attorney Docket no.: 763-26 PCT/US
For: PROCESS FOR THE PREPARATION OF IMIDAZOPYRIDINES

DECISION ON

PETITION

UNDER 37 CFR 1.42

This is a decision on a submission under 37 CFR 1.42, filed in the United States Patent and Trademark Office (USPTO) in response to a Notification of Missing Requirements on 05 September 2003.

BACKGROUND

On 14 February 2003, applicant filed a Transmittal Letter 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.

In response to the Notification of Missing Requirements mailed on 29 May 2003, and to satisfy the requirement that an oath or declaration of the inventors be furnished, applicant filed a declaration that was signed by the co-inventors and executed by H. J. Rey-Papina, sole heir of deceased co-inventor Max Rey. The submission was treated as a request for status under 37 CFR 1.42.

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."

37 CFR 1.497(a)(3) requires that the declaration identify each inventor and the country of citizenship of each inventor. 37 CFR 1.497(b)(2) requires the declaration to state the relationship of the person (under 37 CFR 1.42) making the declaration for a deceased inventor. 37 CFR 1.497(b)(2) further states that, if the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration must state that the person is a legal representative and indicate the citizenship, residency and mailing address of the legal representative. The declaration must also state the citizenship, residency and last mailing address of the deceased inventor to comply with 37 CFR 1.497(a)(3).

The declaration submitted on 29 May 2003 is executed by the co-inventors as identified

in the published international application and indicates their respective citizenship, residency and mailing addresses. With respect to the deceased inventor, however, the declaration only identifies "H.J. Rey-Papina on behalf of Max Rey as joint inventor". Moreover, the declaration also does not identify the country of citizenship, residency and mailing address for both the legal representative and the deceased inventor.

Thus, the declaration is unacceptable because it does not identify Heidedore Jlsabeth Rey-Papina, as sole heir or legal representative for deceased inventor Max Rey, is not signed as such and does not clearly state the country of citizenship, former residency and mailing address of both the deceased inventor and the legal representative, as required for compliance with 37 CFR 1.497. See also 37 CFR 1.64. Accordingly, it is inappropriate, 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 **DISMISSED WITHOUT PREJUDICE.**

If reconsideration of the merits of the request for status under 37 CFR 1.42 is desired, applicant is required to correct the above-noted defects including the furnishing of an oath/declaration in compliance with 37 CFR 1.42 and 1.497 within TWO (2) MONTHS 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."

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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10 DEC 2003

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Daniel A. Scola, Jr.
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6900 Jericho Turnpike
Syosset, NY 11791

In re Application of MAX REY (deceased) Application No.: 10/344,713 PCT No.: PCT/EP01/09519 Int. Filing Date: 17 August 2001 Priority Date: 17 August 2000 Attorney Docket no.: 763-26 PCT/US For: PROCESS FOR THE PREPARATION OF IMIDAZOPYRIDINES	DECISION ON RENEWED PETITION UNDER 37 CFR 1.42

This is a decision on a renewed submission under 37 CFR 1.42 and combined declaration and power of attorney, filed in the United States Patent and Trademark Office (USPTO) on 24 November 2003.

BACKGROUND

On 14 February 2003, applicant filed a Transmittal Letter 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.

In response to the Notification of Missing Requirements mailed on 29 May 2003, and to satisfy the requirement that an oath or declaration of the inventors be furnished, applicant filed a declaration that was signed by the co-inventors and executed by H. J. Rey-Papina, sole heir of deceased co-inventor Max Rey. The submission was treated as a request for status under 37 CFR 1.42.

On 08 October 2003, a decision dismissing applicant's petition was mailed indicating that the declaration was unacceptable because it did not identify Heidedore Jlsabeth Rey-Papina, as sole heir or legal representative for deceased inventor Max Rey, was not signed as such and did not clearly state the country of citizenship, former residency and mailing address of both the deceased inventor and the legal representative, as required for compliance with 37 CFR 1.497.

On 24 November 2003, applicant filed the instant renewed submission under 37 CFR 1.42 along with a declaration executed by the legal representative for the deceased inventor, Max Rey.

DISCUSSION

37 CFR 1.497(a)(3) requires that the declaration identify each inventor and the country of citizenship of each inventor. 37 CFR 1.497(b)(2) requires the declaration to state the relationship of the person (under 37 CFR 1.42) making the declaration for a deceased inventor. 37 CFR 1.497(b)(2) further states that, if the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration must state that the person is a legal representative and indicate the citizenship, residency and mailing address of the legal

representative. The declaration must also state the citizenship, residency and last mailing address of the deceased inventor to comply with 37 CFR 1.497(a)(3).

The declaration submitted on 29 May 2003 was executed by the co-inventors as identified in the published international application and indicates their respective citizenship, residency and mailing addresses. The declaration submitted on 24 November 2003 identifies H.J. Rey-Papina as the sole heir of deceased inventor Max Rey. Moreover, the declaration identifies the country of citizenship, residency and mailing address for both the legal representative and the deceased inventor.

Thus, the declaration is acceptable because it identifies H. J. Rey-Papina, as sole heir for deceased inventor Max Rey, is signed as such and clearly states the country of citizenship, former residency and mailing address of both the deceased inventor and the legal representative, as required for compliance with 37 CFR 1.497. 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 **24 November 2003.**

Cynthia M. Kratz

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

09 AUG 2005

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Dale A. Bjorkman
Kagan Binder, PLLC
Suite 200, Maple Island Building
221 Main Street North
Stillwater, MN 55082

In re Application of	:	
STEINMETZER, et al.	:	
App. No.: 10/344,722	:	
PCT No.: PCT/EP02/00652	:	DECISION ON PETITION
Int. Filing Date: 23 January 2002	:	
Priority Date: 23 January 2001	:	
Attorney Docket No.: VOS0012/US	:	
For: OLIGO OR POLYALKYLENE GLYCOL-COUPLED THROMBIN INHIBITORS		

This decision is in response to applicant's "Petition under 37 CFR 1.10(e) and 37 CFR 1.181(a) to Withdraw Holding of Abandonment Based on Evidence that a Reply to Notice of Missing Requirements was Timely Filed" submitted 25 October 2004.

The petition is accompanied by a copy of the declaration filed on 10 December 2003 in the United States Patent and Trademark Office and requests, in effect, that the copy of the declaration be accepted as a true copy of the declaration filed 10 December 2003.

A review of the application file reveals that a declaration in compliance with 37 CFR 1.497 was received in the United States Patent and Trademark Office on 10 December 2003. Accordingly, applicant's request that the copy of the declaration filed with the petition be accepted as a copy of the original declaration filed 10 December 2003 is dismissed as moot, since the original declaration has now been located and placed in the application file.

In view of the declaration filed 10 December 2003, the Notification of Abandonment dated 05 October 2004 is hereby **VACATED**. The application has an international filing date of 23 January 2002 under 35 U.S.C. 363 and a 35 U.S.C. 371(c) date of **10 December 2003.**

The application is being referred back to Technology Center AU 1626 further processing.

Anthony Smith

Anthony Smith
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Fax: (571) 273-0459

14 MAR 2003

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ROBIN L. TESKIN
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INTELLECTUAL PROPERTY GROUP
1600 TYSONS BLVD
MCLEAN, VIRGINIA 22102

In re Application of	:	
RAFAEL FISSORE	:	
Serial No.: 10/344,723	:	DECISION ON
Filing Date: 14 February 2003	:	
Attorney Docket No.: PW291869	:	PETITION UNDER
For: SPERM FACTOR OSCILLOGENIN	:	
	:	37 CFR 1.137(b)

This application is before the PCT Legal Office for consideration of applicant's petition to revive under 37 CFR 1.137(b) filed on 14 February 2003.

On 21 March 2001, applicant filed international application PCT/US01/08998, which claimed priority of an earlier US application filed 22 March 2000. On 19 October 1999, a Demand was filed; consequently, the deadline for entry into national stage expired thirty months after the priority date or by midnight on 23 September 2002. Thereafter, the application went abandoned for failure to enter national stage in the U.S. before the expiration of the thirty month period.

On 14 February 2003, applicant filed a petition to revive which was accompanied by a request for filing application under Rule 53(a), (b)& (f). The following language was inserted before the first line of the specification, which was amended to read: "This is a Continuation of an International Application No. PCT/US01/08998 filed 21 March 2001...". The application was assigned serial no. 10/344,723 and treated as a filing under 35 U.S.C. 111.

DISCUSSION

The transmittal letter filed on 14 February 2003 did not identify the application as a national stage application being filed under 35 U.S.C. 371 but requested filing under 37 CFR 1.53(a), (b)& (f) as a continuation application of pending international application PCT/US01/08998. The application is considered filed under 35 U.S.C. 111(a). Accordingly, the original papers deposited on 14 February 2003 were properly accepted as a filing under 35 U.S.C. 111(a). Since the application is deemed to have been filed under 35 U.S.C. 111(a), international application PCT/US01/08998 became abandoned as to the United States of America after midnight on 23 September 2002 for failure to pay the basic national fee.

On 14 February 2003, applicant also filed a petition under 37 CFR 1.137(b) to revive international application PCT/US01/08898 as to the United States abandoned under 35 U.S.C. 371(d). The filing of the present continuing application under 35 U.S.C. 111(a) is accepted as the appropriate response under 37 CFR 1.137(b). See MPEP § 711.03(c).

All of the requirements of 37 CFR 1.137(b) for revival have been submitted. Applicants' statement that "the entire delay in filing the continuation application from the due date of September 22, 2002 until the filing date of a grantable petition was unintentional" has been interpreted as meaning that "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. If this is an incorrect interpretation in view of the rules, petitioner is required to promptly notify this office.

International application PCT/US01/08998 is being revived for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the present continuing application 10/344,723.

The specification and claims filed on 14 February 2003 complete the requirements for a filing date under 35 U.S.C. 111(a). Accordingly, these applications will be accorded a filing date of 14 February 2003.

Applicant is entitled to claim benefit under 35 U.S.C. 120 and 365(c) of the filing date of the international application for the common subject matter, since this application (Serial No. 10/344,723) and the international application (PCT/US01/08898) designating the United States were copending on 14 February 2003. Applicant has obtained benefit of the earlier international application, with the amendment of the beginning of the specification of this application by inserting a proper reference to the parent international application. As stated above, applicant has amended the first line of the specification to read: "This is a Continuation of an International Application No. PCT/US01/08998 filed 21 March 2001...".

CONCLUSION

Applicant's petition to revive under 37 CFR 1.137(b) is **GRANTED.**

This application is being forwarded to Office of Initial Patent Examination for further processing as an application filed under 35 U.S.C. 111(a), having a filing date of 14 February 2003. The application will then be examined in due course.

Cynthia M. Kratz

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CMK:cmk

#3

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14 JUL 2003

Robin Teskin
Pillsbury Winthrop LLP
1600 Tyson Blvd.
McLean, Virginia 22102

In re Application of	:	
ROBL et al.	:	
U.S. Application No.: 10/344,724	:	DECISION ON PETITION
Filing Date:14 February 2003	:	UNDER 37 CFR 1.137(b)
Attorney's Docket No.: P291871	:	
For: USE OF HAPLOID GENOMES FOR	:	
GENETICS DIAGNOSIS, MODIFICATION	:	
AND MULTIPLICATION		

This is a decision on applicant's "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally under 37 CFR 1.137(b)" filed 14 February 2003 to revive international application PCT/US00/30202.

On 02 November 2000, applicants filed international application PCT/US00/30202, which designated the United States and claimed a priority date of 02 November 1999. 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, 02 May 2002.

On 30 April 2002, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia: the basic national fee, a copy of the international application; and a preliminary amendment. These papers were assigned application no. 10/111, 846 and were considered the national stage application of PCT/US00/30202.

On 14 February 2003, applicants filed, *inter alia*: "Request for Filing Application under Rule 53(a), (b), & (f); an application containing a specification including claims; and a petition and fee to revive international application PCT/US00/30202 under 37 CFR 1.137(b).

As stated above, international application PCT/US00/30202 entered the national stage in the United States under 35 U.S.C. 371 on 30 April 2002. Since the international application was not abandoned, the present petition is not necessary. Therefore, applicant's petition to revive international application PCT/US00/30202 is **DISMISSED as moot**. The $650.00 petition fee will not be charged to counsel's deposit account.

This application (10/344,724) will be treated as a continuation of international application no. PCT/US00/30202 and will be forwarded to the Office of Initial Patent Examination for further processing under 35 U.S.C. 111(a).

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: (703) 308-6314
Facsimile: (703) 308-6459

15 JAN 2004

#8

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

William B. Kezer
Townsend, Townsend & Crew, LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834

In re Application of	:	
PANDEY, et al.	:	
U.S. Application No.: 10/344,737	:	DECISION ON PETITION
PCT No.: PCT/US01/41751	:	
Int. Filing Date: 17 August 2001	:	UNDER 37 CFR 1.182
Priority Date: 18 August 2000	:	
Attorney Docket No.: 021390-003410US	:	
For: NITROGENOUS HETEROCYCLIC COMPOUNDS	:	

This decision is in response to applicant's correspondence filed 28 November 2003 in the United States Patent and Trademark Office (USPTO). The correspondence is being treated as a petition under 37 CFR 1.182. As authorized, payment of the $130.00 petition fee will be charged to Deposit Account No. 20-1430.

[illegible]/2004 [illegible] 00000158 201430 10344737
[illegible] 130.00 [illegible]

BACKGROUND

On 17 August 2001, applicant filed international application PCT/US01/41751 which claimed priority to an earlier application filed 18 August 2000. 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, 18 February 2003.

On 14 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).

On 10 July 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 14 October 2003, applicant responded with an executed declaration, payment of the appropriate surcharge and a petition for a two-month extension of time.

On 31 October 2003, applicant was mailed a NOTIFICATION OF DEFECTIVE RESPONSE

(Form PCT/DO/EO/916) advising applicant that the inventor's name on the declaration, Junko Sasaki did not match the inventor's name in the published international application. Applicant was afforded one month to file a proper response.

On 28 November 2003, applicant filed the present petition under 37 CFR 1.182.

DISCUSSION

The Manual of Patent Examining Procedure at § 605.04(c) requires in instances where an inventor has changed his or her name after the application has been filed to submit a petition under 37 CFR 1.182. The petition must include the appropriate petition fee and an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or certified copy of the court order. As noted above, the $130.00 petition fee has been charged to counsel's Deposit Account No. 20-1430, and thus item (1) has been satisfied.

With regard to item (2), the abstract of the family register for inventor Junko Sasaki (nee Irie) does not appear to be a certified copy of the court order, but merely a photocopy of a family registry document and a translation of the relevant portion of the registry. If a certified copy of the court order is not available, applicant may file an affidavit signed by Mrs. Sasaki with both names setting forth the procedure whereby the change of name was effected. Therefore, item (2) has not been satisfied, and thus the petition may not be properly granted at this time.

In addition it is noted that the filed declaration does not comply with 37 CFR 1.497(a)-(b) in that the declaration contains numerous copies of various signature pages. This suggests that the enclosed declaration was constructed from numerous complete declarations or that the inventors forwarded to counsel only the signatures pages of the declaration. Either alternative renders the submitted declaration defective under 37 CFR 1.497. While each inventor need not execute the same oath or declaration, where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. (See MPEP 201.03 B. Oath or Declaration.)

CONCLUSION

For the reasons above, applicant's petition under 37 CFR 1.182 is **DISMISSED**.

Any reconsideration on the merits of this petition 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 1.182."

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

15 APR 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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William B. Kezer
Townsend, Townsend & Crew, LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834

In re Application of PANDEY, et al. U.S. Application No.: 10/344,907 PCT No.: PCT/US01/41749 Int. Filing Date: 17 August 2001 Priority Date: 18 August 2000 Attorney Docket No.: 021390-003510US For: NITROGENOUS HETEROCYCLIC COMPOUNDS	DECISION ON RENEWED PETITION UNDER 37 CFR 1.182

This decision is in response to applicant's "Renewed Petition Under 37 CFR 1.182" filed 18 March 2004 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 15 January 2004, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.182 and informing applicant that the filed declaration did not comply with 37 CFR 1.497 (a)-(b). Specifically, the eighth listed inventor was listed and executed as "Junko Sasaki" whereas the International Application listed the eighth inventor as "Junko Irie." Applicant was afforded two months to provide either a declaration executed with the name which appeared on the international application, "Junko Irie" or in the alternative, a petition under 37 CFR 1.182 requesting that applicant's name be changed to "Junko Sasaki." Applicant was also advised that the filed declaration was non-compliant as it appeared to have been assembled from various declaration pages. Applicant was afforded two months to file any request for reconsideration.

On 18 March 2003, applicant filed the present petition.

DISCUSSION

Accompanying the present petition applicant has included a declaration signed by the relevant inventor Junko Sasaki. This declaration details the procedure whereby the change of name was effected, namely by marriage, and is signed by Mrs. Sasaki in both her married name and earlier single name (Junko Irie). This declaration is an acceptable form of documentation. In addition, a review of the filed declarations find that they comply with 37 CFR 1.497(a)-(b).

Further, applicant has now completed all the requirements under 35 U.S.C. 371 for entry into the national stage in the United States.

CONCLUSION

For the reasons above, applicant's "Petition Under 37 CFR 1.182" is **GRANTED**.

The $130.00 petition fee was charged to Deposit Account No.: 20-1430 on 15 January 2004 when the first set of papers were considered as a petition under 37 CFR 1.182. Therefore, the present payment of $130.00 will be refunded.

The application has an international filing date of 17 August 2001 and will be given a date of **18 March 2004** 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, i.e. recording the subject joint inventor as Junko Sasaki.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: 703-305-0130
Fax: 703-308-6459

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

Weaver Austin Villeneuve & Sampson LLP
P.O. BOX 70250
OAKLAND, CA 94612-0250

Mail Date: 04/20/2010

Applicant	: Hrvoje Petkovic	: DECISION ON REQUEST FOR
Patent Number	: 7595175	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/344,738	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 07/31/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1045** 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.

08 JUL 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

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HAHN LOESER & PARKS, LLP
TWIN OAKS ESTATE
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AKRON, OH 44313

In re Application of	:	
Anthony A. Anthony	:	
Application Serial No.: 10/344,749	:	
PCT No.: PCT/US01/41720	:	DECISION ON PETITION
Intl. Filing Date: 14 August 2001	:	UNDER 37 CFR 1.137(b)
Priority Date: 15 August 2000	:	
Attorney's Docket No.: 6521-27-PCT-US	:	
For: An Electrode Arrangement for Circuit	:	
Energy Conditioning	:	

This decision is in response to applicants' "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137 (b)", filed 30 May 2003.

BACKGROUND

On 14 August 2001, applicants filed International Application PCT/US01/41720 which claimed priority to an earlier United States application filed on August 15, 2000. Accordingly, pursuant to 37 CFR 1.495, the thirty month period for paying the basic national fee expired on 15 February 2003.

On 13 February 2003, applicants filed national stage papers in the United States including, inter alia, a transmittal letter stating that the application was being filed under 35 U.S.C. 371. Applicant did not, however, submit the basic national fee.

On 28 May 2003, DO/EO mailed a "NOTIFICATION OF ABANDONMENT" indicating that the applicant had failed to provide the full U.S. Basic National Fee by 30 months (37 CFR 1.495).

On 30 May 2003, applicant filed the present petition which was accompanied by the petition fee, a copy of the "NOTIFICATION OF ABANDONMENT", a check for payment of the U.S. Basic National Fee and authorization to charge Deposit Account No. 15-0450. The petition was also accompanied by a "Combined Declaration and Power of Attorney", a corrected transmittal letter, and an assignment.

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that the application be revived on the grounds of unintentional delay must be filed promptly after applicant becomes aware of the abandonment and must be

accompanied by: (1) the required reply, unless previously filed, (2) the petition fee required by law, (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 and (4) a terminal disclaimer (for applications filed before 8 June 1995).

As to item (1), the petition is accompanied by the required reply in the form of a check for payment of the U.S. Basic National Fee.

As to item (2), the petition is accompanied by the required petition fee.

As to item (3), the petition is accompanied by applicants' 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."

As to item (4), a terminal disclaimer is not required in the present case.

CONCLUSION

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

The additional $130.00 surcharge (for filing the oath or declaration after thirty months from the priority date) will be charged to applicant's deposit account 15-0450.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the present application, including according the present application a 35 USC 371 (c) date of 30 May 2003.

Boris Milef
PCT Legal Examiner
PCT Legal Office

Kenya A. McLaughlin
PCT Legal Office Detailee
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AUG 17 2004
PATENT & TRADEMARK OFFICE

Tel: 703-415-0012
Fax: 703-415-0013
Email: rneifeld@Neifeld.com
Web: www.Neifeld.com

TRANSMITTAL LETTER AND AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

ASSISTANT COMMISSIONER FOR PATENTS
ALEXANDRIA, VA 22313

RE: Attorney Docket No.: X2YA0119UPCT-US
Application Serial No.: 10/344,749
Filed: 05/30/03
Title: An Electrode Arrangement for Circuit Energy Conditioning
Inventor: Anthony et al.
Group Art Unit: 2838
Examiner: Unknown

SIR:

Attached hereto for filing are the following papers:

1. Decision on Petition Under 37 CFR 1.183 Seeking Waiver of Requirements Under 37 CFR 1.98 and 1.52 (Filed in Application Serial No: 10/237,079, Neifeld Docket No: X2YA0010U-US; 5 Pages)

Our check in the amount of $0.00 is attached covering the required fees.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-2106. A duplicate copy of this sheet is enclosed.

31518
PATENT TRADEMARK OFFICE

8/17/04
Date

Richard A. Neifeld, Ph.D.
Registration No. 35,299
Attorney of Record

Printed: August 17, 2004 (8:43am)
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NEIFELD IP LAW, PC
2001 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22202

Attorney Review of Decision: 8-2004

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AUG 10 2004

OFFICE OF PETITIONS

In re Application of
Anthony, A. et al.
Application No. 10/237,079
Filed: September 9, 2002
For: UNIVERSIAL ENERGY CONDITIONING INTERPOSER WITH CIRCUIT ARCHITECTURE
Attorney Docket No. X2YA0010U/US

DECISION ON PETITION UNDER 37 CFR 1.183 SEEKING WAIVER OF REQUIREMENTS UNDER 37 CFR 1.98 and 1.52

This is a response to a petition under 37 CFR 1.183 filed on April 22, 2004, concurrently with an Information Disclosure Statement (IDS). The § 1.183 petition requests waiver of the rules for Information Disclosure Statements under 37 CFR 1.98. The petition under 37 CFR 1.183, is requesting relief from the § 1.98 provision which requires filing a paper copy of each reference in each of 26 related applications where the references are being cited by Petitioner. The request for waiver is made in view of the need to file multiple applications relating to different aspects of a particular invention. The § 1.183 petition also contains a request seeking permission to submit the same prior art submissions on compact disc which would require a waiver of 37 CFR 1.52(a) and (e).

The petition under 37 CFR 1.183 requesting relief to file a reduced number of paper copies of IDS references and to file them on compact disc is **GRANTED IN PART** to the extent set forth below.

Part I. Background

The instant application filed under 35 U.S.C. 111 is one of about 26 U.S. applications relating to different aspects of an invention.

DecPet_X2YA0010UUS_040813 RB

Petitioner's submission of an Information Disclosure Statement is taken as an attempt to comply with 37 CFR 1.56(b)(1) that requires disclosure to the Office of information material to patentability, which includes information that "establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim...." Such disclosure can be made by an Information Disclosure Statement (IDS) in the manner prescribed by 37 CFR 1.97 and 1.98.

Part II. Petition Under 37 CFR 1.183 - Special Treatment of Compact Disc

The petition states that the compact disc filed with the IDS is an additional copy of the paper references included with the IDS. It is not apparent from the petition why the Office needs to make available to every examiner in all 26 applications a second copy of each reference on compact disc. Accepting a second copy on compact disc of each reference places an additional burden on the Office. First, there is the burden to determine if the paper copy and the compact disc copy of the references are the same. If the two copies are not the same it raises questions about what the examiner considered in each application. Second, accepting the compact disc copy places a burden on the Office to maintain a copy as part of the Official record of the application. Finally, there is insufficient information in the petition evaluate the data formats and software requirements to determine how compatible the filing is with the Office's automated systems and procedures for maintaining records. Hence it is not clear why relief is required under § 1.183 if relief from filing a paper copy in each application is granted. Nor is it apparent on balance why the Office should accept the additional burden of having to process a second copy of the references on compact disc. In view of the relief granted below, no further discussion of the compact discs is required in this decision.

Petition under § 1.183 for a waiver of the rules for compact discs is Dismissed.

Part III. Petition Under 37 CFR 1.183 - Paper Copies

37 CFR 1.98 requires that any information disclosure statement provide a copy of all patents, publications or other information submitted under 37 CFR 1.97 for consideration by the Office. 37 CFR 1.97 notes that information disclosure statements are considered in regard to the application in which they are filed. See also MPEP 609, pages 600-121 and 600-122.

Paper copies: Petitioner notes that the instant application is one of about 24 bulk filing applications that have been filed in regard to a particular technology. Accordingly, Petitioner requests that one individual paper copy of each citation brought to the attention of the Office in regard to the instant individual application, the "holding" application, not be required to be submitted in each related "bulk filing" application.

Rather than be required to submit, via a paper copy, two cartons of foreign patent and non-patent literature references in each of 24 applications, Petitioner seeks to have:

(1) The concurrently filed single paper copy of each IDS citation fulfill the requirement for a paper copy in all 24 applications;

(2) One application (the instant application) identified as a "holding" application which would contain one complete set of paper copies of references; the paper copies of the references to be submitted in only the "holding" application;

(3) The other related pending U.S. applications, hereafter referred to as the "bulk filing" applications, be exempt from requiring a separately filed paper set of the references; the bulk filing applications will contain other information, e.g., a copy of the decision on petition permitting such procedure, and a copy of the Form 1449 (or equivalent).

Once past the initial IDS submission, the petition does not propose the waiver to apply to updates and no waiver is granted for updates of the IDS.

A review of Office records indicates that 23 applications are either Image File Wrapper (IFW) applications or will soon be IFW applications. The one application that is not an IFW application will become an IFW application upon filing an RCE which appears to be required for consideration of the IDS. The Office has provided an image copy of all of the IDS references from the holding application to the other 23 bulk IFW applications.

Decision: 37 CFR 1.183 provides relief for extraordinary situations, when justice requires suspension of any requirement of the regulations which is not a requirement of the statutes. The instant petition urges that not only would applicant be spared the necessity of submitting duplicative paper copies of foreign patent and non-patent literature references in 24 applications, but also the Office would benefit from not having to handle and store the duplicative sets of copies. While there may be some negative effects from the Office's point of view in terms of making the copies available in different applications from one paper copy, on balance, there is seen to be sufficient benefit to justify waiver in this instance for all the applications filed.

Accordingly, the petition under 37 CFR 1.183 is granted to the extent indicated and under the terms and conditions as are set forth below.

The § 1.98(a)(2) requirement for (the submission of) a copy of each foreign patent and non-patent literature IDS citation in a bulk filing application will be waived in the bulk filing applications provided that the following 7 conditions are complied with:

1) One paper copy of each foreign patent and non-patent literature IDS citation has been submitted to the Office in the concurrently filed IDS in this, the holding application;

2) The information cited in each of the bulk filing applications is or has also been cited in the holding application;

Note: Applicant is not required to cite in each bulk filing application every item of information that is cited in the instant holding application. Items should be cited in each bulk filing application on the basis of relevancy and materiality to the particular claims in the bulk filing application and what each piece of information teaches.

A waiver is not granted (for the requirement to supply a paper copy of an IDS citation in another bulk filing application) where the citation is not, or has not been, made in the instant holding application.

4) A copy of this Decision is filed in each bulk filing application for which waiver is requested;

5) Explanatory information related to a particular citation, such as the concise explanation of a foreign language reference under § 1.98(a)(2), if submitted in the holding application, must also be supplied in each bulk filing application where the citation is made.

6) The Office accepts and specifically reserves the right to terminate the waiver grant in regard to § 1.98(a)(2) without provision of reasons. In such event, a two month period will be given where paper copies would have to be supplied in all applications where new citations are made. Should a termination of the waiver be desired by the Office, the Office will provide written notice to the correspondence address of record. Termination by applicant may be by returning to compliance with § 1.98(a)(2) without formal notice thereof and no transition/continuing period after termination is required.

7) There will be no waiver of any aspects of 37 CFR 1.97 in any application after allowance or final rejection of that application.

Part IV. Further Correspondence

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

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

By FAX: (703) 872-9306
Attn: Office Patent Legal Administration/Michael L. Lewis

Telephone inquiries should be directed to Michael L. Lewis at (703)306-5585.

Robert J. Spar
Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Petitioner's list of Applications

NEIFELD DOCKET NO: X2YA0010U/US

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATIONS OF: Anthony

Examiner: JACKSON, S.

APPLICATION NO: 10/237,079

GAU: 2836

Filed: 9/9/2002

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OPLA

Title: Universal Energy Conditioning Interposer with Circuit Architecture

and relating to the following 24 applications:

National AppNo	Neif Dock Ref	Status	Title
09/647,648	X2YA0105UPCT-US	Allowed	Component Carrier
10/479,506	X2YA0025UPCT-US	pending	Arrangement for Energy
10/766,000	X2YA0013U-US	pending	Shielded Energy Conditioner
09/996,355	X2YA0125U-US	Pending	Energy pathway arrangement
10/023,467	X2YA0126U-US	Pending	Energy pathway arrangements
10/115,159	X2YA0021U-US	Pending	Offset pathway arrangements
10/189,338	X2YA0022U-US	Pending	Pathway arrangement
10/189,339	X2YA0023U-US	Pending	Arrangement for energy
10/237,079	X2YA0010U/US	Pending	Universal energy conditioning
10/328,942	X2YA0108U-US-C1	Pending	Paired Multi-Layered Dielectric
10/344,749	X2YA0119UPCT-US	Pending	An Electrode Arrangement for
10/399,590	X2YA0015UPCT-US	Pending	Amalgam of shielding and
10/399,630	X2YA0014UPCT-US	Pending	Energy Pathway Arrangements
10/432,840	X2YA0016UPCT-US	Pending	Energy Pathway Arrangements
10/433,482	X2YA0017UPCT-US	Pending	Energy Pathway Arrangements
10/435,199	X2YA0020U-US	Pending	Energy Conditioning Structure
10/443,764	X2YA0026U-US-C1	Pending	Paired Multi-Layered Dielectric
10/443,778	X2YA0029U-US-C2	Pending	Energy Conditioning Circuit
10/443,788	X2YA0028U-US-C2	Pending	Component Carrier
10/443,792	X2YA0027U-US-C1	Pending	Multi-Functional Energy
10/460,361	X2YA0032UUSC1	Pending	Predetermined symmetrically
10/705,962	X2YA0041U-US	Pending	COMPONENT CARRIER
09/632,048	X2YA0117U-US	Allowed	Universal Energy Conditioning
10/369,335	X2YA0100U-US-C4	Allowed	Polymer Fuse & Filter

TO: ASSISTANT COMMISSIONER FOR PATENTS

ALEXANDRIA, VA 22313

37 CFR 1.183 PETITION TO WAIVE PORTION OF THE IDS RULES

FILE A REDUCED SET OF REFERENCES

BEST AVAILABLE COPY

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Paper No. 9

HARNESS DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON, VA 20195

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OFFICE OF PETITIONS

In re Application of	:	
Wofgang Brandl et al	:	
Application No. 10/344,753	:	ON PETITION
Filed: February 14, 2003	:	
Attorney Docket No. 32860-000447/US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 9, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed November 3, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 4, 2004.

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

This application is being forwarded to Technology Center AU 2839 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
PO Box 1450
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28 AUG 2003

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Fairfax, VA 22032

In re Application of Bott et al. US Application No.: 10/344,769 PCT Application No.: PCT/EP01/07541 International Filing Date: 2 July 2001 Priority Date: 16 August 2000 Attorney's Docket No.: 01012-1008 For: FREQUENCY AND TIME SYNCHRONISATION OF AN OFDM RECEIVER BY MEANS OF MAXIMUM LIKELIHOOD DECODING	DECISION ON PETITION UNDER 37 CFR 1.47(a)

This decision is in response to the "Petition under 37 CFR 1.47(a)" filed on 9 June 2003.

BACKGROUND

On 2 July 2001, Applicants filed international application PCT/EP01/07541, in German, which claimed priority of an earlier application filed on 16 August 2000. A copy of the international application was communicated from the International Bureau to the USPTO on 21 February 2002. The 30-month period for paying the basic national fee ended at midnight on 16 February 2003.

On 14 February 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), and an English translation of the international application, but not an oath or declaration.

On 3 June 2003, a "Notification of Missing Requirements under 37 CFR 371 in the United States Designated/Elected Office (DO/EO/US)" was mailed, stating that an oath or declaration as required by 35 U.S.C. 371(c)(4) was missing, and setting forth an extendable 2-month period for submitting a proper oath or declaration.

The instant petition, accompanied by a "Declaration and Power of Attorney for Patent Application" executed by two of the three named-inventors, asserts that the non-signing inventor, Dimitri Korobkov ("Korobkov"), refused to join in this 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 authorizes the USPTO to charge the $130 petition fee required in item (1) to a credit card.

The petition has also met the requirements of items (3) and (4), including authorizing the USPTO to charge the $130 surcharge for late filing of an acceptable oath or declaration to a credit card.

As to item (2), the petition encloses declarations of facts by Thomas Körfer ("Körfer"), an attorney practicing in Germany; Stephanie Szeili ("Szeili"), Körfer's secretary; and Rainer Bott ("Bott"), the first named inventor in this application. According to these declarations of facts:

(A) Körfer mailed Korobkov, on 23 January 2003, an assignment an a declaration and power of attorney; and on 31 January 2003, copies of: the instant international application, its English translation (specification including claims; drawings), and a preliminary amendment to be filed in the USPTO. Korobkov apparently received the papers mailed on both dates.

(B) Szeili contacted Korobkov by telephone on 24 February 2003, and the latter indicated his refusal to sign the application declaration.

(C) On 9 January 2003, Bott received an e-mail from Korobkov, stating that Korobkov refused to sign the application declaration that Bott had sent him previously.

Apparently, a *bona fide* attempt has been made, in vain, to secure Korobkov's signature on the application declaration. The requirement in item (2) is also considered met.

CONCLUSION

In view of the above, the §1.47(a) petition is **GRANTED.**

A review of the declaration submitted with the instant petition reveals that it complies with 37 CFR 1.497(a) and (b). Applicants have met the requirements of 37 CFR 1.495 for acceptance

into the national stage under 35 U.S.C. 371(c). Consequently, the application has an international filing date of 2 July 2001, and a 35 U.S.C. 371 date of 9 June 2003.

As provided in 37 CFR 1.47(c), a notice of the filing of the instant application will be sent to Korobkov at his last known address indicated in the instant petition.

A notice of the filing of the instant application under 37 CFR 1.47(a) will be published in the *Official Gazette.*

The application is being returned to DO/EO/US for processing in accordance with this decision, including the mailing of a Notification of Acceptance (Form PCT/DO/EO/903), and correction of the USPTO electronic database to show all three inventors for this application.

Richard Cole
PCT Legal Examiner
PCT Legal Office

RC Tang
Petitions Attorney
PCT Legal Office
Telephone: 703-308-1315
Facsimile: 703-308-6459

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PO Box 1450
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www.uspto.gov

28 AUG 2003

Prof. Dr. Dimitri Korobkov
Leerbachstr. 50
60322 Frankfurt
Germany

In re Application of :
Bott et al. :
US Application No.: 10/344,769 :
PCT Application No.: PCT/EP01/07541 :
International Filing Date: 2 July 2001 :
Priority Date: 16 August 2000 :
Attorney's Docket No.: 01012-1008 :
For: FREQUENCY AND TIME :
SYNCHRONISATION OF AN OFDM :
RECEIVER BY MEANS OF MAXIMUM :
LIKELIHOOD DECODING :

Dear Prof. Dr. Korobkov,

You are named as an inventor in the above-referenced 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 one of the inventors.

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. In the alternative, you may arrange to do any of the preceding through a registered patent or agent presenting a written authorization from you. If you decide to join in this application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of the appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Richard Cole
PCT Legal Examiner
PCT Legal Office

RC Tang
Petitions Attorney
PCT Legal Office
Telephone: 703-308-1315
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Stephen C. Carlson, Esq.
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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 all inventors. 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 (Dimitri Korobkov) 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/EP01/07541 and was filed on 2 July 2001 in the names of Rainer Bott, Karlheinz Pensel, and Dimitri Korobkov for the invention entitled FREQUENCY AND TIME SYNCHRONISATION OF AN OFDM RECEIVER BY MEANS OF MAXIMUM LIKELIHOOD DECODING. The national stage application number is 10/344,769, and has a 35 U.S.C. 371 date of 9 June 2003.

01 APR 2004

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Simona Levi-Minz
Ivax Corporation
4400 Biscayne
Miami, Florida 33137

In re Application of	:	
LANGFORD et al.	:	COMMUNICATION
Application No.: 10/344,789	:	&
PCT No.: PCT/GB01/03648	:	NOTIFICATION OF
Int. Filing Date: 15 August 2001	:	ABANDONMENT
Priority Date: 18 August 2000	:	
Attorney Docket No.: NHC202065-USA	:	
For: SPRAY DEVICE		

This communication is in response to "Statement" filed 03 December 2003.

BACKGROUND

On 15 August 2001, applicants filed international application PCT/GB01/03648, 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 28 February 2002. A Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire on 18 February 2003.

On 14 February 2003, applicant filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee and a copy of the international application.

On 30 May 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 oath or declaration executed by the inventor and an English translation of the international application was required. The notification set a TWO (2) MONTH period for response.

On 03 December 2003, applicant filed "Statement" which included a declaration executed by two of the three applicant/inventors.

COMMUNICATION

Applicant state in the present communication that, "Alan Langford, one of the joint inventors, suffered a sudden stoke occurring on November 26, 200 and has no present capacity to make the necessary oath or declaration, but to date, no legal representative has been appointed on his behalf."

37 CFR 1.43 *When the Inventor is insane or legally incapacitated*, states, in part:

In case of the death of the inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may make the necessary oath or declaration, and apply for and obtain the patent

35 USC 117 *Death or Incapacity of Inventor*, states:

Legal representatives of deceased inventors and of those under legal incapacity may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor.

The 03 December 2003 "Statement" is not a proper reply to the 30 May 2003 Notification of Missing Requirements. A proper response to the Notification of Missing Requirements must include a grantable request under 37 CFR 1.43 or a declaration executed by all the named inventors in compliance with 37 CFR 1.497(a) and (b). Here, counsel has submitted a declaration executed by two of the three inventor. Therefore, the declaration is not in compliance with 37 CFR 1.497(a) - (b) and cannot be considered a proper response to the 30 May 2003 Notification of Missing Requirements. Because the failure to file the proper response does not appear to have been the result of an inadvertent omission (37 CFR 1.135(a)), applicant will not be accorded a new time period to correct the deficiencies in the response. Accordingly, the application is hereby held to be **abandoned**.

CONCLUSION

For the reasons discussed above, this application is **ABANDONED**.

Applicants may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived. Any petition filed under 37 CFR 1.137(a) and/or a petition under 37 CFR 1.137(b) requesting that the application be revived must meet the criteria indicated in the recent revision of 37 CFR 1.137. This recommendation to file a petition under 37 CFR 1.137(a) or (b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

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: (703) 308-6314
Fax: (703) 308-6459

24 JAN 2005

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Mark G. Lappin, P.C.
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In re Application of	:	
LANGFORD et al.	:	
Application No.: 10/344,789	:	
PCT No.: PCT/GB01/03648	:	DECISION ON PETITION
Int. Filing Date: 15 August 2001	:	
Priority Date: 18 August 2000	:	
Attorney Docket No.: NHC202065-USA	:	
For: SPRAY DEVICE		

The petition to revive under 37 CFR 1.137(b) filed 07 January 2005 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 an executed declaration and power of attorney 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 returned to the United States Designated/Elected Office for processing in accordance with this decision.

Anthony Smith

Anthony Smith
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HOUSTON TX 77070

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OFFICE OF PETITIONS

In re Application of :
ELBAZ, et al. :
Application No. 10/344,792 : DECISION GRANTING PETITION
Filed: July 30, 2003 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **199-0054US** :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 22, 2008, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on January 18, 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 Monica A. Graves at (571) 272-7253.

This application is being referred to Technology Center AU 2614 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Sherry D. Brinkley
Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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MAILED

SEP 28 2009

OFFICE OF PETITIONS

In re Patent No. 7,535,485	:	
Elbaz, et al.	:	DECISION DISMISSING
Application No. 10/344,792	:	REQUEST FOR
Issue Date: May 19, 2009	:	RECONSIDERATION OF
Filed: July 30, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	UNDER 37 CFR 1.705
199-0054US	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, filed July 17, 2009, which is properly treated under 37 CFR § 1.705(d). Patentees request that the determination of patent term adjustment be corrected from five hundred and seven (507) days to eight hundred and nine (809) days.

The request for reconsideration of patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of 507 days.

BACKGROUND

This application was filed on July 30, 2003. On August 24, 2007, a request for continued examination (RCE) was filed. On May 19, 2009, the application matured into U.S. Patent No. 7,535,485, with a revised patent term adjustment of 507 days. The Office determined that the 552 days of Office delay pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b)[1,2] overlaps with

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[1] Pursuant to 35 U.S.C. 154(b)(1)(B), 37 CFR 1.702(b) provides, in pertinent part, that:

Failure to issue a patent within three years of the actual filing date of the application. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of

the 571 days of Office delay pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1) and (2)[3,4] accorded prior to the filing of the request for continued examination. A period of adjustment of 25 days of Office delay subsequent to the request for continued examination was entered pursuant to 37 CFR 1.702(a)(2). No additional days of patent term adjustment were entered at issuance under the three-year pendency provision. Given the applicant delay of 89 days, the patent issued with a revised patent term adjustment of 507 ((571 + 25) - 89) days.

On July 17, 2009, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee). See 37 CFR 1.705(d). Patentees aver that the correct number of

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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:

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

[2] As of the filing of the RCE on August 24, 2007, the application was pending three years and 552 days.

[3] 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) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed 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;

[4] A first Office action was not mailed until April 24, 2006, fourteen months and 571 days after the date of completion, July 30, 2003. A non-final Office action was not mailed until July 17, 2008, four months and 25 days after a Request for Continued Examination was filed on February 22, 2008.

days of patent term adjustment is 809 days under the court's interpretation of the overlap provision as set forth in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that pursuant to Wyeth, periods of delay under 35 U.S.C. 154(b)(1)(A) and 35 U.S.C. 154(b)(1)(B) overlap only if they occur on the same calendar day or days. Specifically, patentees state that:

> The Office has calculated the A-Time for this Patent to be 507 days. This calculation reflects 596 days of USPTO Delay and 89 days of Applicant delay. Applicant does not dispute the calculation of 507 days of A-Time Patent Term Adjustment in this case.
>
> The time period set forth under 37 CFR 1.703(b), B-Time, allows for 3 years pendency of an application. In the instant case, this is represented by the duration between 7/30/2006 (3 years from filing) and 5/19/2009 (Date of Issuance of Patent). This time period represents 1024 days. Note, according to 37 CFR 1.702(b)(1) this time period cannot include "any time consumed by continued examination of the application under 35 USC 132(b)." The period consumed by continued examination in this case is the time period between 8/24/2007 and 5/19/2009 (634 days). Furthermore, this amount should also be reduced by 89 days of Applicant delay. Therefore, the total B-Time credit for this application should be 1024 - 634 - 89 = 301 days. Note also, Applicant delays have been accounted for completely in the A-Time Calculation.

Excerpt taken from "Request for Reconsideration of Patent Term Adjustment", filed July 17, 2009, pg.3

OPINION

At the outset, the Office notes that period of delay of 301 days, pursuant to 37 CFR 1.702(b), as set forth by patentees, for the Office taking in excess of three years to issue the patent is incorrect as patentees did not use the correct 35 U.S.C. 371(b) national stage commencement date of Tuesday, February 18, 2003, in calculating the period of adjustment under 37 CFR 1.703(b). As stated in 37 CFR 1.703(b)(1), 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) in an international application and ending on the date a patent was issued, but not including any time consumed by continued examination of the application requested by the applicant under 35 U.S.C. 132. While the date of completion of all 35 U.S.C. 371 requirements, July 30, 2003, is the date used in calculation of the examination delay under 37 CFR 1.703(a), the date the national stage commenced under 35 U.S.C. 371(b), Tuesday, February 18, 2003[5], is used to determine 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) is 552 days, counting the number of days in the period beginning on the day after the date that is three years after the date on which the national stage commenced under 35 U.S.C. 371(b), February 19, 2006, and ending on the date the first RCE was filed, August 24, 2007.

Patentees' interpretation of the period of overlap has been considered, but found inconsistent with the Office's interpretation of the overlap provision, 35 U.S.C. 154(b)(2)(A). 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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

As explained in *Explanation of 37 CFR 1.703(f)*[6] *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

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[5] It is noted that February 15, 2003, fell on a Saturday and February 17, 2003, was a federal holiday.

[6] 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.

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).

Further, as stated in the *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding §1.702 overlap, the period of

adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the entire period from the date on which the national stage commenced under 35 U.S.C. 371(b), February 19, 2006, to the date of filing of a request for continued examination (RCE), August 24, 2007, (not including any other periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)). The relevant period ends with the filing of the RCE as the three-year time frame specified in 35 U.S.C. 154(b)(1)(B) does not include the period subsequent to the filing of the RCE. 35 U.S.C. 154(b)(1)(B)(i). Thus, only the 571 days of patent term adjustment accorded prior to the filing of the request for continued examination, pursuant to 37 CFR 1.702(a)(1), is considered in determining overlap. The 25 days for Office delay under 37 CFR 1.702(a)(2), occurring subsequent to the filing of the request for continued examination, is not considered.

The 552 days of patent term adjustment under 37 CFR 1.702(b) overlap with the 571 days of patent term adjustment under 37 CFR 1.702(a)(1). 596 (571 + 25) days is the actual number of days issuance of the patent was delayed.

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

CONCLUSION

In view thereof, the Office affirms that the revised determination of patent term adjustment at the time of the issuance of the patent is 507 days (596 (571 + 25) days of Office delay - 89 days of applicant delay).

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

Telephone inquiries specific to this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Gavin Randall Tame	:	
Application No. 10/344,793	:	ON PETITION
Filed: June 17, 2003	:	
Attorney Docket No. SAF-06-5925	:	

This is a decision on the petition under 37 CFR 1.137(b), filed March 21, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 21, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on November 22, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $510 extension of time fee submitted with the petition on March 21, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

The application file is being referred to Technology Center AU 2887 for appropriate action on the concurrently filed amendment.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/344,793	06/17/2003	Gavin Randall Tame	SAF-06-5925	5149

28465 7590 12/05/2008
PATENT GROUP
C/O DLA PIPER US LLP
203 N. LASALLE ST., SUITE 1900
CHICAGO, IL 60601

EXAMINER
LE, UYEN CHAU N

ART UNIT	PAPER NUMBER
2874	

MAIL DATE	DELIVERY MODE
12/05/2008	PAPER

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

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

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12/01/2008

PATENT GROUP
C/O DLA PIPER US LLP
203 N. LASALLE ST., SUITE 1900
CHICAGO IL 60601

In re Application of: Gavin Randall Tame Serial No.: 10/344,793 Filed: June 17, 2003 Title: **TRANSFER OF VERIFICATION DATA**	::: : :	DECISION *SUA SPONTE* WITHDRAWING HOLDING OF ABANDONMENT

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

A non-final Office action was mailed on August 21, 2006, setting a three-month shortened statutory period for responding thereto. The applicant filed a response with a Petition to revive the application on March 21, 2007. The petition was granted on January 29, 2008, and a Notice of Abandonment was mailed on January 31, 2008.

The Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn in view of the fact that the petition was granted and made the application pending. Thus, the application is not abandoned in fact.

The response filed March 21, 2007 will be processed and the examiner will review the response including determining whether the response was in proper format and fully responsive to the outstanding Office action. Inconvenience to the applicant is regretted.

Any inquiry regarding this decision should be directed to Steven Paik, Supervisory Patent Examiner, at (571) 272-2404.

Cassandra C. Spyrou, TC Director (Acting)
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

PTO/SB/44 (02-01)
Approved for use through 01/31/2004. 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 : US 6,869,774 B2

DATED : March 22, 2005

INVENTOR(S) : ENDO et al.

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

(73) Assignee: "Yaeta Endo, Ehime (JP) should read --CellFree Sciences Co., Ltd., Kanagawa, Japan--.

IN THE FIGURES:

Fig. 1, "Suppy" should read --Supply-- .

OK

IN THE SPECIFICATION:

Column 2, line 36, "mixture reaction phase)" should read --mixture (reaction phase)-- .

IN THE CLAIMS:

Claim 7, column 16, line 13, "a reaction" should read --a reaction mixture-- .

MAILING ADDRESS OF SENDER:
KILYK & BOWERSOX, P.L.L.C.
Luke A. Kilyk
53A East Lee Street
Warrenton, Virginia 20186

PATENT NO US 6,869,774 B2

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

Date: June 16, 2005 I hereby certify that, on the date indicated above, I deposited this paper with identified attachments and/or fee with the U.S. Postal Service and that it was addressed for delivery to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 by "First Class Mail" service.

Kim Blum — Kim Blum
Name (Print) — Signature

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE 22 Mar 06

TO SPE OF : ART UNIT 1653

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/344803** Patent No.: **6869774**

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. _____

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: _____

_____

_____

_____

_____

_____ 1653

SPE **Art Unit**

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KILYK & BOWERSOX, P.L.L.C.
400 HOLIDAY COURT
SUITE 102
WARRENTON, VA 20186

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SEP 25 2006

OFFICE OF PETITIONS

In re Patent No. 6,869,774 :
Issue Date: March 22, 2005 :
Application No. 10/344,803 : ON PETITION
Filed: March 18, 2003 :
Docket No. 3190-031 :

This is a decision on the request for issuance of a certificate of correction to issue in the name of "CellFree Sciences, Co. Ltd.," filed May 25, 2006.

The instant request seeks issuance of a certificate of correction of assignee data in the name of "CellFree Sciences, Co. Ltd."

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 (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17(i) of this chapter.

The instant petition has been reviewed and found to comply with the requirements of 37 CFR 3.81(b). According, the instant petition is hereby **GRANTED**.

This application is being forwarded to the Certificate of Correction Branch for issuance of the requested Certificate of Correction.

Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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INTELLECTUAL PROPERTY DEPARTMENT
ONE TAKEDA PARKWAY
DEERFIELD IL 60015

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APR 2 7 2007

OFFICE OF PETITIONS

In re Application of	:	
Doen et al.	:	
Application No. 10/344805	:	ON PETITION
Filed: 02/14/2003	:	
Attorney Docket No. 2772 US0P	:	

This is a decision on the petition under 37 CFR 1.137(b), filed February 2, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of May 17, 2006. Petitioners obtained an extension of time for response within the first month pursuant to the provisions of 37 CFR 1.136(a). However, in the absence of a timely and properly filed reply, the application became abandoned on September 18, 2006. A Notice of Abandonment was mailed on January 31, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has submitted (1) the reply in the form of a Request for Continued Examination (RCE) (and fee) and a submission required by 37 CFR 1.114; (2) the petition fee; and (3) an adequate statement of unintentional delay.[1]

[1] 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." The statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3); however, it is being construed as the required statement. Petitioners must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Petitioners submitted a revocation and power of attorney, a change of correspondence address, a copy of the assignment, and an **unexecuted** Statement Under 37 CFR 3.73(b). As the Statement Under 37 CFR 3.73(b) was not signed, the Office will **not** enter the revocation and power of attorney and change of correspondence address at this time. A courtesy copy of this decision is being mailed to the person signing the petition; however, all future correspondence will be directed to the address currently of record until the USPTO receives an executed Statement Under 37 CFR 3.73(b).

This application is being referred to Technology Center AU 1624 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Cc: HAMRE, SCHUMANN, MUELLER & LARSON, P.C.
P.O. BOX 2902
MINNEAPOLIS, MN 55402-0902

03 JUN 2003

#3

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Robert S. Silver
Caesar, Rivise, Bernstein, Cohen
& Pokotilow, LTD
1635 Market Street, 12th Floor
Philadelphia, PA 19103

In re Application of	:	
PARDOE et al.	:	
Application No.: 10/344,812	:	DECISION ON PETITION
PCT No.: PCT/GB01/00946	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 05 March 2001	:	
Priority Date: 06 March 2000	:	
Attorney Docket No.:S1011/20143	:	
For: PHARMACEUTICAL COMPOSITION	:	

The petition to revive under 37 CFR 1.137(b) filed 14 February 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 $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. 03-0075 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 14 February 2003.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: (703) 308-6314
Facsimile: (703) 308-6459

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OFFICE OF PETITIONS

MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE, WI 53202

In re Application of Swift et al. :
Application No. 10/344,813 : Decision on Petition
Filing Date: June 12, 2003 :
Attorney Docket No. 013344-9040 :

This is a decision on the petition filed November 21, 2008, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

The above-identified application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed February 29, 2008, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed. See 37 CFR 41.37(b). As no claim was allowed, the-above-identified application became abandoned on April 30, 2008. See MPEP 1215.04.

Petitioner contends an Appeal Brief was timely mailed April 29, 2008. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated April 29, 2008.

One may prove the timely filing of papers by providing a showing in compliance with 37 CFR 1.8(b). 37 CFR 1.8(b) states,

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the

correspondence will be considered timely if the party who forwarded such correspondence:

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

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

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

The instant petition does not comply with requirement (3) above. Specifically, petitioner has not filed a statement by the person who actually mailed the correspondence. The certificate of mailing is signed by Christopher Austin. Therefore, a statement by Austin should be supplied.

Unless filed by EFS web, further correspondence with respect to this matter should be addressed as follows:

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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 BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE, WI 53202

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OFFICE OF PETITIONS

In re Application of Swift et al. :
Application No. 10/344,813 : Decision on Petition
Filing Date: June 12, 2003 :
Attorney Docket No. 013344-9040 :

This is a decision on the petition filed May 26, 2009, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **granted**.

A Notice of Appeal was filed February 29, 2008. An appeal brief (and appeal brief fee) was not received within two (2) months and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained. As a result, the Office considered the appeal to be dismissed. *See* 37 CFR 41.37(b). Since no claim was allowed, the Office considered the application to be abandoned. *See* MPEP 1215.04.

Petitioner contends an Appeal Brief was timely mailed April 29, 2008. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated April 29, 2008.

One may prove the timely filing of papers by providing a showing in compliance with 37 CFR 1.8(b). Petitioner has supplied evidence satisfying the requirements set forth in 37 CFR 1.8(b).

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

Technology Center Art Unit 2837 will be informed of the instant decision and the examiner will consider and respond to the appeal brief in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

Mail Date: 04/21/2010

Applicant	: Jun Ozawa	: DECISION ON REQUEST FOR
Patent Number	: 7660722	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/344,822	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/14/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2068** 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.

20 SEP 2004

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Agilent Technologies, Inc.
Intellectual Property Administration, Legal Dept.
P.O. Box 7599
M/S DL429
Loveland, CO 80537-0599

In re Application of	:	
Ng et al.	:	
Application No.: 10/344,836	:	
PCT No.: PCT/US01/25599	:	
Int. Filing Date: 15 August 2001	:	DECISION
Priority Date: 17 August 2000	:	
Attorney Docket No.: 70990052-3	:	
For: Optical Encoder Module	:	

This is a decision on applicants' "Petition To Withdraw Holding Of Abandonment" filed on 17 February 2004.

BACKGROUND

This international application was filed on 15 August 2001 and claimed a priority date of 17 August 2000. A Demand electing the U.S. was filed prior to the elapse of 19 months from the priority date. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 17 February 2003. On 13 February 2003, applicants filed *inter alia* the basic national fee.

On 12 May 2003, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of additional claims fees, an executed oath or declaration of the inventors and a surcharge under 37 CFR 1.492(e).

On 05 February 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.

DISCUSSION

Petitioner requests that the Notification of Abandonment be withdrawn because applicants allegedly submitted a timely response to the Notification of Missing Requirements mailed on 12 May 2003. In support of this, counsel has provided copies of papers allegedly filed on 13 June 2003, including a "Transmittal Letter For Submission Of Missing Parts," a "Response To Notification Of Missing Requirements," an executed declaration of the inventors, and a copy of a return postcard receipt itemizing those items and stamped as "Rec'd PCT/PTO 13 JUN 2003."

MPEP 503 states in part that "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." Pursuant to that practice, the papers (including the "Transmittal Letter For Submission Of Missing Parts," the "Response To Notification Of Missing Requirements," and the executed declaration of the inventors) filed on 17 February 2004 are being accepted as copies of the respective papers originally filed on 13 June 2003. The electronic records of the USPTO indicate that payment of the surcharge under 37 CFR 1.492(e) and the additional claims fees were received on 13 June 2003. As such, it would be appropriate to conclude that applicant timely replied to the Notification of Missing Requirements mailed on 12 May 2003; therefore, the Notification of Abandonment mailed on 05 February 2004 is hereby **VACATED**.

DECISION

The petition is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **13 June 2003**.

Richard Cole
PCT Legal Examiner
PCT Legal Office

George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
After 30 Sep. 2004: (571) 272-3283
Fax: (703) 308-6459
After 30 Sep. 2004: (571) 273-0459

11 SEP 2003

#6

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Welsh & Katz
120 South Riverside Plaza
22nd Floor
Chicago IL 60606

In re Application of	:	
GUELLER et al	:	
Application No.: 10/344,839	:	
PCT No.: PCT/CH01/00485	:	
Int. Filing Date: 09 August 2001	:	DECISION
Priority Date: 14 August 2000	:	
Attorney Docket No.: 89065	:	
For: METHOD FOR CARRYING OUT A	:	
CHEMICAL REACTION	:	

This decision is in response to applicants' "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" filed 27 June 2003.

BACKGROUND

On 09 August 2001, applicants filed international application PCT/CH01/00485 which claimed a priority date of 14 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 February 2002. A Demand for international preliminary examination, in which the United States was elected, was filed on 18 February 2002, prior to nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 14 February 2003.

On 13 February 2003, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the basic national fee, an assertion of small entity status, and a declaration of inventors.

On 03 June 2003, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that (1) a translation of the international application into English was required because the translation filed on 13 February 2003 was defective in that it included the claims as amended under Article 34 rather than the claims as filed, (2) the processing fee under 37 CFR 1.492(f) for providing the translation of the application later than thirty months from the priority date was required, (3) a new declaration of inventors in compliance with 37 CFR 1.497(a)-(b) was required because the

declaration submitted 13 February 2003 was defective in that there was no documentation for the name change of inventor number 3; and (4) the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date was required.

On 27 June 2003, applicants submitted the instant "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)."

DISCUSSION

As to item (3), the response filed 27 June 2003 notifies the Office that the correct spelling of the inventor's name is **Rolf Gueller** as indicated in the declaration filed 13 February 2003 rather than Rolf Guller as indicated in the international application. The response explains that the international application contained an incorrect spelling concerning the name of Mr. Gueller.

Applicants' explanation of the difference in the spelling of Rolf Gueller's name is accepted and noted for the record.

As to item (4), the response filed 27 June 2003 is a proper reply to those portions of the NOTIFICATION OF MISSING REQUIREMENTS mailed 03 June 2003 concerning the defective declaration and the surcharge under 37 CFR 1.492(e). The declaration of inventors filed 27 June 2003 is in compliance with 37 CFR 1.497(a)-(b).

As to item (1), the translation of the international application into English filed 13 February 2003 is defective. As noted in the NOTIFICATION OF MISSING REQUIREMENTS mailed 03 June 2003, the translation filed on 13 February 2003 was defective in that it included the claims as amended under Article 34 rather than the claims as filed. Applicants urge in the response mailed 27 June 2003 that the translation filed 13 February 2003 "is identical (except for the claims) to the International Application." 37 CFR 1.495(c) requires "a translation of the international application, as filed, into the English language." The international application includes the claims. PCT Article 3(2). Accordingly, a translation of the international application, as filed, includes a translation of the claims as filed.

As to item (2), because a proper translation into English has not yet been filed, the processing fee under 37 CFR 1.492(f) is required.

CONCLUSION

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

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including preparing and mailing of a NOTIFICATION OF A DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that the translation filed on 13 February 2003 is defective in that it included the claims as amended under Article 34 rather than the claims as filed and that the processing fee under 37 CFR 1.492(f) is required.

Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (703) 308-2066
Facsimile: (703) 308-6459

0 3 NOV 2003

#7

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22nd Floor
Chicago IL 60606

In re Application of	:	
GUELLER et al	:	
Application No.: 10/344,839	:	
PCT No.: PCT/CH01/00485	:	
Int. Filing Date: 09 August 2001	:	DECISION
Priority Date: 14 August 2000	:	
Attorney Docket No.: 89065	:	
For: METHOD FOR CARRYING OUT A	:	
CHEMICAL REACTION	:	

The decision mailed 11 September 2003 is VACATED for the reasons set forth below.

BACKGROUND

On 09 August 2001, applicants filed international application PCT/CH01/00485 which claimed a priority date of 14 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 February 2002. A Demand for international preliminary examination, in which the United States was elected, was filed on 18 February 2002, prior to nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 14 February 2003.

On 13 February 2003, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the basic national fee, an assertion of small entity status, and a declaration of inventors.

On 03 June 2003, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that (1) a translation of the international application into English was required because the translation filed on 13 February 2003 was defective in that it included the claims as amended under Article 34 rather than the claims as filed, (2) the processing fee under 37 CFR 1.492(f) for providing the translation of the application later than thirty months from the priority date was required, (3) a new declaration of inventors in compliance with 37 CFR 1.497(a)-(b) was required because the declaration submitted 13 February 2003 was defective in that there was no documentation for the name change of inventor number 3; and (4) the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date was required.

On 27 June 2003, applicants submitted a "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)."

On 11 September 2003, the USPTO mailed a decision indicating that items (1) and (2) were still required, that items (3) and (4) had been met, and that the declaration of inventors was in compliance with 37 CFR 1.497(a)-(b). (The decision erroneously referred to a declaration filed 27 June 2003. The only declaration of inventors in the application file is the declaration filed 13 February 2003.)

DISCUSSION

Upon further review of the application file, it is noted that items (3) and (4) have not been met and that the declaration of inventors was in compliance with 37 CFR 1.497(a)-(b). Accordingly, the decision mailed 11 September 2003 is hereby VACATED.

As to item (3), the third named inventor is listed as Christelle Lorin in the published international application and as "Christelle Jablonski (formerly Lorin)" in the declaration of inventors filed 13 February 2003. 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 a certified copy of the court order. In this instance, the $130 petition fee has not been paid. Nor have applicants have provided an affidavit signed with both names or a certified copy of the court order.

As to item (4), because a declaration in compliance with 37 CFR 1.497(a)-(b) has not yet been filed, the surcharge fee under 37 CFR 1.492(e) is required.

As to item (1), the translation of the international application into English filed 13 February 2003 is defective. As noted in the NOTIFICATION OF MISSING REQUIREMENTS mailed 03 June 2003, the translation filed on 13 February 2003 was defective in that it included the claims as amended under Article 34 rather than the claims as filed. Applicants urge in the response mailed 27 June 2003 that the translation filed 13 February 2003 "is identical (except for the claims) to the International Application." 37 CFR 1.495(c) requires "a translation of the international application, as filed, into the English language." The international application includes the claims. PCT Article 3(2). Accordingly, a translation of the international application, as filed, includes a translation of the claims as filed.

As to item (2), because a proper translation into English has not yet been filed, the processing fee under 37 CFR 1.492(f) is required.

CONCLUSION

A proper response must be filed within TWO (2) MONTHS from the mail date of this decision.

A proper response must include (1) a translation of the international application into English was required because the translation filed on 13 February 2003 was defective in that it included the claims as amended under Article 34 rather than the claims as filed, (2) the processing fee under 37 CFR 1.492(f) for providing the translation of the application later than thirty months from the priority date was required, (3) a petition under 37 CFR 1.182 along with an affidavit signed with both names setting forth the procedure whereby the change of name for the third named inventor was effected, or a certified copy of the court order, and (4) the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date was required.

Failure to timely file a proper response to this decision in a timely manner will result in abandonment of the application with regards to national stage prosecution in the United States.

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

Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (703) 308-2066
Facsimile: (703) 308-6459

18 MAY 2004

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Welsh & Katz
120 South Riverside Plaza
22nd Floor
Chicago IL 60606

In re Application of	:	
GUELLER et al	:	
Application No.: 10/344,839	:	
PCT No.: PCT/CH01/00485	:	
Int. Filing Date: 09 August 2001	:	DECISION
Priority Date: 14 August 2000	:	
Attorney Docket No.: 89065	:	
For: METHOD FOR CARRYING OUT A	:	
CHEMICAL REACTION	:	

The decision is in response to applicants' "RESPONSE TO DECISION MAILED NOVEMBER 3, 2003, WHICH DECISION VACATES PREVIOUS DECISION MAILED SEPTEMBER 11, 2003" filed in the United States Patent and Trademark Office (USPTO) on 11 December 2003.

BACKGROUND

On 09 August 2001, applicants filed international application PCT/CH01/00485 which claimed a priority date of 14 August 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 February 2002. A Demand for international preliminary examination, in which the United States was elected, was filed on 18 February 2002, prior to nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 14 February 2003.

On 13 February 2003, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the basic national fee, an assertion of small entity status, and a declaration of inventors.

On 03 June 2003, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that (1) a translation of the international application into English was required because the translation filed on 13 February 2003 was defective in that it included the claims as amended under Article 34 rather than the claims as filed, (2) the processing fee under 37 CFR 1.492(f) for providing the translation of the application later than thirty months from the priority date was required, (3) a

new declaration of inventors in compliance with 37 CFR 1.497(a)-(b) was required because the declaration submitted 13 February 2003 was defective in that there was no documentation for the name change of inventor number 3; and (4) the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date was required.

On 27 June 2003, applicants submitted a "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)."

On 11 September 2003, the USPTO mailed a decision indicating that items (1) and (2) were still required, that items (3) and (4) had been met, and that the declaration of inventors was in compliance with 37 CFR 1.497(a)-(b). (The decision erroneously referred to a declaration filed 27 June 2003. The only declaration of inventors in the application file is the declaration filed 13 February 2003.)

On 03 November 2003, the USPTO mailed a decision vacating the decision mailed 11 September 2003. The 03 November 2003 decision indicating that none of items (1)-(4) had been met and that (1) a translation of the international application into English because the translation filed on 13 February 2003 was defective in that it included the claims as amended under Article 34 rather than the claims as filed, (2) the processing fee under 37 CFR 1.492(f) for providing the translation of the application later than thirty months from the priority date was required, (3) a petition under 37 CFR 1.182 along with an affidavit signed with both names setting forth the procedure whereby the change of name for the third named inventor was effected, or a certified copy of the court order, and (4) the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required.

On 11 December 2003, applicants filed the instant "RESPONSE TO DECISION MAILED NOVEMBER 3, 2003, WHICH DECISION VACATES PREVIOUS DECISION MAILED SEPTEMBER 11, 2003", which was accompanied by a translation of the international application into English including a translation of the claims as filed, the processing fee under 37 CFR 1.492(f), a petition under 37 CFR 1.182 along with an affidavit by Christelle Jablonski, and the surcharge under 37 CFR 1.492(e).

DISCUSSION

Items (1)-(4) above have been met. With regard to item (3), the "AFFIDAVIT OF CHRISTELLE JABLONSKI, FORMERLY CHRISTELLE LORIN" is signed with both names and sets forth the procedure whereby the change of name was effected. The affidavit by Christelle Jablonski submitted 11 December 2003 is accepted. The petition fee has been paid.

The translation of the original claims filed 11 December 2003 will be replaced with the translation of the Article 34 amendments to the claims filed 13 February 2003.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.182 is **GRANTED**.

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

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including (1) replacing the translation of the claims as originally filed (which were submitted by applicants 11 December 2003) with the translation of the Article 34 amendments to the claims (which were submitted by applicants 13 February 2003) and (2) according the application a 35 U.S.C. 371 (c)(1), (c)(2), and (c)(4) date of **11 December 2003**.

Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (703) 308-2066
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-Hermann WOLF	:	
Application No. 10/344,847	:	DECISION ON PETITION
Filed: February 19, 2003	:	TO WITHDRAW
Attorney Docket No. 449122049100	:	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 17, 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 with customer No. 25227.

All attorneys/agents associated with Customer Number 25227 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

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

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

There is an outstanding Office action mailed March 7, 2007 that requires a reply by the applicant.

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

April Wise
Petitions Examiner
Office of Petitions

cc: HANS-HERMANN WOLF
LEONHARDIWEG 45 A
MUNCHEN 81829
GERMANY

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

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
10/344,847	02/19/2003	Hans-Hermann Wolf	449122049100

CONFIRMATION NO. 4660

OC000000024513646

25227
MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

Date Mailed: 06/25/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/17/2007.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

Diane Gordup

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199

FORMER ATTORNEY/AGENT COPY

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OFFICE OF PETITIONS

Morrison & Foerster LLP
1650 Tysons Boulevard
Suite 400
Mclean, VA 22102

In re Application of	:	
Michael Horn et al.	:	
Application No. 10/344,853	:	DECISION ON PETITION
Filed: February 19, 2003	:	TO WITHDRAW
Attorney Docket No. 449122051600	:	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

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MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 400
MCLEAN, VA 22102

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OFFICE OF PETITIONS

In re Application of
HORN, et al.
Application No. 10/344,854
Filed: July 21, 2003
Attorney Docket No. **118744-073**

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 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 the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **BELL, BOYD & LLOYD, LLP**
P.O. BOX 1135
CHICAGO IL 60690

08 AUG 2003

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Kendrick P. Patterson
Sterne, Kessler, Goldstein & Fox, PLLC
1100 New York Avenue, Suite 600
Washington, D.C. 20005-3934

In re Application of AGRAWALA, et al. U.S. Application No.: 10/344,857 PCT No.: PCT/US01/25381 Int. Filing Date: 15 August 2001 Priority Date: 15 August 2000 Attorney Docket No.: 1797.0400001 For: METHOD, SYSTEM, AND COMPUTER PROGRAM PRODUCT FOR POSITIONING AND SYNCHRONIZING WIRELESS COMMUNICATIONS NODES	COMMUNICATION

The above-identified application is before the Office of PCT Legal Administration for consideration of issues arising under 35 U.S.C. 371.

BACKGROUND

On 15 August 2001, applicant filed international application PCT/US01/25381, which claimed priority of an earlier application filed 15 August 2000. A Demand for international preliminary examination electing the United States 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 15 February 2003.

On 19 February 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia: payment of the full, U.S. basic national fee and an Information Disclosure Statement.

On 11 July 2003, applicant was mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) informing applicant that the present application was abandoned as to the national stage in the United States for failure to provide the copy of the international application by 30 months.

DISCUSSION

Applicant is advised that a review of USPTO records finds that applicant provided a timely payment of the full, U.S. basic national fee. 15 February 2003 was a Saturday. Thus payment was due on the next business day. 17 February 2003 was a Federal holiday and the

USPTO was closed on 18 February 2003 due to inclement weather. As such, applicant's payment of the full, U.S. basic national fee on 19 February 2003 was timely. In addition, applicant was not required to provide a copy of the international application as filed as the application was filed in the United States Receiving Office (RO/US).

CONCLUSION

The "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) mailed 11 July 2003 is hereby **VACATED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this communication, namely, the mailing of 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).

Leonard Smith
Legal Examiner
Office of PCT Legal Administration

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

1 9 MAR 2003

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WASHINGTON, D.C. 20231
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M. Wayne Western
THORPE NORTH & WESTERN, LLP
P.O. Box 1219
Sandy, UT 84091-1219

In re Application of
HENDERSON, Janeel
U.S. Application No.: 10/344,865
PCT No.: PCT/US99/30340
Int. Filing Date: 18 December 1999
Priority Date: 19 December 1998
Attorney Docket No.: T7121.PCT.US
For: COMPREHENSIVE DIETARY SUPPLEMENTS

DECISION ON PETITION FOR REVIVAL UNDER 37 CFR 1.137(b)

Applicant's "Petition under 37 C.F.R. 1.137(b) for Revival of an Unintentionally Abandoned International Application Designating the U.S." filed with the national stage papers on 13 February 2003 in the above-captioned application is hereby **GRANTED** as follows:

The appropriate basic national fee and petition to revive fee have been paid. Applicant states 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 in this case. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

A signed oath or declaration has not yet been submitted.

Accordingly, this application is being forwarded to the United States Designated/Elected Office for further processing including mailing a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee for a small entity pursuant to 37 CFR 1.492(e) is required.

James Thomson

James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457

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William S Frommer
Frommer Lawrence & Haug
745 Fifthe Avenue
New York, NY 10151

Mail Date: 04/21/2010

Applicant	: Masamichi Takayama	: DECISION ON REQUEST FOR
Patent Number	: 7603190	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/344,866	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/14/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1732** 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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ALCON
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FORT WORTH TX 76134

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OFFICE OF PETITIONS

In re Application of :
Kapin, et al. :
Application No. 10/344,881 :
Filed: February 14, 2003 :
Attorney Docket No. 1973 US F :
For: METHOD OF TREATING
ANGIOGENESIS-RELATED DISORDERS
USING BENZOYL PHENYLACETIC ACID

ON PETITION

This is a decision on the petition, filed March 27, 2007, under 37 CFR 1.137(b) to revive the above-identified application.

The above-identified application became abandoned for failure to timely submit a reply within one month of the mailing of the August 25, 2006 Notification of Non-compliant Appeal Brief (Notice). No response or extensions of time under 37 CFR 1.136(a) being received, this application became abandoned on September 26, 2006. A Notice of Abandonment was mailed on March 6, 2007.

Applicants have submitted a reply to the August 25, 2006 Notice, an acceptable statement of the unintentional nature of the delay in responding to the August 25, 2006 Notice, and the $1,500.00 petition fee.

The petition is **GRANTED**.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $2,160.00 extension of time fee submitted with the petition on March 27, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioners' deposit account.

After the mailing of this decision the application will be forwarded to Technology Center AU 1618 for consideration of the reply filed on March 27, 2007.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

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

02 OCT 2006

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MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.
ONE FINANCIAL CENTER
BOSTON MA 02111

In re Application of Sherris et al. Application No. 10/344,886 PCT App. No.: PCT/US02/22449 Int. Filing Date: 15 July 2002 Attorney Docket No. 18217-501NATL	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 26 September 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

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

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

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

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

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence(s) of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii), which was filed with the instant petition; (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted, on 26 September 2005; and (3) the petition contains a statement that "The undersigned asserts that the entire delay between the date the benefit claim was due, according to 37 C.F.R. § 1.78(a)(2)(ii), and the date the benefit claim was perfected was unintentional, as required by 37 C.F.R. § 1.78(a)(3). Once aware of the

delay, the undersigned worked diligently to have the benefit claim corrected." 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 1.78(a)(5)(ii) and the date the claim was filed was unintentional. Since the statement contained in the petition varies from the required language, the statement will be construed as the statement required by 37 CFR 1.78(a)(3). Petitioner must notify the Office if this is not a correct reading of the statement appearing in the petition. 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 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 this application is entitled to the benefit of the earlier filing date.

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

Any inquiries concerning this decision may be directed to George Dombroske, whose contact information is provided below. 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 1618 for appropriate action on the amendment filed 26 September 2005, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration

George M. Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283
Fax: (571) 273-0459

ATTACHMENT: Corrected Filing Receipt

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NOV 3 0 2009

Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

In re Application of Peter Heinrich et al. Application No. 10/344,887 Filed: February 13, 2003 For: METHOFD FOR CONTROLLING AND ADJUSTING A MOTOR-DRIVEN ADJUSTING METHOD	DECISION ON PETITION TO REDATE AND REMAIL NON-RECEIVED OFFICE ACTION

This is in response to applicant's petition to Reset a Period for Reply Due to non-receipt, filed in the United States Patent and Trademark Office (USPTO) on August 3, 2009.

The petition is **GRANTED.**

Petitioner asserts that the Office action having a mail date of June 12, 2009 was not received at the correspondence address of record. The Office action in question was discovered during a status check of Private PAIR performed on July 28, 2009. As applicant never received the mailed copy of the Office action, the petition is being treated as a petition to restart the time period for response due to non-receipt of an Office communication.

There is a strong presumption that an Office action properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office action was not received must be supported by a showing that it was not received.

The showing required to establish non-receipt of an Office action must include all of the following requirements:

(1) A statement from the practitioner stating the Office action was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

(3) A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of July 13, 2009. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Applicant's renewed petition now includes a statement that a search of the file jacket and docket records indicates that the Office action was not received; as well as a copy of the docket record where the non-received Office action would have been entered had it been received and docketed.

With all of the above conditions now being satisfied, the petition is **GRANTED** and the period for response is hereby reset to run 1 month from the date of July 28, 2009, the date applicant became aware of the existence of the above Notice.

Any questions regarding this decision should be directed to Steven N. Meyers at (571) 272-6611.

Steven N. Meyers, Quality Assurance Specialist
Patent Technology Center 3600
(571) 272-6611

Sm/sm: 11/29/09

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DEC 3 0 2009

CHRISTIE, PARKER & HALE, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

In re Application of: Peter Heinrich et al.	:	DECISION ON PETITION
Application No. 10/344,887	:	TO WITHDRAW THE NOTICE
Filed: February 13, 2003	:	OF NON-COMPLIANCE
For: METHOD FOR CONTROLLING AND	:	APPEAL BRIEF
ADJUSTING A MOTOR-DRIVEN	:	UNDER 37 CFR 1.181
ADJUSTING DEVICE	:	

This is in response to applicants' petition under 37 CFR 1.181 filed August 12, 2009 requesting review and withdrawal of the Non-Compliant Appeal Brief issued on June 12, 2009.

The Petition is **GRANTED**.

The record indicates that applicant filed an appeal brief on February 17, 2009. The examiner issued a Notice of Non-Compliant Appeal Brief on June 12, 2008 on the grounds that 1) in the section of Summary of claimed subject matter, applicants failed to refer to the reference characters in the drawings the claimed "a force limit", the "overall force" and "the actual output force of the adjusting device", and 2) that the appeal brief was directed to the substitute specification dated November 20, 2006 which was not entered.

Applicants assert that it is not necessary to refer, within the Summary of claimed subject matter, reference character(s) from the drawing(s). Under 37 CFR 41.37 (c) (5), the Summary of claimed subject matter should provide "a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.". Since applicants have attempted to point out from the specification by page and line number the supports for the claimed subject matter, it is deemed unnecessary in this case to further provide reference numbers from the drawings. Applicants' argument is persuasive.

In addition, applicants argue that, contrary to the Examiner's Notice of Non-Compliant letter, the appeal brief filed on February 17, 2009 is directed to the original translated PCT application filed on February 13, 2003. Upon further review of the appeal brief, the applicants are correct. The petition to withdraw the Notice of Non-compliant Appeal Brief is hereby granted. An examiner's answer in response to the appeal brief filed on February 17, 2009 will be provided.

Any questions regarding this decision should be directed to SPE Khoi Tran at (571) 272-6919.

Katherine Matecki

Katherine Matecki, Director
Technology Center 3600
(571) 272-3600

kt/lm: 12/15/09

LM

11 MAR 2004

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William B. Kezer
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Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834

In re Application of PANDEY, et al. U.S. Application No.: 10/344,907 PCT No.: PCT/US01/41749 Int. Filing Date: 17 August 2001 Priority Date: 18 August 2000 Attorney Docket No.: 021390-003510US For: NITROGENOUS HETEROCYCLIC COMPOUNDS	DECISION ON PETITION UNDER 37 CFR 1.182

This decision is in response to applicant's correspondence filed 28 November 2003 in the United States Patent and Trademark Office (USPTO). The correspondence is being treated as a petition under 37 CFR 1.182. As authorized, payment of the $130.00 petition fee will be charged to Deposit Account No.: 20-1430.

BACKGROUND

On 17 August 2001, applicant filed international application PCT/US01/41749 which claimed priority to an earlier application filed 18 August 2000. 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, 18 February 2003.

On 14 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).

On 11 August 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 16 October 2003, applicant responded with an executed declaration and payment of the appropriate surcharge fee.

On 04 November 2003, applicant was mailed a NOTIFICATION OF DEFECTIVE RESPONSE

(Form PCT/DO/EO/916) advising that the inventor's name on the declaration, Junko Sasaki did not match the inventor's name on the published International Application. In addition, applicant was informed that the filed declaration listed nine inventors whereas the published international application showed ten inventors. Applicant was afforded one month to file a proper response.

On 28 November 2003, applicant filed the present petition under 37 CFR 1.182.

DISCUSSION

The Manual of Patent Examining Procedure at § 605.04(c) requires in instances where an inventor has changed his or her name after the application has been filed to submit a petition under 37 CFR 1.182. The petition must include the appropriate petition fee and an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or certified copy of the court order. As noted above, the $130.00 petition fee has been charged to counsel's Deposit Account No. 20-1430, and thus item (1) has been satisfied.

With regard to item (2), the abstract of the family register for inventor Junko Sasaki (nee Irie) does not appear to be a certified copy of the court order, but merely a photocopy of a family registry document and a translation of the relevant portion of the registry. If a certified copy of the court order is not available, applicant may file an affidavit signed by Mrs. Sasaki with both names setting forth the procedure whereby the change of name was effected. Therefore, item (2) has not been satisfied, and thus the petition may not be properly granted at this time.

In addition it is noted that the filed declaration does not comply with 37 CFR 1.497(a)-(b) in that the declaration contains numerous copies of various signature pages. This suggests that the enclosed declaration was constructed from numerous complete declarations or that the inventors forwarded to counsel only the signatures pages of the declaration. Either alternative renders the submitted declaration defective under 37 CFR 1.497. While each inventor need not execute the same oath or declaration, where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. (See MPEP 201.03 B. Oath or Declaration.)

CONCLUSION

For the reasons above, applicant's petition under 37 CFR 1.182 is **DISMISSED**.

Any reconsideration on the merits of this petition 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 1.182."

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

19 AUG 2004

#8

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In re Application of	:	
PANDEY, et al.	:	DECISION ON PETITION
Application No.: 10/344,907	:	
PCT No.: PCT/US01/41749	:	UNDER 37 CFR 1.182
Int. Filing Date: 17 August 2001	:	
Priority Date: 18 August 2000	:	
Atty. Docket No.: 021390-003510US	:	
For: NITROGENOUS HETEROCYCLIC	:	
COMPOUNDS	:	

This decision is in response to applicant's "Renewed Petition Under 37 CFR § 1.182" filed 01 April 2004 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 11 March 2004, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.182. Applicant was afforded two months to file a renewed petition under 37 CFR 1.182.

On 01 April 2004, applicant filed the present renewed petition accompanied by newly executed declarations of the inventors.

DISCUSSION

The present petition is accompanied by an affidavit setting forth the procedure whereby the change of name of inventor IRIE was effected; namely by marriage. The declaration is executed by Mrs. SASAKI using her current married name and her maiden name. As such, it is appropriate to grant applicant's petition at this time. Further, a review of the application file reveals that applicant has presently provided compliant, executed declarations from all of the inventors and all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have now been satisfied.

CONCLUSION

The petition under 37 CFR 1.182 to change the inventor's name from Junko Irie to Junko Sasaki is **GRANTED**.

The application has an international filing date of 17 August 2001 under 35 U.S.C. 363 and will be given a date of **01 April 2004** under 35 U.S.C. 371 (c)(1), (c)(2) and (c)(4).

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for further processing in accordance with this decision.

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J 9 MAR 2004

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One Metropolitan Square, 16th Floor
St. Louis, MO 63102

In re Application of MOSKOWITZ	:	
U.S. Application No.: 10/344,908	:	
PCT Application No.: PCT/US01/24985	:	
Int. Filing Date: 09 August 2001	:	DECISION
Priority Date Claimed: 09 August 2000	:	
Attorney Docket No.: DZG 2187.2	:	
For: VHL PROMOTER DIAGNOSTIC POLYMORPHISM	:	

This is in response to applicant's "Petition Under 37 CFR 1.181 to Withdraw Holding of Abandonment" filed 02 March 2004.

BACKGROUND

On 09 August 2001, applicant filed international application PCT/US01/24985, which claimed priority of an earlier United States application filed 09 August 2000. The thirty-month period for paying the basic national fee in the United States expired on 09 February 2003.

International application PCT/US01/24985 became abandoned as to the United States for failure to timely pay the basic national fee.

On 14 February 2003, applicant filed a petition under 37 CFR 1.137(b).

On 29 July 2003, this office mailed a decision granting the 14 February 2003 petition.

On 05 August 2003, applicant filed a petition under 37 CFR 1.47(b).

On 11 August 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), which indicated that an oath or declaration in compliance with 37 CFR 1.497 is due.

On 05 September 2003, this Office mailed a decision dismissing the 05 August 2003 petition.

On 16 December 2003, applicant purportedly filed a renewed petition under 37 CFR 1.47(b).

On 19 February 2004, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned for failure to timely respond to the 05 September 2003 decision.

On 02 March 2004, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

I. Petition Under 37 CFR 1.181

The evidence of record is sufficient to establish that the renewed petition was originally filed on 16 December 2003. Specifically, the copy of the return postcard, which includes the renewed petition in its itemized contents and which bears a USPTO date stamp of 16 December 2003, serves as *prima facie* evidence that the renewed petition was received by the USPTO on 16 December 2003.

II. Renewed Petition Under 37 CFR 1.47(b)

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the 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 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. See 37 CFR 1.47(b).

Petitioner has previously satisfied items (1), (2), (3), (5), and (6) above.

With regard to item (4) above, the requisite declaration has been submitted.

CONCLUSION

For the reasons set forth in §I above, the petition under 37 CFR 1.181 is GRANTED.

For the reasons set forth in §II above, the renewed petition under 37 CFR 1.47(b) is GRANTED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 19 February 2004 is hereby VACATED.

This application has an international filing date of 09 August 2001 and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 16 December 2003.

As set forth in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

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

09 MAR 2004

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David Moskowitz
518 Bonhomme Woods Drive
St. Louis, MO 63132

In re Application of MOSKOWITZ
U.S. Application No.: 10/344,908
PCT Application No.: PCT/US01/24985
Int. Filing Date: 09 August 2001
Priority Date Claimed: 09 August 2000
For: VHL PROMOTER DIAGNOSTIC POLYMORPHISM

Dear David Moskowitz:

You are named as the inventor in the above-captioned United States national stage 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 the inventor.

As the named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 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 choose 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.

Respectfully

Bryan Tung
PCT Legal Examiner
PCT Legal Office
Telephone: 703-308-6614
Facsimile: 703-308-6459

Edward J. Hejlek
Senniger, Powers, Leavitt & Roedel
One Metropolitan Square, 16th Floor
St. Louis, MO 63102

Attorney Docket No.: DZG 2187.2

29 JUL 200

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In re Application of MOSKOWITZ	:	
U.S. Application No.: 10/344,908	:	
PCT Application No.: PCT/US01/24985	:	
Int. Filing Date: 09 August 2001	:	DECISION
Priority Date Claimed: 09 August 2000	:	
Attorney Docket No.: DZG 2187.2	:	
For: VHL PROMOTER DIAGNOSTIC	:	
POLYMORPHISM	:	

This is in response to applicant's "Petition for Revival an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 14 February 2003.

BACKGROUND

On 09 August 2001, applicant filed international application PCT/US01/24985, which claimed priority of an earlier United States application filed 09 August 2000. The thirty-month period for paying the basic national fee in the United States expired on 09 February 2003.

International application PCT/US01/24985 became abandoned as to the United States for failure to timely pay the basic national fee.

On 14 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 filed.

Bryan Tung
PCT Legal Examiner
PCT Legal Office

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05 SEP 20

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In re Application of MOSKOWITZ	:	
U.S. Application No.: 10/344,908	:	
PCT Application No.: PCT/US01/24985	:	
Int. Filing Date: 09 August 2001	:	DECISION
Priority Date Claimed: 09 August 2000	:	
Attorney Docket No.: DZG 2187.2	:	
For: VHL PROMOTER DIAGNOSTIC	:	
POLYMORPHISM	:	

This is in response to applicant's "Petition for Filing of Patent Application When Inventor Refuses to Execute Papers Under 37 CFR § 1.47(b)" filed 05 August 2003.

BACKGROUND

On 09 August 2001, applicant filed international application PCT/US01/24985, which claimed priority of an earlier United States application filed 09 August 2000. The thirty-month period for paying the basic national fee in the United States expired on 09 February 2003.

International application PCT/US01/24985 became abandoned as to the United States for failure to timely pay the basic national fee.

On 14 February 2003, applicant filed a petition under 37 CFR 1.137(b).

On 29 July 2003, this office mailed a decision granting the 14 February 2003 petition.

On 05 August 2003, applicant filed the present petition under 37 CFR 1.47(b).

On 11 August 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), which indicated that an oath or declaration in compliance with 37 CFR 1.497 is due.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the 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 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. See 37 CFR 1.47(b).

With regard to item (1) above, the requisite fee has been provided.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

> Where a refusal 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.
>
> Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.
>
> When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.
>
> 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 affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, 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 affidavit or declaration.

The petition states that David Moskowitz refuses to sign the application papers. Petitioner has sufficiently shown that a bona fide attempt was made to present a copy of the application papers to Moskowitz for signature (see affidavit of Joel Schwarz, ¶2). Furthermore, petitioner has adequately demonstrated Moskowitz refuses to sign. Specifically, Moskowitz made an express oral refusal to execute the application papers during a telephone conversation with Lee Henderson (see Henderson's affidavit, ¶5). Therefore, it would be reasonable to conclude that Moskowitz refuses to join in the application.

With regard to item (3) above, the petition states the last known address of the nonsigning inventor.

With regard to item (4) above, the declaration submitted with the petition is improper. Specifically, Lee Henderson is improperly listed as the inventor.

With regard to item (5) above, the 37 CFR 1.47(b) applicant must prove that, as of the date the application was deposited in the Patent and Trademark Office, (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 filing of the application. MPEP 409.03(f).

In the present case, item (A) above applies. Petitioner has submitted documentary evidence of a chain of title from the original owner David Moskowitz to the assignee Viral Therapeutics, Inc.

With regard to item (6) above, petitioner has made an adequate showing that granting of the petition is necessary to preserve the rights of the parties or to prevent irreparable harm.

CONCLUSION

Because petitioner has failed to satisfy item (4) above, the petition under 37 CFR 1.47(b) is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file a proper response will result in ABANDONMENT of the application. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)". No additional petition fee is required.

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

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PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/344920

Paper No.: ____

DATE : 1/30/06

TO SPE OF : ART UNIT 3643

SUBJECT : Request for Certificate of Correction on Patent No.: 6948449 B2

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

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

Virginia Tolbert

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 113

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

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

Comments:

TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER

SPE

3643
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/10/2008

TO SPE OF : ART UNIT 2600 (2621)

SUBJECT : Request for Certificate of Correction on Patent No.: 7,342,966

10/844923

Attn: Erick Rekstad

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

Please complete this form and forward within 7 days to: Scanning customer Support

Send copy also via PTO mail to:
Certificates of Correction Branch – 2900 South Tower 9A39A
Palm location 7580 - Tel. No. 308-8309

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

*Ok to enter References (Other Pubs) Item (56) as requested in COCIN?.

Thank You For Your Assistance

Ernest C. White, LIE - 308-9390x122
Certificates of Correction Branch

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

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

Comments:

None

THAI Q. TRAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

A.U. 2621

PTOL-308 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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CARELLA, BYRNE, BAIN, GILFILLAN, CECCHI,
STEWART & OLSTEIN
5 BECKER FARM ROAD
ROSELAND, NJ 07068

COPY MAILED
DEC 12 2006
OFFICE OF PETITIONS

In re Application of	:	
Adolf Bernds, et al.	:	
Application No. 10/344,926	:	ON PETITION
Filed: July 25, 2003	:	
Attorney Docket No. 411000-133	:	

This is a decision on the petition, filed May 30, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to the Office action under Ex parte Quale, 1935 Dec. Comm'r Pat. 11 (1935) mailed November 3, 2005. A Notice of Abandonment was mailed on June 2, 2006.

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

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the requisite issue/publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay[3].

---

[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.

[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. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The application file is being forwarded to Technology Center AU 2811 for consideration of the amendment filed May 30, 2006.

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.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

#4

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2 5 AUG 2003

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

In re Application of STEINMEYER et al. Application No.: 10/344,943 PCT No.: PCT/DE01/02977 Int. Filing Date: 03 August 2001 Priority Date: 16 August 2000 Attorney Docket No.: 1454-1401 For: SUPRACONDUCTOR DEVICE COMPRISING A COOLING UNIT FOR COOLING A ROTATING SUPRACONDUCTIVE COIL	DECISION on COMMUNICATION

This is a decision on applicant's "Communication" filed in the United States Patent and Trademark Office (USPTO) on 21 May 2003.

BACKGROUND

On 03 August 2001, applicant filed international application No. PCT/DE01/02977 which claimed a priority date of 16 August 2000. A copy of the international application had been communicated earlier to the United States Patent and Trademark Office from the International Bureau on 21 February 2002.

On 06 March 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 18 February 2003 (16 February 2003 was a Sunday and 17 February 2003 was a federal holiday).

On 19 February 2003, one day after the expiration of the thirty month period, applicant filed a transmittal letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the basic national fee and an English translation of the international application.

On 05 May 2003, although the application was abandoned for failure to pay the basic national fee by the thirty month deadline, the DO/EO/US mailed 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 the $130 surcharge for filing the oath or declaration after the thirty month period was required.

On 21 May 2003, a response to the Notification of Missing Requirements was filed along with a combined declaration/power of attorney.

DISCUSSION

Applicant's request for entry into the national stage failed to provide payment of the basic national fee by the 30 month deadline or by 18 February 2003. Pursuant to 35 U.S.C. 371 and 37 CFR 1.495(b) and (h), the application is abandoned for failure to pay the basic national fee by the 30 month deadline.

Applicant is also advised that the declaration submitted on 21 May 2003 is unacceptable as filed. A review of the declaration/power of attorney indicates that the declaration contains two identical sheets of pages 3 and 4. One page 3 and page 4 is signed by two of the named inventors. The second page 3 and 4 is executed by the legal representatives of the deceased inventor, Elmar Trautenberg. It appears that the attorney either pieced together two separate complete declarations into one composite declaration or that the legal representatives were presented with an incomplete declaration. What is required is one declaration where all inventors have signed or two separate complete declarations. Thus, the requirements of 37 CFR 1.497 have not been met and the declaration is unacceptable.

CONCLUSION

The application is ABANDONED for failure to pay the basic national fee by the expiration of the time period.

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.

The application will be forwarded to the U.S. Designated/Elected Office for issuance of a Notification of Abandonment (Form PCT/DO/EO/909) indicating the failure to pay the basic national fee by the expiration of the time period.

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (703) 306-5467

#9

30 MAR 2006

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

In re Application of STEINMEYER et al. Application No.: 10/344,943 PCT No.: PCT/DE01/02977 Int. Filing Date: 03 August 2001 Priority Date: 16 August 2000 Attorney Docket No.: 1454-1401 For: SUPRACONDUCTOR DEVICE COMPRISING A COOLING UNIT FOR COOLING A ROTATING SUPRACONDUCTIVE COIL	DECISION on COMMUNICATION

This is a decision on applicant's "Response to Decision on Communication" filed in the United States Patent and Trademark Office (USPTO) on 08 September 2003 and "Response to Notification of Abandonment" filed on 25 September 2003.

BACKGROUND

On 03 August 2001, applicant filed international application No. PCT/DE01/02977 which claimed a priority date of 16 August 2000. On 06 March 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 19 February 2003 (16 February 2003 was a Sunday; 17 February and 18 February 2003 were federal holidays).

On 19 February 2003, applicant filed a transmittal letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the basic national fee and an English translation of the international application.

On 05 May 2003, the DO/EO/US mailed 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 the $130 surcharge for filing the oath or declaration after the thirty month period was required.

On 21 May 2003, a response to the Notification of Missing Requirements was filed along with a combined declaration/power of attorney.

On 23 August 2003, a decision on the submission was mailed advising applicant that the international application was abandoned for failure to pay the basic national fee by the thirty month period because the payment of the basic national fee was due on 18 February 2003. The decision also noted that the declaration submitted on 21 May 2003 was unacceptable as it appeared to be a composite declaration.

On 03 September 2003, a Notification of Abandonment was mailed to applicant.

On 08 September 2003, applicant filed a Response to the Decision on Communication indicating that 18 February 2003 was a federal holiday and thus, the application should not be considered abandoned.

On 23 September 2003, applicant filed a Response to Notification of Abandonment, refiling a copy of the 08 September 2003 submission and requesting withdrawal of the abandoned status.

DISCUSSION

A review of the Official Gazette Notice dated 25 March 2003 states that the United States Patent and Trademark Office was officially closed on Tuesday, February 18, 2003 and considered a federal holiday within the District of Columbia under 35 U.S.C. 21 and 37 CFR 1.6, 1.7 and 1.9. Accordingly, an action or fee due on 18 February 2003 will be considered as timely for the purposes of, fee paid, on the next succeeding business day on which the USPTO was open, that is, Wednesday, 19 February 2003.

The thirty month deadline for filing a National stage application expired at midnight 16 February 2003. Since 16 February 2003 was a Sunday and 17 February and 18 February 2003 were federal holidays, the fee was to be paid on the "next succeeding business day which was not a Saturday, Sunday or federal holiday" or on 19 February 2003. On 19 February 2003, applicant timely filed a transmittal letter to the USPTO requesting entry into the U.S. national stage along with payment of the basic national fee. Pursuant to 37 CFR 1.7(a), the request for entry and payment of basic national fee was timely filed and thus, the application was not abandoned for failure to pay the basic national fee by the 30 month deadline. Therefore, the Notification of Abandonment mailed on 03 September 2003 is hereby VACATED.

A review of the declarations submitted on 08 September 2003 reveals that they are in compliance with 37 CFR 1.497(a) and (b) and are acceptable.

CONCLUSION

The Notification of Abandonment mailed on 03 September 2003 is **VACATED**. U.S. application 10/344,943 is the national stage filing of PCT/DE01/02977.

The application will be forwarded to the U.S. Designated/Elected Office for further processing. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is 08 September 2003.

Cynthia M. Kratz
Attorney Advisor
PCT Legal Office
Office of PCT Legal Administration

Telephone: (571)272-286

24 MAR 2004

#7

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Leandro Arechederra
ExxonMobil Chemical Company
P.O. Box 2149
Baytown, Texas 77522-2149

In re Application of	:	
LIN et al.	:	
Application No.: 10/344,952	:	
PCT No.: PCT/US01/26191	:	DECISION
Int. Filing Date: 22 August 2001	:	
Priority Date: 22 August 2000	:	
Attorney Docket No.: 2001B006A	:	
For: POLYPROOYLENE POLYMERS		

This decision is in response to applicants' "Communication" filed 05 March 2004 which being treated as a petition under 37 CFR 1.182. Applicants are requesting to change the name of the fourth named inventor from Susan C. Chien to Susan Chia-Yi Yeh due to marriage. The petition fee will be charged to Deposit Account no. 05-1715, as authorized.

BACKGROUND

On 22 August 2001, applicants filed international application PCT/US01/26191 which claimed a priority date of 22 August 2000. The international application named Chon-Yie Lin; Michael C-C Chen; Bernard Bossaert; and Susan C. Chien as applicants/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 22 February 2003.

On 18 February 2003, applicants filed a transmittal letter for entry into the national stage accompanied by, *inter alia:* the requisite basic national fee; a copy of the international application; and a preliminary amendment.

On 02 June 2003, the United Stated Designated/Elected Office mailed 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) must be filed. The notification set a two-month time limit in which to respond.

On 08 July 2003, applicants filed a declaration executed by: Chon-Yie Lin; Michael C-C Chen; Bernard Bossaert; and Susan Chia-Yi Yeh (formerly Chien).

On 12 October 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the declaration was defective Susan Chia-Yi Yeh was not listed on the international application.

On 05 March 2003, applicants filed the present communication.

DISCUSSION

Applicants state in the present communication that "enclosed is the documentation to support the name change of the inventor Susan Chia-Yi Yeh (formerly Chien.)" 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 (1) the appropriate petition fee and (2) an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or a certified copy of the court order. In this case, applicant has provided a copy of marriage certificate for Steven Yeh and Susie C. Chien, however, the copy of a marriage certificate for religious purposes provided is not a certified copy of a court order changing the name of applicant. Therefore, item (2) has not been satisfied, and thus the petition may not be properly granted at this time.

CONCLUSION

For the reasons above, the petition 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 1.182". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

A proper response must include an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or a certified copy of the court order.

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: (703) 308-6314
Fax: (703) 308-6459

30 APR 2004

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#9

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Leandro Arechederra
ExxonMobil Chemical Company
P.O. Box 2149
Baytown, Texas 77522-2149

In re Application of	:	
LIN et al.	:	
Application No.: 10/344,952	:	
PCT No.: PCT/US01/26191	:	DECISION
Int. Filing Date: 22 August 2001	:	
Priority Date: 22 August 2000	:	
Attorney Docket No.: 2001B006A	:	
For: POLYPROPYLENE POLYMERS		

This is a decision on applicants' "Renewed Petition under 37 CFR 1.182" filed in the Patent and Trademark Office (PTO) on 19 April 2004. Applicants are requesting to change the name of the fourth-named inventor from Susan C. Chien to Susan Chia-Yu Yeh due to marriage. The petition was accompanied by an affidavit signed by Susan Chia-Yu Yeh using both her former name and present name. The $130 petition fee has been submitted.

DISCUSSION

The Manual of Patent Examining Procedure at § 605.04(c) requires in instances where an inventor has changed his or her name after the application has been filed to submit a petition under 37 CFR 1.182. The petition must include (1) the appropriate petition fee and (2) an affidavit signed with both names setting forth the procedure whereby the change of name was effected, or a certified copy of the court order. The petition has been reviewed and is approved. The declaration submitted on 08 July 2003 is accepted.

CONCLUSION

The petition under 37 CFR 1.182 to change the inventor's name from Susan C. Chien to Susan Chia-Yu Yeh is **GRANTED**. This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (703) 308-6314
Fax: (703) 308-6459

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,830,173	2004-12-14	10/344,968	2003-02-18	SEN0524.US

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	/Fred Gribbell/	Date (YYYY-MM-DD)	2010-05-14
Name	Frederick H. Gribbell	Registration Number	33892

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 6830173
Issue Date: December 14,2004
Application No. 10344968
Filed: February 18,2003
Attorney Docket No. 300.1

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

This is a decision on the electronic petition, filed May 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 May 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.

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

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EDWIN D. SCHINDLER
FIVE HIRSCH AVENUE
P.O. BOX 966
CORAM NY 11727-0966

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JUN 19 2007

OFFICE OF PETITIONS

In re Application of :
Dobson :
Application No. 10/344,974 :
Filed: May 1, 2003 :
Attorney Docket No. N/A :
For: METHOD AND APPARATUS FOR DISPENSING MEDICATION

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on January 31, 2007, to revive the above-identified application.

This application became abandoned for failure to timely respond to the final Office action mailed July 19, 2005, which set an extendable three month period for reply. No extension of time being obtained, this application became abandoned on October 20, 2005 for failure to reply. A Notice of Abandonment was mailed on February 8, 2006.

Applicant has submitted a proper reply to the July 19, 2005 final Office action in the form of a RCE and required fee and amendment, an acceptable statement of the unintentional nature of the delay in responding to the July 19, 2005 final Office action, and the $750.00 petition fee.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 3725 for consideration of the RCE and amendment filed on January 31, 2007.

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

30 NOV 2004

#14

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26389
CHRISTENSEN O'CONNER JOHNSON KINDNESS
1420 Fifth Avenue, Suite 2800
Seattle, WA 98101

In re Application of :
VAN DER VALK *et al* :
U.S. Application No.: 10/344975 :
PCT No.: PCT/EP01/09570 :
Int. Filing Date: 16 August 2001 : **DECISION**
Priority Date: 18 August 2000 :
Attorney Docket No.: ARNO120591 :
For: INHIBITION OF GENERATIVE :
PROPAGATION IN GENETICALLY :
MODIFIED GRASSES :

This is a decision on the "Response to Notification of Defective response Abandonment" filed 01 July 2004 and "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(B)" filed on 07 September 2004.

BACKGROUND

On 06 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 computer readable form (CRF) sequence listing diskette, a declaration in compliance with 37 CFR 1.497(a) and (b) and a $130.00 surcharge fee was required. A two-month time period for response was set with extensions of time available.

On 24 July 2003, applicants filed a "Response to Notice of Missing Requirements" which was accompanied by, *inter alia*, a declaration, the $130.00 surcharge and a CRF sequence listing diskette.

On 08 September 2003, the DO/EO/US mailed a Notification of a Defective Response (Form PCT/DO/EO/916) indicating that the CRF sequence listing diskette submitted on 24 July 2003 was defective. The Raw Sequence Listing Error Report from the Scientific and Technical Information Center (STIC) indicated that a corrected diskette was required.

On 01 October 2003, applicants filed a "Response to Notification of Defective Response" with a CRF sequence listing diskette.

On 09 February 2004, the DO/EO/US mailed a Notification of Defective

Response Abandonment (Form PCT/DO/EO/918) because a proper response to the Form PCT/DO/EO/905 mailed 06 June 2003 was not received within the time period set.

On 09 April 204, the Raw Sequence Listing Error Report from the STIC detected more errors.

On 01 July 2004, applicants filed a "Response to Notification of Defective Response Abandonment" along with a substitute CRF sequence listing diskette.

On 07 September 2004, applicants submitted the instant petition to revive which was accompanied by, *inter alia*, a substitute CRF sequence listing diskette with this petition.

DISCUSSION

Petition to Withdraw the Holding of Abandonment

In the response filed 01 July 2004, applicants argue pursuant to 35 CFR 1.135(c) that when a reply is a *bona fide* attempt to advance an application, and is substantially a complete reply to the Office action, but consideration of some matter or compliance has been inadvertently omitted, the applicant is normally given a new time period for reply. Applicants contend that the 01 October 2003 response was a bona fide attempt to advance the above-captioned application and was a complete reply apart from an inadvertent error in the sequence listing.

Applicants' argument is not persuasive. As indicated in the Code of Federal Regulations, authority for 37 CFR 1.135 is under 35 U.S.C. 133. The setting of time periods in applications filed under 35 U.S.C. 371 prior to completion of the requirements under 35 U.S.C. 371(c) is authorized under 35 U.S.C. 371(d), not 35 U.S.C. 133.

In addition, the Form PCT/DO/EO/916 mailed 08 September 2003 clearly indicated that a proper response was due within one month from the date of the Form PCT/DO/EO/916 or within the time period given in the Form PCT/DO/EO/905 mailed 06 June 2003, whichever is longer. Applicants were previously notified that the CRF diskette submitted 24 July 2003 was defective. No extensions of time were warranted.

Petition to Revive Under 37 CFR 1.137(b)

A petition to revive an application on the grounds of unintentional delay pursuant to 37 CFR 1.137(b) must be accompanied by: (1) a proper reply; (2) the requisite petition fee; (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was

unintentional; and (4) any required terminal disclaimer.

The petition fee of $1,330.00 has been paid. Applicants state that "[t]he entire delay in filing the required response from the due date for the required response until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3). A terminal disclaimer is not required. Accordingly, items (2), (3) and (4) of 37 CFR 1.137(b) have been satisfied.

However, a proper reply in the above-captioned application is to satisfy the Notification of Missing Requirements mailed 06 June 2003. Applicants filed a substitute computer readable form sequence listing containing no errors with the instant petition. But a review of the declaration filed on 24 July 2003 shows that it is not in compliance with 37 CFR 1.497(a) and (b).

Applicants submitted what appears to be four different declarations. 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. There is no indication whether the inventors were aware that any other inventor was claimed on the above-captioned application except as listed on the page they signed. The inventors are not listed together and there are no page numbers on the pages submitted. Thus, the declaration submitted is <u>not</u> in compliance with 37 CFR 1.497(a)(3) in that it does not properly identify each inventor. Therefore, item (1) of 37 CFR 1.137(b) is not yet satisfied.

All of the requirements of 37 CFR 1.137(b) are incomplete.

<u>CONCLUSION</u>

For the reasons discussed above, applicants' petition to withdraw the holding of abandonment and petition revive under 37 CFR 1.137(b) are both **<u>DISMISSED</u>** without prejudice.

The application remains **<u>ABANDONED</u>**.

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. A proper response requires submitting a declaration in compliance with 37 CFR 1.497(a) and (b). Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia

22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302

22 MAR 2005

#16

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In re Application of
VAN DER VALK *et al*
U.S. Application No.: 10/344,975
PCT No.: PCT/EP01/09570
Int. Filing Date: 16 August 2001
Priority Date: 18 August 2000
Attorney Docket No.: ARNO120591
For: INHIBITION OF GENERATIVE PROPOGATION IN GENETICALLY MODIFIED GRASSES

DECISION ON PETITION FOR REVIVAL UNDER 37 CFR 1.137(b)

Applicants' "Request for Reconsideration of Decision on Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b)" filed on 01 February 2005 is hereby **GRANTED** as follows:

A declaration in compliance with 37 CFR 1.497(a) and (b) was submitted as the proper reply satisfying item (1) of 37 CFR 1.137(b). All other items were previously satisfied in the prior petition on 07 September 2004. Accordingly, all requirements under 37 CFR 1.137(b) are now satisfied.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 16 August 2001, under 35 U.S.C. 363 and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 01 February 2005.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

James Thomson

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302

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10 APR 2007

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In re Application of	:	
VAN DER VALK *et al*	:	
U.S. Application No.: 10/344,975	:	
PCT No.: PCT/EP01/09570	:	
Int. Filing Date: 16 August 2001	:	**DECISION**
Priority Date: 18 August 2000	:	
Attorney Docket No.: ARNO120591	:	
For: GRASSES EXPRESSING AtH1	:	
EXHIBIT DELAYED HEADING AND	:	
REDUCED INFLORESCENCES (AS	:	
AMENDED)	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed 03 May 2006.

The petition is **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition 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). The petition under 37 CFR 1.78(a)(3) must be accompanied by:

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

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference that the application is a continuation-in-part to the

prior-filed nonprovisional application, *i.e.*, U.S. Application No. 09/423,575, has been included in the Supplemental Application Data Sheet provided with the petition; (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.

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 this application is entitled to the benefit of the earlier filing date.

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

This matter is being referred to Technology Center Art Unit 1638 for appropriate action on the amendment filed 03 May 2006, 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.

Any questions concerning this decision may be directed to James Thomson at (571) 272-3302.

Boris Milef
Legal Examiner
Office of Petitions and PCT Legal Administration

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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/344,975	07/24/2003	1638	1300	ARNO120591	35	1

CONFIRMATION NO. 7870

CORRECTED FILING RECEIPT

OC000000023318044

26389
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

Date Mailed: 04/10/2007

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)

Pieter Van Der Valk, Rilland, NETHERLANDS;
Cornelius M.P. Van Dun, Roosendaal, NETHERLANDS;
Sjec C.M. Smeekens, Driebergen, NETHERLANDS;
Marcel C.G. Proveniers, Utrecht, NETHERLANDS;

Power of Attorney: The patent practitioners associated with Customer Number **26389**.

Domestic Priority data as claimed by applicant

This application is a 371 of PCT/EP01/09570 08/16/2001
which claims benefit of 60/226,422 08/18/2000
and claims benefit of 60/253,274 11/27/2000
and claims benefit of 60/253,327 11/27/2000
and claims benefit of 60/300,220 06/22/2001
This application 10/344,975
is a CIP of 09/423,575 01/27/2000 PAT 6,864,051
which is a 371 of PCT/IB98/00821 05/14/1998

Foreign Applications

UNITED KINGDOM 9709789.3 05/14/1997
UNITED KINGDOM 9727458.3 12/30/1997

If Required, Foreign Filing License Granted: 04/10/2007

The country code and number of your priority application, to be used for filing abroad under the Paris

Convention, is US10/344,975

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Inhibition of generative propagation in genetically modified grasses

Preliminary Class

800

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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

GRANTED

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

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

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

NOT GRANTED

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

27 APR 2004

#6

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Julian F. Santos
Mc Donnell Boehnen Hulbert & Berghoff
300 South Wacker Drive
Suite 3200
Chicago, Illinois 60606

In re Application of Bromley, et al. Application No.: 10/344,976 PCT No.: PCT/US01/24616 Int. Filing Date: 06 August 2001 Priority Date: 18 August 2000 Attorney's Docket No.: 03-089-L For: SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR REMOTE VEHICLE DIAGNOSTICS, MONITORING AND REPROGRAMMING	DECISION ON PETITION UNDER 37 CFR 1.47(a)

This is a decision in response to the "PETITION UNDER 37 CFR §1.47(a) TO ALLOW SIGNATURE ON GEHALF OF INVENTORS WHO REFUSE TO SIGN" filed on 10 November 2003. The $130 petition fee has been paid.

BACKGROUND

On 06 August 2001, applicants filed international application PCT/CA01/01318 that claimed priority of an earlier United States application filed 18 August 2000. 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. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 18 February 2003.

On 18 February 2003, applicants 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 and the basic national fee of $900 as required by 35 U.S.C. 371(c). These papers were assigned application number 10/344,976.

On 05 June 2003, the United States Patent and Trademark Office in its capacity as an Elected Office mailed the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration. The notification set a two-month time period in which to respond.

In order to satisfy the requirements of 35 U.S.C. 371(c)(4), on 10 November 2003, applicants filed the following papers:

1) a Response to Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) including a Petition under 37 CFR 1.47(a);

2) the required petition fee;

3) a three month extension of time fee;

3) signed statement by Julian F. Santos;

4) a declaration signed by inventors William Bromley, Brian Carl, Brian Crull, and Dennis Essenmacher on behalf of inventors Andrew Ditchfield, Michael Kapolka and Sam Chang.

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, 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 inventor. The petition is missing item (2) above.

With respect to item (1), applicant included the $130 petition fee.

With respect to item (2), Mr. Santos indicated that inventors Ditchfield, Kapolka and Chang all received a full set of application papers. Further, inventors Chang and Kapolka both stated that they would not sign the application papers. Further, inventor Ditchfield accepted delivery of the application papers on two occasions, but has not returned phone calls regarding this application. It is clear that inventors Ditchfield, Kapolka and Chang are refusing to sign the declaration.

With respect to item (3), applicant provided inventor Ditchfield's, Kapolka's and Chang's last known address. With respect to item (4), applicant provided a declaration signed by inventors William Bromley, Brian Carl, Brian Crull, and Dennis Essenmacher on behalf of inventors Andrew Ditchfield, Michael Kapolka and Sam Chang.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is **GRANTED**.

The Application Division and the International Division are authorized to accept the application as a 37 CFR 1.47(a) application and to mail a filing receipt. The application will be given an international filing date of 06 August 2001 under 35 U.S.C. 363, and a date of 10 November 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 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.

The application is being returned to the International Division for processing as the U.S. National Stage of the above-identified international application.

Debra Brittingham
PCT Legal Office
DSB/LS:dsb

Tel: (703) 305-3401
Fax: (703) 308-6459

Conferee: Leonard Smith
PCT Legal Examiner
PCT Legal Office

27 APR 2004

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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 all inventors. The petition has been granted. A notice has been sent to the last known address of the non-signing inventors. The inventors whose signatures are missing (Andrew Ditchfield, Michael Kapolka and Sam Chang) 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/US01/24616 and was filed on 19 September 2001 in the names of William Bromley, Brian Carl, Brian Crull, Dennis Essenmacher, Andrew Ditchfield, Michael Kapolka and Sam Chang for the invention entitled SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR REMOTE VEHICLE DIAGNOSTICS, MONITORING AND REPROGRAMMING. The national stage application number is 10/344,976 and has a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 10 November 2003.

27 APR 2004

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Andrew Ditchfield
29361 Tonester Circle
New Hudson, MI 48165

In re Application of: Bromley, et al.
Application No.: 10/344,976
PCT No.: PCT/US01/24616
Int. Filing Date: 06 August 2001
Attorney's Docket No.: 03-089-L
For: SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR REMOTE VEHICLE DIAGNOSTICS, MONITORING AND REPROGRAMMING.

Dear Mr. Chang:

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.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

Debra S. Brittingham
PCT Legal Examiner
Telephone: (703) 308-3401
Facsimile: (703) 308-6459

Counsel of Record: Julian F. Santos
Mc Donnell Boehnen Hulbert & Berghoff
300 South Wacker Drive
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Chicago, Illinois 60606

26 NOV 2004

#12

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Karen Blochlinger, Ph.D
Christensen O'Connor Johnson Kindness, PLLC
1420 Fifth Avenue, Suite 2800
Seattle, Washington 98101

In re Application of VAN DER VALK, et al. Application No.: 10/344,977 PCT No.: PCT/EP01/09572 Int. Filing Date: 16 August 2001 Priority Date: 18 August 2000 Atty. Docket No.: ARNO120594 For: INHIBITION OF GENERATIVE PROPAGATION IN GENETICALLY MODIFIED HERBICIDE RESISTANT GRASSES	DECISION ON PETITION UNDER 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 07 September 2004 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the required response from the due date for the required response until the filing of a grantable petition under 37 CFR § 1.137(b) was unintentional" and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has now provided a complaint sequence listing in response to the Form PCT/DO/EO/905. 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. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

The application has an international filing date of 16 August 2001 under 35 U.S.C. 363 and will be given a date of **26 June 2003** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3294
Fax: (571) 273-0459

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MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

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JUL 09 2007

OFFICE OF PETITIONS

In re Application of
Jurgen GRAF, et al
Application No. 10/344,996
Filed: February 20, 2003
Attorney Docket No. 449122052000

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 17, 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 with customer No. 25227.

All attorneys/agents associated with Customer Number 25227 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

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

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

There is an outstanding Office action mailed March 7, 2007 that requires a reply by the applicant.

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

April Wise
Petitions Examiner
Office of Petitions

cc: JURGEN GRAF
WEISSER WEG 34
89143 BLAUBEUREN
GERMANY

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

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/344,996	02/20/2003	Jurgen Graf	449122052000

CONFIRMATION NO. 5444

OC000000024513716

25227
MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

Date Mailed: 06/25/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/17/2007.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

Diane Goodlyn

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
FORMER ATTORNEY/AGENT COPY

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

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APR 1 2 2007

OFFICE OF PETITIONS

In re Application of :
Brown, et al. :
Application No. 10/345,002 :
Filed: January 14, 2003 :
Attorney Docket No. 000029D1 :
For: METHOD AND APPARATUS FOR EFFICIENT DATA TRANSMISSION CONTROL IN A WIRELESS VOICE-OVER-DATA COMMUNICATION SYSTEM

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on February 9, 2007, to revive the above-identified application.

This application became abandoned for failure to timely respond to the final Office action mailed June 10, 2005, which set an extendable three month period for reply. Accordingly, this application became abandoned on September 11, 2005. A Notice of Abandonment was mailed on January 22, 2007.

Applicants have submitted a RCE and required fee and amendment in reply to the June 10, 2005 final Office action, an acceptable statement of the unintentional nature of the delay in responding to the June 10, 2005 final Office action, and the petition fee.

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

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 2188 for consideration of the RCE and amendment filed on February 9, 2007.

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 04/29/2010

Applicant	: James M. Brown	: DECISION ON REQUEST FOR
Patent Number	: 7609716	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/345,002	: 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 **693** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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Paper No. 8

ALFRED E. MANN FOUNDATION FOR
SCIENTIFIC RESEARCH
PO BOX 905
SANTA CLARITA CA 91380

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JUN 1 8 2003

OFFICE OF PETITIONS

In re Application of
Fey, et al.
Application No. 10/345,013
Filed: March 12, 2003
Attorney Docket No. A285-USA
FOR: SPACE-SAVING PACKAGING OF
ELECTRONIC CIRCUITS

ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed March 12, 2003, requesting that the Office accord Figure 6 a filing date of January 15, 2003. In the alternative, petitioners request that the Office accord Figure 6 a filing date of March 12, 2003, which was the date that Figure 6 was filed in the Office.

The petition to accord Figure 6 and the above-identified application a filing date of March 12, 2003 is **GRANTED**.

The application was filed on January 15, 2003. On March 6, 2003, the Office mailed a Notice of Omitted Item(s) in a Nonprovisional Application (Notice) informing petitioners that Figure 6 described in the specification appeared to have been omitted.

Petitioners do not argue that Figure 6 was filed with the application papers on March 12, 2003. Instead, petitioners argue that since Figure 6 was available at the time or mailing and was in fact mailed in the associated PCT application (PCT/US03/01277) on the same date, that upon petition, the Office may incorporate Figure 6 from the concurrently filed PCT application into the above-identified application.

There is no incorporation by reference statement found in the transmittal letter or in the specification of the above-identified application. The fact that the same drawing is found in the concurrently filed PCT case has no impact on what was filed in the above-identified application.

The petition to accord a filing date of January 15, 2003 to the above-identified application with Figure 6 considered part of the application is dismissed.

In the alternative, petitioners request that the above-identified application be accorded a filing date as of the date of submission of omitted Figure 6. Petitioners submitted a petition under 37 CFR 1.182, including Figure 6, the petition fee, and a newly executed supplemental declaration on March 12, 2003.

The petition to accord a filing date of March 12, 2003 is granted.

After the mailing of this decision, the application file will be returned to the Office of Initial Patent

Examination (OIPE) for further processing with a filing date of March 12, 2003. OIPE will mail a replacement filing receipt in due course.

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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P.O. Box 1450
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MARK D MILLER
KIMBLE, MACMICHAEL & UPTON
5260 NORTH PALM AVENUE, SUITE 221
FRESNO, CA 93704

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JUL 24 2009

OFFICE OF PETITIONS

In re Application of	:	
Galip TALEGON	:	
Application No. 10/345,026	:	DECISION ON PETITION TO
Filed: January 14, 2003	:	WITHDRAW FROM RECORD
Attorney Docket No. **10142.00.USU01**	:	

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 30, 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 Marcus N. DiBudo on behalf of all attorneys of record. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future communications from the Office will be directed to the sole named signing inventor at the address below until otherwise properly notified by the applicant.

There is an outstanding Office action mailed March 17, 2009 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: **GALIP TALEGON**
365 NORTH PEARSON DRIVE, SUITE 6
PORTEVILLE, CA 93257

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MARK D MILLER
KIMBLE, MACMICHAEL & UPTON
5260 NORTH PALM AVENUE
SUITE 221
FRESNO CA 93704

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APR 15 2010

OFFICE OF PETITIONS

In re Application of	:	
Galip Talegon	:	DECISION ON PETITION
Application No. 10/345,026	:	TO WITHDRAW
Filed: January 14, 2003	:	FROM RECORD
Attorney Docket No. 10142.00.USU01	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 19, 2010.

The request is **APPROVED**.

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

The request was signed by Marcus N. DiBuduo on behalf of all attorneys of record who are associated with Customer No. 25265.

All attorneys/agents associated with Customer Number 25265 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the applicant at the address indicated below.

Currently, there is an outstanding Office action mailed December 15, 2009 that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Galip Talegon
22754 Avenue 178
Porterville, CA 93257

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MAY 22 2006

FULBRIGHT & JAWORSKI, LLP
A REGISTERED LIMITED LIABILITY PARTNERSHIP
SUITE 2400
600 CONGRESS AVENUE
AUSTIN TX 78701-3271

In re Application of	:
Tadishi Honda et al	:
Serial No.: 10/345,053	: PETITION DECISION
Filed: January 15, 2003	:
Attorney Docket No.: UTSC:731US	:

This is in response to the petition under 37 CFR 1.144, filed February 8, 2006, requesting withdrawal of an improper restriction requirement. The delay in acting on this petition is regretted.

BACKGROUND

A review of the file history shows that this application was filed under 35 U.S.C. 111 and contained 66 claims, as filed. In a first Office action mailed August 25, 2004, the examiner set forth a seven-way restriction requirement which is not set forth herein. Group I, claims 1-21, was directed to products of Formula I as set forth in claim 1 and an election of a single species was also required if Group I was elected.

Applicants replied on September 27, 2004, electing without traverse Group I. The reply was held defective by letter dated December 23, 2004, for failure to elect a species. On March 27, 2005, applicants replied electing the species of claim 12.

The examiner mailed an Office action to applicants on May 31, 2005, noting the election of Group I without traverse and the species of claim 12. Based on the species elected, the examiner defined the scope of claim 1 to be examined, limiting variables R_1, R_8, R_9 and R_{10}. The examiner then indicated claim 1 was allowable over the art, but objected to as containing non-elected subject matter. Claims 2-21 were also objected to as depending from an objected to claim and claim 7 was objected to as being a substantial duplicate of claim 6.

Applicants replied on October 3, 2005, canceling claims 22-66 (non-elected claims) and objecting to the examiner's definition of variables in claim 1, arguing that claim 1 is a linking claim and allowable and that therefore all claims and species within its scope must also be examined.

The examiner mailed a Final Office action to applicants on December 6, 2005, maintaining the objections of the previous Office action and arguing that restriction within a Markush claim is proper under certain circumstances. The objection to claim 7 as a substantial duplicate of claim 6 was also maintained.

Applicants replied on February 6, 2006, canceling claim 7 and arguing the examiner's position as incorrect with respect to the restriction requirement, as before. Applicants also filed this petition concurrently utilizing the same arguments. The examiner entered the amendment, but maintained the objections in an Advisory Action mailed March 1, 2006.

DISCUSSION

Applicants' petition is directed to the examiner's holding of non-elected subject matter within claim 1 and the request to cancel it. Applicants argue that claim 1 is a linking claim and the examiner must proceed in accordance with M.P.E.P. 809, which states, in essence, that a linking claim must be examined with the invention elected and should any linking claim be allowed the restriction must be withdrawn.

Applicants' arguments are in error. There is no true restriction within claim 1, only an election of species. Claim 1 is not a linking claim, per se, in that it does not link several inventions. Rather it is a Genus claim encompassing (linking) a number of species encompassed within its scope. To the extent that each species is an independent invention, the claim may be considered linking such independent inventions together. However, these are more effectively treated as Markush group claims having a genus/species relationship. A review of claim 1 shows that all of the species encompassed have as a base structure a tricyclic ring structure with various groups appended thereto. The examiner appears to have identified R_1, R_{10} and, in part, R_8 and R_9 as significant variable groups. By defining these variables, the examiner has eliminated compounds where R_1 can be COOH, R_8 and R_9 form an epoxide ring and R_{10} is a heterocyclic substituent. The examiner argues that this is a proper use of the restriction provisions of 35 U.S.C. 121 with respect to Markush groups.

The criteria for making and maintaining a restriction within a Markush group is that the individual compounds do not share a substantial structure with all other compounds and/or do not have an activity or property that is common to all. Here it is clear that all compounds encompassed within the Markush group are based on Formula 1 which has a tricyclic base structure. From the specification it can be ascertained that compounds with this base structure do have a property or activity in common. The examiner's requiring an "election of species" is confirmation of their similarity in structure and properties. Since a large number of compounds are encompassed by this Markush group, election of species was proper. Consonant with that the examiner is required to follow the guidelines of M.P.E.P. 803.02 having made the election of species. The examiner has failed to do this, but has instead limited applicants' claim scope in contravention to the decisions of *In re Weber, In re Haas* and *In re Harnish*. For this reason applicants' position is correct and the examiner must examine the full scope of claim 1 as directed by the guidelines of M.P.E.P. 803.02

DECISION

The petition is **GRANTED**.

The application will be forwarded to the examiner for examination of claim 1 in accordance with the guidelines set forth in M.P.E.P. 803.02.

In view of this decision, the Finality of the last Office action is withdrawn inasmuch as the Office action is incomplete.

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 703-308-3824 or by facsimile sent to the general Office facsimile number, 571-273-8300.

George C. Elliott
Director, Technology Center 1600

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Paper No. 6

CONLEY ROSE, P.C.
P.O. BOX 684908
AUSTIN, TX 78768-4908

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OFFICE OF PETITIONS

In re Application of:
Mehrdad Nikoonahad, Gouheng Zhao and Kahlman Kele
Application No.: 10/345,055
Filed: January 15, 2003
Title of Invention: SYSTEMS AND METHODS FOR INSPECTION SPECIMEN SURFACES

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to a Petition under 37 CFR 1.47(a), filed September 2, 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, Mehrdad Nikoonahad, 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 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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Mehrdad Nikoonahad
271 Oakhurst Place
Menlo Park, CA 94025

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NOV 25 2003
OFFICE OF PETITIONS

In re Application of:
Mehrdad Nikoonahad, Gouheng Zhao
and Kahlman Kele
Application No.: 10/345,055
Filed: January 15, 2003
Title of Invention: SYSTEMS AND
METHODS FOR INSPECTION SPECIMEN
SURFACES

LETTER

Dear Mr. Nikoonahad:

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: CONLEY ROSE, P.C.
P.O. BOX 684908
AUSTIN, TX 78768

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DARBY & DARBY PC
P O BOX 5257
NEW YORK, NY 10150-5257

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OFFICE OF PETITIONS

In re Application of
Mohammad R. Marzabadi et al
Application No. 10/345,063
Filed: January 14, 2003
Attorney Docket No. 20082/1200720-US5

: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition, filed April 5, 2005, which is being treated as a petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

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

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

The petition fails to comply with item (1) above.

The concurrently filed amendment to add the 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).

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) and a substitute amendment[1] deleting the improper incorporation by reference statement is required.

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

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

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

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

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

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *Note* 37 CFR 1.121

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NEW YORK, NY 10150-5257

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OFFICE OF PETITIONS

In re Application of
Mohammad R. Marzabadi et al
Application No. 10/345,063
Filed: January 14, 2003
Attorney Docket No. 20082/1200720-US5

: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6)
:

This is a decision on the renewed petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed November 2, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **Granted**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

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

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

The petition complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the prior-filed applications has been included in an

amendment to the first sentence of the specification following the title, as provided by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains an adequate statement of unintentional delay. Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 119(e) to the prior-filed applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should <u>not</u> 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 <u>not</u> be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

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

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

This matter is being referred to Technology Center Art Unit 1625 for consideration by the examiner of the claim for priority to the prior-filed applications.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LUNDBECK RESEARCH USA, INC.
ATTENTION: STEPHEN G. KALINCHAK, LEGAL
215 COLLEGE ROAD
PARAMUS NJ 07652

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FEB 0 4 2008

OFFICE OF PETITIONS

In re Patent No. 7,105,544	:	
Issue Date: September 12, 2006	:	
Application No. 10/345,063	:	ON PETITION
Filed: January 14, 2003	:	
Attorney Docket No. 65369-US-CIP1	:	

This is a decision on the petition filed September 28, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to change the name of an assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to Carl Friedman at (571) 272-6842. 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.

David Bucci
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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

Mail Date: 04/21/2010

Applicant	: Henry Nita	: DECISION ON REQUEST FOR
Patent Number	: 7604608	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/345,078	: 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 **1237** 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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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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OFFICE OF PETITIONS

In re Application of	:	
David W. Gohl, et al.	:	
Application No. 10/345,090	:	DECISION ON PETITION
Filed: January 14, 2003	:	TO WITHDRAW
Attorney Docket No. 163.17323US01	:	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 22, 2007.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Merchant & Gould, PC has been revoked by the assignee of the patent application on June 11, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: KAGAN BINDER, PLLC
MAPLE ISLAND BUILDING
221 MAIN STREET NORTH
SUITE 200
STILLWATER, MN 55082

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Paper No. 9

M. WAYNE WESTERN
THORPE NORTH & WESTERN, LLP
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SANDY, UT 84091-1219

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MAY 0 4 2005

OFFICE OF PETITIONS

In re Application of :
Trevor Page, et al. :
Application No. 10/345,098 :
Filed: January 15, 2003 :
Attorney Docket No. T9510NPCON :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 31, 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 Notice to File Missing Parts of Nonprovisional Application mailed February 18, 2004. 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 April 19, 2004.

The Power of Attorney filed on March 31, 2005 is not accepted. In the instant case, President & CEO, Richard W. Hellyer, has not satisfactorily established ownership of the property to the satisfaction of the Commissioner. In this regard, the box checked, "Assignee of record of the entire interest. See 37 CFR 3.71. Statement Under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)", was not received with the Power of Attorney request.

More specifically, in order for an assignee to take action in a case before the Office, compliance with 37 CFR 3.73(b) must be satisfied. 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment submitted for recording) or by specifying (*e.g.*, reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A blank 37 CFR 3.73(b), (Form PTO/SB/96) accompanies this decision.

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

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

Retta Williams

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

Attachment: Blank Copy of 37 CFR 3.73(b) form.

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Paper No.

JONES & SMITH , LLP
2777 ALLEN PARKWAY
SUITE 800
HOUSTON TX 77019

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MAY 17 2010

OFFICE OF PETITIONS

In re Application of	:	
Gupta et al.	:	
Application No. 10/345,104	:	DECISION ON REQUEST FOR
Filed: January 15, 2003	:	RECONSIDERATION OF
Patent No. 7,638,468	:	PATENT TERM ADJUSTMENT
Issue Date: December 29, 2009	:	
Atty Docket No. 020569-00600	:	
(P202-1229-U	:	
Title: SURFACTANT BASED	:	
VISCOELASTIC FLUIDS	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed December 23, 2009. Patentees request that the patent term adjustment indicated on the Issue Notification be corrected from one hundred and ninety-eight (198) days to two hundred and thirty-three (233) days.

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

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

An Issue Notification was mailed on December 9, 2009, with an indication that the patent term adjustment to date was 198 days. This petition was timely filed on December 23, 2009. This application matured into U.S. patent number 7,638,468, with a patent term adjustment of 198 days on December 29, 2009. Patentees do not state a basis for their assertion of an entitlement to two hundred and thirty-three (233) days of patent term adjustment.

Patentees' calculations fail to take into account the 35-day reduction associated with the submission of a paper (replacement drawings) on March 31, 2009 after a notice of allowance has been mailed. 37 CFR § 1.704(c)(10) indicates that the submission of a paper after a notice of allowance has been mailed will result in a period of adjustment set forth in § 1.703, and the reduction will constitute the lesser of four months or "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." A notice of allowance was mailed on March 6, 2009, replacement drawings were received on March 31, 2009, and a supplemental notice of allowance was mailed on May 4, 2009. This resulted in a reduction of 35 days.

It follows that this 35-day reduction was proper.

The proper period of adjustment for Office delay at the time of the mailing of the issue notification was 501 (350 + 151) days. The proper period of reduction at the time of mailing of the issue notification was 303 (53 + 31 + 97 + 26 + 61 + 35) days.

In view thereof, the patent term adjustment at the time of issuance was 198 (501 - 303) days.

No adjustment to the patent term will be made at this time.

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Hollingsworth & Funk, LLC
8009 34th Avenue South
Suite 125
Minneapolis MN 54425

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OFFICE OF PETITIONS

In re Application of
Costa-Requena et al.
Application No. 10/345,114
Filed: January 15, 2003
Attorney Docket No. NOKM.029PA

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 24, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to timely file a response to a non-final Office Action, which was mailed on July 3, 2008. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on October 4, 2008. A Notice of Abandonment was mailed on February 18, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment (2) the petition fee of $1620, and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 2194 for appropriate action by the Examiner in the normal course of business on the reply received.

Charlema Grant
Petitions Attorney
Office of Petitions

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LAHIVE & COCKFIELD, LLP
ONE POST OFFICE SQUARE
BOSTON MA 02109-2127

In re Application of	:
John Joseph Harrington et al	:
Serial No.: 10/345,115	: PETITION DECISION
Filed: January 15, 2003	:
Attorney Docket No.: ATX-004PC2	:

This is in response to the petition under 37 CFR 1.181, filed October 9, 2007, requesting withdrawal of the Finality of the Office action mailed April 9, 2007.

BACKGROUND

A review of the file history shows that this application was filed on January 15, 2003 and contained after preliminary amendment claims 171-210. On November 15, 2005, the examiner mailed a 9-way restriction requirement to applicants. Applicants replied by canceling claims 189-199 and 204-210 leaving only Groups I, II and VII which applicants requested be rejoined or examined together.

The examiner mailed a new Office action to applicants on March 7, 2006, noting applicants' traversal of the restriction requirement and modifying it by combining Groups I and VII, but maintaining Group II as withdrawn. The specification and disclosure were objected to as containing new matter in view of the amendment of July 17, 2003. Sequence compliance was required in reply to the Office action. Claims 171-176 were objected to for improper language and claims 177-179 were objected to as improperly multiply dependent. Claims 171-176 and 200-203 were objected to as indefinite for various reasons. Claims 171-176 were rejected for obvious double patenting over SN 10/342,896. Claims 200-203 were rejected under 35 U.S.C. 101 for claiming the same invention as SN 10/342,761. Claims 171-176 and 200-203 were rejected as anticipated by deWeese et al as evidenced by deWind.

Applicants replied on September 9, 2006, amending the specification, canceling claims 1-210 and adding new claims 211-234. Applicants filed replacement drawings and an acceptable sequence listing and replied to all of the rejections of record.

The examiner mailed a Final Office action to applicants on April 9, 2007, holding claims 215-219 and 225-230 withdrawn. The examiner maintained the objection to new matter in the specification. Claims 233-234 were objected to as improper multiple dependent claims. Claims 211-214, 220-224 and 231-232 were rejected under 35 U.S.C. 112, second paragraph, identifying

the indefinite language of the new claims. Claims 212-214, 220-224 and 231-232 were also rejected under 35 U.S.C. 112, first paragraph, as lacking written description in the specification. Claims 211 and 231-232 were rejected under 35 U.S.C. 102(b) as anticipated by deWeese et al as evidenced by deWind. The examiner indicated finality was proper in view of applicants' amendments.

Applicants filed this petition, a Notice of Appeal and a reply to the Office action on October 9, 2007.

DISCUSSION

Applicants request withdrawal of the finality of the Office action of April 9, 2007, on the basis that the rejections under 35 U.S.C. 112, second paragraph, were not necessitated by applicants' amendments as the terms rejected were all present in the claims as previously presented.

It is noted that this petition was filed six months after the Office action being complained of. 37 CFR 1.181(f) sets a two month time period for filing a petition to the Office regarding the propriety of an examiner's action. (It may also require that the action be a repeated action.) This petition could be dismissed solely on the basis that it is untimely. However it will also be addressed on the merits.

In response to the first Office action applicants canceled all pending claims and presented a new set of claims generally corresponding to the original claims examined, claims 171-179 and 200-203 (also presented are claims corresponding to withdrawn claims 180-188). The first Office action objected to indefiniteness in the number of mutated cells in the library, a lack of antecedent basis for the terms "mutagenized clones" and "allele" and "unpaired splice donor". Applicants revised the claims by eliminating these terms or providing proper antecedent basis. The Final Office action objected to "insertional mutagen" as not having clear metes and bounds, and "recombination sequences...genome" for the same reason. Terms lacking antecedent basis identified were "the cellular genome", "the mutation frequency of physicochemically mutated alleles" (refers to the 0.1X, 1.0X, etc. values), "about 0.1X-10X genome coverage per $2\text{-}10^6$ physicochemically mutated clones", "the average number of mutated alleles per cell" and "said physicochemical mutagen". Also objected to were values"$2\text{-}10^6$" as indefinite in that it could mean a range of 2 to 1,000,000 or just 2,000,000.

Applicants argue that the term insertional mutagen was present in previous claims, but not rejected. However, the previous claim set used the term "insertional mutagenesis" which is not the same term. The rejection is proper. Similarly, the term "0.1X-10X in the previous claims referred to **total coverage**, not an average coverage per number of mutated clones. The rejection is proper. The term "$1\text{-}10^6$" and similar terms do appear in the original claim set and should have been objected to at that time. The term "average number of physicochemically mutated alleles" does appear in both claims sets. However, its application as a quantifier has changed somewhat, but could, and perhaps should, have been rejected in the first action.

Applicants also argue that the new matter rejection which refers to the ranges set forth could also have been made in the first action. However the previous set of claims utilized the ranges

identified in an independent claim referring to the cell library and number of clones present. The new set of claims utilizes the same values in dependent claims, which also refer to cell libraries, but they define the number of mutated alleles, not clones.

In view of the above it is apparent that one or two of the rejections set forth under 35 U.S.C. 112, second paragraph, may have been appropriately set forth in the first Office action and were not. However, the bulk of the rejections and the new matter rejection as it now stands could not have been set forth until the presentation of the new claims. In addition, the other rejections which were maintained are not new. Thus the Finality of the Office action was not improper.

DECISION

The petition is **DENIED.**

The application will be forwarded to the examiner for consideration of applicants' amendment of October 9, 2007, and further action not inconsistent with this decision.

Applicants remain under obligation to submit an appropriate Appeal Brief within the time period set therefore, or as extended under 37 CFR 1.136(a).

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

Christopher Low
Acting Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 5

Donald Bollella, Esq.
BURSTEIN TECHNOLOGIES, Inc.
163 Technology Drive
Irvine, CA 92618

In re Application of	:	DECISION ON PETITION
Pal et al	:	
Application No. 10/345,122	:	**COPY MAILED**
Filed: January 14, 2003	:	OCT 25 2004
For: METHODS AND APPARATUS	:	
FOR EXTRACTING DATA FROM AN	:	
OPTICAL ANALYSIS DISK	:	**OFFICE OF PETITIONS**

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed September 8, 2004.

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 Provisional Application (hereinafter "Notice"), mailed April 29, 2003. The Notice required the basic filing fee; late filing fee oath or declaration surcharge, and additional claims fees. 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 June 30, 2003. A Notice of Abandonment was mailed February 9, 2004.

With the instant petition, Applicant has filed responses to the Notice and completed the requirements of a grantable petition under 37 CFR 1.137(b).

This application is being forwarded to the Office of Initial Patent Examination for continued processing in due course.

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

Derek L. Woods
Attorney Advisor
Office of Petitions

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KEVIN E. NOONAN
MCDONNELL, BOEHNEN, HULBERT & BERGHOFF
32ND FLOOR
300 S. WACKER DRIVE
CHICAGO, IL 60606

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OFFICE OF PETITIONS

In re Application of	:	
Kiminobu Sugaya, et al.	:	
Application No. 10/345,126	:	DECISION GRANTING PETITION
Filed: January 14, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 02-112-C	:	

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

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

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CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of	:	
Sugaya et al.	:	
Application No. 10/345,126	:	ON APPLICATION FOR
Filed: January 14, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 02-112-C	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b) filed on January 16, 2009. Applicants submit that the correct patent term adjustment to be indicated on the patent is nine hundred twenty-five (925) days, not four hundred eighty-five (485) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction, in part, on the basis that the Office will take in excess of three years to issue this patent.

To the extent 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].

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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.

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).

To the extent that the instant application for patent term adjustment requests reconsideration of the PTA at the time of the mailing of the Notice of Allowance, the request is **granted to the extent indicated**.

The Office has updated the PALM and PAIR screens to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is FOUR HUNDRED NINETY-TWO (492) days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On October 17, 2008, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date was four hundred eighty-five (485) days. The period of adjustment was 576 days of PTO delay and 91 days of applicant delay[2].

On January 16, 2009, the subject application for patent term adjustment was timely filed.[3]

Subsequently, on April 3, 2009, a petition to withdraw from issue and a request for continued examination were filed. A Notice of Allowance was mailed in response on April 13, 2009,

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[2] The periods of applicant delay was calculated as follows: 15 days for the filing of a response to the notice to file missing parts on June 27, 2003, three (3) months and 15 days after the mailing of the notice to file missing parts on March 12, 2003; 33 days for the filing a request for continued examination on March 19, 2007, three (3) months and 33 days after the mailing of the final office action on November 13, 2006; two (2) days for the filing of a request for continued examination on February 18, 2008, three (3) months and two (2) days after the mailing of a final office action on November, 15, 2007; and 41 days for the filing of an information disclosure statement on April 22, 2008, 41 days after the final of a reply to an office action on March 12, 2008.

[3] Office records indicate that the issue fee was paid on January 16, 2009.

along with a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) advising applicants that the patent term adjustment to date was 485 days.

Applicants assert that the period of reduction of 41 days for the filing of an Information Disclosure Statement (IDS) on April 22, 2008, 41 days after the filing of a reply on March 12, 2008, to a non-final action should be removed because the IDS contained a statement in accordance with 37 CFR 1.704(d).

37 CFR 1.704(d) states that 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.

Applicants are correct. A review of the record reveals that the IDS filed on April 22, 2008 contains a statement in accordance with 37 CFR 1.704(d). Accordingly, entry of a period of reduction of 41 days is not warranted and will be removed.

Applicants assert that a period of reduction of 23 days should be entered for the filing of a reply on March 12, 2008, which was filed in response to a Notice of Non-Compliant Amendment mailed on February 27, 2008, mailed in response to the request for continued examination filed on February 18, 2008.

On February 18, 2008, the request for continued examination was filed. On February 27, 2008, a notice of non-compliant amendment was mailed, stating that the amendment filed with the request for continued examination was non-compliant with 37 CFR 1.121 or 1.4. In response, on March 12, 2008, a reply correcting the omission was filed, 23 days after the reply having the omission was filed.

Applicants are correct. 37 CFR 1.704(c)(7) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or

examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed. Accordingly, a period of reduction of 23 days pursuant to 37 CFR 1.704(c)(7) will be entered.

Applicants assert that a period of reduction of seven (7) days should be entered for the filing of an IDS on June 24, 2008, after the mailing of a notice of allowance. On July 1, 2008, seven (7) days after the filing of the IDS, a paper was mailed acknowledging receipt of the IDS.

Applicants are incorrect. Subsequent to the filing of the IDS on June 24, 2008, an RCE (and IDS) were filed as the response to the Notice of Allowance in lieu of payment of the Issue Fee. Accordingly, any applicant delay for the filing of the RCE is properly calculated pursuant to 37 CFR 1.704(b), not 1.704(c)(10). 37 CFR 1.704(b) provides, 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.

The notice of allowance was mailed on May 15, 2008, and the RCE was filed on July 22, 2008. As the RCE was filed within the

three (3) month period provided for in 37 CFR 1.704(b), entry of a period of reduction is not warranted.

A review of the record confirms that an additional period of reduction should be entered for applicant's failure to engage pursuant to 37 CFR 1.704(c)(10). A Notice of Allowance was mailed on October 17, 2008. Applicants filed a request for continued examination (RCE) and an IDS on April 3, 2009. Prior to filing the RCE, applicants paid the issue fee. This set the calculation of the period of reduction pursuant to 37 CFR 1.704(b), if any, for applicant delay. The filing of the RCE and IDS after the mailing of the Notice of Allowance on October 17, 2008 continued a failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 11 days, counting the number of days beginning on April 3, 2009 and ending on April 13, 2009, the date of mailing of the new Notice of Allowance in response.

37 CFR 1.704(c)(10) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: submission of 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.

The IDS submitted on April 3, 2009, did not contain the statement set forth in 37 CFR 1.704(d). Accordingly, a period of reduction of 11 days pursuant to 37 CFR 1.704(c)(10) will be entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is four hundred ninety-two (492) days (576 days of Office delay reduced by eighty-four (84) (15+33+2+23+11) days of applicant delay).

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

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Encl: Copy of updated PALM screen

Day : Wednesday

PALM INTRANET

Date: 9/9/2009
Time: 20:27:10

PTA Calculations for Application: 10/345126			
Application Filing Date:	01/14/2003	PTO Delay (PTO):	576
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	91
Post-Issue Petitions:	0	Total PTA (days):	492
PTO Delay Adjustment:	7		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
156	09/09/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		11	
155	09/09/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		23	
154	09/09/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	41		
144	04/13/2009	MAIL NOTICE OF ALLOWANCE			
143	04/10/2009	ISSUE REVISION COMPLETED			
142	04/10/2009	DOCUMENT VERIFICATION			
141	04/10/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
140	04/10/2009	NOTICE OF ALLOWABILITY			
139	04/03/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
138	04/03/2009	REFERENCE CAPTURE ON IDS			
137	04/03/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
136	04/08/2009	DATE FORWARDED TO EXAMINER			
135	04/03/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
134	04/08/2009	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
133	04/06/2009	MAIL-RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
132	04/06/2009	RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
131	04/03/2009	PETITION ENTERED			
130	04/03/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
129	04/03/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
128	02/25/2009	PUBS CASE REMAND TO TC			

127	01/16/2009	PETITION ENTERED			
126	01/22/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
125	01/16/2009	ISSUE FEE PAYMENT VERIFIED			
124	01/16/2009	ISSUE FEE PAYMENT RECEIVED			
123	10/20/2008	EXPORT TO INITIAL DATA CAPTURE			
122	10/17/2008	MAIL NOTICE OF ALLOWANCE			
122	10/17/2008	MAIL NOTICE OF ALLOWANCE			
121	10/15/2008	ISSUE REVISION COMPLETED			
121	10/15/2008	ISSUE REVISION COMPLETED			
120	10/15/2008	DOCUMENT VERIFICATION			
120	10/15/2008	DOCUMENT VERIFICATION			
119	10/15/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
119	10/15/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
118	10/10/2008	NOTICE OF ALLOWABILITY			
118	10/10/2008	NOTICE OF ALLOWABILITY			
117	07/22/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
117	07/22/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
116	09/11/2008	FINISHED INITIAL DATA CAPTURE			
116	09/11/2008	FINISHED INITIAL DATA CAPTURE			
115	07/22/2008	REFERENCE CAPTURE ON IDS			
115	07/22/2008	REFERENCE CAPTURE ON IDS			
114	07/22/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
114	07/22/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
113	08/07/2008	DATE FORWARDED TO EXAMINER			
113	08/07/2008	DATE FORWARDED TO EXAMINER			
112	07/22/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
112	07/22/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
111	08/07/2008	DATE FORWARDED TO EXAMINER			
111	08/07/2008	DATE FORWARDED TO EXAMINER			
110	07/22/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			

110	07/22/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
109	08/07/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
109	08/07/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
108	08/04/2008	WORKFLOW - QUERY REQUEST - FINISH			
108	08/04/2008	WORKFLOW - QUERY REQUEST - FINISH			
107	07/22/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
107	07/22/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
106	07/22/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
106	07/22/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
105	07/01/2008	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
105	07/01/2008	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
104	06/27/2008	TC RETURN TO PUBS			
104	06/27/2008	TC RETURN TO PUBS			
103	06/24/2008	REFERENCE CAPTURE ON IDS			
102	06/24/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
101	06/27/2008	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
94	06/24/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
93	06/24/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
92	06/02/2008	PUBS CASE REMAND TO TC			
91	06/19/2008	WORKFLOW - QUERY REQUEST - BEGIN			
90	05/20/2008	EXPORT TO INITIAL DATA CAPTURE			
89	05/15/2008	MAIL EXAMINER'S AMENDMENT			
88	05/15/2008	MAIL NOTICE OF ALLOWANCE			
87	05/14/2008	ISSUE REVISION COMPLETED			
86	05/14/2008	DOCUMENT VERIFICATION			
85	05/12/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
84	05/12/2008	CASE DOCKETED TO EXAMINER IN GAU			
83	05/09/2008	EXAMINER'S AMENDMENT COMMUNICATION			

82	05/09/2008	NOTICE OF ALLOWABILITY			
81	04/22/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		41	73
80	02/28/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
78	02/28/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
77	02/18/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
76	04/22/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
75	04/22/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
74	03/15/2008	DATE FORWARDED TO EXAMINER			
73	03/12/2008	RESPONSE AFTER NON-FINAL ACTION			
72	02/28/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
71	02/27/2008	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT			
70	02/27/2008	NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT.			
69	02/18/2008	REFERENCE CAPTURE ON IDS			
68	02/18/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
67	02/27/2008	DATE FORWARDED TO EXAMINER			
66	02/18/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
65	02/27/2008	DATE FORWARDED TO EXAMINER			
64	02/18/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		2	60
63	02/27/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
62	02/18/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
61	02/18/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
60	11/16/2007	MAIL FINAL REJECTION (PTOL - 326)			
59	11/15/2007	FINAL REJECTION			
58	06/25/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
57	09/14/2007	DATE FORWARDED TO EXAMINER			
56	09/12/2007	RESPONSE AFTER NON-FINAL ACTION			

55	06/25/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
54	06/25/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
53	06/13/2007	MAIL NON-FINAL REJECTION			
52	06/11/2007	NON-FINAL REJECTION			
51	03/19/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
50.7	03/19/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	03/19/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	03/28/2007	DATE FORWARDED TO EXAMINER			
48	03/19/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
47	03/28/2007	DATE FORWARDED TO EXAMINER			
46	03/19/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		33	43
45	03/28/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
44	03/19/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
43	11/14/2006	MAIL FINAL REJECTION (PTOL - 326)			
42	11/13/2006	FINAL REJECTION			
41	06/12/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
40	09/10/2006	DATE FORWARDED TO EXAMINER			
39	09/07/2006	RESPONSE AFTER NON-FINAL ACTION			
38.7	06/12/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38	06/12/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	06/07/2006	MAIL NON-FINAL REJECTION			
36	06/05/2006	NON-FINAL REJECTION			
35	05/15/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
34	05/15/2006	REFERENCE CAPTURE ON IDS			
33.7	05/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	31
33	05/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	05/18/2006	DATE FORWARDED TO EXAMINER			

31	05/15/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
30	05/15/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
29	02/21/2006	MAIL RESTRICTION REQUIREMENT			
28	02/17/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
27	09/20/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
26	01/22/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
25	09/22/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
24	12/17/2005	DATE FORWARDED TO EXAMINER			
23	11/28/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
22	11/28/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
21	10/11/2005	MAIL RESTRICTION REQUIREMENT	576		-1
20	10/07/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
19	05/13/2005	CASE DOCKETED TO EXAMINER IN GAU			
18	10/15/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
17.7	09/20/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	09/20/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	02/27/2004	REFERENCE CAPTURE ON IDS			
15.7	01/22/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	01/22/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	02/11/2004	CASE DOCKETED TO EXAMINER IN GAU			
13	12/30/2003	REFERENCE CAPTURE ON IDS			
12.7	09/22/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	09/22/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	08/20/2003	APPLICATION DISPATCHED FROM OIPE			
10	08/20/2003	APPLICATION IS NOW COMPLETE			
9	06/27/2003	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM		15	6
7	06/27/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC			

		115, OATH OF THE APPLIC			
6	03/12/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	03/04/2003	CLEARED BY L&R (LARS)			
3	01/27/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/24/2003	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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DEC 15 2004
OFFICE OF PETITIONS

In re Application of	:
Christian Bonetto et al	:
Application No. 10/345,141	: DECISION GRANTING PETITION
Filed: January 16, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 015291-090	:

This is a decision on the petition, filed December 13, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 2, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 3635 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

---

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

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KELLEY DRYE & WARREN LLP
3050 K STREET, NW
SUITE 400
WASHINGTON, DC 20007

COPY MAILED

MAR 3 1 2008

In re Application of	:	
TANNER, Howard M. et al.	:	
Application No. 10/345,143	:	DECISION ON PETITION
Filed: January 16, 2003	:	TO WITHDRAW
Attorney Docket No.	:	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 18, 2008.

The request is **APPROVED**.

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

The request was signed by John N. Coulby on behalf of all attorneys of record who are associated with customer No. 25243. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the second named inventor Hugh H. Trout, III at the address indicated below.

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

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **HUGH H. TROUT, III, M.D.**
8218 WISCONSIN AVENUE
SUITE 204
BETHESDA, MD 20814

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1300 I STREET, N.W.
WASHINGTON DC 20005-3315

MAILED

APR 0 8 2009

OFFICE OF PETITIONS

In re Application of
John Keane et al
Application No. 10/345,145
Filed: January 16, 2003
Attorney Docket No. 7937.0002-08

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 19, 2009, 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 replacement drawing; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance/Notice of Allowability mailed September 29, 2008, is accepted as having been unintentionally delayed.

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

This application is being referred to the Office of Data Management to be processed into a patent and for review of the drawing submitted on March 19, 2008

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 6

FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER
1300 I STREET NW
WASHINGTON, DC 20005

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SEP 22 2003

OFFICE OF PETITIONS

In re Application of	
Juergen Kortenbach et al	
Application No. 10/345,150	DECISION GRANTING STATUS
Filed: January 16, 2003	UNDER 37 CFR 1.47(A)
For: TISSUE FASTENING DEVICES AND PROCESSES THAT PROMOTE TISSUE ADHESION	

This is in response to the petition under 37 CFR 1.47(a), filed June 20, 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.

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, deposit account No. 23-1703 will be charged the fee for the petition under 37 CFR 1.47 ($130).

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

This application is being forwarded to Technology Center AU 3624 for examination in due course.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MICHAEL SEAN McBRAYER
6160 CHAPMAN FIELD DRIVE
MIAMI, FL 33156

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SEP 22 2003

OFFICE OF PETITIONS

In re Application of
Kortenbach; McBrayer; Adams; Devries; Stahley; Otano-Lata; Wendlandt; Shaw; and Weisenborn
Application No. 10/345,150
Filed: January 16, 2003
For: TISSUE FASTENING DEVICES AND PROCESSES THAT PROMOTE TISSUE ADHESION

Dear Mr. McBrayer:

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

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

Telephone inquiries regarding this communication should be directed to Wan Laymon at (703) 306-5685. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks

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

cc:
FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER
1300 I STREET NW
WASHINGTON, DC 20005

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

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SEP 1 0 2007

OFFICE OF PETITIONS

In re Application of
Kotenbach et al.
Application No.10/345,150
Filed: January 16, 2003
Attorney Docket Number: 06530.0143-01

DECISION ON PETITION
UNDER 37 CFR 1.183 AND 1.48

This is in response to the petitions filed under 37 CFR §§1.48 and 1.183 filed on September 22, 2006.

The petition filed under 37 CFR 1.48 is **DISMISSED**.
The petition filed under 37 CFR 1.183 is **DISMISSED AS MOOT** .

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," 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 16, 2003, with an executed oath or declaration on filing naming inventors Kortenbach, McBrayer, Adams, Devries, Stahley, Otano-lata, Wendlandt, Shaw and Wisenborn as the co- inventors. Petitioner now seeks to amend the inventorship for the above-identified application to remove inventor Otano-Lata.

Petition Under 37 CFR 1.48

A grantable petition under 37 CFR 1.48 (a) requires: (1) a request to correct the inventorship that sets forth the desired inventorship change; (2) a statement from each

person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) an oath or declaration by the actual inventor or inventors as required by §1.63 or as permitted by §§ 1.42, 1.43 or §1.47; (4) the processing fee set forth in §1.17(l); and (5) if an assignment has been executed by any of the original named inventors, the written consent of the assignee.

As to item (2), the declaration submitted contains non-dated and non-initialed alterations to the declaration. Specifically changes were made by inventor Kotenbach. A newly executed declaration without alterations should be provided. Any changes made in ink in the application or oath prior to signing should be initialed and dated by the applicants prior to execution of the oath or declaration. The Office will not consider whether non-initialed and/or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration. See MPEP 605.04(a).

Petition Under 37 CFR 1.183

The petition under 37 CFR 1.183 is dismissed as inappropriate. When an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, the requirement for that inventor to sign the supplemental declaration may be suspended or waived in accordance with 37 CFR 1.183. All available joint inventor(s) must sign the supplemental declaration on behalf of themselves, if appropriate, and on behalf of the nonsigning inventor. See MPEP § 409.03(a). 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. Petitioner has filed this petition with respect to non-signing inventor McBrayer. A review of the record shows that this application was previously granted 1.47 status as to inventor McBrayer. Thus, petitioner is not required to obtain the signature of McBrayer.

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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OFFICE OF PETITIONS

In re Application of
Kotenbach et al.
Application No.10/345,150
Filed: January 16, 2003
Attorney Docket Number: 06530.0143-01

DECISION ON PETITION
UNDER 37 CFR 1.48

This is in response to the renewed petitions filed under 37 CFR §1.48 filed on March 26, 2008.

The petition filed under 37 CFR 1.48 is **GRANTED**.

The above-identified application was filed on January 16, 2003, with an executed oath or declaration on filing naming inventors Kortenbach, McBrayer, Adams, Devries, Stahley, Otano-Iata, Wendlandt, Shaw and Wisenborn as the co- inventors. Petitioner now seeks to amend the inventorship for the above-identified application to remove inventor Otano-Lata.

A grantable petition under 37 CFR 1.48 (a) requires: (1) a request to correct the inventorship that sets forth the desired inventorship change; (2) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) an oath or declaration by the actual inventor or inventors as required by §1.63 or as permitted by §§ 1.42, 1.43 or §1.47; (4) the processing fee set forth in §1.17(i); and (5) if an assignment has been executed by any of the original named inventors, the written consent of the assignee.

In conjunction with prior grant under 37 CFR 1.47, petitioner has met the requirements of 37 CFR 1.48.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

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OFFICE OF PETITIONS

In re Application of :
Kumar, et al. :
Application No. 10/345,163 : ON PETITION
Filed: January 16, 2003 :
Attorney Docket No. GRT/4062-52

This is a decision on the petition under 37 CFR 1.183 to waive the requirement of 37 CFR 1.63(a)(2), filed December 26, 2006.

The petition is granted.

A review of the application file history reveals that an *Ex Parte Quayle* action was issued on December 4, 2006, requiring a new declaration under 37 CFR 1.63 to be filed because the declaration filed on January 16, 2003, identifies the second named inventor as only "Rajesh". The instant petition requests that the requirement of 37 CFR 1.63(a)(2) that a first and last name for an inventor be provided on the declaration be waived as to the second named inventor because he is only known as "Rajesh". Petitioner has provided documentary evidence that the second named inventor is known only as "Rajesh".

The evidence is convincing that the second named inventor is known only as "Rajesh". The petition is granted accordingly. The requirement of 37 CFR 1.63(a)(2) is waived as to the second named inventor.

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

The file is being directed to Technology Center 1700, GAU 1753 for further processing.

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
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ANDERSON, KILL & OLICK, P.C.
1251 AVENUE OF THE AMERICAS
NEW YORK, NY 10020-1182

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JUN 0 1 2006

OFFICE OF PETITIONS

In re Application of :
Cho, et al. :
Application No. 10/345,197 :
Filed: January 16, 2003 :
Attorney Docket No. 023414-0110 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 14, 2006, to revive the above-identified application.

This application became abandoned for failure to timely pay the issue fee and publication fee within three (3) months of the mailing of the Notice of Allowance and Fee(s) Due, mailed September 14, 2005. Accordingly, this application became abandoned on December 15, 2005. No Notice of Abandonment has been mailed.

Applicants have submitted a proper reply in the form of the issue fee, the publication fee and a completed PTOL-85, an acceptable statement of the unintentional nature of the delay in responding to the September 14, 2005 Notice of Allowance and Fee(s) Due, and the petition fee.

The petition is **granted**.

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

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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BRYAN ANDERSON
HONEYWELL INTERNATIONAL INC.
PATENT SERVICES, 101 COLUMBIA RD.
PO BOX 2245, MS AB-2B
MORRISTOWN NJ 07962

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In re Application of
Hardie
Application No. 10/345,206
Filed: 16 January, 2003
Attorney Docket No. 85170-4300

: DECISION

This is a decision on the petition filed on 10 March, 2008, to revive an application under 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

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.

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

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

BACKGROUND

The record reflects that:

Petitioner failed to reply to a final Office action mailed on 28 September, 2005, with reply due absent an extension of time on or before 28 December, 2005.

The application went abandoned by operation of law after midnight 28 December, 2005.

The Office mailed the Notice of Abandonment on 9 May, 2006.

On 26 May and again on 19 June, 2006, Petitioner filed a Notice of Change of Address.

On 10 March, 2008, 2008, Petitioner filed, *inter alia*, the instant petition (with fee) alleging unintentional delay under 37 C.F.R. §1.137(b), included therewith a reply in the form of a request and fee for continued examination (RECE) and an amendment as the submission under 37 C.F.R. §1.114), and made the statement of unintentional delay.

The record (including the petition filed on 10 March, 2008) does not necessitate a finding that the delay between midnight 28 December, 2005 (the date of abandonment), and 10 March, 2006 (the date of filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Counsel Kermit D. Lopez (Reg. No. 41,953) when accepting Petitioner's representation that the delay in filing the response was unintentional.

(See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).)

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 those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS

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

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office). See specifically, the regulations at 37 C.F.R. §10.18.

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.[2],[3]

CONCLUSION

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

The instant application is released to Technology Center/AU 2816 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the Technology Center/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the Technology Center/AU where that change of status must be effected—that does not occur in the Office of Petitions.

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[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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[2] 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).

[3] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

[4] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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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JUN 2 2004

Office of the Director
Group 3600

Merek, Blackmon & Voorhees, LLC
673 S. Washington St.
Alexandria, VA 22202

In re Application of:
Donald W. Tinker
Serial No. 10/345,224
Filed: January 16, 2003
For: FLAPPER VALVE FOR SINGLE TRIP RETRIEVAL OF PACKER TOOLS

DECISION ON PETITION TO MAKE SPECIAL (ENERGY)

This is a decision on the petition filed May 5, 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 present invention significantly reduces the costs and complexity of drilling for fuels and the subsequent retrieval of tools after exploitation. The petition further states that because of the reduction in costs, more fuel can be economically acquired, or smaller deposits can be economically exploited allowing larger amounts of fuels to be efficiently exploited. Applicant's invention appears to be directed to increased exploitation of energy resources instead of a conservation of energy resources. Therefore, these statements are inadequate to establish for the record the discovery or development of energy resources, or more efficient utilization and conservation of energy resources.

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. Applicant should promptly submit 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.

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

KJD/vdb 5/18/04

#6

UNITED STATES PATENT & TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
Washington, D.C. 20231

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Office of the Director
Group 3600

Paper No. 6

Merek, Blackmon & Voorhees, LLC
673 S. Washington St.
Alexandria VA 22202

In re Application of:	:	
Donald Tinker	:	**DECISION ON PETITION**
Serial No. 10/345,229	:	**TO MAKE SPECIAL**
Filed: January 16, 2003	:	**(ENERGY)**
For: Whipstock collet latch	:	

This is a decision on the petition filed May 5, 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 "use of the whipstock collet latch allows the running of multiple drill parts during run of the whipstock thereby significantly saving money and time in the drilling for natural gas or other deposits". These statements, which evidence more efficient utilization and development of energy resources, are 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.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866
(703) 605-0586

KJD/ekn: 7/18/03

#7

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United States Patent and Trademark Office
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FROM DIRECTORS OFFICE

JUN 14 2005

TECHNOLOGY CENTER

Leong C. LEI
PMB #1008, 1867 Ygnacio Valley Road
Walnut Creek, CA 94598

In re Application of	:	
Wen-Tsan Wang	:	DECISION ON PETITION
Application No. 10/345,270	:	TO WITHDRAW THE
Filed: January 16, 2003	:	HOLDING OF
For: ORGANIZER	:	ABANDONMENT

This is in response to applicant's petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office (USPTO) on December 31, 2004.

The petition is **DISMISSED**.

A review of the file records reveals that the application was held abandoned for failure to timely file a reply to the non-final Office action mailed March 31, 2004. A Notice to that affect was mailed November 2, 2004.

Applicant states that the Office action mailed March 31, 2004 was not received.

There is a strong presumption that mail properly addressed and delivered to the United States Postal Service was in fact delivered to the addressee. An allegation that an Office communication 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. However, the presumption that the Office communication was delivered to applicant may be overcome by a showing that the communication was not, in fact, received as indicated below.

Since the application was pro se at the time of abandonment, statements of non-receipt should include a statement by the applicant, and by anyone else at applicant's correspondence address, who would have handled the Office communication, and include any available documentary evidence of mail received, covering a reasonable period after the date of the Office communication, to show non-receipt of the communication in question. Copies of records on which the receipt date of the Office communication would have been entered had it been received, (*e.g.*, a copy of the outside of the file maintained by

applicant), are required if available. Also, a showing of any docket records *or other method* which would serve as a reminder of a response due date should be submitted. Whatever method applicant uses as a reminder, and submits in response to this decision should be adequately explained. Also, a statement is required that a search of the file maintained by applicant, or any other location where correspondence from the USPTO is kept, failed to find a copy of the Office communication in question. Finally, applicant must state that he was in fact at the correspondence address of record at the time the Office action would have been received.

Any such exhibits should be submitted as part of statement(s) showing that no Office communication was ever received.

Applicant's petition of December 31, 2004 does not include any statement by the applicant that the office action was not received, nor any statement that the applicant was at the correspondence address at the time the office action would have been received. Also, no showing has been made of any docket records or any other method that serves as a reminder of a response due date.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181" and should be mailed to the Commissioner for Patents, P.O. Box 1450, Technology Center 3600, Alexandria, VA 22313-1450.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6611

SNM/js: 6/7/05

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No. 10

LEONG C. LEI
PMB#1008, 1867 YGNACIO VALLY ROAD
WALNUT CREEK CA 94598

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JUL 12 2007

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Wen-Tsan Wang :
Application No. 10/345,270 :
Filed: January 16, 2003 :
Attorney Docket No. FP9304 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 2, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 31, 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 July 1, 2004.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $750.00; and (3) an adequate statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3213.

The application file is being forwarded to Technology Center 3600, Art Unit 3634.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No. None

LEONG C. LEI
1867 YGNACIO VALLEY ROAD
PMB# 1008
WALNUT CREEK CA 94598

COPY MAILED

FEB 09 2006

OFFICE OF PETITIONS

In re Application of	:	
Wen-Tsan Wang	:	
Application No. 10/345,272	:	DECISION ON PETITION UNDER
Filed: January 16, 2003	:	37 C.F.R. §1.181(A)
Attorney Docket Number: FP9281	:	
Title: STORAGE CONTAINER MADE	:	
OF BAMBOO STRIPS	:	

This is a decision on the petition under 37 CFR §1.181(a), filed March 30, 2005, to withdraw the holding of abandonment.

The Office regrets the delay in issuing this decision.

BACKGROUND

The above-identified application became abandoned for failure to reply 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 response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on October 2, 2004.

With the present petition, petitioner has asserted that the non-final Office action was never received. Petitioner has included a copy of one page from a notebook.

RELEVANT PORTION OF THE MPEP

MPEP 711.03(c) states, in part:

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

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

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

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

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

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

ANALYSIS

The showing in the instant petition is not sufficient to withdraw the holding of abandonment. Although Petitioner has stated that the Office communication was not received and that he searched the file jacket and the docket records, the printout Petitioner has supplied fails to establish non-receipt of the Office communication. The printout does not serve as a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed. The

header of the page, "Title: STORAGE CONTAINER MADE OF BAMBOO STRIPS," makes it clear that the printout is associated with the present file, whereas a docket report is a mail log, recorded by the person who receives all incoming mail. A docket report should show all incoming mail received during the relevant time period. Hence, the submitted copy of the log which is associated with the present file fails to show the correspondence at issue was not received, and merely misplaced and filed with another file.

Furthermore, Petitioner has failed to submit a copy of the file jacket.

As such, Petitioner has not established non-receipt of the communication, and the petition must be **DISMISED**.

CONCLUSION

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. §1.181." This is not a final agency action within the meaning of 5 U.S.C 704.

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

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

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

Encl: copy of non-final Office Action

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

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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No. None

LEONG C. LEI
1867 YGNACIO VALLEY ROAD
PMB# 1008
WALNUT CREEK CA 94598

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JUL 21 2006

OFFICE OF PETITIONS

In re Application of :
Wen-Tsan Wang :
Application No. 10/345,272 :
Filed: January 16, 2003 :
Attorney Docket Number: FP9281 :
Title: STORAGE CONTAINER MADE :
OF BAMBOO STRIPS :

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

This is a decision on the petition under 37 C.F.R. §1.137(b)[1], filed April 10, 2006, to withdraw the holding of abandonment.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed July 1, 2004, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on October 2, 2004.

A petition under 37 C.F.R. §1.181 was filed on March 30, 2005, and was dismissed via the mailing of a decision on February 9, 2006.

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

With the present petition, Petitioner has submitted the petition fee, an amendment, and the proper statement of unintentional delay. A terminal disclaimer is not required.

As such, the petition is **GRANTED**.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the amendment which was received with the present petition can be processed.

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

Paul Shanoski

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

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SEP 2 2 2003

OFFICE OF PETITIONS

BAKER & HOSTETLER LLP
Washington Square
Suite 1100
1050 Connecticut Avenue, N.W.
Washington DC 20036

In re Application of
C. Mangold, et al.
Application No. 10/345,280
Filed: January 16, 2003
Attorney Docket No. 87305.0034

DECISION GRANTING PETITION

This is a decision on the petition filed May 5, 2003, requesting that the above-identified application be accorded a filing date of January 16, 2003, with six sheets of drawings as part of the original disclosure.

On January 16, 2003, the above-identified application was filed. On March 4, 2003, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application" (the "Notice"), stating that the application had not been accorded a filing date because it was filed without drawings and drawings were required to understand the subject matter sought to be patented. The Notice also indicated that the oath or declaration was missing. The Notice allowed a non-extendable two month period for reply beginning from the mailing date of the Notice.

In response, on May 5, 2003, applicants filed the present petition and a duplicate copy of the application papers originally filed. Among the duplicate application papers filed, were six sheets of drawings. Petitioner also filed a copy of an Office date-stamped postcard showing that, among other items, six sheets of drawings received on January 16, 2003.

Upon review of the record, the six sheets of darlings have not been located among the application papers. However, the evidence is convincing that the application papers deposited January 16, 2003, included six sheets of darlings which were subsequently misplaced by the Office. Therefore, the application, including the six sheets of drawings, was complete on filing and entitled to a filing date of January 16, 2003.

Accordingly, the petition is granted.

Applicant is advised that the Notice was sent in error and is vacated. Therefore, no petition fee is necessary and the fee of $130.00 will be refunded in due course.

The executed declaration filed May 5, 2003, is noted and made of record.

The application file is being returned to the Office of Initial Patent Examination for further processing with the filing date of January 16, 2003, using the six sheets of drawings filed January 16, 2003.

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

Mail Date: 04/20/2010

Applicant	: Yoshifumi Niki	: DECISION ON REQUEST FOR
Patent Number	: 7651487	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/345,303	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **512** 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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MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON DC 20005-3096

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OFFICE OF PETITIONS

In re Patent No. 7,253,931	:	
Issue Date: August 7, 2007	:	
Application No. 10/345,345	:	ON PETITION
Filed: January 16, 2003	:	
Attorney Docket No. 58799-074	:	

This is a decision on the petition filed October 12, 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 request is **GRANTED**.

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.

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STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005

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MAR 17 2004

OFFICE OF PETITIONS

Applicant: McClurg et al.
Appl. No.: 10/345,366
Filing Date: January 16, 2003
Title: BIOMETRIC IMAGING SYSTEM AND METHOD
Attorney Docket No.: 1823.0530001/MVM/LMY
Pub. No.: US 2003/0133143 A1
Pub. Date: July 17, 2003

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on August 20, 2003.

The request is DISMISSED.

The instant request is that the application be republished because the assignee information on the front page of the patent application publication contains **a material error by the USPTO** wherein the Assignee name "Cross Match Technologies, Inc." is misprinted as "Cross Match Technology, Inc."

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 instant request does not identify a material mistake in the publication made by the Office. The assignment information was printed correctly on the patent application publication, as it was provided on the transmittal letter.[2] The Office prints the assignee information as reflected on the transmittal letter or application data sheet, if provided by applicant and does not look at the assignment records for the assignment information. While Applicant's representative now argues that the USPTO committed a material error in the publication of the application as it printed "Technology," not "Technologies" in the assignment information, the Applicant's representative provided "Technology" on the application transmittal letter.

On April 2, 2003, a Filing Receipt (copy enclosed) was mailed listing the assignee name as "Cross Match Technology, Inc." To avoid this type of problem in the future, applicants' representative should make request a corrected filing receipt using the facsimile number (703-746-9195) on the Filing Receipt.

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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).

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

Applicants' request for a corrected patent application publication on August 20, 2003, 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(b), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

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

The application will be examined in due course.

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

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

Enclosure: Copy of previously mailed Filing Receipt
Corrected Filing Receipt

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Paper No.

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

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MAR 1 1 2008

OFFICE OF PETITIONS

In re Application of	:	
Ken Beck	:	DECISION ON PETITION
Application No. 10/345,371	:	PURSUANT TO
Filed: January 16, 2003	:	37 C.F.R. § 1.182
Attorney Docket No. 1252.1071CIP7	:	
Title: FAILURE HIERARCHY IN A	:	
CLUSTER FILESYSTEM	:	

This is a decision on the "PETITION UNDER 37 C.F.R. § 1.182 FOR REFUND OF FEES" filed December 21, 2007, requesting the refund of fees associated with the filing of a Request for Continued Examination (RCE) and a petition for a four-month extension of time.

The petition is **DISMISSED**.

The Office mailed a final Office action on December 21, 2006. An after-final amendment was filed on June 21, 2007 along with a notice of appeal. On July 2, 2007, an interview summary was mailed, where finality of the December 21, 2006 Office action was withdrawn.

It appears that the Examiner subsequently reconsidered the propriety of the withdrawal of the finality of the December 21, 2006 Office action: an advisory action was mailed on September 4, 2007, indicating that either an amendment that placed the claims in condition for allowance, a notice of appeal, or an RCE would need to be filed.

On September 12, 2007, a petition seeking the withdrawal of the advisory action was filed, along with a conditional RCE and a conditional one-month extension of time.

On December 21, 2007, concurrently with this petition, Petitioner submitted a RCE and a petition for a four-month extension of time. Each of these fees will be charged to Petitioner's Deposit Account in due course.

Rule § 1.114(a) requires the submission of the fee set forth in Rule § 1.17(e) upon the submission of a RCE. Rule § 1.136(a)(1) requires the submission of the fee set forth in Rule § 1.17(a) upon the submission of a petition for an extension of time.

Each of these Rules requires the payment of a fee upon the filing of this particular submission. Consequently, these fees will not be refunded.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the submission under 37 C.F.R. § 1.114 - the amendment filed on June 21, 2007- can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[1]. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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

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McGuire Woods LLP
Suite 1800
1750 Tysons Boulevard
McLean, VA 22102

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SEP 0 3 2004

OFFICE OF PETITIONS

In re Application of
Sang-Soo Kim, et al.
Application No. 10/345,383
Filed: January 16, 2003
Attorney Docket No. 6192.0127.BA

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 28, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMSSED AS MOOT** for the reasons stated below.

In the instant case, the Office recognized the claim for benefit of prior-filed nonprovisional application, number 09/551,404, filed April 17, 2000, said claim appearing in the Application Transmittal, filed with the application on January 16, 2003. In view thereof, a petition under 37 CFR 1.78(a)(3) is unnecessary.[1]

In view of the dismissal of the petition as moot, the $1330 fee submitted therefor is unnecessary. Accordingly, as authorized, this fee will be refunded to Deposit Account No. 23-1951 in due course.

Any inquiries concerning this decision may be directed to Marianne Jenkins at (703) 306-3475.

This application is being returned to Technology Center Art Unit 2673 for examination in due course.

Frances Hicks

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

[1] *Note* MPEP 201.11(V), page 200-75 (Rev. 1. Feb. 2004) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

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FOLEY AND LARDNER LLP
3000 K STREET NW, SUITE 500
WASHINGTON DC 20007

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JUN 27 2007

OFFICE OF PETITIONS

In re Application of	:	
SERAFICA, et al.	:	
Application No. 10/345,394	:	DECISION ON PETITION
Filed: January 16, 2003	:	TO WITHDRAW
Attorney Docket No. **079579-0116**	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 17, 2007.

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

A review of the file record indicates that the power of attorney to *FOLEY AND LARDNER LLP* has been revoked by the assignee of the patent application on January 5, 2007 and re-submitted April 16, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **STINSON MORRISON HECKER LLP**
ATTN: PATENT GROUP
1201 WALNUT STREET, SUITE 2800
KANSAS CITY, MO 64106-2150

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JUL 16 2007

STINSON MORRISON HECKER LLP
ATTN: PATENT GROUP
1201 WALNUT STREET, SUITE 2800
KANSAS CITY MO 64106-2150

In re Application of	:
Gonzalo Serafica et al	:
Serial No.: 10/345,394	: PETITION DECISION
Filed: January 16, 2003	:
Attorney Docket No.: 505827-0005	:

This is a decision on applicants' request for a two week Extension of Time under 37 CFR 1.136(b) filed on July 11, 2007.

The fee for the extension of time of $200.00 will be charged to applicants' Deposit Account No. 19-4409, as directed.

Applicant requests the additional time due to the mailing of the Examiner's Answer to the address of former counsel due to failure of the Office to enter a properly and timely filed Power of Attorney.

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

Patent Owner's due date for filing a Reply Brief is extended by ONE MONTH to August 17, 2007.

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

IFW 1645

OIPE JC11
FEB 18 2005
PATENT & TRADEMARK OFFICE

New Atty. Dkt. No. 065334-0109
Old Atty. Dkt. No. N/A.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bjarne Bogen; Robert William Mallone; Iacob Mathiesen; Torunn Elisabeth Tjelle

Title: PRODUCTION OF MULTI-CHAIN PROTEIN FROM MUSCLE

Appl. No.: 10/345410

Filing Date: 01/16/2003

Patent No:

WD 09/22/05

APPROVED

WITHDRAWAL OF ATTORNEY OF RECORD AND CHANGE OF CORRESPONDENCE ADDRESS

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

Sir:

Due to the clients request to transfer certain applications, effective February 18, 2005, Foley & Lardner LLP attorneys associated with CUSTOMER NUMBER: 22428, withdraw as Attorney of Record for the captioned application. The undersigned is signing this withdrawal on behalf of herself and all the aforementioned attorneys.

All further correspondence should be sent to:

Doug Murdock
Genetronics, Inc.
11494 Sorrento Valley Road
San Diego, CA 92121-1334

Respectfully submitted,

Date S. A. Bent ⟷ By 16 February 2005

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5475
Facsimile: (202) 672-5399

Stephen A. Bent
Attorney for Applicant
Registration No. 29,768

002.1324799.1

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MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

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OFFICE OF PETITIONS

In re Application of
Uwe KLATT, et al
Application No. 10/345,416
Filed: January 16, 2003
Attorney Docket No. 449122050100

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 18, 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 with customer No. 25227.

All attorneys/agents associated with Customer Number 25227 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

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

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

There are no pending Office actions at the present time.

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

April Wise
Petitions Examiner
Office of Petitions

cc: UWE KLATT
ALT TEGEL 7
BERLIN 13507
GERMANY

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

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
10/345,416	01/16/2003	Uwe Klatt	449122050100

CONFIRMATION NO. 9808

OC000000024516095

25227
MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

Date Mailed: 06/25/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/18/2007.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

Diane Godlewski

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
FORMER ATTORNEY/AGENT COPY

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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

JASON D. EISENBERG
STERNE, KESSLER, GOLDSTEIN & FOX, P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

In re Application of	:	
McClurg et al.	:	
Application No. 10/345,420	:	DECISION ON PETITION
Filed: January 16, 2003	:	TO MAKE SPECIAL
For: **BIOMETRIC IMAGING SYSTEM AND METHOD**	:	

This is a decision on the petition under 37 C.F.R. §1.102 to make special filed March 24, 2005 which is considered as pursuant to MPEP §708.02 (IV), applicant's age.

A petition to make special under MPEP §708.02, IV, must show that petitioner is 65 years of age, or more. Acceptable evidence includes a birth certificate, copy of a driver's license, or simply a statement by the applicant. No fee is required.

The petition includes a Statement in Support executed by applicant attesting that John F. Carver, co-inventor is over 65 years of age.

Accordingly, the petition is **GRANTED**.

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

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

Kenneth A. Wieder

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

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MERCHANT & GOULD PC
P O BOX 2903
MINNEAPOLIS, MN 55402-0903

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APR 05 2005

OFFICE OF PETITIONS

In re Application of
Dennis Hancock et al
Application No. 10/345,452
Filed: January 17, 2003
Attorney Docket No. 838.273US01

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

This is a decision on the petition, filed March 25, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 20, 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 3727 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).*

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ROPES & GRAY LLP
PATENT DOCKETING 39/361
1211 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8704

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MAR 3 1 2008

In re Application of	:	
WEISS, Joel et al.	:	
Application No. 10/345,466	:	DECISION ON PETITION
Filed: January 14, 2003	:	TO WITHDRAW
Attorney Docket No. **CF-69**	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 19, 2008.

The request is **APPROVED**.

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

The request was signed by Laurence Rogers on behalf of all attorneys of record who are associated with customer No. 64558. All attorneys/agents associated with the Customer Number 64558 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

Tredelle D. Jackson
Petitions Examiner
Office of Petitions

cc: **JOEL WEISS**
C/O FISH & NEAVE
1251 AVENUE OF THE AMERICAS
NEW YORK, NY 10020-1104

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

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RICHARD A. FAGIN
P.O. BOX 1247
RICHMOND TX 77406-1247

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MAR 04 2009

OFFICE OF PETITIONS

In re Application of :
Gupta :
Patent No. 6,952,101 :
Issued: 4 October, 2005 :
Application No. 10/345,506 :
Filed: 16 January, 2003 :
Attorney Docket No. KJT-02-02 :

NOTICE

This is in response to the paper filed 4 October, 2007, under 37 C.F.R. §1.27(g)(2) requesting that status as a Small Entity be removed.

In accordance with the request, status as a Small Entity will be removed, and Petitioner is required to pay fees at the schedule set forth for not-small entities.

NOTE: Petitioner is reminded that the regulations require that Petitioner:

- Set forth both the application number and the patent number when submitting materials for a patented matter; and

- File for each application/patent an accounting effective the actual date of loss of status, specifying the date(s), the amount(s) paid, amount(s) actually due, and the difference(s) due and payable.

The regulations at 37 C.F.R. §1.28, and in particular at 37 C.F.R. §1.28(c)(2)(ii)—with the penalty provisions at 37 C.F.R. §1.28(c)(3)—provide:

> **§ 1.28 Refunds when small entity status is later established; how errors in small entity status are excused.**
> (a)*Refunds based on later establishment of small entity status.* A refund pursuant to § 1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 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 § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within three months of the date of payment of, the full fee.

(b)*Date of payment.*

(1)The three-month period for requesting a refund, pursuant to paragraph (a) of this section, starts on the date that a full fee has been paid;

(2)The date when a deficiency payment is paid in full determines the amount of deficiency that is due, pursuant to paragraph (c) of this section.

(c)*How errors in small entity status are excused.* If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section:

(1)*Separate submission required for each application or patent.* Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error), required by paragraph (c)(2) of this section, for one application or one patent. Where more than one application or patent is involved, separate submissions of deficiency payments (*e.g.*, checks) and itemizations are required for each application or patent. See § 1.4(b).

(2)*Payment of deficiency owed.* The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(i)*Calculation of the deficiency owed.* The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;

(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 a 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.

(3) *Failure to comply with requirements.* If the requirements of paragraphs (c)(1) and (c)(2) of this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month

non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office.

(d) *Payment of deficiency operates as notification of loss of status.* Any deficiency payment (based on a previous erroneous payment of a small entity fee) submitted under paragraph (c) of this section will be treated under § 1.27(g)(2) as a notification of a loss of entitlement to small entity status.

Out of an abundance of caution, Petitioners always are reminded that that those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

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.

This file is being released to IFW Files Repository.

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[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[2] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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Director's Office
Group 3700

PRICE HENEVELD COOPER DEWITT & LITTON, LLP
695 KENMOOR, S.E.
P O BOX 2567
GRAND RAPIDS MI 49501

In re Application of
SAMUEL A. KATT
Application No.: 10/345,511
Filed: January 16, 2003

DECISION ON PETITION UNDER 37 CFR 1.144

This is a decision on the petition under 37 CFR 1.144 filed February 17, 2005, requesting review of the election of species requirement made in the October 3, 2003 Office Action.

The petition is granted-in-part.

Petitioner argues that the requirement for the election of species is improper for the reason that independent claims 20 and 7 cannot be withdrawn when claims 21 and 22 that depend on these independent claims are considered to read on the species. In addition, petitioner argues that the requirement be withdrawn insofar as a generic claim has now been allowed.

A review of the originally filed disclosure reveals that on page 7 lines 3-5, all of the embodiments can be provided with a strap extending through slots in the vertical legs of the brackets. However, no discussion of additional straps on each bracket is made in any of the embodiments. While it is noted that figure 5 includes additional members perpendicular to straps 24, they are not discussed and could just as easily be rigid hooks. Since none of the embodiments disclose more than one strap on each bracket, the claim language of "at least one strap" is not directed to any of the species and should be considered generic. This is also true for the term "mechanism" since all embodiments are disclosed as having slot. As such, claims 7 and 14-22 should not have been withdrawn.

With regard to the requirement being withdrawn since a generic claim has been allowed, the requirement be must withdrawn when claims directed to a non-elected specie are embraced by an allowable generic claim. See MPEP 809.02(c). Since applicant has no current claims non-elected as based upon this decision, there is no reason the examiner cannot maintain the election if claims were presented to a non-elected specie that were not embraced by an allowable generic claim.

In conclusion the election of specie requirement is maintained, however, claims 7 and 14-22 are considered to be examinable under the elected specie. The examiner is directed to withdraw the finality of the last office action, enter the amendments after final and provide an office action not inconsistent with this decision.

Richard A. Bertsch, Director
Technology Center 3700

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A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE, FL 32614-2950

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OFFICE OF PETITIONS

In re Application of	:	
Melker et al.	:	
Application No. 10/345,532	:	NOTICE OF REQUEST FOR
Filed: January 16, 2003	:	RECONSIDERATION OF
Patent No. 6,974,706	:	PATENT TERM ADJUSTMENT
Issued: December 13, 2005	:	and
Attorney Docket Number:	:	NOTICE OF INTENT TO ISSUE
UF-342	:	CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed February 2, 2006. Patentee requests that the the above-identified patent be afforded a patent term adjustment of 86 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **eighty-six (86)** days.

On December 13, 2005, the above-identified application matured into U.S. Patent No. 6,974,706. The instant request for reconsideration filed February 2, 2006 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 0 days. Patentees dispute the reduction of 120 days associated with the filing of a miscellaneous paper on August 8, 2005. Patentee states that this paper was a Statement of Substance of Interview as required by the Examiner's Interview Summary mailed July 6, 2005, and thus, pursuant to the OG Notice published June 26, 2001, *Clarification of 37 C.F.R. 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, no reduction is warranted.

Patentees' arguments are well-taken. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of a response to the examiner's reasons for allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record reveals that the reduction of one hundred twenty (120) days was based on the filing of the Applicants' Interview Summary. This paper is not identified as one of the papers the filing of which the Director has specifically deemed not to be a failure to engage in reasonable efforts within the meaning of 1.704(c)(10). Nonetheless, under the circumstances of this case, it is concluded that the filing of Applicants' Interview Summary is not a failure to engage within the meaning of 1.704(c)(10). Thus, it is concluded that the reduction of one hundred twenty (120) days is not warranted.

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 EIGHTY-SIX (86) days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 6,974,706 B1

DATED : December 13, 2005

INVENTOR(S) : Melker 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 (0) days

Delete the phrase "by 0 days" and insert – by 86 days--

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MICHAEL G. FLETCHER
FLETCHER, YODER & VAN SOMEREN
P.O. BOX 692289
HOUSTON TX 77269-2289

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APR 12 2005
OFFICE OF PETITIONS

In re Patent No. 6,734,089	:	
Issued: 11 May, 2004	:	
Application No. 10/345,542	:	ON PETITION
Filed: 16 January, 2003	:	
Attorney Docket No. MICS:0091	:	

This is a decision on the petition filed on 6 December, 2004, 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 571.272.3213. 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.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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

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APR 26 2005
TECHNOLOGY CENTER 3600

HAYNES AND BOONE, LLP
901 MAIN STREET, SUITE 3100
DALLAS, TX 75202

In re application of:
Philippe J. Auber
Application No. 10/345,569
Filed: January 16, 2003
For: SHAFT SEAL

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on March 1, 2005, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

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

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

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

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

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks conditions A) and B) above.

As to condition A), the attorneys listed in the request (Customer Number 27683) do not correspond with those named in the Power of Attorney in the declaration, thereby creating confusion as to who is withdrawing. To alleviate this problem, it is suggested that the request be resubmitted and that such request specifically state that the signing attorney is signing on behalf of all attorneys of record in this application.

As to condition B), no reason is given for the withdrawal request. Condition B) can be met by specifying one of the valid reasons for withdrawal under 37 CFR 10.40(c)(1)-(6).

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(571)-272-6611

SNM/dew: 4/18/05

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100 EAST WISCONSIN AVENUE
SUITE 3300
MILWAUKEE, WI 53202-4108

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OFFICE OF PETITIONS

In re Application of
Philippe Jacques Auber
Application No. 10/345,569
Filed: January 16, 2003
Attorney Docket No. 26333.893

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 18, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee and publication fee and formal drawings in a timely manner in reply to the Notice of Allowance and Notice of Allowability mailed October 28, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on January 29, 2005.

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

The drawings filed on April 18, 2005 have been approved by the Draftsperson. A copy of the Notice of Draftsperson's Patent Drawing Review (PTO-948) is attached.

The Revocation and Substitute Power of Attorney filed April 18, 2005 has been entered and made of record (copies attached).

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

This matter is being referred to Publishing Division.

Wan Laymon

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

Attachments: PTO-948
Notice Regarding Change of Power of Attorney
Notice of Acceptance of Power of Attorney

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

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APR 26 2010

OFFICE OF PETITIONS

In re Patent No. 7,155,183	:	
Issue Date: December 26, 2006	:	
Application No. 10/345,604	:	NOTICE
Filed: August 28, 2007	:	
Attorney Docket No. 28944/40595	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed March 2, 2010. 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 filed on May 21, 2007 is hereby accepted. The petition is **GRANTED**.

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.

This file is being forwarded to Files Repository.

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OCT 11 2005

BUCKLEY, MASCHOFF, TALWALKAR LLC
5 ELM STREET
NEW CANAAN, CT 06840

In re application of Miles Lasater et al. Application No. 10/345,605 Filed: January 16, 2003 For: SYSTEMS AND METHODS FOR FACILITATING A DISTRIBUTION OF BANK ACCOUNTS VIA AN EDUCATIONAL INSTITUTION	: : : : :	**DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION)**

This is in response to the petition filed on July 18, 2005 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

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

The petition fails to adequately meet requirements (B) above. In this regard, item (B) is not met because the petition fails to include an election without traverse, or a statement that applicants are willing to elect without traverse should a restriction or election be required.

For the above stated reasons, the petition is **DISMISSED**.

Petitioner is given one more opportunity to perfect the petition. 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.

Applicant should promptly submit a renewed petition to the Commissioner for 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.

Kenneth Dorner
Special Programs Examiner
Technology Center 3600
(571) 272-6587

KJD/slb: 10/03/05

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NOV - 9 2005

BUCKLEY, MASCHOFF, TALWALKAR LLC
5 ELM STREET
NEW CANAAN CT 06840

In re application of	:	**DECISION ON PETITION**
Miles Lasater et al.	:	**TO MAKE SPECIAL**
Application No. 10/345,605	:	**(ACCELERATED**
Filed: January 16, 2003	:	**EXAMINATION)**
For: SYSTEMS AND METHODS FOR FACILITATING A DISTRIBUTION OF BANK ACCOUNTS VIA AN EDUCATIONAL INSTITUTION		

This is in response to the renewed petition filed on October 17, 2005 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

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

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

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

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

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

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(571) 272-6587

KJD/slb: 10/26/05

UNITED STATES PATENT AND TRADEMARK OFFICE

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ATMI, INC.
7 COMMERCE DRIVE
DANBURY CT 06810

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MAY 13 2005

OFFICE OF PETITIONS

In re Application of :
Smuruthi Kamepalli et al :
Application No. 10/345,616 :
Filed: January 16, 2003 :
Attorney Docket No. ATMI-606 :

ON PETITION

This is a decision on the petition, filed January 24, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 13, 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 1621 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

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ON PETITION

In re Application of :
Smuruthi Kamepalli et al :
Application No. 10/345,616 :
Filed: January 16, 2003 :
Attorney Docket No. ATMI-606 :

This is a decision on the petition, filed January 24, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on January 13, 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 1621 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

DOCUMENTED
MAY 1 7 2005
DUE:
BY:

[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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STEPTOE & JOHNSON, LLP
2121 AVENUE OF THE STARS
SUITE 2800
LOS ANGELES CA 90067

MAILED

JUL 08 2010

OFFICE OF PETITIONS

In re Patent No. 7,627,668	:	DECISION ON REQUEST FOR
CARDNO et al.	:	RECONSIDERATION OF
Issue Date: December 1, 2009	:	PATENT TERM ADJUSTMENT AND
Application No. 10/345,649	:	NOTICE OF INTENT TO ISSUE
Filed: January 16, 2003	:	CERTIFICATE OF CORRECTION
Atty. Docket No. 83336.1713	:	

This is a decision on the petition filed on January 19, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand eight hundred eight (1808) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The term of the above-identified patent is extended or adjusted by **one thousand one hundred one (1101) days**.

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 January 17, 2006, and ends on December 25, 2007, the day before the RCE was filed, and is 708 days (not 1415 days). See 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 1101 days, not 1808 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, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

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

The Office acknowledges the submission of the $200.00 fee set forth in 37 CFR 1.18(e).

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand one hundred one (1101) days.**

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,627,668 B2

DATED : Dec. 1, 2009 **DRAFT**

INVENTOR(S) : CARDNO 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 647 days.

Delete the phrase "by 647 days" and insert – by 1101 days--

PALM INTRANET

Day : Tuesday
Date: 7/6/2010
Time: 13:51:24

PTA Calculations for Application: 10/345649			
Application Filing Date:	01/16/2003	PTO Delay (PTO):	925
Issue Date of Patent:	12/01/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	278
Post-Issue Petitions:	0	Total PTA (days):	1101
PTO Delay Adjustment:	454		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
95	07/06/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	454		
87.5	11/11/2009	PTA 36 MONTHS			
87	12/01/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
86	11/09/2009	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
84	10/28/2009	EXPORT TO FINAL DATA CAPTURE			
83	10/27/2009	FINISHED INITIAL DATA CAPTURE			
82	10/27/2009	DISPATCH TO FDC			
81	10/21/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
79	10/16/2009	STATEMENT FILED INDICATING A LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS			
78	10/16/2009	ISSUE FEE PAYMENT VERIFIED			
76	10/16/2009	ISSUE FEE PAYMENT RECEIVED			
71	10/14/2009	MAIL NOTICE OF ALLOWANCE			
70	10/09/2009	ISSUE REVISION COMPLETED			
69	10/06/2009	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
68	10/06/2009	DOCUMENT VERIFICATION			
67	10/06/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
66	10/06/2009	EXAMINER'S AMENDMENT COMMUNICATION			
65	10/06/2009	NOTICE OF ALLOWABILITY			
64	09/04/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
60	09/18/2009	DATE FORWARDED TO EXAMINER			
59	09/10/2009	AMENDMENT AFTER FINAL REJECTION			

58	06/10/2009	ELECTRONIC REVIEW			
57	06/10/2009	EMAIL NOTIFICATION			
56	06/10/2009	MAIL FINAL REJECTION (PTOL - 326)			
55	06/07/2009	FINAL REJECTION			
54	03/27/2009	DATE FORWARDED TO EXAMINER			
53	02/23/2009	RESPONSE AFTER NON-FINAL ACTION		2	50
52	11/21/2008	ELECTRONIC REVIEW			
51	11/21/2008	EMAIL NOTIFICATION			
50	11/21/2008	MAIL NON-FINAL REJECTION			
49	11/18/2008	NON-FINAL REJECTION			
47	10/07/2008	CASE DOCKETED TO EXAMINER IN GAU			
46	09/11/2008	DATE FORWARDED TO EXAMINER			
45	08/22/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
44	09/11/2008	DATE FORWARDED TO EXAMINER			
43	08/22/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		89	37
42	09/11/2008	DISPOSAL FOR A RCE / CPA / R129			
41	08/22/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
40	07/22/2008	EMAIL NOTIFICATION			
39	07/21/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
38	07/18/2008	CORRESPONDENCE ADDRESS CHANGE			
37	02/25/2008	MAIL FINAL REJECTION (PTOL - 326)			
36	02/19/2008	FINAL REJECTION			
35	01/30/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
34	01/28/2008	CORRESPONDENCE ADDRESS CHANGE			
33	01/28/2008	DATE FORWARDED TO EXAMINER			
32	12/26/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
31	01/28/2008	DATE FORWARDED TO EXAMINER			
30	12/26/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		95	26
29	01/28/2008	DISPOSAL FOR A RCE / CPA / R129			
28	12/26/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
27	12/26/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
26	06/22/2007	MAIL FINAL REJECTION (PTOL - 326)			

25	06/20/2007	FINAL REJECTION			
24	03/29/2007	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
23	03/29/2007	NEW OR ADDITIONAL DRAWING FILED			
22	04/20/2007	DATE FORWARDED TO EXAMINER			
21	03/29/2007	RESPONSE AFTER NON-FINAL ACTION		92	17
20	03/29/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
19	01/16/2003	PRELIMINARY AMENDMENT			
17	09/27/2006	MAIL NON-FINAL REJECTION	925		-1
16	09/21/2006	NON-FINAL REJECTION			
15	01/16/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
14	09/09/2006	CASE DOCKETED TO EXAMINER IN GAU			
13	05/11/2006	CASE DOCKETED TO EXAMINER IN GAU			
12	04/10/2006	CASE DOCKETED TO EXAMINER IN GAU			
11	12/09/2005	CASE DOCKETED TO EXAMINER IN GAU			
10	10/23/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	01/16/2004	REFERENCE CAPTURE ON IDS			
8.7	01/16/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	01/16/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	05/27/2003	CASE DOCKETED TO EXAMINER IN GAU			
6	03/04/2003	APPLICATION DISPATCHED FROM OIPE			
5	03/03/2003	APPLICATION IS NOW COMPLETE			
2	01/25/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/16/2003	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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STALLMAN & POLLOCK LLP
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SUITE 2200
SAN FRANCISCO CA 94111

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MAR 17 2006

OFFICE OF PETITIONS

In re Application of	:	
Richard S. Stack et al.	:	
Application No. 10/345,666	:	DECISION ON PETITION
Filed: January 16, 2003	:	UNDER 37 C.F.R. §1.181
Attorney Docket Number: BARO-300	:	
Title: SATIATION POUCHES AND METHODS OF USE	:	

This is a decision on the petition filed on February 2, 2006, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR §1.113 in a timely manner to the final Office action mailed May 19, 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 above-identified application became abandoned on August 20, 2005. A notice of abandonment was mailed on November 29, 2005.

With the present petition, Petitioner has asserted that a response to this communication was submitted via the filing of a Request for Continued Examination (RCE) on November 23, 2005 (November 19, 2005 fell on a Saturday.) Petitioner has submitted a copy of this response, which contains a certificate of mailing dated November 21, 2005 and a date stamp of November 23, 2005 from the Office of Initial Patent Examination.

The electronic file has been reviewed, and the same contains the above-mentioned response. It is clear that this response was received on November 23, 2005.

Furthermore, Office records indicate that the fees for both the filing of an RCE and a three-month extension of time were charged to Petitioner's Deposit Account on November 25, 2005.

Petitioner has requested that the holding of abandonment in the above-identified application be withdrawn. It is clear that a response was timely submitted. Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that petitioner has met his burden of establishing that a submission was timely submitted.

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

Technology Center 3700 will be notified of this decision.

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

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

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OSHA LIANG LLP
SUITE 2800
1221 MCKINNEY ST.
HOUSTON TX 77010

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AUG 0 1 2006

OFFICE OF PETITIONS

In re Application of
Shigeru Matsumura :
Application No. 10/345,705 : ON PETITION
Filed: January 16, 2003 :
Attorney Docket No. 02008.052002 :
:

This is a decision on the petition filed July 31, 2006, requesting withdrawal of the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED as moot**.

Unfortunately, the petition did not reach the appropriate official for decision within sufficient time to avert issuance of the application into a patent. Petitioner's attention is directed to 37 CFR 1.313(d), which states:

> A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue**. Withdrawal of an application from issue after payment of the issue fee may not be effective to avoid publication of application information.

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

Karen Creasy
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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MAR 12 2003

OFFICE OF PETITIONS

In re Application of	:
Richards et al.	: DECISION GRANTING
Application No. 10/345,768	: PETITION
Filed: 16 January, 2003	:
Attorney Docket No. 2088	:

This is a decision on the petition filed on 6 February, 2003, which is treated as a petition filed under 37 CFR 1.10(c) requesting that the above-identified application be accorded a filing date of 16 January, 2003, rather than the presently accorded filing date of 15 January, 2003.

The petition is **GRANTED**.

Petitioner alleges that the application was deposited in Express Mail service on 16 January, 2003. In support, on 6 February, 2003, petitioner supplied a copy of Express Mail Label No. EV066374167US (the same Express Mail number found on the itemized transmittal sheet accompanying the original application papers located in the official file). The "date-in" on the Express Mail Label, however, appears to be 01/15/03. The Express Mail label also contains an official USPS postmark, however, dated 16 January, 2003.

In view of the above, the petition is granted. The petition fee is unnecessary and will be credited to counsel's deposit account, No. 21-0765.

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to **16 January, 2003**.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 3/11/03

2 Serial/Patent # 10/345,768

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
	Extension of Time			$
	Notice of Appeal/Appeal			$
1460	Petition	2	2-6-03	$ 130—
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 130—

8 TO BE REFUNDED BY:

	Treasury Check
X	Credit Deposit A/C #:

9 21--07765

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

DUE TO PTO error

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: R WOOD TITLE: ATTY

SIGNATURE: RW PHONE: 3086918

OFFICE: PETITIONS

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: Alicia Pelly DATE: 3/12/03

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

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Refund Branch
Crystal Park One, Room 802B

FORM PTO 1577
(01/90)

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LEE, HONG, DEGERMAN, KANG & SCHMADEKA
660 S. FIGUEROA STREET
Suite 2300
LOS ANGELES CA 90017

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SEP 21 2007

OFFICE OF PETITIONS

In re Application of
Han et al.
Application No. 10/345,784
Filed: January 16, 2003
Attorney Docket Number: 2078-3-13

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 17, 2007, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a reply to the non-final Office Action of October 19, 2005. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). A Notice of Abandonment was mailed on January 20, 2006.

This petition is hereby **Granted**.

The office hereby acknowledges the receipt of the Amendment submitted with the instant petition.

It is noted the number associated with customer number 35884 differs from the address provided on the petition. If appropriate a change of correspondence address should be submitted. A courtesy copy will be sent to petitioner, however all future correspondence will be directed to the address of record.

This application is being referred to Art Unit 3762 for further processing.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: Craig w. Schmoyer
Lee Hong Degerman Kang & Schamadeka PC
801 South Figueroa Street, 12th Floor
Los Angeles, CA 90017

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IRVINE, CA 92612-1599

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AUG 16 2007

OFFICE OF PETITIONS

In re Application of
David F. Woodward et al
Application No. 10/345,788
Filed: January 15, 2003
Attorney Docket No. 17481 (AP)

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

This is a decision on the petition, filed August 15, 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 1, 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 1615 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\aug10\345788.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.: X

DATE : **August 01, 2008**

TO SPE OF : ART UNIT **1615**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/345788** Patent No.: **7351788 B2**

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

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within **7** days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**.

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within **7** days, to:

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

You can fax the Directors/SPE response to 571-270-9990

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: _____

MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER

SPE — 1615 **Art Unit**

Patent 7,351,404

PATENT

IN UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David F. Woodward et al

Patent No.: 7,351,404

Serial No. 10/345,788

Docket No: 17481 (AP)

Examiner: Silverman, Eric E

Issue Date: April 1, 2008

Filed: January 15, 2003

Group Art Unit: 1615

Confirmation No.: 3151

Title METHOD OF ENHANCING HAIR GROWTH

REQUEST FOR CERTIFICATION OF CORRECTION

Attn: Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

OK to Enter
7/24/08

It is requested that a Certificate of Correction be issued correcting printing errors appearing in the above-identified United States patent. Two copies of the text of the Certificate in the suggested form are enclosed.

Pursuant to 1.20(a), the examiner is authorized to charge the Certificate of Correction fee of $100.00 to the Deposit Account No.01-0885.

Issuance of the Certificate of Correction would neither expand nor contract the scope of the claims as properly allowed, and re-examination is not required.

The Examiner is authorized to charge any additional fees or credit overpayment to Deposit Account No. 01-0885.

Respectfully submitted,

Date July 17, 2008

By /John E. Wurst/
Attorney Name: John E. Wurst
Reg. No. 40,283

Please send all inquiries and correspondence to:
John E. Wurst
Allergan, Inc. (T2-7H)
2525 Dupont Drive
Irvine, CA 92612
Telephone: 714-246-5475 / Facsimile: 714-246-4249

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

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

NOV 16 2007

In re Application of	:
Michael J. Constanza et al	:
Serial No.: 10/345,808	: PETITION DECISION
Filed: January 16, 2003	:
Attorney Docket No.: ORT1303USCNT	:

This is a response to the petition under 37 CFR 1.59(b), filed April 26, 2004, to expunge information from the above identified application. This application has been allowed.

Petitioner requests that a documents submitted October 25, 2007, be expunged from the record. Petitioner does not state 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.

Petitioner states that the documents submitted October 25, 2007, were unintentionally submitted. No fees were charged for this submission which included a Request for Continued Examination (RCE), although authorization to charge a Deposit Account is given. Petitioner does not state that failure to obtain return of the papers would cause irreparable harm or that the information contained therein has not otherwise been made public. Further, it appears that a nearly identical amendment was filed approximately 10 days later.

The petition is **DISMISSED** since applicants do not provide sufficient reasons for granting expungement.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at general Office facsimile number.

John LeGuyader
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

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APR 14 2010

OFFICE OF PETITIONS

In re Application of	:	
Costanzo et al.	:	
Application No. 10/345808	:	ON REQUEST FOR
Filing or 371(c) Date: 01/16/2003	:	RECONSIDERATION OF
Attorney Docket No.	:	PATENT TERM ADJUSTMENT
ORT-1303 (CONT)	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed January 22, 2010. Applicants requests that the Patent Term Adjustment be corrected to 21 days, from zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants' requests this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is

advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

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

/Derek L. Woods/

Derek L. Woods
Attorney
Office of Petitions

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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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DALY, CROWLEY, MOFFORD & DURKEE,
SUITE 301A
354A TURNPIKE STREET
CANTON MA 02021-2714

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OFFICE OF PETITIONS

In re Application of :
Alexander H. Slocum et al :
Application No. 10/345,846 : DECISION ON PETITION
Filed: January 16, 2003 :
Attorney Docket No. TER-006AUS :

This is a decision on the petition under 37 CFR 1.137(b), filed , July 7, 2005, to revive the above-identified application. This is also a decision on the request for refund filed July 7, 2005, which is being treated as a petition under 37 CFR 1.181(a), to withdraw holding of abandonment.

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

The petition under 37 CFR 1.181(a) is **DISMISSED**.

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

The petition under 37 CFR 1.181(a), is dismissed because there is no evidence of irregularity in the mailing of the Office letter on July 13, 2004.

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

This matter is being referred to Technology Center AU 3753.

Karen Creasy

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

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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TECHNOLOGY CENTER 3600

LOWENSTEIN SANDLER PC
65 LIVINGSTON AVENUE
ROSELAND, NJ 07068

In re application of Derek J. Joyce Application No. 10/345,850 Filed: January 16, 2003 For: METHODS FOR IDENTIFYING OR PREDICTING CAPACITY PROBLEMS	: : : :	**DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION)**

This is in response to the petition filed on June 23, 2003, to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

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

The petition fails to adequately meet requirement (B) above. Regarding item (B), the petition fails to include an election without traverse, or a statement that applicant is willing to elect without traverse should a restriction or election be required.

For the above stated reasons, the petition is **DISMISSED**.

Petitioner is given one more opportunity to perfect the petition. 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.

Applicant should promptly submit a renewed petition to the Commissioner for 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
571-272-6619
RAR/dcg: 6/5/06

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

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.
ATTN: PATENT INTAKE CUSTOMER NO. 30623
ONE FINANCIAL CENTER
BOSTON, MA 02111

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APR 0 9 2008

OFFICE OF PETITIONS

In re Application of :
David Haines et al :
Application No. 10/345,856 : ON PETITION
Filed: January 16, 2003 :
Attorney Docket No. 21534-002 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 31, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 5, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is June 6, 2007.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $525 extension of time submitted with the petition on October 31, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405 and the submission required by 37 CFR 1.114; (2) the petition fee of $770; 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 1617 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petition Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Attn: Patent Intake Customer No. 30623
One Financial Center
Boston, MA 02111

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OFFICE OF PETITIONS

In re Application of
David Haines et al.
Application No. 10/345,856
Filed: January 16, 2003
Attorney Docket No. 21534-002

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 23, 2008.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. 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 Ingrid A. Beattie on behalf of all attorneys of record who are associated with customer No. 30623. All attorneys/agents associated with the Customer Number 30623 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 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 signing inventor. A courtesy copy of this decision is being mailed to the address noted on the request. However, if the person named on the request desires to receive future correspondence regarding this file, the appropriate documents must be submitted.

If an assignee desires to intervene in this application, then compliance with 37 CFR 3.73(b) must be met. A statement under 37 CFR 3.73(b) has not been provided in this application.

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

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Natural Alternatives International, Inc.
1185 Linda Vista Drive
San Marcos, CA 92078

cc: Fadia F. Mahmoud
Ali Thanian Al-Ozaina Street
Area 12, House 10
Salawa, Kuwait

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
10/345,856	01/16/2003	David Haines	21534-002

CONFIRMATION NO. 2950

POWER OF ATTORNEY NOTICE

30623
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ATTN: PATENT INTAKE CUSTOMER NO. 30623
ONE FINANCIAL CENTER
BOSTON, MA 02111

OC000000030962964

Date Mailed: 07/14/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/23/2008.

- 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.

/kainabinet/

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

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PATRICK J. O'SHEA
O'SHEA, GETZ & KOSAKOWSKI, P.C.
1500 MAIN STREET, SUITE 912
SPRINGFIELD, MA 01115

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SEP 0 6 2005

OFFICE OF PETITIONS

In re Application of :
Roland Baumgaertner :
Application No. 10/345,893 : ON PETITION
Filed: January 16, 2003 :
Attorney Docket No. 7039 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 12, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 11, 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 12, 2004.

The Change of Correspondence Address has been accepted and recorded.

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 $1500; and (3) an adequate statement of unintentional delay. Accordingly, the petition filed May 12, 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 matter is being referred to Technology Center 2800, Art Unit 2833 for further processing.

Retta Williams

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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KATHY MANKE
AVAGO TECHNOLOGIES LIMITED
4380 ZIEGLER ROAD
FORT COLLINS, CO 80525

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In re Application of	:	
Peter H. Mahowald, et al.	:	
Application No. 10/345,899	:	DECISION ON PETITION
Filed: January 15, 2003	:	
Attorney Docket No. 10021181-1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 19, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit corrected formal drawings on or before September 20, 2007, as required by the Notice to File Corrected Application Papers, mailed July 20, 2007. Accordingly, the date of abandonment of this application is September 21, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the corrected formal drawings , (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

The drawings have been approved by the USPTO draftsperson.

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

This application is being referred to the Office of Data Management for processing into a patent.

April M. Wise
Petitions Examiner
Office of Petitions

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

Mr. Joseph Nebelon
12608 Carmel County Road
#631
San Diego, CA 92310

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SEP 1 0 2003

OFFICE OF PETITIONS

In re Application of:
Vance D. Campbell, Jr., Joseph Nebelon,
Robert D. Adams, Patrick Ching
and April Marano-Ford
Application No. 10/345,901
Filed: January 16, 2003
Title of Invention: SYRINGE WITH
RETRACTABLE NEEDLE ASSEMBLY

LETTER

Dear Mr. Nebelon:

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: FULBRIGHT & JAWORSKI L.L.P.
29TH FLOOR
865 SOUTH FIGUEROA STREET
LOS ANGELES, CA 90017-2576

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 5

FULBRIGHT & JAWORSKI L.L.P.
29TH FLOOR
865 SOUTH FIGUEROA STREET
LOS ANGELES, CA 90017-2576

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SEP 1 0 2003

OFFICE OF PETITIONS

In re Application of: Vance D. Campbell, Jr., Joseph Nebelon, Robert D. Adams, Patrick Ching and April Marano-Ford Application No. 10/345,901 Filed: January 16, 2003 Title of Invention: SYRINGE WITH RETRACTABLE NEEDLE ASSEMBLY	DECISION GRANTING STATUS UNDER 37 CFR 1.47

This Decision is in response to a Petition Under 37 C.F.R. 1.47(a), filed August 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, Joseph Nebelpn, 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 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

SPE C. McDermott

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/345,904

Paper No.: _____

DATE : 6/16/05

TO SPE OF : ART UNIT 3738

SUBJECT : Request for Certificate of Correction on Patent No.: 6814749

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

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

Lamonte M. Newsome

Thank You For Your Assistance

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

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

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

Comments:

Cmr — **SPE**

7/18/05 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 4

HARNESS, DICKEY & PIERCE,
P.L.C.
P.O. BOX 8910
RESTON, VA 20195

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JUL 14 2003

OFFICE OF PETITIONS

In re Application of
Peter Tiemann
Application No. 10/345,947
Filed: January 17, 2003
Attorney Docket No.
32860-000476/US

DECISION ON PETITION

This is a decision on the petition filed April 30, 2003, requesting that the above-identified application be accorded a filing date of January 17, 2003, including pages 12-15 of the specification as part of the original specification.

The application was deposited on January 17, 2003. On March 3, 2003, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice"), stating that the application had been accorded a filing date of January 17, 2003, and advising applicants, inter alia, that pages 12-14 of the specification appeared to be missing.

In response applicant submits the instant petition and substitute specification. The petition asserts that no pages were omitted, but that the return-receipt postcard incorrectly indicated 18 pages of specification were filed, when in fact only 15 pages were filed. Moreover, page 12 of the specification was not numbered, and pages 13 - 15 were misnumbered as pages 16-18. Petitioner argues that only 15 pages of specification were filed and received in the Office on January 17, 2003. The substitute specification corrects the labeling of pages 1 - 15 of the specification.

Based on the statements made in the petition, which is signed by a registered practitioner, it appears that the pages of the specification numbered 16 - 18 are typographical errors and that no pages 16-18 were intended to be filed on January 17, 2003.

The mailing of a 'Notice of Omitted Item(s)' will permit the applicant to either: (1) promptly establish prior receipt in the USPTO of the drawing(s) at issue (generally by way of date-stamped postcard receipt (MPEP 503)) (by filing a petition under 37 CFR 1.53); (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date such submission as the application filing date (by filing a petition under 37 CFR 1.182); or (3) "accept the application as deposited in the USPTO [and not] respond to the 'Notice of Omitted Item(s)'", thereby constructively accepting the application as deposited with this Office. Amendment of the specification is required . . . to renumber the pages consecutively. . . ." See MPEP 601.01(g).

In this instance, Petitioner elected option (3), and filed a substitute specification in lieu of an Amendment.

Accordingly, the petition is **GRANTED**.

However, since the application as filed listed pages number 1-11, included a blank page, and listed pages numbered 16-18, and no pages numbered 13-15 were present on January 17, 2003, the application was prima facie incomplete. See MPEP 506 and 608.01. Thus, the petition and the petition fee were necessary to correct applicants' filing error. Therefore, the petition fee will not be refunded.

The application will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries specific to 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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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON VA 20195

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MAY 0 6 2004

OFFICE OF PETITIONS

In re Application of
Peter Tiemann
Application No. 10/345,967
Filed: January 17, 2003
Attorney Docket No. 32860-000477/US

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed March 30, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of the prior-filed applications.

The petition is **DISMISSED**.

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

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

The instant application was filed on January 17, 2003 and was pending at the time of filing of the instant petition.

The reference to the prior-filed applications was not included in the manner specified in 37 CFR 1.78(a)(2)(i) (i.e., in an ADS or in an amendment to the first sentence following the title of the specification) or filed within the period specified in 37 CFR 1.78(a)(2)(ii).

---

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

The instant petition does not comply with item (1).

In the amendment submitted with the instant petition, the foreign priority claim for benefits to European Application No. 02001267.0 filed January 17, 2002, should not be included in the amendment claiming priority under 35 U.S.C. § 120.

For the above-noted reason, the petition under 37 CFR 1.78(a)(3) cannot be granted.

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

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

By hand: Customer Window located at:

2011 South Clark Place
Crystal Plaza Two Lobby
Room 1B03
Arlington, VA 22202

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

Any questions concerning this matter may be directed to the undersigned at (703) 305-8859.

Karen Creasy

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

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HARNESS, DICKEY & PIERCE
P.O. BOX 8910
RESTON VA 20195

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OFFICE OF PETITIONS

In re Application of	:
Peter Tiemann	: DECISION ON PETITION
Application No. 10/345,967	: UNDER 37 CFR 1.78(a)(3)
Filed: January 17, 2003	:
Attorney Docket No. 32860-000477/US	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed May 11, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

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

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

The instant petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation,

divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., August 2001), Section 201.11, Reference to First Application. The amendment filed May 11, 2004, fails to state the relationship of PCT Application No. PCT/DE99/01109, filed April 14, 1999, to the instant application.

Additionally, the foreign application data should be included in the declaration or Application Data sheet and not in an amendment to the first sentence following the title of the specification. **Note 1.63(c)(2) and 1.76.** Therefore, petitioner need not include the foreign application data in the supplemental amendment since the foreign priority claim for benefits to European Application No. 02001267.0, filed January 17, 2002 has been acknowledged.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment[1] stating the relationship of the prior-filed applications to the instant application is required.

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

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

By hand: Customer Window located at:

2011 South Clark Place
Crystal Plaza Two Lobby
Room 1B03
Arlington, VA 22202

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

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[1] *Note* 37 CFR 1.121

Any questions concerning this matter may be directed to the undersigned at (703) 305-8859 .

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUL 1 4 2004

OFFICE OF PETITIONS

In re Application of :
Peter Tiemann :
Application No. 10/345,967 : DECISION ON PETITION
Filed: January 17, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 32860-000477/US :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed June 17, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

---

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

The instant pending application was filed on January 17, 2003, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

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

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

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

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8859.

The examiner of Technology Center Art Unit 3745 will consider applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to prior-filed nonprovisional Application No. 10/345,967, filed January 17, 2003.

Karen Creasy

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

JUN - 5 2003

Paper No. 6

In re Application of	:	
Scott A. Pino	:	
Serial No. 10/345,975	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO MAKE SPECIAL
For: TOY ASSEMBLY	:	

Applicant's petition, filed May 14, 2003, seeks to have this application made special pursuant to the Accelerated Examination Program. The petition is GRANTED.

The petition has been reviewed and is found to be in compliance with the requirements for special status as set forth in Section 708.02(VIII) of the Manual of Patent Examining Procedures (MPEP).

Applicant is advised that the examiner's search will be restricted to the subject matter encompassed by the claims. In the event that the application receives a first action rejection, applicant is encouraged to arrange for an interview with the examiner, and to provide the examiner with a working copy of any proposed amendment one working day prior to the interview. Any amendment filed in response to a first action rejection which would require broadening of the field of search will be treated as an improper response.

PETITION GRANTED.

E. Rollins-Cross

E. Rollins-Cross, Director
Technology Center 3700

Blank, Rome, Comisky & McCauley, LLP
900 17th Street, NW, Suite 1000
Washington, DC 20006

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

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APR 2 8 2004

OFFICE OF PETITIONS

Applicant: Mougin
Appl. No.: 10/345,977
Filing Date: April 9, 2002
Title: COMPOSITION COMPRISING POLYMERS HAVING A STAR STRUCTURE, THE POLYMERS, AND THEIR USE
Attorney Docket No.: 5725.0565-01
Pub. No.: US 2003/0135004 A1
Pub. Date: July 17, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on September 8, 2003 for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

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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FORT COLLINS CO 80527-2400

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Feather, et al. :
Application No. 10/346,002 :
Filed: January 15, 2003 :
Attorney Docket No. 200207500-1 :

This is a decision on the petition under 37 CFR 1.181, filed September 11, 2006, to withdraw the holding of abandonment in the above-identified application and the petition under 37 CFR 1.137(b), filed December 17, 2007, to revive the above-identified application.

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

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

This application became abandoned for failure to timely pay the issue fee and publication fee within three (3) months of the mailing of the Notice of Allowance and Fee(s) Due, mailed April 18, 2006. Accordingly, this application became abandoned on July 19, 2006. A Notice of Abandonment was mailed on August 28, 2006.

On August 28, 2006 applicants filed a PTOL-85b fee transmittal. It is noted that no boxes pertaining to fee payment were checked.

Where it is clear that an applicant actually intends to pay the issue fee and required publication fee, but the proper fee payment is not made, for example, an incorrect issue fee amount is supplied, or a PTOL-85B Fee(s) Transmittal form is filed without payment of the issue fee, a general authorization to pay fees or a specific authorization to pay the issue fee, submitted prior to the mailing of a notice of allowance, will be allowed to act as payment of the correct issue fee. 37 CFR 1.311(b); MPEP 1306

This application contained a number of general authorizations that were filed prior to the mailing of the Notice of Allowance. Thus, the Office had authorization to charge the necessary fees to deposit account no. 08-2025 when the flawed PTOL-85b was filed.

The petition under 37 CFR 1.181 is granted and the 37 CFR 1.137(b) is dismissed as moot. The $1,540.00 petition fee will be credited to deposit account no. 08-2025. The issue fee due on April 28, 2006 was $1,400.00. Petitioner has been charged $1,440.00, which is the amount due on December 17, 2007. The $40.00 overcharge will be credited to petitioners' deposit account as well.

This application is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries concerning this matter may 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

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United States Patent and Trademark Office
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EAST HANOVER, NJ 07936-1080

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OFFICE OF PETITIONS

In re Application of Tsao :
Application No. 10/346,013 : Decision on Petition
Filing Date: January 16, 2003 :
Attorney Docket No. OP/4-32320A/USN :

This is a decision on the petition filed March 2, 2004, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed.**

The application was filed with an unexecuted declaration.

A Notice to File Missing Parts was mailed March 5, 2003. The Notice required an executed oath or declaration and required a surcharge of $130.

A reply was not matched with the file. As a result, a Notice of Abandonment was mailed February 3, 2004.

Petitioner asserts a reply to the Notice of Missing Parts was timely filed. In support of the petition, petitioner has submitted a date-stamped postcard receipt, indicating a reply was filed on March 11, 2003.

The original reply filed March 11, 2003, was not matched with the file and cannot be located. However, M.P.E.P. 503 states, "[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." Accordingly, it is concluded a reply was timely filed in the Patent and Trademark Office but not matched with the application file.

Unfortunately, the Office cannot grant the petition because neither the petition filed March 2, 2004, nor the copy filed August 4, 2006, include a copy of the executed declaration misplaced by the Office. The application cannot be processed without an executed declaration.

A request for reconsideration and executed declaration should be filed.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time

under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

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

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

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

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

Telephone inquiries regarding this communication should be directed to Petitions Attorney Shirene Brantley at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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EAST HANOVER, NJ 07936-1080

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DEC 29 2006

OFFICE OF PETITIONS

In re Application of Tsao :
Application No. 10/346,013 :
Filing Date: January 16, 2003 :
Attorney Docket No. OP/4-32320A/USN :

Decision on Petition

This is a decision on the petition filed November 17, 2006, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **granted.**

The application was filed with an unexecuted declaration. A Notice to File Missing Parts was mailed March 5, 2003. The Notice required an executed oath or declaration and required a surcharge of $130. A reply was not matched with the file. As a result, a Notice of Abandonment was mailed February 3, 2004.

Petitioner asserts a reply to the Notice of Missing Parts was timely filed. In support of the petition, petitioner has submitted a date-stamped postcard receipt, indicating a reply was filed on March 11, 2003.

The original reply filed March 11, 2003, was not matched with the file and cannot be located. However, M.P.E.P. 503 states, "[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." Accordingly, it is concluded a reply was timely filed in the Patent and Trademark Office but not matched with the application file.

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

The Office of Initial Patent Examination will be informed of the instant decision and will take steps to prepare the application for examination in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Shirene Brantley at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6886326	2005-05-03	10346024	2003-01-17	017575.0819

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	/brad williams/	Date (YYYY-MM-DD)	2009-08-24
Name	Bradley P. Williams	Registration Number	40227

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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In re Patent No. 6886326
Issue Date: May 3,2005
Application No. 10346024
Filed: January 17,2003
Attorney Docket No. 017575.0819

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

This is a decision on the electronic petition, filed August 24,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 24,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 1/5/10

Paper No.: —

TO SPE OF : ART UNIT 2794

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/346041 Patent No.: 7176248B2

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: Correction is approved. No new matter has been introduced and no change in scope or meaning of claims has been introduced.

Carrie Shosho 3/2/10

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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NAVAL RESEARCH LABORATORY
ASSOCIATE COUNSEL (PATENTS)
CODE 1008.2
4555 OVERLOOK AVENUE, S.W.
WASHINGTON, DC 20375-5320

Mail Date: 04/21/2010

Applicant	: Jozef Verborgt	: DECISION ON REQUEST FOR
Patent Number	: 7615604	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/346,061	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/17/2003	: 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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RADER, FISHMAN & GRAUER PLLC
SUITE 501
1233 20TH STREET, N.W.
WASHINGTON, DC 20036

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OFFICE OF PETITIONS

In re Patent No. 7,012,679	:	
Issue Date: March 14, 2006	:	
Application No. 10/346,065	:	NOTICE
Filed: January 17, 2003	:	
Attorney Docket No. KKH-025	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-6059.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

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STAMATIOS MYLONAKIS
7009 CASHELL MANOR COURT
DERWOOD, MD 20855-1201

In re Application of	:	
Robert P. Goldman	:	DECISION ON REQUEST
Application No. 10/346,090	:	TO WITHDRAW FROM
Filed: January 17, 2003	:	RECORD
Attorney Docket No. 104-004-US	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 CFR § 1.36(b) or 37 CFR § 10.40 filed July 7, 2005 and supplemented on July 11, 2005.

The request is **NOT APPROVED**.

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, "In preparation for my retirement, I am limiting my practice and Mr. Goldman has been notified and recommended alternative Firms", does not meet any of the conditions set forth in 37 CFR 10.40.

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

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Robert P. Goldman
15215 Shady Grove Road
Suite 101
Rockville, MD 20850

Robert P. Goldman
9907 Fleming Avenue
Bethesda, MD 20854

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Stamatios Mylonakis
7009 Cashell Manor
Derwood, MD 20855-1201

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JUL 25 2006

OFFICE OF PETITIONS

In re Application of	:	
Robert P. GOLDMAN	:	
Application No. 10/346,091	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. 104-001-US	:	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 7, 2005 and supplemented July 11, 2005.

The request is **NOT APPROVED**.

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

The 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, law firm no longer represents inventor, he will be retaining new attorney/agent to handle his needs, does not meet any of the conditions set forth in 37 CFR 10.40.

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

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

David Bucci
Petitions Examiner
Office of Petitions

cc: Robert P. Goldman
15215 Shady grove Road, Suite 101
Rockville, MD 20850

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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#4

Lawrence J. Crain
Suite 2500
300 South Wacker Drive
Chicago, IL 60606

MAILED

APR 16 2003

Office of the Director
Group 3600
Paper No. 4

In re application of
Alfred G. Niederman et al.
Application No. 10/346,126
Filed: January 16, 2003
For: MODULAR FURNITURE INCLUDING INTERCHANGEABLE UPHOLSTERY

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on January 16, 2003, under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a signed statement from one of the applicants stating that he is at least 65 years of age.

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

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

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

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866
(703) 605-0586 (facsimile)

KJD/tpl: 4/10/03

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OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

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OFFICE OF PETITIONS

In re Application of
Brault et al.
Application No. 10/346,134
Filed: January 17, 2003
Attorney Docket No.
233016US41

ON PETITION

This is a decision on the petition under 37 CFR 1.55(c), filed September 21, 2004, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of French Application No. 02 00522, filed January 17, 2002.

This Petition is hereby **dismissed as moot**.

In the instant case, the Office recognized the claim for benefit of prior-filed French Application No. 02 00522, filed January 17, 2002, said claim appearing in the Declaration and Power of Attorney, filed with the instant application on January 17, 2003. In view thereof, a petition under 37 CFR 1.55(c) is unnecessary.

Accordingly, the $1330 petition fee will be credited to Deposit Account number 15-0030 as authorized in the instant petition.

This application is being forwarded to Technology Center AU 3745 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Frances Hicks
Lead Petitions Examiner
Office of Petitions

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Director's Office
Group 3700

Jon Woodard
100 State Street, Suite 700
Erie, PA 16507-1459

DECISION ON PETITION

In re Application of: James P. Cornell
Appl. No.: 10/346,145
Filed: 01/16/2003
For: Air Compressor Unit Inlet Control

This is a decision on the petition filed on 05/17/2005 by which petitioners request reconsideration of the restriction requirement rendered in paper No. 20050318. The petition is considered pursuant to 37 CFR 1.144 and 37 CFR 1.181, and no fee is required.

In light of the newly rendered Office Action, paper No. 11252005, mailed 11/30/2005, and Applicant's response thereto received 12/30/2005, the controversy over the restriction requirement rendered earlier in the prosecution has been resolved. Therefore, the petition is considered moot and dismissed.

PETITION DISMISSED.

Frederick R. Schmidt, Director
Technology Center 3700

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MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON, VA 22201

Mail Date: 04/20/2010

Applicant	: Masanao Kamei	: DECISION ON REQUEST FOR
Patent Number	: 7612051	: RECALCULATION of PATENT
Issue Date	: 11/03/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/346,176	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/17/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **774** 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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FEB 17 2005

Shoemaker and Mattare, LTD
10 Post Office Road, Suite 100
Silver Spring, MD 20910

In re Application of
Loubert Suddaby
Serial No. : 10/346,181
Filed : January 17, 2003
For : Flexible Wire Transection of the Transverse Carpal Ligament

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)

This is a decision on the petition filed September 15, 2004, to make the above-identified application special. The petition requests that the above-identified application be made special on the basis of special examining procedure for certain new applications – accelerated examination as set forth in MPEP § 708.02, item VIII.

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

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

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.

Esther M. Kepplinger

Esther M. Kepplinger, Director
Technology Center 3700
Phone: (571) 272-2975

ak/02/11/05

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Paper No. 12

WILLIAM L. WARREN
SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, NE
ATLANTA GA 30309-3996

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DEC 08 2003

OFFICE OF PETITIONS

In re Application of
Susan R. Wessler et al.
Application No. 10/346,198
Filed: January 16, 2003
Attorney Docket No. 18465-0018

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the statement filed November 20, 2003 (certificate of mail date, November 17, 2003), in response to the Notice to File Missing Parts "Notice" mailed September 16, 2003. The statement is treated as a petition under 37 CFR 1.47(a).

The petition is dismissed.

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

The above-identified application was filed on January 16, 2003, naming Susan R. Wessler, Ning Jiang, Zhirong Bao. Xiaoyu Zhang and Sean R. Eddy but without a signed declaration.

Accordingly, on September 16, 2003, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, on November 20, 2003 (certificate of mail date, November 17, 2003), the present petition was filed. Petitioners assert that the Declaration and Assignment were sent to the University of Georgia Research Foundation requesting execution of the declaration. The signed declaration was returned by inventors Wessler, Jiang and Zhang but not by inventors Bao and Eddy.

Petitioner's statement further claims that the University of Georgia Research Foundation was to have forwarded the declarations for inventors Bao and Eddy.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

The present petition lacks items (1) and (4).

In regards to item (1), petitioners have not provided sufficient proof that a copy of the application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor. The statement made by Mr. Warren (attorney of record) is that the "declaration" was forwarded by the University of Georgia Research Foundation to Washington University, but not even a copy of a cover letter forwarding any documents to inventors Bao and Eddy in care of Washington University was included with this petition.

No copies of any of the referenced correspondences has been provided and neither has proof that a copy of the application papers including specification and drawings (if drawings were required) were sent to the non-signing inventors or their representatives. Thus, there is no evidence to show that inventors Bao and Eddy had the benefit of seeing the application.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventors for review 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 can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that 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.

As well, with respect to item (4), the last known addresses of inventors Bao and Eddy have not been provided as required by 37 CFR 1.47. Petitioners must provide a statement of the last known address of the nonsigning inventors. That address should be the last known address at which the inventors customarily receive mail. Ordinarily, the last known address will be the last known residence of the nonsigning inventor.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 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

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DEC 1 1 2003
Sutherland, Asbill & Brennan LLP

Paper No. 12

WILLIAM L. WARREN
SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, NE
ATLANTA GA 30309-3996

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OFFICE OF PETITIONS

In re Application of
Susan R. Wessler et al.
Application No. 10/346,198
Filed: January 16, 2003
Attorney Docket No. 18465-0018

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the statement filed November 20, 2003 (certificate of mail date, November 17, 2003), in response to the Notice to File Missing Parts "Notice" mailed September 16, 2003. The statement is treated as a petition under 37 CFR 1.47(a).

The petition is dismissed.

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

The above-identified application was filed on January 16, 2003, naming Susan R. Wessler, Ning Jiang, Zhirong Bao. Xiaoyu Zhang and Sean R. Eddy but without a signed declaration.

Accordingly, on September 16, 2003, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, on November 20, 2003 (certificate of mail date, November 17, 2003), the present petition was filed. Petitioners assert that the Declaration and Assignment were sent to the University of Georgia Research Foundation requesting execution of the declaration. The signed declaration was returned by inventors Wessler, Jiang and Zhang but not by inventors Bao and Eddy.

Petitioner's statement further claims that the University of Georgia Research Foundation was to have forwarded the declarations for inventors Bao and Eddy.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

The present petition lacks items (1) and (4).

In regards to item (1), petitioners have not provided sufficient proof that a copy of the application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor. The statement made by Mr. Warren (attorney of record) is that the "declaration" was forwarded by the University of Georgia Research Foundation to Washington University, but not even a copy of a cover letter forwarding any documents to inventors Bao and Eddy in care of Washington University was included with this petition.

No copies of any of the referenced correspondences has been provided and neither has proof that a copy of the application papers including specification and drawings (if drawings were required) were sent to the non-signing inventors or their representatives. Thus, there is no evidence to show that inventors Bao and Eddy had the benefit of seeing the application.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventors for review 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 can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that 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.

As well, with respect to item (4), the last known addresses of inventors Bao and Eddy have not been provided as required by 37 CFR 1.47. Petitioners must provide a statement of the last known address of the nonsigning inventors. That address should be the last known address at which the inventors customarily receive mail. Ordinarily, the last known address will be the last known residence of the nonsigning inventor.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 14

WILLIAM L. WARREN
SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, NE
ATLANTA GA 30309-3996

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FEB 19 2004

OFFICE OF PETITIONS

In re Application of
Susan R. Wessler et al.
Application No. 10/346,198
Filed: January 16, 2003
Attorney Docket No. 18465-0018

: DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 CFR 1.47(a) DISMISSED AS INVOLVING MOOT ISSUES

Papers filed on February 11, 2004, in reply to "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on December 8, 2003, included, a Declaration signed by the previously nonsigning inventors, Zhirong Bao and Sean R. Eddy, in compliance with 37 CFR 1.63.

In view of the joinder of the inventors, further consideration under 37 CFR 1.47(a) is **dismissed** as involving moot issues; 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 1638 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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No Dates Docketed
Reply with Instructions if Dates Needed
RECEIVED
FEB 24 2004

OIPE JC59
JUL 26 2004
PATENT & TRADEMARK OFFICE

Paper No. 14

WILLIAM L. WARREN
SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, NE
ATLANTA GA 30309-3996

Sutherland, Asbill & Brennan LLP

COPY MAILED

FEB 19 2004

OFFICE OF PETITIONS

In re Application of
Susan R. Wessler et al.
Application No. 10/346,198
Filed: January 16, 2003
Attorney Docket No. 18465-0018

: DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 CFR 1.47(a) DISMISSED AS INVOLVING MOOT ISSUES

Papers filed on February 11, 2004, in reply to "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on December 8, 2003, included, a Declaration signed by the previously nonsigning inventors, Zhirong Bao and Sean R. Eddy, in compliance with 37 CFR 1.63.

In view of the joinder of the inventors, further consideration under 37 CFR 1.47(a) is **dismissed** as involving moot issues; 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 1638 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

OIPE JC58
JUL 26 2004
PATENT & TRADEMARK OFFICE

RECEIVED
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THE U.S.P.T.O. OFFICIAL MAILROOM STAMP AFFIXED HERETO ACKNOWLEDGES RECEIPT OF THE ITEMS LISTED BELOW:

Applicant(s): Susan R. Wessler, et al.

Application Serial No.: 10/346,198 Filing Date: January 16, 2003

Title: Transposable Elements in Rice and Methods of Use

Paper(s)Submitted: Request for Reconsideration of Petition Under 37 CFR 1.47(a) with certificate of mailing; copies of executed Declaration and Power of Attorney by inventors Sean R. Eddy and Zhirong Bao.

Attorney: ECM/em
Date Mailed: **February 9, 2004**
Attorney Docket No.: 18465-0018

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PATENT & TRADEMARK OFFICE

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NOV 25 2003
Sutherland, Asbill & Brennan LLP

THE U.S.P.T.O. OFFICIAL MAILROOM STAMP AFFIXED HERETO ACKNOWLEDGES RECEIPT OF THE ITEMS LISTED BELOW:

Applicant(s): Susan R. Wessler, et al.

Application Serial No.: 10/346,198 Filing Date: January 16, 2003

Title: Transposable Elements in Rice and Methods of Use

Paper(s)Submitted: Response to Notice to File Missing Parts of Nonprovisional Application with certificate of mailing (in duplicate); Statement in Response to Notice to File Missing Parts with certificate of mailing; copies of correspondence mailed to Dr. Fincher, executed Declaration and Power of Attorney by Susan R. Wessler, Ning Jiang, and Xiaoyu Zhang (three pages); and Part 2 – Return Copy of the Notice to File Missing Parts.

Attorney: WLW/em
Date Mailed: **November 17, 2003**
Attorney Docket No.: 18465-0018

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THE U.S.P.T.O. OFFICIAL MAILROOM STAMP AFFIXED HERETO ACKNOWLEDGES RECEIPT OF THE ITEMS LISTED BELOW:

Applicant(s): Susan R. Wessler, et al.

Application Serial No.: 10/346,198 Filing Date: January 16, 2003

Title: Transposable Elements in Rice and Methods of Use

Paper(s)Submitted: Submission of Substitute Specification Under 37 C.F.R. §1.125(b) with certificate of mailing; substitute specification (1-162 pages); and marked up version of the substitute specification showing all the changes to the specification of record.

Attorney: WLW/em
Date Mailed: **September 8, 2003**
Attorney Docket No.: 18465-0018

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THE U.S.P.T.O. OFFICIAL MAILROOM STAMP AFFIXED HERETO ACKNOWLEDGES RECEIPT OF THE ITEMS LISTED BELOW:

Applicant(s): Susan R. Wessler, et al.

Application Serial No.: 10/346,198 Filing Date: January 16, 2003

Title: Transposable Elements in Rice and Methods of Use

Paper(s) Submitted: Preliminary Amendment with certificate of mailing; Partial Response to Notice to File Missing Parts; Part 2-Return copy-Notice to File Missing Parts of Application; Sequence Identification Listing (pages 1-100); Statement accompanying Sequence Identification Listing; and Sequence Listing Diskette

Attorney: WLW/em
Date Mailed: **May 28, 2003**
Attorney Docket No.: 18465-0018

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THE U.S.P.T.O. OFFICIAL MAILROOM STAMP AFFIXED HERETO ACKNOWLEDGES RECEIPT OF THE ITEMS LISTED BELOW:

Applicant(s): Susan R. Wessler, et al.

Application Serial No.: 10/346,198 Filing Date: January 16, 2003

Title: Transposable Elements in Rice and Methods of Use

Paper(s) Submitted: Utility Information Disclosure Statement (1pg) with Certificate of Mailing; Form PTO-1449 (2pp); copies of 16 references.

Attorney: William L. Warren/pt
Date Mailed: April 4, 2003
Attorney Docket No.: 18465-0018

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OIPE JC56
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THE U.S.P.T.O. OFFICIAL MAILROOM STAMP AFFIXED HERETO ACKNOWLEDGES RECEIPT OF THE ITEMS LISTED BELOW:

Applicant(s): Susan R. Wessler, et al.

Application Serial No.: To be assigned

Filing Date: January 16, 2003

Title: Transposable Elements in Rice and Methods of Use

Paper(s) Submitted: Utility Patent Application Transmittal; Patent Application (1 page of Abstract, 152 pages of Specification, 8 pages of Claims, and 11 sheets of drawings). By Express Mailing (EL 690 567 283 US).

Attorney: William L. Warren/em
Date Mailed: **January 16, 2003**
Attorney Docket No.: 18465-0018

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MAR 17 2004

Paper No. 7

In re Application of	:	
Bernard Lerner et al.	:	
Serial No. 10/346,217	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO MAKE SPECIAL
For: DUNNAGE MATERIAL AND	:	
PROCESS	:	

Applicant's petition, filed February 26, 2004, requests that this application be rendered special for examination in that applicant is over sixty-five (65) years of age.

The petition has been reviewed and is found to be in compliance with the requirements for special status as set forth in Section 708.02(IV) of the Manual of Patent Examining Procedure (MPEP).

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Watts, Hoffmann, Fisher & Heinke Co.
P.O. Box 99839
Cleveland, OH 44199-0839

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Paper No. 4

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

In re Application of	:
Michael G. Falbo Sr. et al	:
Application No. 10/346,218	: DECISION GRANTING STATUS
Filed: January 17, 2003	: UNDER 37 CFR 1.47(A)
For: IMAGING TABLE	:

This is in response to the petition under 37 CFR 1.47(a), filed June 30, 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.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

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

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

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

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KERRY A. O'ROURKE
12328 WEST 100TH STREET
OVERLAND PARK, KS 66215

In re Application of
Falbo Sr. and O'Rourke
Application No. 10/346,218
Filed: January 17, 2003
For: IMAGING TABLE

Dear Mr. O'Rourke:

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

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

Telephone inquiries regarding this communication should be directed to Wan Laymon at (703) 306-5685. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

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

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

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ALEXANDRIA, VA 22313-1450
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Jason Long
13 Valerie Lane
Danbury CT 06811

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OCT 09 2003

OFFICE OF PETITIONS

In re Application of	:	
Jason Long	:	
Application No. 10/346,223	:	DECISION DISMISSING PETITION
Filed: January 18, 2003	:	
For: MARSHMALLOW	:	

This is a decision on the petition filed October 2, 2003, requesting that the above-identified application be accorded a filing date of January 17, 2003, rather than the presently accorded filing date of January 18, 2003.

Petitioner alleges that the application was deposited in Express Mail service on January 17, 2003.

Paragraph (a) of 37 CFR 1.10 states that:

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

Paragraph (c) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The present petition lacks the showing required by item (3) above.

Petitioner submitted a copy of the Express Mail label; however, the "date-in" is blank. Furthermore, the Express Mail label does not contain any official notation by the USPS evidencing the date of deposit. Specifically, the date stamped on the label does not appear to be an official stamp of the USPS.

Accordingly, the petition is **dismissed**. The application will retain the filing date of January 18, 2003.

Any request for reconsideration must be filed within TWO (2) MONTHS of the date of this decision in order to be considered timely. See 37 CFR 1.181(f).

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

By mail: Commissioner for Patents
Mail Stop Petition
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 South Clark Place
Arlington, VA 22202

Telephone inquiries regarding this matter should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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

Jason Long
13 Valerie Lane
Danbury CT 06811

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OCT 23 2003

OFFICE OF PETITIONS

In re Application of :
Jason Long :
Application No. 10/346,223 : DECISION DISMISSING PETITION
Filed: January 18, 2003 :
For: MARSHMALLOW :

This is a decision on the renewed petition filed October 17, 2003, requesting that the above-identified application be accorded a filing date of January 17, 2003, rather than the presently accorded filing date of January 18, 2003.

Petitioner alleges that the application was deposited in Express Mail service on January 17, 2003.

Paragraph (a) of 37 CFR 1.10 states that:

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

Paragraph (c) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The present petition lacks the showing required by item (3) above.

Petitioner submitted a letter from USPS employee, Richard I. Bulan. Mr. Bulan explained that petitioner deposited the Express Mail package at Business Shipping, Inc., a postal store affiliate, in Danbury, CT on Friday, January 17, 2003, after 4:00 pm. Mr. Bulan further stated that the clerk placed a one-line date stamp on the Express Mail label to indicate the date it was received; however, the mail collected after 4:00 pm on that date was not received by the Backus Avenue post office until January 18, 2003.

It is unclear from Mr. Bulan's statement whether Business Shipping, Inc. is a US Postal Office or a commercial business. Furthermore, it is not apparent if the clerk at Business Shipping, Inc. is a USPS employee. Petitioner must submit a statement from a USPS employee such as Mr. Bulan that identifies the package by the Express Mail label No. and corroborates that the package was deposited by petitioner in the USPS Express Mail Service on January 17, 2003, at a US Postal Office.

Accordingly, the petition is **dismissed** without prejudice.

Any request for reconsideration must be filed within TWO (2) MONTHS of the date of this decision in order to be considered timely. See 37 CFR 1.181(f).

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

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

By FAX: (703) 308-6916
Attn: Office of Petitions
(Faxes will not be accepted after December 1, 2003)

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

Telephone inquiries regarding this matter should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GORDON & REES LLP
101 WEST BROADWAY
SUITE 1600
SAN DIEGO CA 92101

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Director's Office
Group 3700

In re Application of C. ROSS FISHER, et al	:	DECISIOIN ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT
Serial No. 10/346,228 Filed Jan. 16, 2003	:	

For: EMISSION CONTROL VALVE FOR GAS-FUELED ENGINES

This is a decision on petitioner's request filed May 4, 2005 to review the holding of abandonment, mailed March 16, 2005 for failure to respond to the Office action of September 3, 2004.

In support of the request, petitioner has submitted a copy of a request for a three-month extension of time and a response with a certificate of mailing dated March 3, 2005. Petitioner has also submitted a declaration attesting to the timely mailing as required by 37 CFR 1.8(b). Petitioner also has submitted a copy of a response and a copy of a PTO stamped post card receipt dated March 8, 2005.

In view of the above, the Notice of Abandonment mailed March 16, 2005 is in error and is hereby vacated. The holding of abandonment is withdrawn. This application is being forwarded to the examiner for appropriate action.

Summary: Holding of Abandonment Withdrawn.

Richard A. Bertsch, Director
Technology Center 3700
Phone: (571) 272-3700
Fax: (571) 272-7764

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Paper No. 4

VIERRA MAGEN MARCUS HARMON & DENIRO LLP
685 MARKET STREET, SUITE 540
SAN FRANCISCO, CA 94105

In re Application of :
Omar Amirana :
Application No. 10/346,232 : ON PETITION
Filed: January 17, 2003 :
Attorney Docket No.:OMRA-01000US3 :
Title of Invention: STENT AND :
DELIVERY METHOD FOR APPLYING RF :
ENERGY TO A PULMONARY VEIN AND THE :
ATRIAL WALL AROUND ITS OSTIUM TO :
ELIMINATE ATRIAL FIBRILLATION WHILE:
PREVENTING STENOSIS OF THE :
PULMONARY VEIN THEREAFTER :

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OFFICE OF PETITIONS

This is a decision on the petition filed December 1, 2003 (certificate of mailing November 24, 2003), requesting that figures 1,4,8, and 11 be considered as filed on January 17, 2003, as part of the original disclosure.

The application was filed on January 1, 2003. However, on April 22, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice to File Missing Parts of Nonprovisional Application" stating that the application had been accorded a filing date of January 17, 2003 and advising applicant that figures 1, 4, 8 and 11 as described in the specification appeared to have been omitted.[1]

In response, the present petition was filed. Petitioner neither asserts that the missing pages were actually deposited in the PTO on January 17, 2003, with the other application papers nor does petitioner request a later filing date. The petition contends that the application as filed included written descriptions of each of the omitted figures, thus the submission of the omitted figures would not constitute new matter. Furthermore, petitioner asserts omitted figures 1,4,8 and 11 were included in provisional application no. 60/ 350,248 filed January 17, 2002 to which the present application claims priority.

The argument and evidence supplied with the petition has been carefully considered, but are not persuasive. A priority claim under 35 U.S.C. 120 in a continuation or divisional application does not amount to an incorporation by reference of the application(s) to which priority is claimed. The mere reference to another application is <u>not</u> an incorporation of anything therein into the application containing the reference. <u>See</u> <u>In re</u>

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[1]The Notice also required a surcharge fee for the late submission of an oath or declaration, an oath or declaration as well as replacement drawings.

Seversky, 177 USPQ 144, 146 (C.C.P.A. 1973) and Dart Industries, Inc. v. Banner, 207 USPQ 273, 276 (D.C. Cir. 1980). See also, Advance Display Systems Inc. v. Kent State University, 54 USPQ2d 1673 (Fed. Cir. 2000).

Accordingly, the Notice of File Missing Parts is correct. The petition is **dismissed**. In view of applicant's argument that figures 1,4,8 and 11 do not constitute new matter, applicant may wish to file and amendment adding the figures.

Pursuant to petitioner's request a $130.00 petition fee is bing charged to deposit account 50-1826.

The application file is being returned to the Office of Initial Patent Examination for further processing with a **filing date of January 17, 2003**, using the papers submitted on that date. The records should indicate that figures 2,3,5,6,7,9,10 and 12 (5 pages) were submitted upon filing the original application.

The Office acknowledges receipt of the declaration and surcharge as well as the replacement drawings.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KLEIN O'NEILL & SINGH, LLP
43 CORPORATE PARK, SUITE 204
IRVINE, CA 92606

COPY MAILED

AUG 1 8 2008

In re Application of	:	
MILKOV, et al.	:	
Application No. 10/346,235	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. 25325-US-PA	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 4, 2008.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to KLEIN O'NEILL & SINGH, LLPP has been revoked by the assignee of the patent application on March 25, 2008. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: JIANQ CHYUN INTELLECTUAL PROPERTY OFFICE
ROOSEVELT ROAD, SECTION 2 / 7TH FLOOR-1, NO. 100
TAIPE, TAIWAN 100

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

Paper No. 6

CRAIG METCALF
MADSON & METCALF
GATEWAY TOWER WEST
15 WEST SOUTH TEMPLE, SUITE 900
SALT LAKE CITY, UTAH 84101

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JUN 0 3 2003

OFFICE OF PETITIONS

NOTICE

In re Application of :
Karen Krapcho et al :
Application No. 10/346,241 :
Filed: January 17, 2003 :
Attorney Docket No. 1094.2.6.3 :

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 1600.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

CYNTHIA S. MURPHY
RENNER, OTTO, BOISSELLE & SKLAR, LLP
NINETEENTH FLOOR
1621 EUCLID AVENUE
CLEVELAND OH 44115-2191

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DEC 0 9 2003

OFFICE OF PETITIONS

In re Application of	:
Corcoran, Jaecklein, Pricone,	: DECISION ACCORDING STATUS
Theilman, Chui, and Chen	: UNDER 37 CFR 1.47(a)
Application No. 10/346,242	:
Filed: 17 January, 2003	:
Atty Docket No. AVER.P3084USA	

This is in response to the petition filed under 37 CFR 1.47(a)[1] on 20 November, 2003.

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been sent a copy of the application papers. Specifically, petitioners have established, via the signed statement of non-signing joint inventor Robert M. Pricone, that Pricone was presented with a copy of the application papers, but expressly refused in writing to sign the declaration naming him as a joint inventor along with Craig S. Corcoran, William J. Jaecklein, W. Scott Theilman, Cindy Chia-Wen Chiu, and David Hsein-Pin Chen.

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

---

[1] A petition under 37 CFR 1.47(b) is inappropriate in this instance since all but one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign. Accordingly, the petition will be treated as a petition under 37 CFR 1.47(a).

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 late-filing surcharge of $130.00 will be charged to counsel's deposit account, No. 18-0988, as authorized on the "Petition and Fee For Extension of Time" form filed on 20 November, 2003.

After this decision is mailed, the application will be forwarded the Office of Initial Patent Examination for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Robert M. Pricone
31175 Bob-o-Link Lane
Libertyville, IL 60648

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DEC 0 9 2003

OFFICE OF PETITIONS

In re Application of
Corcoran et al.
Application No. 10/346,242
Filed: 17 January, 2003
For: SHEET HAVING MICROSIZED ARCHITECTURE

Dear Mr. Pricone:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at 703/308-6918. Requests for information regarding your application should be directed to the File Information Unit at 703/308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 703/308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

CYNTHIA S. MURPHY
RENNER, OTTO, BOISSELLE & SKLAR, LLP
NINETEENTH FLOOR
1621 EUCLID AVENUE
CLEVELAND OH 44115-2191

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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td

Mailed: 1-3-06

In re application of	:	
Joe E. Maskasky et al.	:	DECISION ON
Serial No. 10/246,265	:	PETITION
Filed: September 18, 2002	:	

For: PHOTOTHERMOGRAPHIC MATERIALS CONTAINING HIGH IODIDE EMULSIONS

This is a decision on the PETITION UNDER 37 CFR 1.181 FOR ENTRY OF THE AFTER FINAL AMENDMENT filed January 18, 2005.

On November 17, 2004, a final office action was mailed to Applicants, rejecting all of the pending claims under various 35 USC 103 rejections. Additionally, all of the claims were rejected under 35 USC 112, 1st paragraph as failing to comply with the written description requirement. The examiner took the position that the "consisting essentially of" language in claims 1, 14 and 23 was not supported by the specification and was therefore new matter. Applicants responded to this office action with an amendment after final which was filed on January 18, 2005. The amendment attempted to cancel the phrase "consisting essentially" in the claims. The examiner refused entry of the amendment in an advisory action mailed February 11, 2005.

On February 23, 2005, the instant petition under 37 CFR 1.181 was timely filed to request the entry of the after final amendment of January 18, 2005.

Petitioner's position is that the amendment after final did not raise any new issues as alleged by the examiner in the advisory action and that the amendment further reduces the issues for appeal.

DECISION

Section 714.13 of the MPEP states in part:

ENTRY NOT A MATTER OF RIGHT

It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection (see 37 CFR 1.116) or reinstate previously canceled claims.
Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other way requires only a cursory review by the

examiner, compliance with the requirement of a showing under 37 CFR 1.116(b)(3) is expected in all amendments after final rejection.

In the advisory action mailed February 11, 2005, the examiner states that the proposed amendment after final would raise new issues requiring further consideration and/or search. The examiner also states that the amendment would not place the application in better form or simplify issues for an appeal. Petitioner argues that the amendment would not require further consideration and/or search because the newly proposed claims were searched and considered twice previously. This argument is persuasive. It is noted that the proposed claims are of the same scope the claims were prior to making the amendment adding the "consisting essentially of" limitation. The scope of the proposed claims were in fact examined and treated previously by the examiner. It is also noted that the examiner made no changes to the rejection from prior to the language being added to the present. It is unclear as to why a further search and or consideration would be required since the rejection would clearly not be changed upon entry of the amendment. As for the examiner's position that the amendment would not simplify the issues for appeal and simplify the issues, the amendment would overcome the 35 USC 112, 1st paragraph rejections. This would clearly place the claims in better form for appeal and would eliminate one outstanding issue.

Accordingly, the petition for entry of the after final amendment is **GRANTED.** It is noted that an appeal brief was filed on April 20, 2005. The application is being forwarded to the examiner for consideration of the brief.

JMStone

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

Paul A. Leipold
Patent Legal Staff
Eastman Kodak Company
343 State Street
Rochester NY 14650-2201

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JAN - 4 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

FISH & NEAVE LLP
1251 AVENUE OF THE AMERICAS
50TH FLOOR
NEW YORK NY 10020-1105

In re Application of
Gerald E. Bennington, et al.
Application No. 10/346,266
Filed: January 15, 2003
For: **ELECTRONIC TELEVISION PROGRAM GUIDE SCHEDULE SYSTEM AND METHOD**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed November 12, 2004, requesting withdrawal of the holding of abandonment of the above-identified application.

The above-identified application became abandoned due the applicant's failure to timely respond to a non-final Office action mailed January 23, 2004. A Notice of Abandonment was mailed October 19, 2004.

Petitioner asserts that a proper response was timely filed on June 23, 2003. In support of the petition, petitioner submits a copy of the response, a copy of the Express Mailing Label No. EV371751213US and a copy of a date-stamped post-card receipt.

The filing of papers and fees by Express Mail is covered by 37 C.F.R. § 1.10. 37 C.F.R. 1.10(e) states:

"Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) the petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

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

(3) the petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(30 of this section that the requested filing date was the date the correspondence was deposited in the "Express mail Post Office to Address" service prior to the last scheduled pickup for that day; and

(4) the petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS." [emphasis added]

Applicant's petition does not satisfy the requirements of 37 CFR §1.10 (e) given that the "Express mail" mailing label that was provided with the petition, does not include a "date-in" indication.

37 CFR §1.10 Filing of correspondence by "Express Mail.", (a)-(b) state:

> (a)
>
> (1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.
>
> (2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).
>
> (b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section. [emphasis added]

However, the petition also included a copy of a post card receipt, date-stamped as having been received in the Office on June 23, 2004. The post card receipt itemized, among other items, a reply to the Office action and a check in the amount of $420.00 for the two months extension of time. Moreover, a review of the Office's Revenue and Accounting Management software indicates that a check in the amount of $420.00 was received on June 23, 2004 and processed on June 28, 2004.

The original correspondence filed was not matched with the application file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the U.S.PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely filed in the Patent and Trademark Office but not matched with the application file. The fees submitted with the original response have been received and credited to the instant application.

For the reasons stated above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application file is being forwarded to the Technology Center's Technical Support Staff for entry of the response filed with the petition. From there, the application will be forwarded to the examiner for appropriate action in due course.

Dwayne Bost
Special Programs Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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EDWARDS & ANGELL, LLP
DIKE, BRONSTEIN, ROBERTS & CUSHMAN,
IP GROUP
P.O. BOX 9169
BOSTON MA 02209

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MAR 0 4 2004

OFFICE OF PETITIONS

In re Application of
Deodatta Vinayak Shenai-Khatkhate et al
Application No. 10/346,275
Filed: January 17, 2003
Attorney Docket No. 51360-CIP

ON PETITION

This is a decision on the petition, filed February 24, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 5, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

---

[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 Art Unit 1621 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:
EDWARDS & ANGELL, LLP
P.O. BOX 55874
BOSTON, MA 02205

UNITED STATES PATENT AND TRADEMARK OFFICE

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IBM CORPORATION
INTELLECTUAL PROPERTY LAW
11400 BURNET ROAD
AUSTIN, TX 78758

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JAN 13 2006

OFFICE OF PETITIONS

In re Application of	:
Jeffrey Douglas Brown et al	:
Application No. 10/346,293	: DECISION GRANTING PETITION
Filed: January 16, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. AUS920020704US1	:

This is a decision on the petition, filed January 12, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 22, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2112 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 7

John R. Hoffman
13th Street, 616 W.
P.O. Box 191
Jasper, IN 47547

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MAR 0 8 2004

OFFICE OF PETITIONS

In re Application of
Luther B. Day, et. al.
Application No. 10/346,329
Filed: January 17, 2003
Attorney Docket No. N/A

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 24, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed March 6, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned after midnight May 6, 2003.

In response to the Notice to File Corrected Application Papers, petitioner submitted with the instant petition $665 for the petition to revive fee, and a specification.

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/346,339	01/17/2003	Donald Edward Benson	SVL920010055US1/A8530	3789

46159 7590 09/09/2009
SUGHRUE MION PLLC
USPTO CUSTOMER NO WITH IBM/SVL
2100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20037

EXAMINER
EHICHIOYA, FRED I

ART UNIT	PAPER NUMBER
2156	

MAIL DATE	DELIVERY MODE
09/09/2009	PAPER

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

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

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

Laura Moskowitz
SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

In re Application of:
Donald Edward BENSON et al
Application No. 10/346,339
Filed: January 17, 2003
For: Digital Library System with Customizable Workflow

DECISION GRANTING PETITION TO RESET PERIOD FOR REPLY

This is a decision on the petition, filed on 06 July 2009, requesting that the shortened statutory period for reply set forth in the Office Action mailed on 04 February 2009 be restarted.

In the absence of any apparent irregularity associated with the mailing of an Office Action, the Office presumes that the communication was properly mailed to the address of record. This presumption may be overcome by showing that the Office Action was not received.

The relevant portion of MPEP § 711.03(c) states:

> 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.

In support of the petition, the petitioner stated that the Office Action mailed 04 February 2009 was never received by applicants and stated applicant's representative only discovered the Office Action during a recent check of PAIR and stated that the Office Action was downloaded from the Private PAIR on 09 June 2009. The petitioner supplied a copy of docketing record (PTO Office Action Mail Reports dated between February 4, 2009 and February 11, 2009) showing that the Office Action was never received by applicant's representative. The docketing record shows no entry reflecting receipt of the Office Action on or about 04 February 2009.

Since the petitioner failed to provide a statement attesting to the fact that a search of the file jacket and docketing record indicated that the Office Action was not received, she has not met the criteria of set out in MPEP § 711.03(c) for establishing failure to receive the Office Action mailed 04 February 2009. To expedite the prosecution of this application, the undersigned is hereby assuming that the petitioner did search the file jacket and docketing record and the petitioner found no record of receiving the Office Action.

For the above-stated reasons, the petition is **GRANTED**. Accordingly, the shortened statutory period that was originally set forth in the Office Action mailed on 04 February 2009 is hereby reset to run FROM THE DATE OF 09 June 2009.

Any inquiry concerning this decision should be directed to the undersigned whose telephone is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, SPRE/QAS
Technology Center 2100
Computer Architecture and Software

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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

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DEC 0 4 2006

OFFICE OF PETITIONS

In re Application of :
Martinez et al. :
Application No. 10/346,353 :
Filed: January 16, 2003 :
Title: Generating test Input For A Circuit :

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed October 16, 2006.

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

This application became abandoned for failure to timely submit a response to the final Office Action mailed March 15, 2006. The Notice set an extendable 3 month period for reply. No extensions of time pursuant to 37 CFR 1.136(a) were obtained. Accordingly, this application was held abandoned on June 16, 2006. A Notice of Abandonment was mailed on October 4, 2006.

Petitioner asserts that the final Office Action mailed on March 15, 2006 was never received. Petitioner attest that the Office Action was never received. Petitioner states a search of the file jacket and docket records confirms the Office Action was not received. In support of petitioner's contention, a copy of the docket records has been provided.

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

This application is being forwarded to Art Unit 2138 for re-mailing of the final Office Action. The one month time period for reply will be set to run from the mailing date of the new Office Communication.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Paper No. 6

MARK F. VICKERS
17534 BALLINGER WAY NE
SEATTLE, WA 98155

COPY MAILED
MAY 2 1 2004
OFFICE OF PETITIONS

In re Application of	:	
Vickers, Mark F.	:	
Application No. 10/346,364	:	ON PETITION
Filed: January 16, 2003	:	
Attorney Docket No. MV0001	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 5, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (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.

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

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

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

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

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BLACK LOWE & GRAHAM, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE WA 98104

MAILED
04 APR 2006

In re Application of:
Clifford A. Kushler, et al.
Serial No.: 10/346,366
Filed: January 16, 2003
For: SYSTEM AND METHOD FOR CONTINUOUS STROKE WORD-BASED TEXT INPUT

DECISION *SUA SPONTE* WITHDRAWING HOLDING OF ABANDONMENT

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

A Notice of Allowance and Issue Fee(s) Due communication was mailed on October 4, 2005 setting a shortened statutory period of three months for filing the issue fee. No response to the Notice of Allowance and Issue Fee(s) Due was received. A Notice of Abandonment has not been mailed.

A review of the file record indicates that the Notice of Allowance and Issue Fee(s) Due was returned to the Office as undeliverable on October 18, 2005; thus, there was obviously an irregularity in mailing of the Office action. A further review of the file finds that the Amendment Transmittal Letter filed on September 22, 2005 included a request to "Direct all communications to" an address. The Patent and Trademark Office technical support staff apparently failed to recognize or enter the provided address as a "new" correspondence address and therefore the Notice of Allowance and Issue Fee Due was inadvertently mailed to a former correspondence address of record. On December 2, 2005, applicant filed a "Change of Correspondence Address" which has been entered.

Although no petition or request to withdraw the holding of abandonment has been filed, the holding of abandonment is hereby withdrawn. The Notice of Allowance and Issue Fee(s) Due is also hereby vacated.

The application is being forwarded to the Technology Center's technical support staff for preparing and mailing a new Notice of Allowance and Issue Fee(s) Due. The time period for paying the issue fee will run from the new mailing date thereof.

Krista Zele
Special Programs Examiner
Technology Center 2600
Communications

UNITED STATES
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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

MAY 22 2003

CROMPTON. SEAGER & TUFTLE, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420

In re Application of	:	
Daniel et al	:	
Serial No.: 10/346,372	:	DECISION ON PETITION
Filed: January 17, 2003	:	
For: Distal Protection Device and Method	:	

This is in response to applicants' petition filed April 6, 2001, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on infringement.

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

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

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, Washington, DC 20231, or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle

John E. Kittle
Director
Technology Center 3700/2900

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AUG 17 2004

WHITEFORD, TAYLOR & PRESTON, LLP
ATTN: GREGORY M STONE
SEVEN SAINT PAUL STREET
BALTIMORE MD 21202-1626

In re Application of	:	
Yoav et al	:	
Serial No.: 10/346,372	:	DECISION ON PETITION
Filed: February 4, 2003	:	
For: Radioacivte Emission Detector	:	
Equipped with...	:	

This is in response to the petition applicant filed on July 7, 2004, to make the above-identified application special under the provisions of 37 CFR 1.102(d).

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

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

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, Washington, DC 20231, or by telephone at (703)308-0873 or by facsimile transmission at (703)308-3139.

John E. Kittle

John E. Kittle
Director
Technology Center 3700/2900

UNITED STATES
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TRADEMARK OFFICE

JUN 10 2003

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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#6

CROMPTON, SEAGER & TUFTE, LLC
122 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420

In re Application of	:	
Daniel et al	:	
Serial No.: 10/346,373	:	DECISION ON
Filed: January 17, 2003	:	PETITON TO MAKE SPECIAL
For: Distal Protection Device and Method	:	

This is in response to applicants' petition filed April 21, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on infringement.

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

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

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, Washington, DC 20231, or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle
Director
Technology Center 3700/2900

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JJGJR.: 06-04

Paper No: 9

LATHROP & GAGE LC
2345 GRAND AVENUE
SUITE 2800
KANSAS CITY MO 64108

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JUN 17 2004
OFFICE OF PETITIONS

In re Application of
Stoffer, et al. :
Application No. 10/346,374 :
Filing Date: 17 January, 2003
Attorney Docket No. 402967 :

This is a decision on the petition filed on 13 January, 2004, and resubmitted on 19 April, 2004, and in light of the allegations considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.

For the reasons set forth below, the petition as considered under 37 C.F.R.§1.181 is **GRANTED**.

BACKGROUND

The record reflects that:

- it appeared that Petitioner failed to reply timely and properly to the Notice to File Missing Parts (Oath/Declaration and surcharge) (Notice) mailed on 6 March, 2003, with reply due absent extension of time on or before 6 May, 2003;
- a result, the application was deemed abandoned after midnight 6 May, 2003;
- Notice of Abandonment was mailed on 3 February, 2004;

- with the instant petition Petitioner Peter C. Knops (Reg. No. 37,659) included, *inter alia*: his statement and documents evidencing non-receipt of the Notice;
- with the instant petition, Petitioner provided a copy of the reply (Oath/Declaration) and authorization for the surcharge ($130.00) to Deposit Account 12-0600.

NOTE: Docketing of a Status Inquiry at six- (6-) month intervals following the filing of replies may be prudent practice to demonstrate diligence when lengthy delays occur in matters such as this.

STATUTES, REGULATIONS AND ANALYSIS

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

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

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

---

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

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

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

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

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

constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

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

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[7]

Petitioner evidences non-receipt of the Notice of Missing Parts, and so satisfies the showing as required under 37 C.F.R. §1.181.

CONCLUSION

Because Petitioner satisfied the burdens set forth in Delgar v. Schulyer, the petition under 37 C.F.R. §1.181 hereby is **granted**, the 3 February, 2004, Notice of Abandonment is **vacated**, and the petition fee is waived.

The file is held in the Office of Petitions to address another matter.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

---

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

[7] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

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JJGJR.: 06-04

Paper No: 10

LATHROP & GAGE LC
2345 GRAND AVENUE
SUITE 2800
KANSAS CITY MO 64108

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JUN 1 8 2004
OFFICE OF PETITIONS

In re Application of
Stoffer, et al. :
Application No. 10/346,374 :
Filing Date: 17 January, 2003
Attorney Docket No. 402967 :

This is a decision on the petition filed on 13 January, 2004, resubmitted on 19 April, 2004, alleging unavoidable delay under 37 C.F.R. §1.137(a).

For the reasons set forth below, the petition as considered under 37 C.F.R.§1.137(a) is **DISMISSED**.

BACKGROUND

The record reflects that:

- it appeared that Petitioner failed to reply timely and properly to the Notice to File Missing Parts (Oath/Declaration and surcharge) (Notice) mailed on 6 March, 2003, with reply due absent extension of time on or before 6 May, 2003;
- a result, the application was deemed abandoned after midnight 6 May, 2003;
- Notice of Abandonment was mailed on 3 February, 2004;

- with the petition, Petitioner Peter C. Knops (Reg. No. 37,659) included, *inter alia*: his statement and documents evidencing non-receipt of the Notice, and the petition considered as a request to withdraw the holding of abandonment was granted under 37 C.F.R. §1.181 when Petitioner also provided a copy of the reply (Oath/Declaration) and authorization for the surcharge ($130.00) to Deposit Account 12-0600;

- the instant petition is now moot.

NOTE: Docketing of a Status Inquiry at six- (6-) month intervals following the filing of replies may be prudent practice to demonstrate diligence when lengthy delays occur in matters such as this.

STATUTES, REGULATIONS AND ANALYSIS

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

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

Delays in responding properly raise the question whether delays are unavoidable.[3] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[4]

---

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

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

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

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

And the Petitioner must be diligent in attending to the matter.[5] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

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

CONCLUSION

The instant petition under 37 C.F.R. §1.137(a) hereby is **dismissed as moot**.

The file is forwarded to OIPE for further processing as necessary consistent with this decision before being forwarded for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

---

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

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

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OFFICE OF PETITIONS

SCOTT A. MCBAIN
DELPHI TECHNOLOGIES, INC.
LEGAL STAFF, MAIL CODE: 480-410-202
P.O. BOX 5052
TROY, MI 48007

In re Application of	:	
Belen Alvarez et al	:	
Application No. 10/346,391	:	ON PETITION
Filed: January 17, 2003	:	
Attorney Docket No. DP-3071707500/160		

This is a decision on the petition, filed July 5, 2005 under 37 CFR 1.313(c)(2), to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

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

This matter is being referred to Technology Center AU 3683 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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Christopher B. Eide
Morrison & Foerster LLP
755 Page Mill Road
Palo Alto CA 94304-1018

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JAN 23 2007

OFFICE OF PETITIONS

NOTICE

In re Patent No. 6,825,960 :
Issue Date: November 30, 2004 :
Application No. 10/346,399 :
Filed: January 15, 2003 :
Attorney Docket No. 495812003000 :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 072804

AUG 27 2004

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

In re Application of:	:	
VLADIMIR VOLMAN	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Serial No.: 10/346,401	:	
Filed: January 15, 2003	:	
Attorney Docket No.: **040092-027000US**	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed March 18, 2004.

The request is **DISMISSED** as moot.

A review of the application file record reveals a proper revocation and power of attorney to the attorneys of McDermott, Will & Emery was filed on April 6, 2004. As such, the power of attorney for the attorneys and agents requesting withdrawal has already been revoked. Accordingly, the present request is moot, and must be dismissed.

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

Inquiries related to this decision should be directed to Jose G. Dees at (571) 272-1569.

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

cc: MARK J. ITRI
MCDERMOTT, WILL & EMERY
18191 VON KARMAN AVE., SUITE 400
IRVINE, CA 92612-0187

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WOODCOCK WASHBURN LLP
CIRA CENTRE 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104-2891

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OFFICE OF PETITIONS

In re Application of	:	
Lien, et al.	:	
Application No. 10/346,404	:	ON PETITION
Filed: January 15, 2003	:	
Attorney Docket No. 22877-0040		

This is a decision on the petition to revive an unintentionally abandoned application under 37 CFR 1.137(b), filed December 21, 2007.

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

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed July 13, 2007. This notice set a statutory period for reply of three (3) months. No issue fee having been received, the application became abandoned on October 14, 2007. The Office mailed a Notice of Abandonment on November 6, 2007.

With the instant petition, applicants paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of the issue fee and publication fees.

Receipt of the Power of Attorney, submitted with the instant petition, is acknowledged.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The matter is being forwarded to Group Art Unit 2628 for consideration of the Rule 312 Amendment, submitted with the petition.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of	:	
O'Donnell	:	
Application No. 10/346,406	:	ON PETITION
Filed: January 16, 2003	:	
Attorney Docket No. 7397	:	

This is a decision on the petition under 37 CFR 1.137(a), filed June 3, 2005, to revive the above-identified application. The petition is also being treated under 37 CFR 1.181 (no fee) as a petition to withdraw the holding of abandonment.

The petition is **granted.**

A Notice of Abandonment was mailed May 17, 2005.

The Notice states that the application became abandoned as a result of petitioner failing to respond to the Office action mailed September 24, 2004.

Petitioner states that the September 24, 2004 Office action was never received.

A review of the file fails to indicate that any Office action was mailed on September 24, 2004.

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

Since the petition has been granted under 37 CFR 1.181, the petitioner's request to have the petition considered under 37 CFR 1.137(a) is dismissed as moot. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, a refund of the petition fee will be scheduled.

Technology Center Art Unit 3739 will be notified the application is not abandoned so that the merits of the application can be considered in due course. If the examiner did in fact mail an Office action on September 24, 2004, a new copy of the Office action should be mailed setting a new time period for response.

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

Charles Steven Brantley
Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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HAVERSTOCK & OWENS LLP
ATTN: Thomas B. Haverstock
162 N. Wolfe Road
Sunnyvale CA 94086

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JUL 1 9 2005

OFFICE OF PETITIONS

In re Application of
Biberger et al.
Application No.10/346,445
Filed: January 15, 2003

Attorney Docket No. SSI-00701
Title of Invention: Method of Supercritical Processing of A Workpiece

ON PETITION

This is a decision on the petition filed April 20, 2005 under 37 CFR 1.137(a) and in the alternative under 37 CFR 1.137(b).

The petition to revive under 37 C.F.R. § 1.137(a) is **DISMISSED**.

The petition to revive under 37 C.F.R. §1.137(b) is **GRANTED**.

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 October 25, 2004. 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 January 26, 2005. This decision precedes the mailing of a Notice of Abandonment.

Petitioner contends the Notice of Allowance and Fee (s) Due was entered into the law firm's computerized docket on November 5, 2004. The deadline of January 25, 2005 as well as a reminder for two weeks prior was entered. When the electronic docket prompted payment of the issue fee on February 25, 2005, it was discovered the issue fee deadline of January 25, 2005 had expired. A review of the computerized docket system showed the incorrect due date February 25, 2005 rather than the due date of January 25, 2005 which had been originally entered. As such the issue and publication fee were not timely submitted.

Petition to revive under 37 CFR 1.137(a)

A grantable petition under 37 C.F.R. § 1.137(a) must be accompanied by:

(1) the required reply,[1]

(2) the petition fee,

(3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, and

(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition lacks item (3).

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 37 C.F.R. § 1.137(a).

The Office may revive an abandoned application if the delay in responding to the relevant outstanding office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable." See, 37 C.F.R. § 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" is applicable to ordinary human affairs, and requires no more greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business."); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case by case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2D 1130 (N.D. Ind. 1987).

The argument petitioner has presented is not persuasive to establish unavoidable delay. It is not apparent petitioner is not aware how the error occurred. To the extent petitioner argues that the error occurred because of computer error via the electronic docket system, petitioner has failed to provide sufficient evidence that the computer system failed and that computer error was the cause of the delay in submitting the issue and publication fees. The fact that the original docket entry was deleted from the electronic docket report and a new deadline for a month later was entered into the docket system implies that changes were made to the system not failure of the docket system due to computer failure.

---

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

A delay resulting from an clerical error on the part of an employee in the performance of a clerical function may provide the basis for a showing of unavoidable delay provided it is shown that :

a) the error was the cause of the delay at issue;

b) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and

c) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

Petitioner has failed to establish (b) and (c).

As to item (b), petitioner has not provided sufficient evidence regarding the business routine in place. In addition to Ms. Dalton, who else has access to the docket system? When the new date was entered into the docket system why did a subsequent printout not require your signature. How frequently are printouts reviewed?

As to item (c), petitioner has failed to establish that Ms. Dalton was sufficiently trained and experienced to perform the clerical function in question. No evidence has been provided to establish she had sufficient training and experience to handle this clerical function. Petitioner needs to provide sufficient facts and evidence to establish there was justified reliance on Ms. Dalton's capabilities. The degree of supervision of Ms. Dalton's work, examples of other clerical work functions carried out and checks on the described work which were used to assure proper execution of assigned tasks. The same information would need to be provided for any docket clerk that may have entered the incorrect docket entry.

Petition to Revive Under 37 CFR 1.137(b)

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by the required reply, the required petition fee, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional. The filing of a petition under 37 C.F.R. § 1.137(b) cannot be intentionally delayed, and therefore, must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 C.F.R. § 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 C.F.R. § 1.137(b).

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

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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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KUBOVIK & KUBOVCIK
SUITE 710
900 17TH STREET NW
WASHINGTON, DC 20006

In re Application of	:	
Juha T. Rantala et al	:	
Application No. 10/346,450	:	ON PETITION
Filed: January 17, 2003	:	
Attorney Docket No. SLC-018	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 20, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed June 14, 2005, which set a shortened statutory period for reply of three (3) months. Two months extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 15, 2005.

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

This matter is being referred to Technology Center AU 2813 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES
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Commissioner for Patents
Washington, DC 20231
www.uspto.gov

3/29/04

Coudert Brothers
Attn Lewis Reff
1114 Avenue of the Americas
New York NY 10036

Dear Applicant:

The Box PGPub replacement drawings for application number 10/346,473 received on 3/10/04 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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AVAGO TECHNOLOGIES, LTD.
P.O. BOX 1920
DENVER CO 80201-1920

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APR 0 9 2007

OFFICE OF PETITIONS

In re Application of :
Woolf et al. :
Application No. 10/346,480 : DECISION ON PETITION
Filed: 15 January, 2003 :
Atty. Docket No. 10021189-1 :

This is a decision on the petition styled under 37 CFR 1.47(a) and filed on 8 January, 2007, which is treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR 1.131 in that it requires that a declaration filed thereunder by signed by all inventors.[1]

The petition is **granted**.

In view of the efforts recounted to obtained the signature of joint inventor Angeline Young Rodriguez, it is agreed that justice would be served by waiving the requirement for her signature on the declaration filed under 37 CFR 1.131.

The aforementioned supplemental declaration has been accepted, on petition, and placed in the file.

It is noted that the fee for a petition under 37 CFR 1.183 is $400.00. Accordingly, the balance due has been charged to counsel's deposit account as authorized in the papers filed with the present petition.

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.

DIWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

---

[1] Once an application has received a fully executed oath or declaration under 37 CFR 1.63 and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. See MPEP 603.

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November 2004

Warren P. Kujawa
1770 N. Green Valley Pkwy
Unit 3833
Henderson, NV 89074

DEC 15 2004

In re Application of:
Su Shiong Huang
Serial No.: 10/346,490
Filed: January 21, 2003
Attorney Docket No.: 31900-2

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the "Request For Reconsideration of Holding of Abandonment" filed on December 2, 2003. It is being treated as a petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a). There is no fee for this petition.

The petition is **GRANTED**.

The application was held abandoned for failure to file a proper reply to the Office action mailed on May 7, 2003. A Notice of Abandonment was mailed on November 17, 2003.

Petitioner asserts that the Office action was never received. It is also asserted that a Change of Address was filed in the USPTO in a letter dated March 27, 2003. The Change of Address dated March 27, 2003 was either never received at the USPTO or just not matched with the application file. The Office action dated May 7, 2003 was thus mailed to the correspondence address indicated in the declaration filed with the application.

It is clear that the Office action dated May 7, 2003 was never received by the applicant since the Office action was returned to the USPTO by the U.S. Postal Service. The only question is whether the Change of Address dated March 27, 2003 was properly mailed and timely filed by the applicant. The evidence provided by the petitioner includes a statement which attests upon a personal knowledge basis to the previous mailing as well as a copy of the Change of Address dated March 27, 2003. The copy of the Change of Address contains the required certificate of mailing (dated March 27, 2003) under 37 C.F.R. § 1.8 (a)(1)(ii). The evidence is sufficient under 37 C.F.R. § 1.8 (b) to establish that the Change of Address was timely filed.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed November 17, 2003 is hereby **VACATED** and the holding of abandonment is withdrawn.

On June 14, 2004, applicant filed a second Change of Address directing correspondence to a third address. This decision as well as all future correspondence will be directed to this third address in Henderson, Nevada until otherwise notified by the applicant.

The Office action of May 7, 2003 will be remailed to the Henderson, Nevada address restarting the time period for response. The facsimile and telephone numbers on the Office action have been updated in ink.

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

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

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Warren P. Kujawa
1770 GREEN VALLEY PARKWAY
UNIT 3833
HENDERSON NV 89074

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OFFICE OF PETITIONS

In re Application of
Huang
Application No. 10/346,490
Filed: January 21, 2003
Attorney Docket No. 31500-2
For: EXTERNAL MOUNT TIRE PRESSURE SENSOR SYSTEM

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed November 4, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to timely respond to the non-final Office action, mailed May 7, 2003, which set an extendable three month period for reply. No reply being received, this application became abandoned on August 8, 2003. A Notice of Abandonment was mailed on November 17, 2003.

Petitioner filed a petition to withdraw the holding of abandonment on December 2, 2003 (certificate of mailing date November 25, 2003) based on an allegation of non-receipt. This petition was granted on December 15, 2004. The instant petition was filed prior to the mailing of the December 15, 2004 decision on petition.

As the holding of abandonment has been withdrawn, the petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**. The $55.00 fee submitted with the instant petition will be refunded via a treasury check that will be scheduled shortly.

After the mailing of this decision, the application will be returned to Technology Center GAU 2855.

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

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Warren P. Kujawa
461 INDIGO SPRINGS ST.
HENDERSON NV 89014

Applicant: Huang
Appl. No.: 10/346,490
Filing Date: January 21, 2003
U.S. Patent No.: 6,959,594
Issue Date: November 1, 2005
Title: EXTERNAL MOUNT TIRE PRESSURE SENSOR SYSTEM
Attorney Docket No.: P06653US00-1845
Pub. No.: US 2005/007224 A1
Pub. Date: April 7, 2005

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This is in response to the "Request for A Corrected Or Revised Patent Application Publication under 37 CFR 1.221(b)," which was received on May 9, 2005, for the above-identified 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." 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. 6,959,594 on November 1, 2005, the request is deemed moot.

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

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

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Paper No. 5

YOUNG LAW FIRM
A PROFESSIONAL CORPORATION
4370 ALPINE ROAD SUITE 106
PORTOLA VALLEY CA 94028

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In re Application of
Richard C. Johnson
Application No. 10/346,500
Filed: January 15, 2003
Attorney Docket No. ORCL5796/OID-2002-222-1

DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the Petition to Revive an application abandoned for failure to notify the office of a foreign or international filing under 37 CFR 1.137(f), filed March 19, 2004.

The petition is **GRANTED**.

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

The petition indicates that the present nonprovisional application is the subject of a foreign or international application filed on December 4, 2003. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

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

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

The instant petition has been found to be in compliance with 37 CFR 1.137(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©) is accepted as having been unintentionally delayed.

A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of November 18, 2004 accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 3624 for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

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Paper No. 7

REFLECTIVITY INC
350 POTRERO AVENUE
SUNNYVALE, CA 94085

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OFFICE OF PETITIONS

In re Application of	:	
Andrew G. Huibers et al	:	
Application No. 10/346,506	:	ON PETITION
Filed: January 15, 2003	:	
Attorney Docket No. P73-US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 10, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed April 21, 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 June 22, 2003.

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

The application file is being forwarded to the Office of Initial Patent Examiantion.

Wan Laymon

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

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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

CARRIER BLACKMAN AND ASSOCIATES
24101 NOVI ROAD
SUITE 100
NOVI MI 48375

In re Application of
Nobuharu Nagaoka, et al.
Application No. 10/346,517
Filed: January 17, 2003
For: **DEVICE FOR MONITORING AROUND A VEHICLE**

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition filed September 29, 2005 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

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

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES
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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

#4

MAY 22 2003

CROMPTON. SEAGER & TUFTLE, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420

In re Application of	:	
Daniel et al	:	
Serial No.: 10/346,519	:	DECISION ON PETITION
Filed: January 17, 2003	:	
For: Distal Protection Device and Method	:	

This is in response to applicants' petition filed August 21, 2002, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on infringement.

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

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

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, Washington, DC 20231, or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle
Director
Technology Center 3700/2900

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WEINGARTEN, SCHURGIN, GAGNEBIN & LEBOVICI LLP
TEN POST OFFICE SQUARE
BOSTON, MA 02109

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In re Application of	:	
Ravi Subrahmanyan, et al.	:	
Application No. 10/346,550	:	ON PETITION
Filed: January 17, 2003	:	
Attorney Docket No. AMCC-009XX	:	

This is a decision on the petition under 37 CFR 1.182, filed June 24, 2003, to change the order of the names of the inventors.

The petition is granted.

The order of the names of the inventors has been changed as follows:

1. Jeffrey W. Spires
2. Ravi Subrahmanyan

A corrected Filing Receipt is enclosed. Telephone inquires related to this decision should be directed to the undersigned at (703) 305-9220.

This application is being referred to Technology Center Art Unit 2816 for examination in due course.

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

Enclosure

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FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER LLP
1300 I STREET N W
WASHINGTON, DC 20005-3315

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DEC 0 8 2008

In re Application of	:	
Alex T. Roth, et al.	:	
Application No. 10/346,556	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. 08889.0024-01000	:	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 5, 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 Michael Kim on behalf of himself. Michael Kim has been withdrawn as attorneys or agents of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

The application became abandoned for failure to timely reply to the outstanding Office action mailed January 23, 2006.

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

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

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YOUNG LAW FIRM, P.C.
ALAN W. YOUNG
4370 ALPINE ROAD
SUITE 106
PORTOLA VALLEY CA 94028

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OFFICE OF PETITIONS

In re Application of Derek J. Harper et al Application No. 10/346,575 Filed: January 17, 2003 Attorney Docket No. MICR5701D	: : : : : :	DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 12, 2006.

The petition is **NOT APPROVED**.

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

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in a matter pending before the Office unless such request or such withdrawal is" for one of the permissive reasons listed in 37 CFR 10.40(c). The reason set forth in the request, that attorney no longer represent the interest of the client, do not meet any of the conditions set forth in 37 CFR 10.40.

All communications from the Office will continue to be directed to the above address of record until otherwise properly notified by applicant/assignee.

This application is being referred to Technology Center AU 3767 to await a reply to the Non-final Office action mailed January 19, 2006.

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

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

Conferee:

cc:
DEREK J. HARPER
6856 BUTTONWOOD LANE
GOLETA CA 93117

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ALAN W. YOUNG
4370 ALPINE ROAD
SUITE 106
PORTOLA VALLEY CA 94028

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OFFICE OF PETITIONS

In re Application of	:	
Derek J. Harper et al	:	
Application No. 10/346,575	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. MICR5701D	:	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, 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 Alan W. Young on behalf of all attorneys of record who are associated with customer No. 22430.

All attorneys/agents associated with the Customer Number 22430 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 Derek J. Harper at the address indicated below.

This application became abandoned for failure to timely reply to the Nonfinal Rejection mailed January 18, 2006.

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

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

cc:
DEREK J. HARPER
6856 BUTTONWOOD LANE
GOLETA CA 93117

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Visteon
C/o Brinks Hofer Gilson & Lione
P. O. Box 10395
Chicago, IL 60610

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NOV 07 2005

OFFICE OF PETITIONS

In re Application of	:	
Haimian Cai, et al.	:	
Application No. 10/346,580	:	ON PETITION
Filed: January 17, 2003	:	
Attorney Docket No. 10541-1680	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 21, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely submit the issue fee and publication fee.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the issue fee and publication fee; (2) the petition fee of $1500; and (3) an adequate statement of unintentional delay.

The Office acknowledges receipt of the issue fee, which was submitted with the 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

SCAN! **Please forward case and paper to address shown below.**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/31/08

TO SPE OF : ART UNIT 2193 Trenton Roche

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/346586 Patent No.: 7272830

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

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

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

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

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

LEWIS A. BULLOCK, JR.
SUPERVISORY PATENT EXAMINER

SPE

2193
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

United States
Patent And
Trademark Office

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

PETITION DECISION

07/15/04

W.L. Gore & Associates, Inc.
551 Paper Mill Road
P.O. Box 9206
Newark, DE 19714-9206

Dear Applicant:

The Box PG Pub replacement drawings for application number 10/346599 received on 06/23/04 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Kaletus King, Office of Pre-Grant Publication 703 605-4283.

Kaletus King

Signature of Reviewer, Office of Pre-Grant Publication

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ——

DATE : 10/28/08

TO SPE OF : ART UNIT 1641

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/346620 Patent No.: 7381535B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Virginia Tolbert
Certificates of Correction Branch
703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: No new matter is introduced; scope and meaning of claims is not changed.

Gailene Gabel

[signature]
SPE

1641
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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Paper No.

Stanford University Office of
Technology Licensing
Bozicevic, Field & Francis LLP
1900 University Avenue
Suite 200
East Palo Alto CA 94303

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AUG 26 2009

OFFICE OF PETITIONS

In re Patent No. 7,381,535	:	ON PETITIONS
Perez et al.	:	under 37 CFR 1.183
Issue Date: June 3, 2008	:	and
Application No. 10/346,620	:	ON REQUEST FOR RECONSIDERATION
Filed: January 16, 2003	:	OF PATENT TERM ADJUSTMENT
Atty Docket No. STAN-478CIP	:	

This is a decision on the 1) Petition under 37 C.F.R. 1.183, requesting that the Office suspend the rules and consider on the merits a Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) filed more than two months from the date the above-referenced patent issued; and on the 2) Request for Determination of Patent Term Adjustment - Post Grant, both filed on November 24, 2008.

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

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **dismissed as untimely filed**.

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

BACKGROUND

On June 3, 2008, the above-identified application matured into U.S. Patent No. 7,381,535, with a revised patent term adjustment of 604 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months of the date the patent issued. Patentee now petitions under 37 C.F.R. § 1.183 to (i) suspend or waive the requirement of 37 C.F.R. § 1.705(d) that a Request for Reconsideration of Patent Term Adjustment be filed within two months of the date the patent issued; and (ii) consider the enclosed Request for Reconsideration of Patent Term Adjustment. Patentee references the recent decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. Sept. 30, 2008) as the basis for the petition.

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

The above-referenced patent issued on June 3, 2008. A request for reconsideration of the patent term adjustment indicated in the patent was not filed until November 24, 2008. Petitioner requests that the Office suspend the rules and consider on the merits the Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) even though it was untimely filed more than two months from the date the patent issued.

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

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

By the express provisions of 37 CFR 1.705(d), a request for reconsideration of patent term adjustment must be filed within

two months of the date the patent issued. It is undisputed that no such request for reconsideration was filed by August 3, 2008, the date two months from the date this patent issued, June 3, 2008. Rather, on November 24, 2008, nearly two months after the issuance of a decision in Wyeth v. Dudas on September 30, 2008, petitioner filed the instant request for waiver of the two-month requirement.

37 CFR 1.183 provides that:

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

35 U.S.C. 154, requires the Office to provide the applicant one opportunity to request reconsideration of any patent term adjustment determination made by the Director, authorizes the Director to establish the procedures for requesting such reconsideration. Those procedures[1] include pursuant to 37 CFR 1.705(d) setting a two-month period for filing a request for

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

reconsideration of the revised patent term adjustment indicated in the patent.

Having considered petitioner's arguments, it is concluded that waiver of the two-month requirement is not warranted. The primary basis for requesting waiver set forth by petitioner is "the extraordinary situation presented by the recent decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. Sept. 30, 2008)." Specifically, petitioner states that in Wyeth, the U.S. District Court for the District of Columbia held that contrary to USPTO practice, a patentee is entitled to Patent Term Adjustment credit for examination delay under 37 CFR 1.702(b) in addition to any examination delay under 37 CFR 1.702(a), to the extent that the two periods of delay "do not occur on the same calendar day or days."

Petitioner has not explained why it could not have filed a Request for Reconsideration of Patent Term Adjustment within two months of the date the above-referenced patent issued. Apparently, petitioner's argument is that the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth decision, which was entered more than two months after the issuance of their patent.

The fact that any relief ultimately granted in Wyeth would benefit patentee had they timely filed a request for reconsideration does not make the situation extraordinary. Wyeth followed the procedure set forth in 37 CFR 1.705 for requesting reconsideration of the patent term adjustment determination. Then, pursuant to 35 U.S.C. 154(b)(4)(A), Wyeth timely filed a complaint in District Court seeking judicial review of the Office's decision. A Memorandum Opinion and Order, the Wyeth decision of September 30, 2008, directed to the parties involved was issued.

Petitioner chose not to challenge their revised patent term adjustment within the two-month period. Petitioner's argument that they could not have filed a Request for Reconsideration of Patent Term Adjustment within two months of the date the above-referenced patent issued because the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth decision, which was entered more than two months after the issuance of their patent, is not persuasive.

Petitioner could have filed a Request for Reconsideration of Patent Term Adjustment as Wyeth did. It is acknowledged that petitioner may have chosen not to file a request for reconsideration based on a conclusion that the Office's interpretation of 35 U.S.C. § 154(b)(2)(A) was correct. Nonetheless, the fact that the District Court has now issued an Opinion contrary to the Office's interpretation does not make the situation extraordinary. This is not unlike any other situation where a patentee (or applicant) challenges a final agency decision and the decision upon judicial review could have had applicability to another patentee (or applicant) had they taken such action. In fact, many patentees may be in the same situation as petitioner with respect to the Wyeth decision. In addition, given that the law only allows 180 days for both the filing of a petition and for the Office's consideration of that petition, petitioner's unexplained nearly four-month delay in filing the petition weighs against them.

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

The contention that a decision is in error is a basis for a timely request for review of the decision but does not justify a delay in seeking review of such decision.

The Office provided notice that petitions under 37 CFR 1.182 and 1.183 or requests for certificate of corrections under 35 USC 354 and §1.323 or 35 U.S.C. 255 and §1.324 are not substitute *fora* to obtain to obtain reconsideration of a patent term adjustment determination indicated in a notice of allowance if applicant fails to submit a request for reconsideration within the time period specified in §1.705(b) or to obtain reconsideration of a patent term adjustment determination indicated in a patent if a patentee fails to submit a request for reconsideration within the time period specified in §1.705(d). See 69 Fed. Reg. 21704, 21707 (April, 22, 2004).

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

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

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

This is a decision on the "Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. §1.705(d)," filed November 24, 2008. Therein, patentee requests correction of the patent term adjustment (PTA) indicated in the patent to one thousand two hundred seventy-five (1275) days.

On June 3, 2008, the above-identified application matured into U.S. Patent No. 7,381,535 with a revised patent term adjustment of 604 days. The instant request for reconsideration was filed more than five months after the issuance of the patent, on November 24, 2008.

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

CONCLUSION

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

Receipt of the fees required for the petition under 37 CFR 1.183 and the application for patent term adjustment is acknowledged.

Telephone inquiries specific to this matter should be directed to Charlema Grant, Petitions Attorney, at (571) 272-3215.

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

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COMMISSIONER FOR PATENTS
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Paper No. 4

MCLEOD & MOYNE, P.C.
2190 COMMONS PARKWAY
OKEMOS MI 48864

COPY MAILED

JUN 05 2003

OFFICE OF PETITIONS

In re Application of
Joseph L. DiCesare et al.
Application No. 10/346,625
Filed: January 17, 2003
Attorney Docket No. Neogen 4.1-40

ON PETITION

This is a decision on the "Petition in Response to Notice of Omitted Item(s) in a Nonprovisional Application" filed April 24, 2003, requesting in effect, that the "Notice of Omitted Item(s)" mailed February 25, 2002, in the above-identified application be withdrawn and that the petition fee be refunded.

The application was filed on January 17, 2003. However, on April 1, 2003, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s) in a Nonprovisional Application," stating that the application had been accorded a filing date; however, Page 2 of the specification appeared to have been omitted.

In response, the present petition was filed. The petition argues, in effect, that no pages are missing. Instead, the petition indicates that the pages of specification filed on January 17, 2003, were simply misnumbered.

Petitioner's arguments are well-taken. It is obvious from the petition that no pages were actually missing on January 17, 2003. Rather, the specification was misnumbered and that no pages were actually omitted.

In view of the above, the request to accord the application a filing date of January 17, 2003, is granted.

As as a result of applicant's filing error, however, the "Notice of Omitted Item(s)" mailed April 1, 2003 was correct in stating that Page 2 of the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn and thus the petition fee will not be refunded.

The application will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of January 17, 2003 and using the properly numbered specification submitted on petition April 24, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney in the Office of Petitions 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
Washington, DC 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/346,625	01/17/2003	Joseph L. DiCesare	Neogen 4.1-40

CONFIRMATION NO. 5825

FORMALITIES LETTER

OC000000009749228

21036
MCLEOD MOYNE & REILLY, P.C.
2190 COMMONS PARKWAY
OKEMOS, MI 48864

Date Mailed: 04/01/2003

NOTICE OF OMITTED ITEM(S) IN A NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has been accorded to the above-identified nonprovisional application papers; however, the following item(s) appear to have been omitted from the application:

- Page(s) **Page 2** of the specification (description and claims).

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and $130.00 petition fee *(37 CFR 1.17(h))*) with evidence of such deposit **must** be filed within **TWO MONTHS** of the date of this Notice. The petition fee will be refunded if is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the $130.00 petition fee *(37 CFR 1.17(h))* requesting the later filing date **must** be filed within **TWO MONTHS** of the date of this Notice.

Applicant is advised that generally the filing fee required for an application is the filing fee in effect on the filing date accorded the application and that payment of the requisite basic filing fee on a date later than the filing date of the application requires payment of a surcharge (37 CFR 1.16(e)). To avoid processing delays and payment of a surcharge, applicant should submit any balance due for the requisite filing fee based on the later filing date being requested when submitting the omitted items(s) and the petition (and petition fee) requesting the later filing date.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within **TWO MONTHS** of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b)**. In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (*i.e.*, the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the

references in the specification to the drawing figures to correspond with any relabeled drawing figures, is required. A copy of the drawing figures showing the proposed changes in red ink should accompany with any drawing changes . Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.

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

S. Gorans

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

PART 3 - OFFICE COPY

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE :09/18/2005

TO SPE OF : ART UNIT **OPLA -PTA**

SUBJECT : Request for Certificate of Correction on Patent No.: 10/346643 6781864

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

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

Thank You For Your Assistance

A. Green

Angela Green
Certificates of Correction Branch
Tel. No. 703-305-9380 ext. 123

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

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

Comments:

Do not enter the change to item (*).

Kan Fente — **SPE**

OPLA — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov

PETER H. KANG
PMB 814
751 LAUREL ST.
SAN CARLOS, CA 94070-3113

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FEB 28 2005

OFFICE OF PETITIONS

In re Application of	:
Eunjoo Kim	:
Application No. 10/346,648	: DECISION GRANTING PETITION
Filed: January 17, 2003	: UNDER 37 CFR 1.137(b)
Attorney Docket No. EJK-01	:

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

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment and drawings; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice To File Corrected Application Papers of March 6, 2003, is accepted as having been unintentionally delayed.

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

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

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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TRASKBRITT, P.C.
P.O. BOX 2550
SALT LAKE CITY, UT 84110

Mail Date: 05/03/2010

Applicant	: Matthew Forbes Bramble	: DECISION ON REQUEST FOR
Patent Number	: 7663265	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/346,650	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/16/2003	: ISSUE CERTIFICATE OF CORRECTION

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

The patent term adjustment has been determined to be **2126** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Paper No. 110104

Michael W. Farn
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

DEC 2 2004

In re Application of:	:	
Qin Zhang	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Serial No.: 10/346,653	:	
Filed: January 17, 2003	:	
Attorney Docket No.: **23001-07195**	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed September 17, 2004.

The request is **DISMISSED** as moot.

A review of the application file record reveals a proper revocation and power of attorney to the attorneys of Allen, Dyer, Doppelt, Milbrath & Gilchrist P.A. was filed on September 03, 2004. As such, the power of attorney for the attorneys and agents requesting withdrawal has already been revoked. Accordingly, the present request is moot, and must be dismissed.

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

Inquiries related to this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

Clayton E. LaBalle

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

cc: Allen, Dyer, Doppelt, Milbrth & Gilchrist P.A.
1401 Citrus Center 244 South Orange Avenue
P.O. Box 3791
Orlando FL 32802-3791

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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FOLEY & LARDNER LLP
1530 PAGE MILL ROAD
PALO ALTO CA 94304

In re Application of	:	
LINGAPPA, et al.	:	
Application No. 10/346,654	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. 058423-1004	:	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 25, 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 Karen Flick on behalf of all attorneys of record who are associated with customer No. 38706. All attorneys/agents associated with the Customer Number 38706 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 12, 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: **JAISRI R. LINGAPPA**
49 CRAGMONT AVENUE
SAN FRANCISCO, CA 94116

cc: **THE QUINE INTELLECTUAL PROPETY LAW GROUP PC**
2033 CLEMENT AVENUE, #200
ALARNEDA, CA 94501

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
10/346,654	01/17/2003	Jaisri R. Lingappa	058423-1004

CONFIRMATION NO. 4980

OC000000021582558

38706
FOLEY & LARDNER LLP
1530 PAGE MILL ROAD
PALO ALTO, CA 94304

Date Mailed: 12/13/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/25/2006.

- 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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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

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JUL 23 2007

OFFICE OF PETITIONS

In re Application of	:	
Albert K. Chin	:	
Application No. 10/346,663	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. 23488-07252	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 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 Albert C. Smith on behalf of all attorneys of record.

All attorneys/agents have been withdrawn.

[Example: 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 Issue Fee payment due according the Notice of Allowance and Fee(s) Due letter mailed May 24, 2007.

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

T. Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Albert K. Chin**
2021 Newell Road
Palo Alto, CA 94303

cc: **Jason R. Kraus**
Faegre & Bensen
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/346,663	01/17/2003	Albert K. Chin	23488-07252

CONFIRMATION NO. 5072

OC000000024942909

758
FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

Date Mailed: 07/20/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/18/2006.

- 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.

Terri Williams

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199

FORMER ATTORNEY/AGENT COPY

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OFFICE OF PETITIONS

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

In re Application of	:	
Edward Perez	:	DECISION ON REQUEST
Application No. 10/346,664	:	TO WITHDRAW FROM
Filed: January 17, 2003	:	RECORD
Attorney Docket No. 464802000300	:	

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 December 5, 2005.

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

A review of the file record indicates that the power of attorney to all the attorneys or agents of record have been revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 CFR § 1.36(b) is moot.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

This application file is being referred to Technology Center Art Unit 3734.

Telephone inquires concerning this decision should be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Conferee: Denise Pothier

cc: LEVINE BAGADE, LLP
2483 EAST BAYSHORE ROAD, SUITE 100
PALO ALTO, CA 94303

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OFFICE OF PETITIONS

LEVINE BAGADE HAN LLP
2483 EAST BAYSHORE ROAD, SUITE 100
PALO ALTO CA 94303

In re Application of	:
Edward Perez	:
Application No. 10/346,664	: DECISION GRANTING PETITION
Filed: January 17, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. TSSNNZ00500	:

This is a decision on the petition, filed February 28, 2008 and resubmitted on February 29, 2008, which is being treated under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 3, 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) 272-3208.

This application is being referred to Technology Center AU 3734 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

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OFFICE OF PETITIONS

LEVINE BAGADE HAN, LLP
2400 GENG ROAD, SUITE 120
PALO ALTO, CA 94303

In re Patent No. 7,497,866	:	
Issue Date: March 3, 2009	:	
Application No. 10/346,664	:	DECISION ON PETITION TO
Filed: January 17, 2003	:	WITHDRAW FROM RECORD
Patentee(s): Edward Perez	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed October 15, 2008.

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

A review of the file record indicates that the power of attorney to Customer Number 40518 has been revoked by the assignee of the above patent on June 30, 2008. Accordingly, the request to withdraw under 37 CFR § 1.36(b) is moot.

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

This patent file is being referred to Files Repository.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Wheelock Chan, LLP
P.O. Box 61168
Palo Alto, CA 94306

UNITED STATES PATENT and TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

Mailed: MAR 19 2004

CHK
Paper No. 3

In re Application of Bazan et al.
Serial No.: 10/346,667
Filed: January 17, 2003

DECISION ON PETITION UNDER *37 CFR 1.48*

Title: BINAPTHOL BASED CHROMOPHORE FOR THE FABRICATION OF BLUE ORGANIC LIGHT EMITTING DIODES

This is a decision on the PETITION TO CORRECT INVENTORSHIP IN A NON-PROVISIONAL PATENT APPLICATION filed September 30, 2003 to correct inventorship under 37 CFR 1.48(a) by adding the names of Yoshiharu Sato and Takeshi Shioya to the list of inventors of the instant application.

It is noted that the applicant has met the requirements of 37 C.F.R. § 1.48(a) by (1) submitting a request to correct the inventorship that sets forth the desired inventorship change; (2) providing a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) providing a declaration of the actual inventors as required by 37 C.F.R. § 1.63; (4) providing the processing fee set forth in 1.17(i); and, (5) providing the written consent of the assignee.

The request is **GRANTED**.

The application file is being forwarded to the appropriate section of the Patent and Trademark Office for correction of the record.

Cynthia H. Kelly
Supervisory Patent Examiner
Art Unit 1774
Technology Center 1700

Robert Berliner
FULBRIGHT & JAWORSKI
865 SOUTH FIGUEROA STREET, 29TH FLOOR
LOS ANGELES, CA 90017-2576

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MORGAN LEWIS & BOCKIUS LLP
ONE MARKET, SPEAR STREET TOWER
SAN FRANCISCO, CA 94105

MAILED

MAR 06 2009

OFFICE OF PETITIONS

In re Application of	:	
Richard M. Thayer, et. al	:	
Application No. 10/346,683	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. RLA0004-202-US	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 2, 2006.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney MORGAN LEWIS & BOCKIUS LLP has been revoked by the assignee of the patent application on August 29, 2006. Accordingly, the request to withdraw under 37 CFR 1.36(b) is moot.

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

Telephone inquiries concerning this decision should be directed to Denise Williams at 571-272-8930.

Carl Friedman
Petitions Examiner
Office of Petitions

cc: GLOBAL PATENT GROUP - RLA
MR. DENNIS A. BENNETT
GLOBAL PATENT GROUP, LLC
10411 Clayton Road, Suite 304
ST. LOUIS MO 63138

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P.O. BOX 1450
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INVERNESS MEDICAL INNOVATIONS / WSGR
WILSON SONSINI GOODRICH & ROSATI, P.C.
650 PAGE MILL ROAD
PALO ALTO CA 94304

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OCT 30 2009

OFFICE OF PETITIONS

In re Patent No. 6881581	:	
Issue Date: 04/19/2005	:	
Application Number: 10/346685	:	NOTICE
Filing or 371(c) Date: 01/17/2003	:	
Attorney Docket Number: 8477-709.201	:	

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) 272-3231.

D Wood

Douglas Wood
Attorney
Office of Petitions

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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JJGJr: 12-03

Paper No: 11

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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DEC 2 2 2003

OFFICE OF PETITIONS

In re Application of
Perrier, et al. :
Application No. 10/346,690 : ON PETITION
Filed: 15 January, 2003 :
Attorney Docket No.: 11123.57US01 :

This is a decision on the petition filed (with fee) on 17 November, 2003, under 37 C.F.R. §1.182 to correct the order of inventorship to be consistent with the signed oath/declaration.

The petition is **GRANTED**.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the order of inventorship as corrected consistent with the signed declaration as follows:

Eric Perrier, Les Cotes d'Arey, France
Isabelle Bonnet, Lyon, France
Charlotte DeMatteis, Lyon, France

Thus, this application is being forwarded to OIPE for handling consistent with the decision above.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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JJGJr: 12-03

Paper No: 12

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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DEC 2 2 2003

OFFICE OF PETITIONS

In re Application of
Perrier, et al. :
Application No. 10/346,690 : ON PETITION
Filed: 15 January, 2003 :
Attorney Docket No.: 11123.57US01 :

This is a decision on the petition filed on 17 November, 2003, under 37 C.F.R. §1.53 requesting a corrected filing receipt.

The petition is **DISMISSED as moot**.

Petitioner submitted the original application papers without a signed oath/declaration, pursuant to 37 C.F.R. §1.63.

Upon submission of that document on 17 November, 2003, the inventive entity was re-ordered by Petitioner to be consistent with the wishes of the applicants, and Petitioner seeks to have that reflected in the records of the Office.

This matter has been addressed, and the instant petition/request is unnecessary.

No additional fee has been charged.

Thus, this application is being forwarded to OIPE for handling consistent with the companion decision of this date.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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BASF CATALYSTS LLC
100 CAMPUS DRIVE
FLORHAM PARK NJ 07932

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In re Application of	:	
Eric Perrier, et al.	:	
Application No. 10/346,690	:	ON PETITION
Filed: January 15, 2003	:	
Attorney Docket No. 5250 US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 4, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed July 30, 2007, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on October 1, 2007. The Notice of Abandonment was mailed March 28, 2008. See MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,540; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 1618 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.

Chris Bottorff
Petitions Examiner
Office of Petitions

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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CROMPTON SEAGER & TUFTE LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS MN 55403-2420

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OCT 16 2006
OFFICE OF PETITIONS

In re Application of	:	
Miller, et al.	:	
Application No. 10/346,698	:	ON PETITION
Filed: January 17, 2003	:	
Attorney Docket No. 1001.1619101	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed March 24, 2005.

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

The holding of abandonment is **WITHDRAWN**.

The above-identified application was held abandoned for failure to timely file a reply to the Office action mailed June 3, 2004. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on September 4, 2004. A Notice of Abandonment was mailed on January 11, 2005.

On petition, petitioner has demonstrated that the Office action was mailed to the incorrect address.

The matter is being forwarded to Group Art Unit 3724 for re-mailing of the June 3, 2004 Office action, setting a new period for reply.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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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SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY NY 11530

In re Application of: Traustithor KRISTJANSSON
Application No. 10/346,705
Filed: Jan 18, 2003
For: MULTIMEDIA LINKING AND SYNCHRONIZATION METHOD, PRESENTATION AND EDITING APPARATUS

DECISION SUA SPONTE WITHDRAWING HOLDING OF ABANDONMENT

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

This application is held abandoned for failure to timely file a reply to the Board of Patent Appeals and Interferences Decision mailed April 12, 2010. The Notice of Abandonment was mailed on June 16, 2010.

A review of the file record indicates that the examiner was sustained in part, the Decision affirmed the rejection(s) against the obviousness rejection of claims **1-3 and 5-21**, but reversed all rejections against claim **4** which depends from claim **1**. There are no allowed claims in the application and the time for seeking court review has passed without such review being sought. The examiner, however, did not (1) Convert the dependent claims into independent forms or (2) Set a 1-month time limit in which the appellant may rewrite the dependent claim in independent format in accordance with MPEP § 1214.06. On June 16, 2010, a Notice of Abandonment was mailed for failure to timely file a proper response to the Decision of April 12, 2010. Thus, the Notice of Abandonment was **premature**.

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

The application is being forwarded to the examiner for proper treatment of the application following the Decision of April 12, 2010.

/Kim Huynh/

Kim Huynh, SPRE/QAS
Technology Center 2400
Network, Multiplexing, Cable and Security
571-272-4147

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Paper No.

PAUL, HASTINGS, JANOFSKY & WALKER LLP
P.O. BOX 919092
SAN DIEGO, CA 92191-9092

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NOV 1 8 2004

OFFICE OF PETITIONS

In re Application of :
John Holdsworth :
Application No. 10/346,708 :
Filed: January 16, 2003 :
Attorney Docket No. **034260.0005.UTL** :

ON PETITION

This is a decision on the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED FOR FAILURE TO NOTIFY THE OFFICE OF A FOREIGN OR INTERNATIONAL FILING (37 CFR 1.137(f))," filed October 5, 2004.

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an international application filed on August 28, 2003. However, the US Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the international application.

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

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

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

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

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

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

The previous Request and Certification under 35 U.S.C. 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request indicating a projected publication date of February 24, 2005 accompanies this decision on petition.

The application will be examined in Technology Center AU 2131 in due course.

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

Nancy Johnson
Petitions Attorney
Office of Petitions

Enc: Notice Regarding Rescission of Nonpublication Request (1 page)

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Paper No.

Stephen S. Kornicsky, Esq.
BAKER & MCKENZIE LLP
Patent Department
2001 Ross Avenue, Suite 2300
Dallas, TX 75201

MAILED

FEB 01 2006

TECHNOLOGY CENTER 2100

In re Application of:
Holdsworth
Application No. 10/346,708
Filed: January 16, 2003
For: A TOKEN FOR USE IN ONLINE ELECTRONIC TRANSACTIONS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed December 2, 2005.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. ∋ 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. ∋ 402.06. 37 C.F.R. ∋ 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed December 2, 2005 meets all the requirements. Accordingly the request is **GRANTED**.

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

for James R. Matthews

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
(571) 272-3595

cc: BAKER & MCKENZIE
101 West Broadway, Twelfth Floor
San Diego, CA 92101

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United States Patent and Trademark Office
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LEVINE BAGADE HAN LLP
2400 GENG ROAD, SUITE 120
PALO ALTO, CA 94303

Mail Date: 04/28/2010

Applicant	: Vahid Saadat	: DECISION ON REQUEST FOR
Patent Number	: 7637905	: RECALCULATION of PATENT
Issue Date	: 12/29/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/346,709	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/15/2003	: 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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HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

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JUL 0 2 2004
OFFICE OF PETITIONS

Applicant: McKernan et al.
Appl. No.: 10/346,714
Filing Date: January 16, 2003
Title: SOLID PHASE TECHNIQUE FOR SELECTIVELY ISOLATING NUCLEIC ACIDS
Pub. No.: US 2003/0235839 A1
Pub. Date: December 25, 2003

This is a decision to the request for correction of patent application publication under 37 CFR 1.221(b), which was received via facsimile on June 30, 2004, for the above-identified application.

The request is DISMISSED.

The instant request is that the application be republished because published application includes the specification, claims, drawings and abstract from a reference submitted in an IDS and does not include the application papers filed by applicant.

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 June 30, 2004, 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.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DORSEY & WHITNEY LLP
555 CALIFORNIA STREET, SUITE 1000
SUITE 1000
SAN FRANCISCO CA 94104

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MAR 22 2006

OFFICE OF PETITIONS

In re Application of	:	
Yang et al.	:	DECISION ON PETITION
Application No. 10/346,718	:	TO WITHDRAW
Filed: January	:	FROM RECORD
Attorney Docket No. 470447-2/A-71944	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed February 6, 2006.

The request is **NOT APPROVED**.

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

The request cannot be approved because it is unclear as to whether the petitioner wishes to withdraw only himself or if the petitioner is signing on behalf of all attorneys of record. Since the Power of Attorney was initially appointed to all attorneys associated with Customer Number 32940, it is not possible to withdraw a single attorney.

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

Telephone inquires concerning this decision should be directed to Petitions Examiner Liana Chase at 571-272-3206.

David Bucci
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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TOLER & LARSON & ABEL L.L.P.
5000 PLAZA ON THE LAKE STE 265
AUSTIN TX 78746

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MAR 13 2006

OFFICE OF PETITIONS

In re Application of	:	
Michael GRANNAN, *et al.*	:	
Application No. 10/346,722	:	ON PETITION
Filed: January 17, 2003	:	
Attorney Docket No. **1033-T00463**	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed on February 10, 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, by operation of law, on May 11, 2005. A Notice of Abandonment was mailed on January 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 Notice of Appeal and appeal fee of $500; (2) the petition fee of $1500; and (3) an adequate statement of unintentional delay. Accordingly, the Notice of Appeal is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Anatoly Vortman at (571) 272-6051, or in his absence to the undersigned at (571) 272-7099.

The application file is being referred to Technology Center AU 2142 for appropriate action on the concurrently filed Appeal Brief.

David Bucel
Petitions Examiner
Office of Petitions

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

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MAR 21 2005

OFFICE OF PETITIONS

In re Application	:	
Cheng, et al.	:	
Application No. 10/346,724	:	PATENT TERM ADJUSTMENT
Filed: January 16, 2003	:	
Dkt. No.: 130209.462	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed February 3, 2005. This request is being treated under 37 CFR 1.704(b).

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is **GRANTED**.

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an adjustment of 233 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicants request that the Determination of Patent Term Adjustment be corrected from 165 days as indicated on the Determination of Patent Term Adjustment mailed November 4, 2004 to 233 days.

A review of the application history reveals that an adjustment of 233 days can be attributed to the Office. A reduction under 37 CFR 1.702(a)(1) of 233 days can be attributed to the Office. In accordance with 37 CFR 1.703(a)(1), the adjustment began March 17, 2004, the day after the date that is 14 months from the date the application was filed, and ended November 4, 2004, the date the Notice of Allowance was mailed.

The Office errantly entered August 12, 2003 as the date of reply to the Notice to File Missing Parts of Nonprovisional Application mailed March 5, 2003 rather than the correct date of May 5, 2003.

In view thereof, at the time of Notice of Allowance the application is entitled to a patent term adjustment of 233 days as argued by applicants.

The Office acknowledges receipt of the required patent term adjustment application fee of $200.00.

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

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

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

Enclosure: Copy of Adjustment PAIR Calculation

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SEATTLE, WA 98104-7092

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MAR 2 1 2005

OFFICE OF PETITIONS

In re Application	:	
Cheng, et al.	:	
Application No. 10/346,724	:	PATENT TERM ADJUSTMENT
Filed: January 16, 2003	:	
Dkt. No.: 130209.462	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed February 3, 2005. This request is being treated under 37 CFR 1.704(b).

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is **GRANTED**.

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an adjustment of 233 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicants request that the Determination of Patent Term Adjustment be corrected from 165 days as indicated on the Determination of Patent Term Adjustment mailed November 4, 2004 to 233 days.

A review of the application history reveals that an adjustment of 233 days can be attributed to the Office. A reduction under 37 CFR 1.702(a)(1) of 233 days can be attributed to the Office. In accordance with 37 CFR 1.703(a)(1), the adjustment began March 17, 2004, the day after the date that is 14 months from the date the application was filed, and ended November 4, 2004, the date the Notice of Allowance was mailed.

The Office errantly entered August 12, 2003 as the date of reply to the Notice to File Missing Parts of Nonprovisional Application mailed March 5, 2003 rather than the correct date of May 5, 2003.

In view thereof, at the time of Notice of Allowance the application is entitled to a patent term adjustment of 233 days as argued by applicants.

The Office acknowledges receipt of the required patent term adjustment application fee of $200.00.

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

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

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

Enclosure: Copy of Adjustment PAIR Calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEYER WEAVER & THOMAS LLP
P O BOX 70250
OAKLAND, CA 94612-0250

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OFFICE OF PETITIONS

In re Application of	:
Takashi Ishidoshiro et al	:
Application No. 10/346,731	: DECISION GRANTING PETITION
Filed: January 17, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. MES1P078	:

This is a decision on the petition, filed January 9, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

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

This matter is being referred to Technology Center AU 2685 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

---

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

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SAN DIEGO, CA 92191-9092

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NOV 03 2004

OFFICE OF PETITIONS

In re Application of
Holdsworth, John
Application No. 10/346,732
Filed: January 16, 2003
Attorney Docket No. 45385.00013.CON1

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed October 5, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on August 28, 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 10, 2005 accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 2131 for examination in due course.

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

Liana Chase

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

Stephen S. Kornicsky, Esq.
BAKER & MCKENZIE LLP
Patent Department
2001 Ross Avenue, Suite 2300
Dallas, TX 75201

MAILED

FEB 01 2006

TECHNOLOGY CENTER 2100

In re Application of:
Holdsworth
Application No. 10/346,732
Filed: January 16, 2003
For: SYSTEMS AND METHODS FOR AUTHENTICATION OF ELECTRONIC TRANSACTIONS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed December 2, 2005.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. ∋ 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. ∋ 402.06. 37 C.F.R. ∋ 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed December 2, 2005 meets all the requirements. Accordingly the request is **GRANTED**.

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

James R. Matthews

JM Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
(571) 272-3595

cc: BAKER & MCKENZIE
101 West Broadway, Twelfth Floor
San Diego, CA 92101

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SAN DIEGO, CA 92191-9092

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OFFICE OF PETITIONS

In re Application of
Holdsworth, John
Application No. 10/346,733
Filed: January 16, 2003
Attorney Docket No. 45385.00013.CON2

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed October 5, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on August 28, 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 10, 2004 accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 3629 for examination in due course.

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

Liana Chase

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

Stephen S. Kornicsky, Esq.
BAKER & MCKENZIE LLP
Patent Department
2001 Ross Avenue, Suite 2300
Dallas, TX 75201

MAILED

FEB 01, 2006

TECHNOLOGY CENTER 2100

In re Application of:
Holdsworth
Application No. 10/346,733
Filed: January 16, 2003
For: SYSTEMS AND METHODS FOR SECURE AUTHENTICATION OF ELECTRONIC TRANSACTIONS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed December 2, 2005.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. ∋ 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. ∋ 402.06. 37 C.F.R. ∋ 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed December 2, 2005 meets all the requirements. Accordingly the request is **GRANTED**.

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

James R. Matthews

for Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
(571) 272-3595

cc: BAKER & MCKENZIE
101 West Broadway, Twelfth Floor
San Diego, CA 92101

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BARNES & THORNBURG LLP
11 SOUTH MERIDIAN
INDIANAPOLIS IN 46204

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MAR 0 2 2007

OFFICE OF PETITIONS

In re Patent No. 6,958,025 :
Issue Date: October 25, 2005 :
Application No. 10/346,743 : NOTICE
Filed: January 17, 2003 :
Attorney Docket No. 3057-70037 :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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Paper No.

COHEN, PONTANI,
LIEBERMAN & PAVANE
551 FIFTH AVENUE
SUITE 1210
NEW YORK, NY 10176

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FEB 24 2006

OFFICE OF PETITIONS

In re Patent No. 6,889,597	:	DECISION ON APPLICATION
Alexander Reiser	:	FOR
Issue Date: May 10, 2005	:	PATENT TERM ADJUSTMENT
Application No. 10/346,760	:	and
Filed: January 17, 2003	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 5253-18	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)," filed August 23, 2004. Patentees request that the initial determination of patent term adjustment be corrected from thirty-nine (39) days to ninety (90) days. This paper was recently forwarded to the undersigned for consideration.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is ninety (90) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

Prior to this decision being rendered, the application matured into a patent, with a revised patent term adjustment of thirty (30) days. For the reasons set forth below, 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 eighty-one (81) days.

On June 15, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 39 days. On August 23, 2004, patentees timely[1] submitted an application for patent term adjustment (with required fee). Patentees dispute the reduction of 51 days attributed to applicants for failing to respond within three months to the Notice to File Missing Parts of Application mailed April 2, 2003. Patentees state that their response was received on June 4, 2003, and thus, there was no applicant delay within the meaning of § 1.704(b).

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

The reduction of 51 days has been found to be incorrect. A review of the application file reveals that applicants' responses to the Notice to File Missing Parts of Application mailed April 2, 2003, are of record in the application with dates of receipt by the Office of June 4, 2003. The responses constitute a complete reply. As the complete response was filed within the three-month period under 37 CFR 1.704(b), there was no failure to engage in reasonable efforts to conclude prosecution.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is ninety (90) days.

A review of the application history confirms that, after the mailing of the notice of allowance, there were entries of 120 days and 2 days for applicant delay and an entry of 113 days for Office delay.

In view thereof, the patent should have issued with a revised patent term adjustment of eighty-one (81) days ((90 + 113) - (120 + 3)).

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

---

[1] PALM records indicate that the Issue Fee payment was received on September 17, 2004.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by EIGHTY-ONE (81) 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

Enclosures:
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PTO/SB/44 (04-05)
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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

Page _____ of _____

PATENT NO. :

APPLICATION NO.:

ISSUE DATE :

INVENTOR(S) :

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

MAILING ADDRESS OF SENDER (Please do not use customer number below):

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

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
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Paper No. 7

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

COPY MAILED

JUN 17 2004

OFFICE OF PETITIONS

In re Application of
Krueger et al.
Application No. 10/346,781
Filed: January 21, 2003
Attorney Docket No. S276.12.2

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed May 21, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on January 13, 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 August 5, 2004 was previously mailed on April 16, 2004.

This application is being forwarded to Technology Center Art Unit 3634 for examination in due course.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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APR 23 2008

OFFICE OF PETITIONS

MICHAEL C. POPHAS
EVEREADY BATTERY COMPANY INC.
25225 DETROIT ROAD
P.O. BOX 450777
WESTLAKE OH 44145

In re Application of	:	
Peter Ru-Feng Tsai et al	:	
Application No. 10/346,783	:	DECISION GRANTING PETITION
Filed: January 17, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SP-1659.1 US	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed April 23, 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 March 7, 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 1.34, the signature of Mr. Scott P. Ryan 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 Mr. Ryan desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

---

[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.*

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

This application is being referred to Technology Center AU 1793 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

SCOTT P. RYAN
PRICE, HENEVELD, COOPER, DEWITT & LITTON, LLP
695 KENMOOR SE
P.O. BOX 2567
GRAND RAPIDS, MI 49501-2567

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FOUR MARSHALL FAMILY LIMITED
PARTNERSHIP
101 CARVEY ROAD
BOERNE, TX 78006

MAILED

MAR 18 2009

OFFICE OF PETITIONS

In re Application of	:	
Kelly L. Marshall	:	
Application No. 10/346788	:	DECISION
Filing or 371(c) Date: 01/21/2003	:	ON PETITION
Title of Invention:	:	
METHOD AND APPARATUS FACILITATING	:	
CLOSURE OF HOISTWAY DOOR	:	

This is a decision on the "Petition to Revive Patent Application Unintentionally Abandoned Under 37 CFR 1.137(b)," filed February 12, 2009.

This Petitions are 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 "Request for Reconsideration of Petition under [insert the applicable code section]". This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed August 1, 2005. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No timely and proper reply having been received, the application became abandoned on November 2, 2005. A Notice of Abandonment was mailed February 24, 2006.

The present petition filed under 37 CFR 1.137(b)

Applicant files the present petition under 37 CFR 1.137(b), and includes a petition fee of $740.00. No reply to the final Office action has been included with the petition. The petition is executed by the surviving members of the Four Marshall Family Limited Partnership, to whom the application has been assigned.

Applicable law, Rules and MPEP

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 present petition lacks items (1) and (2).

As to item (1), applicants are advised that the petition fee for a petition under 37 CFR 1.137(b) is currently $810.00. Applicant submitted $740.00. Before the merits of the petition may be considered, the balance of the petition fee must be submitted.

As to item (2), a reply to the final Office action is required. Applicants are advised that where the Abandonment is for Failure To Reply to a Final Action, as is the case here, a reply under 37 CFR 1.113 to a final action must include 1) a request for continued examination (RCE) under 37 CFR 1.114 or 2) cancellation of, or 3) appeal from the rejection of, each claim so rejected. Accordingly, in a nonprovisional application abandoned for failure to reply to a final action, the reply required for consideration of a petition to revive must be:

(A) a Notice of Appeal and appeal fee;

(B) an amendment under 37 CFR 1.116 that cancels all the rejected claims or otherwise prima facie places the application in condition for allowance;

(C) the filing of an RCE (accompanied by a submission that meets the reply requirements of 37 CFR 1.111 and the requisite fee) under 37 CFR 1.114 for utility or plant applications filed on or after June 8, 1995 (see paragraph (d) below); or

(D) the filing of a continuing application under 37 CFR 1.53(b) (or a CPA under 37 CFR 1.53(d) if the application is a design application).

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

A copy of the Office action is enclosed.

The Change of Correspondence Address has been entered and made of record.

Finally, Applicant is advised that a list of registered practitioners is available at www.uspto.gov/main/patents. Applicant is further advised that the Inventor's Assistance Center is available, at 1-800-786-9199, for assistance in prosecuting the patent application.

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

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

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

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

Telephone inquiries concerning this decision only should be directed to the undersigned at (571) 272-3232. Questions regarding rules of practice before this Office should be directed to the Inventor's Assistance Center, at 1-800-786-9199, or to a registered practitioner. All other inquiries should be directed to the applicable Office.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

Enclosure: Final Office action, mailed August 1, 2005

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.
10/346,788	01/21/2003	Kelly L. Marshall		5839

45662 7590 08/01/2005

G. TURNER MOLLER, JR.
711 NORTH CARANCAHUA, SUITE 720
CORPUS CHRISTI, TX 78475

EXAMINER
STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
3634	

DATE MAILED: 08/01/2005

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

Office Action Summary	Application No.	Applicant(s)
	10/346,788	MARSHALL, KELLY L.
	Examiner	Art Unit
	Gregory J. Strimbu	3634

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 9/27/04, 1/6/05 and 5/13/05.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-10 and 14-21 is/are pending in the application.

4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 7-10 and 14-21 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 27 September 2004 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: _____.

Election/Restrictions

Since the election restriction requirement set forth in the previous Office action was made FINAL, subsequent amendments to the claims will not overcome the restriction requirement. Accordingly, claims 1-6 drawn to the method of closing a door are still withdrawn from prosecution.

Drawings

The drawing correction filed September 27, 2004 has been approved.

Specification

The abstract of the disclosure is objected to because "a conical helix" on line 10 is confusing because it is unclear what the applicant is attempting to set forth. Is the applicant referring to a conical helix shape? On line 12, "by the cable" is confusing since it appears that it is the spring rather than the cable that creates the force. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

Claims 7-10 and 14-21 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.

Recitations such as "and thereby to the horizontally slidable moving hoistway door" on lines 16-17 of claim 7 render the claims indefinite because it is unclear if the

applicant is attempting to set forth the subcombination of a door closing device or the combination of a door closing device and the door. The preamble of claim 7 implies the subcombination while the positive recitation of the door on lines 16-17 of claim 7 implies the combination. Recitations such as "a greater door closing force" on lines 20-21 of claim 7 render the claims indefinite because it is unclear if the applicant is referring to the door closing force set forth above or is attempting to set forth another door closing force in addition to the one set forth above. Recitations such as "and" end on line 4 of claim 8 render the claims indefinite because it is unclear if the applicant is referring to one of the ends set forth in claim 7 or is attempting to set forth an end in addition to the one set forth above. Recitations such as "an intermediate position" on line 18 of claim 17 render the claims indefinite because it is unclear what element of the invention is at the intermediate position. Recitations such as "a position between . . . the door open position" on lines 23-24 of claim 17 render the claims indefinite because it is unclear if the applicant is referring to the intermediate position set forth above or is attempting to set forth another position in addition to the intermediate position set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7-10, 14, 15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in figure 1 in view of Stansberry. The admitted prior art in figure 1 discloses a door closing device 27 for a hoistway door 10 being slidably movable between a door open position and a door closed position, the door closing device comprising a sheave (not numbered) having a central axis 31 and a sheave body rotatable about the axis, an elongate tensile element 33 having a free end 34 for attachment to an object 16 and a spring (not shown, but see page 3, lines 18-20) for rotating the sheave body and retracting the elongate tensile element by wrapping the same around the sheave, the relationship between the spring and the sheave acting to deliver a force. The admitted prior art in figure 1 is silent concerning a conical helix shaped groove.

However, Stansberry discloses a counterbalancing mechanism comprising a sheave body 36 (figure 8) having a first groove 70 providing a multiplicity of revolutions (not numbered, but shown in figure 8) about an axis (not numbered, but comprising the axis of the shaft 34) at a first diameter for storing a substantial length of tensile element 40 and a second groove 68 of conical helix shape merging with the first groove and terminating adjacent a central portion of the sheave, the relationship between a spring 44 and the sheave acting to deliver a force to the elongate tensile element when the elongate tensile element is wrapped intermediate the ends of the second groove that is greater than when the elongate tensile element begins to wrap onto the second groove, so that there is a greater force applied to the elongate tensile element at the door closed position than at a position between the door closed position and the door open position,

the sheave body including a flange (not numbered, but shown in figure 7 disposed on the left hand side of the figure) adjacent the second groove and extending a distance greater than the first diameter, a bearing 64.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art in figure 1 with a sheave body shaped as the sheave body taught by Stansberry, to increase the amount of force provided by the spring when the door is in the closed position.

Claims 16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 1 in view of Stansberry as applied to claims 7-10, 14, 15 and 17-19 above, and further in view of Australian Patent Publication No. 113,360. Australian Patent Publication No. 113,360 discloses a spring 19 disposed in a compartment (not numbered, but shown in figure 4) of a sheave.

It would have been obvious to provide the admitted prior art of figure 1, as modified above, with a spring disposed in a compartment, as taught by Australian Patent Publication No. 113,360, to reduce the amount of space required for the door closing device.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 1 in view of Stansberry as applied to claims 7-10, 14, 15 and 17-19 above. The admitted prior art of figure 1, as modified above, is silent concerning the relationship between the door closed position and the door intermediate position.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide the admitted prior art of figure 1 with an intermediate position that is about one foot from the door closed position.

Response to Arguments

Applicant's arguments filed September 27, 2005 have been fully considered but they are not persuasive.

With respect to the applicant's argument's concerning the combination of teachings of the admitted prior art of figure 1 and Stansberry, the examiner respectfully disagrees. The admitted prior art of figure 1 discloses the applicant's claimed invention but for the sheave having a conical helix shaped groove so that the amount of force applied to the tensile element when the door is in a closed position is greater than when the door is in a position other than the closed position. Stansberry discloses the use of a sheave having a conical helix shaped groove so that the amount of force applied to the tensile element when the door is in a closed position is greater than when the door is in a position other than the closed position. Therefore, both Stansberry and the applicant have utilized a conical helix shaped groove so that the spring of the sheave provides a greater force to the tensile element when the door is closed. Even though the invention of Stansberry is used in a counterbalance system of an overhead door

system, the principle of using a conical helix shaped groove to increase the amount of force applied to the tensile element when the door is in a closed position is still taught. Accordingly, one with ordinary skill in the art, when presented with the teachings of both the admitted prior art of figure 1 and Stansberry, would be motivated to provide the sheave of the admitted prior art with a conical helix shaped groove so that the force applied to the tensile element when the door is in the closed position is larger than the force applied to the tensile element when the door is in a position other than the closed position. Should the applicant disagree that one with ordinary skill in the art would not be motivated to combine the teachings the admitted prior art and Stansberry, the applicant need merely turn to the teachings of Barnard which discloses providing a sheave with a conical helix shape so that the door closer provides its greatest closing force to a door when the door is in the closed position.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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).

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
July 26, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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CORPUS CHRISTI TX 78475

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JAN 08 2009

OFFICE OF PETITIONS

In re Application of	:	
Kelly L. Marshall	:	
Application No. 10/346788	:	DECISION
Filing or 371(c) Date: 01/21/2003	:	ON PETITION
Title of Invention:	:	
METHOD AND APPARATUS FACILITATING	:	
CLOSURE OF HOISTWAY DOOR	:	

This is a decision on the Petition to Revive Patent Application Unavoidably Abandoned Under 37 CFR 1.137(a), filed December 3, 2008.

This Petitions 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 "Request for Reconsideration of Petition under [insert the applicable code section]". This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed August 1, 2005. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No timely and proper reply having been received, the application became abandoned on November 2, 2005. A Notice of Abandonment was mailed February 24, 2006.

The petition filed under 37 CFR 1.137(a)

Applicant files the petition under 37 CFR 1.137(a), and avers that the delay in responding to the Office action was unavoidable because his father suffered a stroke in September 2002 and passed away in October 2004. During that time, Applicant states that the patent attorney made amendments to the application that were wrong. Applicant further states that he recently visited with the patent attorney and received the rejection notice of 2005. Applicant states that he and

his brother had been assisting his father with the development of the invention and requested revival of the application.

A Grantable Petition Under 37 CFR 1.137(a)

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

Unavoidable delay

Applicant lacks items (**1**) and (**3**) as set forth above.

Applicable Law, Rules and MPEP

As to item (**1**), Applicant has not filed a reply to the Office action that was mailed on August 1, 2005. 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).

As to item (**3**), Applicant is required to provide a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable. In order to determine whether the delay was unavoidable, the courts have adopted a "reasonably prudent person" standard. The courts have provided that:

> [t]he word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

"The critical phrase 'unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable' has remained unchanged since first enacted in 1861." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The standard for "unavoidable" delay for reinstating a patent is the same as the unavoidable standard for reviving an application. See Ray v. Lehman, 55 F.3d 606, 608-609, 34 U.S.P.Q.2d (BNA) 1786, 1787 (Fed. Cir. 1995) (citing In re patent No. 4,409,763, 7 U.S.P.Q.2d (BNA) 1798, 1800 (Comm'r Pat. 1990; Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The court in In re Mattullath, accepted the standard which had been proposed by Commissioner Hall which "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, 514-515 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)). However, "The question of whether an applicant's delay in prosecuting an application was unavoidable [will] be decided on a case-by-case basis, taking all of the facts and circumstances into account."[1] Nonawareness of the content of, or a misunderstanding of, PTO statutes, PTO rules, the MPEP, or Official Gazette notices, does not constitute unavoidable delay.[2]

The statute requires a "showing" by petitioner. Therefore, petitioner has the burden of proof. The decision will be based solely on the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

Applicant is further advised that the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987).

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[1] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

[2] See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D. D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not constitute "unavoidable" delay)); Vincent v. Mossinghoff, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D. D.C. 1985) (Plaintiffs, through their counsel's actions, **or their own**, must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications.) (Emphasis added).

Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). 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).

Analysis

Initially this Office expresses regret at Petitioner's loss. Petitioner is advised that in order to proceed with the application, the following is provided:

> 37 CFR 1.42. When the inventor is dead.
>
> 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.
>
> Where the inventor dies during the time intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention.
>
> One who has reason to believe that he or she will be appointed legal representative of a deceased inventor may apply for a patent as legal representative in accordance with 37 CFR 1.42.
>
> Application may be made by the heirs of the inventor, as such, if there is no will or the will did not appoint an executor and the estate was under the sum required by state law for the appointment of an administrator. The heirs should identify themselves as the legal representative of the deceased inventor in the oath or declaration submitted pursuant to 37 CFR 1.63 and 1.64.

In this instance, the petition was filed by Chris Marshall; however, the petition noted that the inventor is survived by his wife, and petitioner has at least one other sibling, neither of whom had joined in the application or signed the petition. Petitioner is advised that all applicants must sign papers that are filed in this Office.

Petitioner is also advised that absent a power of attorney, all papers, including petitions, must be signed by all applicant's (legal representatives).

Regarding unavoidable delay, petitioner is advised that he must account for the entire period of delay in responding to the Office action. Here, a reply to the Office action was due on November 1, 2005. The period that must be accounted for is from November 2, 2005, the date

the delay began, and continuing to the present. Petitioner provides that his father passed away in October, 2004, prior to the mailing of the Office action. Thereafter, the legal representatives were responsible for prosecuting the application. Petitioner provides further that he recently received the Notice of 2005; however, petitioner has not provided any explanation as to the delay in prosecuting the application from November 2, 2005 until the present, nor has Petitioner stated when he received a copy of the Office action and what steps were taken to revive the application since becoming aware of the Office action.

Petitioner has failed to demonstrate that the entire delay in responding to the Office action was unavoidable.

Conclusion

Petitioner is advised that all applicants must either appoint a power of attorney to prosecute the application, or all applicants must sign all papers filed in this Office. Petitioner is also required to provide a reply to the Office action. A reply is required before the application may be revived. Petitioner must also demonstrate, under 37 CFR 1.137(a), that the entire delay in filing the reply was unavoidable.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A proper change of address, signed by all applicants, 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.

Finally, Applicant/Petitioner is advised that a list of registered practitioners is available at www.uspto.gov/main/patents. Applicant is further advised that the Inventor's Assistance Center is available, at 1-800-786-9199, for assistance in prosecuting the patent application.

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

By mail:	Director for Patents PO Box 1450 Alexandria, VA 22313-1450
By FAX:	(571) 273-8300 Attn: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this decision only should be directed to the undersigned at (571) 272-3232. Questions regarding rules of practice before this Office should be directed to the Inventor's Assistance Center, at 1-800-786-9199, or to a registered practitioner. All other inquiries should be directed to the applicable Office.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

CC: CHRIS MARSHALL
101 CRAVEY ROAD
BOERNE, TX 78006

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FOUR MARSHALL FAMILY LIMITED
PARTNERSHIP
101 CRAVEY ROAD
BOERNE, TX 78006

MAILED

JUN 25 2009

OFFICE OF PETITIONS

In re Application of	:	
Kelly L. Marshall	:	CORRECTED[1]
Application No. 10/346788	:	DECISION
Filing or 371(c) Date: 01/21/2003	:	ON PETITION
Title of Invention:	:	
METHOD AND APPARATUS FACILITATING	:	
CLOSURE OF HOISTWAY DOOR	:	

This is a decision on the "Request for Reconsideration of Petition," filed May 7, 2009. The request for reconsideration of petition is properly treated under 37 CFR 1.137(b)

This Petitions are 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 "Request for Reconsideration of Petition under [insert the applicable code section]". This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 1, 2005. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is November 2, 2005.

[1] The Decision was originally mailed to 101 Carvey Road. The correspondence address has been corrected.

The February 12, 2009 petition

Applicant filed a petition under 37 CFR 1.137(b) on February 12, 2009, and included a petition fee of $740.00. No reply to the final Office action has been included with the petition. The petition was executed by the surviving members of the Four Marshall Family Limited Partnership, to whom the application has been assigned.

The March 18, 2009 Decision dismissing the petition

The petition was dismissed in a Decision mailed March 18, 2009. The Decision informed Applicant that the petition fee for a petition under 37 CFR 1.137(b) is currently $810.00. Applicant submitted $740.00. Before the merits of the petition could be considered, the balance of the petition fee was required. Applicant was also informed that a reply to the final Office action is required.

The present request for reconsideration

Applicant files the present request for reconsideration of petition and includes the balance of the petition fee, and an Amendment in response to the final Office action.

Applicable law, Rules and MPEP

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 present petition lacks items (1).

As to item (1), The Examiner has reviewed the Amendment and concluded that the Amendment does not comply with the requirements set forth in 37 CFR 1.121.

Also, Applicant is advised that a list of registered practitioners is available at www.uspto.gov/main/patents. Applicant is further advised that the Inventor's Assistance Center is available, at 1-800-786-9199, for assistance in prosecuting the patent application.

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

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

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

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

Telephone inquiries concerning this decision only should be directed to the undersigned at (571) 272-3232. Questions regarding rules of practice before this Office should be directed to the Inventor's Assistance Center, at 1-800-786-9199, or to a registered practitioner. All other inquiries should be directed to the applicable Office.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

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Paper No. 8

8

MERCHANT & GOULD P.C.
PO BOX 2903
MINNEAPOLIS, MN 55402-0903

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MAY 19 2003

OFFICE OF PETITIONS

In re Application of
Hamazawa
Application No. 10/346,806
Filed: January 17, 2003
Attorney Docket No. 12844.0024US01

ON PETITION

This decision concerns the April 22, 2003 "Petition Regarding Drawings" which, in conjunction with the May 2, 2003 " Request for Corrected Filing Receipt," is being properly treated as a petition under 37 CFR 1.53 to correct the filing date of the above-referenced application.

The petition is **GRANTED.**

The application was filed on January 17, 2003. On March 5, 2003, the Office of Initial Patent Examination (OIPE) mailed a Notice of Incomplete Nonprovisional Application, stating that the application was not accorded a filing date because it had been deposited without drawings.[1] On March 17, 2003, Applicant filed a set of formal drawings. In the Filing Receipt mailed on March 28, 2003, the filing date for this application was indicated as March 17, 2003, the day the formal drawings were submitted, rather than January 17, 2003, when the application was filed. The petition then followed, requesting that the application be accorded the filing date of January 17, 2003.

The petition contends that informal drawings were filed with the other application papers on January 17, 2003. In support, the petition is accompanied by a copy of Applicant's postcard receipt, indicating receipt in the PTO on that date of, *inter alia*, 8 sheets of informal drawings. The application is identified on the postcard by inventor name, title of invention, and attorney docket number. Also enclosed with the April 22, 2003 petition are copies of the drawings allegedly filed on January 17, 2003.

The Office file for this application does not include any drawings. Based on the information contained in Applicant's postcard receipt, the Office concludes that 8 sheets of drawings had been received in the PTO on January 17, 2003 but were subsequently misplaced. The petition is thus granted.

The March 5, 2003 Notice of Incomplete Nonprovisional Application is hereby withdrawn.

No petition fee is owed.

Finally, receipt with the April 22, 2003 petition of an executed declaration and the $130 surcharge for late filing of an acceptable declaration is acknowledged. The application is now complete.

The application file is being returned to OIPE for further processing with a filing date of January

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[1] The notice also mentioned an unsigned declaration.

17, 2003, using the duplicate drawings submitted on April 22, 2003 with the petition;[2] for mailing of a corrected filing receipt reflecting the January 17, 2003 filing date; and for correction of the PTO records to indicate that 8 sheets of drawings were present on filing. Thereafter, the application will be forwarded to Technology Center 2800 for examination in due course.

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

Christina Tartera Donnell for

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions

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[2] The formal drawings filed on 3/17/03 are presumed to be identical to those submitted on 4/22/03, and will be entered upon examination by the examiner.

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PACESETTER, INC.
15900 VALLEY VIEW COURT
SYLMAR, CA 91392-9221

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OFFICE OF PETITIONS

In re Application of

Min, et al.

Application No. 10/346,809

Filed: January 17, 2003

Attorney Docket No. A03P1002

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), August 22, 2006, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely remit the issue fee of $1400.00 as required by the Notice of Allowance and Issue Fee Due (the "Notice") mailed May 16, 2006. The Notice set forth a three (3) month statutory period for reply. No response was received within the allowable period. Accordingly, this application became abandoned on August 17, 2006. A Notice of Abandonment was mailed on September 19, 2006

The issue fee was received on August 22, 2006.

Form PTOL-85B, filed August 22, 2006 is noted and made of record.

The application is being directed to Technology Center 3766, GAU 3766 for treatment of the amendment under 37 CFR 1.312 filed May 26, 2006.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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APR - 7 2005

PRESTON GATES & ELLIS LLP
1900 MAIN STREET, SUITE 600
IRVINE CA 92614-7319

In re Application of	:
Chauncey B. Sayre et al	:
Serial No.: 10/346,816	: PETITION TO MAKE SPECIAL
Filed: January 16, 2003	:
Attorney Docket No.: 51314-00001	:

This is in response to the petition filed March 18, 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, XII. Therefor the petition is **GRANTED**.

The provisions of M.P.E.P. 708.02, X and VIII are also satisfied.

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 703-872-9306.

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

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OFFICE OF PETITIONS

In re Application of	:	
Genevieve Silvestro	:	
Application No. 10/346,827	:	DECISION REFUSING STATUS
Filed: January 17, 2003	:	UNDER 37 CFR 1.47(b)
Attorney Docket No. 015675.P439	:	

This is in response to the petitions under 37 C.F.R. § 1.47(b), and 37 C.F.R. 1.137(b), filed June 22, 2005.

The petition under 37 C.F.R. § 1.47(b) is **DISMISSED**.

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

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

The above-identified application was filed on January 17, 2003, without an executed oath or declaration. Accordingly, on March 5, 2003, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a two-month period for reply. Extensions of time were available under 37 C.F.R. 1.136(a). No reply having been received, the application became abandoned on May 6, 2003.

In reply, applicant filed the instant petitions, and paid the appropriate fees.

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

As to requirement (2), Rule 47 applicant has not submitted a declaration. The declaration submitted on petition identifies Genevieve Silvestro as the sole inventor, sets forth his identifying information, but is signed by an unknown third party. On renewed petition, applicant must submit an oath or declaration in compliance with 37 C.F.R. § 1.63. As set forth in MPEP 409.03(b), the "37 CFR 1.47(b) applicant must make the oath required by 37 CFR 1.63 and 1.64 or 1.175." The declaration must be executed, and must identify the full name, residence, post office address, and citizenship of the nonsigning inventor. In addition, the title or position of the person signing must be stated if signing on behalf of a corporation. A corporation may authorize any person, including a registered attorney or agent, to sign the oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, proof of the attorney's or agent's authority in the form of a statement signed by the appropriate corporate officer must be submitted, or the attorney or agent can simply state that he or she is authorized to sign on behalf of the corporation.[1]

As to requirement (6), this requirement may be met by a statement that a filing date is necessary to preserve the rights of the party or to prevent irreparable damage.[2]

A grantable petition under 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply, 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 as set forth in 37 C.F.R. § 1.20(d)) required by 37 C.F.R. § 1.137(d).

The instant petition lacks item (1), the required reply - an executed oath or declaration or a grantable petition under 37 C.F.R. § 1.47(b).

---

[1] See MPEP 409.03(b).

[2] See MPEP 409.03(g).

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

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

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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GENEVIEVE SILVESTRO
27TER SENTE DES PRES
ERAGNY
95610 FRANCE

COPY MAILED

NOV 03 2005

OFFICE OF PETITIONS

In re Application of Genevieve Silvestro Application No. 10/346,827 Filed: January 17, 2003 Title: Control Device With Servocontrol Loop, Particularly an Electrohydraulic Flight Control Actuator	: : : : : :	LETTER

Dear Ms. Silvestro:

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(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as the sole inventor.

As the named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, 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 (571)272-3207. 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

Eric S. Hyman
Blakely Sokoloff Taylor & Zafman
12400 Wilshire Blvd - 7th Floor
Los Angeles, CA 90025
(310)207-3800

UNITED STATES PATENT AND TRADEMARK OFFICE

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
12400 WILSHIRE BLVD
SEVENTH FLOOR
LOS ANGELES CA 90025

COPY MAILED

NOV 03 2005

OFFICE OF PETITIONS

In re Application of	:	
Genevieve Silvestro	:	
Application No. 10/346,827	:	DECISION ACCORDING STATUS
Filed: January 17, 2003	:	UNDER 37 CFR 1.47(b)
Attorney Docket No. 015675.P439	:	

This is in response to the renewed petitions under 37 C.F.R. § 1.47(b), and 37 C.F.R. 1.137(b), filed September 26, 2005.

The petition under 37 C.F.R. § 1.47(b) is **GRANTED**.

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

The above-identified application was filed on January 17, 2003, without an executed oath or declaration. Accordingly, on March 5, 2003, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a two-month period for reply. Extensions of time were available under 37 C.F.R. 1.136(a). No reply having been received, the application became abandoned on May 6, 2003. Applicant filed a petition to revive under 37 C.F.R. § 1.137(b) on June 22, 2005, together with a petition under 37 C.F.R. § 1.47(b). However, the petitions were dismissed in a decision mailed on September 1, 2005.

A grantable petition under 37 C.F.R. § 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 37 C.F.R. § 1.63; (3) the petition fee; (4) a statement of the last known

address of the non-signing inventor; (5) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application; and (6) proof of irreparable damage.

On renewed petition, Rule 47 applicant has submitted a declaration identifying Genevieve Silvestro as the sole inventor, setting forth his identifying information, and signed by attorney Eric S. Hyman on behalf on TRW Systems Aeronautiques Civils. The declaration has been determined to be in compliance with 37 C.F.R. § 1.63.

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

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

A grantable petition under 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply, 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 as set forth in 37 C.F.R. § 1.20(d)) required by 37 C.F.R. § 1.137(d).

By submitted a grantable petition under 37 C.F.R. § 1.47(b), petitioner has submitted the required reply. Petitioner satisfied the other requirements for a petition under 37 C.F.R. § 1.137(b) with the petition filed on June 22, 2005.

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : April 17, 2008

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/346835 Patent No.: RE39707 E

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

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within **7** days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**.

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within **7** days, to:

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

You can fax the Directors/SPE response to 571-270-9990

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: The change to claim 24, line 60 is incorrect because the second structure is missing the ~~CH3~~ a CH_3 group. See ~~Ap~~ entry 21 under Prosecution in IFW specifically claim 24 or see claim 24 in U.S. Patent 6,350,756 of which this case is a reissue.

SPE — 1625 Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080723

DATE :

TO SPE OF : ART UNIT

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

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

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

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

SPE: /Janet L. Andres/ Art Unit 1625

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SEP 22 2004

MICHAEL R. WARD
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO CA 94105-2842

In re Application of	:
Michael W. Graham et al.	: PETITION TO MAKE SPECIAL
Serial No.: 10/346,853	:
Filed: January 17, 2002	:
Attorney Docket No.: 546322000301	

This is in response to the petition filed July 27, 2004, 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, X. Therefor the petition is **GRANTED**.

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

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, 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, 703-872-9306.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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MICHAEL R. WARD
MORRISON & FOERSTER, LLP
425 MARKET STREET
SAN FRANCISCO, CA 94105-2842

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OCT 1 0 2006
OFFICE OF PETITIONS

In re Application of	:	
Graham, et al.	:	
Application No. 10/346,853	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. BENI/0022.C1	:	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 12, 2006.

The request is **NOT APPROVED**.

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

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, "this application is being transferred to another firm for handling", does not meet any the conditions set forth in 37 CFR 10.40.

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

Telephone inquiries concerning this decision should be directed to April Wise at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: PATTON BOGGS, LLP
8484 WESTPARK DRIVE
SUITE 900
MCLEAN, VA 22102

8 MAY 2009

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COOPER & DUNHAM, LLP
30 Rockefeller Plaza
20th Floor
NEW YORK NY 10112

In re Application of	:
GRAHAM et al.	:
Application No. :10/346,853	: DECISION GRANTING PETITION
Filed: 17 January 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 0687/74768-A/JPW/GJG/JRM	:

This is a decision on the petition under 37 CFR 1.78(a), filed 28 December 2006, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign Australian Patent Application No. PP2492, filed 20 March 1998.

The petition is **DISMISSED as moot**.

Applicant seeks the correction of the foreign priority application number. A petition under 37 CFR 1.78(a)(3) is not required for correction of the priority application number. Thus, the petition fee will be refunded. The priority claim cannot be properly corrected because the amendment to the specification improperly incorporates by reference the foreign application. Applicant is advised that a new declaration or supplemental Application Data Sheet is required to make such correction.

Any inquiries directly pertaining to this matter may be directed to Cynthia Kratz at (571) 272-3286.

BryanLin

Bryan Lin
PCT Legal Examiner
Office of PCT Legal Administration

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Alexandria, VA 22313-1450
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MERCHANT AND GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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APR 30 2007

OFFICE OF PETITIONS

In re Application of	:	
Kim R. SMITH, et al	:	
Application No. 10/346,862	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. 163.1561US01	:	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 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).

Sarah M. Monfeldt has been withdrawn as attorney of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

There are no Office actions pending at the present time.

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

April Wise
Petitions Examiner
Office of Petitions

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JUL 14 2009

INTELLECTUAL PROPERTY GROUP
FREDRIKSON & BYRON, P.A.
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS MN 55402

In re Application of: Smith et al. Serial No.: 10/346,862 Filed: January 17, 2003 Attorney Docket No.: **29805.104.1**	: : : : :	DECISION ON PETITION TO CORRECT PTO RECORD AND ISSUE FORM PTOL-85

This is in response to applicants' petition under 37 CFR. § 1.181(a), filed on July 13, 2009, to correct the Official PTO records.

Specifically, applicants "request the issuance of Form PTOL-85 (Notice of Allowance and Issue Fee Due). On March 19, 2009, a Notice of Allowability (Form PTOL-37) was issued. However, Form PTOL-37 was listed on Private PAIR as a Non-Final Office Action rather than a Notice of Allowance (snapshot of Private PAIR is attached). Therefore, Form PTOL-85 has not been issued".

Applicants' points are well taken and the record will be corrected.

Applicants' petition is **GRANTED**.

The application is being returned to the examiner for an action consistent with the 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 at 703-872-9306.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

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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INTELLECTUAL PROPERTY GROUP
FREDRIKSON & BYRON, P.A.
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS, MN 55402

Mail Date: 04/21/2010

Applicant	: Kim R. Smith	: DECISION ON REQUEST FOR
Patent Number	: 7622606	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/346,862	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/17/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **290** 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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DAN M DE LA ROSA
345 EAST 80TH STREET
SUITE 27H
NEW YORK, NY 10021

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OFFICE OF PETITIONS

In re Application of	:	
Randall R. Cornfield	:	
Application No. 10/346,870	:	ON PETITION
Filed: January 17, 2003	:	
Attorney Docket No. P-0073	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed July 13, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

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

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed October 20, 2004, which set a shortened statutory period for reply of three (3) months. Extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on April 21, 2005.

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

As to item (1), the amendment submitted on July 13, 2005 does not *prima facie* places the application in condition for allowance. The required reply to the final Office action must be an

amendment that *prima facie* places the application in condition for allowance, a Notice of Appeal and the requisite fee, or a request for continued examination (RCE). A courtesy copy of the Advisory Action is enclosed.

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

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

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

By fax: (571) 273-8300

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

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions

Attachments: Courtesy copy of the Advisory Action

UNITED STATES PATENT AND TRADEMARK OFFICE

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

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JAN 3 1 2008

OFFICE OF PETITIONS

In re Application of :
Ashvin J. Mathew, et. al. :
Application No. 10/346,885 : ON PETITION
Filed: January 15, 2003 :
Attorney Docket No. MSFT119772 :

This is a decision on the petition under 37 CFR 1.137(b), filed on January 15, 2008, to revive the above-identified application.

The application became abandoned for failure to respond to the non-final Office action mailed July 11, 2007.

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Tracy S. Powell appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party in whose behalf she acts.

The petition satisfies the requirements of 37 CFR 1.137(b), in that, petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,540; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

The Office acknowledges receipt of $ 100 for claims in excess of twenty (20) and $1,050 for a three (3) months extension of time filed on January 15, 2008. However, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r. Pats. 1988). Accordingly, since the $1,050 extension of time was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

This application file is being referred to Technology Center Art Unit 2142, for review of the amendment filed with the instant petition.

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

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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HONEYWELL INTERNATIONAL INC.
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

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OFFICE OF PETITIONS

In re Application of :
Cabuz et al. :
Application No. 10/346,887 :
Filed: January 17, 2003 : ON PETITION
Attorney Docket No.: :
H16-26087 DIV 1 US :

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed July 22, 2005 (Certificate of Mailing dated July 20, 2005).

The petition is **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed March 22, 2005. The Notice set a non-extendable three (3) month period for reply. Accordingly, the application became abandoned on June 23, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

With the instant petition Applicant has submitted the issue fee.

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

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

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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SHOOK, HARDY & BACON L.L.P.
(MICROSOFT CORPORATION)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BOULEVARD
KANSAS CITY, MO 64108-2613

Mail Date: 04/21/2010

Applicant	: Jordan L.K. Schwartz	: DECISION ON REQUEST FOR
Patent Number	: 7577705	: RECALCULATION of PATENT
Issue Date	: 08/18/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/346,891	: OF WYETH
Filed	: 01/15/2003	:
		:

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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MCDERMOTT, WILL & EMERY
4370 LA JOLLA VILLAGE DRIVE, SUITE 700
SAN DIEGO CA 92122

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OFFICE OF PETITIONS

In re Application of :
Newton, et al. :
Application No. 10/346,920 :
Filed: January 17, 2003 :
Attorney Docket No. 05623.P002 :
For: METHOD AND APPARATUS FOR PERMITTING VISUALIZING NETWORK DATA

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 7, 2007, to revive the above-identified application.

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

This application became abandoned for failure to timely reply to the Restriction Requirement, mailed July 13, 2006, which set a thirty day or one month shortened statutory 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 August 14, 2006. A Notice of Abandonment was mailed on January 24, 2007.

Applicants have submitted a proper reply to the Restriction Requirement in the form of an election, an acceptable statement of the unintentional nature of the delay in responding to the Restriction Requirement, and the $1,500.00 petition fee. Accordingly, the petition under 37 CFR 1.137(b) is granted.

After the mailing of this decision, the file will be returned to Technology Center AU 2157 for consideration of the election filed on February 7, 2007.

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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Paper No. 7

LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601-6780

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NOV 1 9 2003

OFFICE OF PETITIONS

In re Application of :
Dennis Szymanski and Sam Hahn :
Application No. 10/346,924 :
Filed: January 17, 2003 :
Attorney Docket No. 220936 :
Title: LIQUID INJECTABLE :
FORMULATION OF DISODIUM PAMIDRONATE:

DECISION ACCORDING STATUS
UNDER 37 CFR § 1.47(a)

This is a decision on the "PETITION FOR FILING BY OTHER THAN ALL THE INVENTORS PURSUANT TO 37 C.F.R. § 1.47(a)," filed October 31, 2003.

The petition is **GRANTED**.

The above-identified application was filed on January 17, 2003, without an executed oath or declaration. Dennis Szymanski and Sam Hahn were identified as joint inventors. Accordingly, on March 31, 2003, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a period for reply of two months from the mailing date of the Notice, with extensions of time obtainable under § 1.136(a).

On October 31, 2003, rule 47 applicant responded with a declaration executed by joint inventor Szymanski on behalf of himself and on behalf of non-signing inventor Hahn; the late surcharge under § 1.16(e); the fee for extension of time for response within the fifth month; and the instant petition (and petition fee). Rule 47 applicant maintains that status under 37 CFR 1.47 is proper because joint inventor Hahn has refused to properly execute the Combined Declaration and Power of Attorney despite diligent effort.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application. The instant application is a continuing application of application

No. 10/138,170. On petition and by declaration of patent attorney Steven H. Sklar, and supporting documentary evidence, petitioner has shown that inventor Hahn was presented with the application papers for the '170 application and by letter mailed January 10, 2003, expressly refused to sign the declaration stating "I have refused to sign the declaration since I did not have had a fair opportunity of discussion on possible compensation prior to signing and my agreement was violated after being signed." However, inventor Hahn enclosed a signed declaration with this letter. Yet, inventor Hahn stated that he refused to review the application without receiving compensation for his time. The application was refiled as a continuing application. Although the petition does not show that continuing application '924 was presented to inventor Hahn, as the continuing application is a refiling of the prior application, it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers inasmuch as he refuses to review them without compensation.

The petition includes a statement of the last known address of inventor Hahn. The declaration filed October 31, 2003, and the petition 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 new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MR. SAM HAHN
23 SNOWBALL CRESCENT
SCARBOROUGH
ONTARIO M1B 1S5
CANADA

COPY MAILED

NOV 1 9 2003

OFFICE OF PETITIONS

In re Application of :
Dennis Szymanski and Sam Hahn :
Application No. 10/346,924 : LETTER
Filed: January 17, 2003 :
Attorney Docket No. 220936 :
Title: LIQUID INJECTABLE :
FORMULATION OF DISODIUM PAMIDRONATE:

Dear Mr. Hahn:

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. However, no action on your part is required for this patent to issue with you as a named inventor.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601-6780

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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FASSE PATENT ATTORNEYS, P.A.
P.O. BOX 726
HAMPDEN, ME 04444-0726

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FEB 10 2005

OFFICE OF PETITIONS

In re Application of :
Takashi Umemoto et al :
Application No. 10/346,938 : ON PETITION
Filed: January 17, 2003 :
Attorney Docket No. 4469

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 2, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter will be forwarded to Technology Center AU 1773 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).

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.
10/346,938	01/17/2003	Takashi Umemoto	4469	4770

21553 7590 06/15/2005

FASSE PATENT ATTORNEYS, P.A.
P.O. BOX 726
HAMPDEN, ME 04444-0726

EXAMINER
LE, HOA T

ART UNIT	PAPER NUMBER
1773	

DATE MAILED: 06/15/2005

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

6/14/05

In re Application of	:	
Takashi Umemoto	:	WITHDRAWAL
Serial No. 10/346,938	:	FROM ISSUE
Filed: January 17, 2003	:	UNDER 37 CFR 1.313(b)
For: PRODUCTION PROCESS FOR OXIDE	:	
MAGNETIC MATERIAL AND OXIDE MAG-	:	
NETIC MATERIAL	:	

The above-identified application is withdrawn from issue after payment of the issue fee due to reopening of prosecution. See 37 CFR 1.313 (b).

The above-identified application is hereby withdrawn from issue.

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to at Carol Chaney (571) 272-1284.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

FASSE PATENT ATTORNEYS, P. A.
P. O. Box 726
Hampden, ME 04444-0726

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/25/07

TO SPE OF : ART UNIT 1773

SUBJECT : Request for Certificate of Correction on Patent No.: 7163667

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:

RENA DYE
SUPERVISORY PATENT EXAMINER

SPE

1794
Art Unit

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OFFICE OF PETITIONS

MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE, SUITE 100
SAN DIEGO CA 92130-2040

In re Application of	:	
SWINKELS, et al.	:	
Application No. 10/346,958	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. 246152008610	:	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 29, 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 Thomas E. Ciotti on behalf of all attorneys of record who are associated with customer No. 25225. All attorneys/agents associated with the Customer Number 25225 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **BART W. SWINKELS**
SCHUTTERSTRAAT 5
THE NETHERLANDS 2611MX

cc: **NIXON & VANDERHYE PC**
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203-1808

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/346,958	01/17/2003	Bart W. Swinkels	246152008610

CONFIRMATION NO. 7095

OC000000021970882

25225
MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-2040

Date Mailed: 01/12/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/29/2006.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Charles Lee Thomason, Esq.
Frost Brown Todd LLC
32nd Floor
400 West Market St.
Louisville KY 40202-3363

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MAY 23 2005

OFFICE OF PETITIONS

In re Application of :
Bernard :
Application No. 10/346,973 : ON PETITION
Filed: January 17, 2003 :
Attorney Docket No. 01-17-03MPARK :

This is a decision on the petitions under 37 CFR 1.137(a), filed April 11, 2005.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

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

The above-identified application became abandoned for failure to timely submit the issue fee in response to the Notice of Allowance and Fee(s) Due, mailed November 29, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on March 1, 2005. A Notice of Abandonment was mailed on April 1, 2005.

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 requirements (1) and (3).

Regarding (1), the authorization to charge the issue fee and the publication fee is found on the PTOL-85B - Fee Transmittal. Unfortunately, the authorized signature line of the form is blank. Please submit a signed, appropriately dated PTOL-85B - Fee Transmittal with either authorization to charge the issue fee and publication fee to deposit account no. 02-4275 or some other form of payment.

Regarding (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).

In the instant case, petitioner has failed to provide adequate evidence that the delay was unavoidable. Petitioner asserts that the delay in payment of the issue fee was unavoidable due to miscommunication between an associate attorney (who has since left the Frost Brown Todd LLC) and the client as to who was to pay the issue fee. In addition, petitioner states that the associate attorney's notes indicate that the issue fee was mailed and the firm was awaiting the issued patent.

Because applicant was represented by registered practitioners, the Office must rely on the actions or inactions of the duly authorized and voluntarily chosen representatives of the petitioner, and the applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962). If the attorneys made any errors, the applicant is bound by such

errors.[1]

An attorney must act reasonably and prudently.

> If [the] attorney somehow breach[es] his duty of care to plaintiff, then plaintiff may have certain other remedies available to him against his attorney. He cannot, however, ask the court to overlook [the attorney's] action or inaction with regard to the patent application. He hired the [attorney] to represent him. [The attorney's] actions must be imputed to him.[2]

The Seventh Circuit has stated,

> The other assumption is that, if the complainants failed in their application through the negligence of their attorney, the delay would be unavoidable, which is wholly unwarranted in the law. It is of the very nature of negligence that it should not be unavoidable, otherwise it would not be actionable. The negligence of the attorney would be the negligence of the [client]. The purpose of the statute was to put an end to such pleas, and there would be no limit to a renewal of these applications if every application, however remote, could be considered under the plea of negligence of attorneys, by whom their business is generally conducted.[3]

The United States Court of Appeals for the Federal Circuit has stated,

> If we were to hold that an attorney's negligence constitutes good cause for failing to meet a PTO requirement, the PTO's rules could become meaningless. Parties could regularly allege attorney negligence in order to avoid an unmet requirement.[4]

---

[1] See California Med. Products v. Technol Med. Products, 921 F. Supp. 1219, 1259 (D. Del. 1995) (citing Smith v. Diamond, 209 U.S.P.Q. 1091, 1093 (D.D.C. 1981) (citing Link v. Walbash Railroad Co., 370 U.S. 626, 8 L. Ed. 2d 734, 82 S. Ct. 1386 (1962))).

[2] Haines v. Quigg, 673 F. Supp. 314, 317, 5 U.S.P.Q. 2d (BNA) 1130 (citing Link v. Walbash Railroad Co., 370 U.S. 626, 8 L. Ed. 2d 734, 82 S. Ct. 1386 (1962) ("Petitioner voluntarily chose his attorney as his representative in the action and he cannot now avoid the consequences of the acts or omissions of this freely selected agent ... Each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'" (emphasis added); Inryco, Inc. v. Metropolitan Engineering Co., Inc., 708 F.2d 1225, 1233 (7th Cir. 1983) ("Courts hesitate to punish a client for its lawyers gross negligence, especially when the lawyer affirmatively misled the client" but "if the client freely chooses counsel, it should be bound to counsel's actions."); see also Wei v. State of Hawaii, 763 F. 2d 370, 372 (9th Cir. 1985); LeBlanc v. I.N.S., 715 F.2d 685, 694 (1st Cir. 1983)). See also Smith v. Diamond, 209 U.S.P.Q. (BNA) 1091 (D. D.C. 1981).

[3] Lay v. Indianapolis Brush & Broom Mfg. Co., 120 F. 831, 836 (1903).

[4] Huston v. Ladner, 973 F.2d 1564, 1567, 23 U.S.P.Q.2D (BNA) 1910 (Fed. Cir. 1992).

In the instant case, the associate attorney responsible for the prosecution of this case did not act as reasonable and prudent persons in relation to his most important business. He did not take care to ensure a timely reply to the Notice of Allowance and Fee(s) Due was filed.

Furthermore, delay resulting from a failure in communication between an applicant and his or her registered practitioner is a delay binding upon an applicant. See In re Kim, 12 USPQ2d 1595 (Comm'r Pat. 1988); Ray v. Lehman, 55 F.3d 606, 610, 34 USPQ2d 1786, 1789 (Fed. Cir. 1989). **Petitioner is advised that delay resulting from a failure in communication between a client and a registered practitioner is not unavoidable delay.** In Re Kim, 12 U.S.P.Q.2d 1595 (Comm'r Pat. 1988).

The petition under 37 CFR 1.137(a) is dismissed.

Regarding fees, deposit account no. 02-4275 will be charged the $250.00 petition fee.

ALTERNATIVE VENUE

The facts recited in the instant petition are those typically encountered in a petition to revive under an unintentional standard. Petitioner should consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $750.00 petition fee.

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

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

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

By hand: 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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United States Patent and Trademark Office
P.O. Box 1450
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Charles Lee Thomason, Esq.
Frost Brown Todd LLC
32nd Floor
400 West Market St.
Louisville KY 40202-3363

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AUG 0 2 2005

OFFICE OF PETITIONS

In re Application of :
Bernard :
Application No. 10/346,973 : ON PETITION
Filed: January 17, 2003 :
Attorney Docket No. 01-17-03MPARK :

This is a decision on the petitions under 37 CFR 1.137(b), filed June 21, 2005.

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

The above-identified application became abandoned for failure to timely submit the issue fee in response to the Notice of Allowance and Fee(s) Due, mailed November 29, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on March 1, 2005. A Notice of Abandonment was mailed on April 1, 2005.

Applicant has submitted a proper reply in the form of the issue fee, the publication fee and the PTOL-85, an acceptable statement of the unintentional nature of the delay in responding to the November 29, 2004 Notice of Allowance and Fee(s) Due, and the petition fee.[1]

The petition is **granted**.

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

---

[1] Pursuant to petitioner's authorization, deposit account no. 02-4275 was charged the $750.00 petition fee, the $700.00 issue fee, and the $300.00 publication fee.

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

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

PETITION DECISION

05/11/04

W. L. Gore & Associates, Inc.
P.O. Box 9206
551 Paper Mill Road
Newark, DE 19714-9206

Dear Applicant:

The Box PG Pub replacement drawings for application number 10/346977 received on 04/23/04 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Kaletus King, Office of Pre-Grant Publication 703 605-4283.

Kaletus King

Signature of Reviewer, Office of Pre-Grant Publication

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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James H. Wynn
Lord Bissell and Brook LLP
300 South Grand Avenue
Los Angeles, CA 90071

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OCT 0 2 2006

OFFICE OF PETITIONS

In re Application of

LOPEZ, et al.
Application No. 10/346,989
Filed: January 17, 2003
Attorney Docket No. 78068/25026

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed June 2, 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 James H. Wynn on behalf of all attorneys of record. James H. Wynn has been withdrawn as attorney or agent of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

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

Amelia Au
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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DIW 04-03

Paper No. 5

ROPES & GRAY
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

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APR 14 2003

OFFICE OF PETITIONS

In re Application of	:	
Nicole Lesley Prokopishyn	:	CORRECTED
Application No. 10/346,990	:	DECISION DISMISSING
Filed: 20 March, 2003	:	PETITION
Attorney's Docket No. BRMZ-P01-004	:	

This is a corrected decision on the petition entitled "Petition to Accord Filing Date" filed on 20 March, 2003, which is treated as a petition under 37 CFR 1.53(e) and 1.10(e) to accord the above-identified application a filing date of 17 January, 2003, including one (1) page containing five (5) claims as a part of the initial disclosure.

The petition is **DISMISSED**.

On 17 January, 2003, the application was deposited without claims. Accordingly, on 12 March, 2003, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that, *inter alia*, the application was incomplete because the specification does not include at least one claim, and that the filing date will be the date of receipt of at least one claim. In response, on 20 March, 2003, petitioner filed the present petition accompanied by, *inter alia*, one (1) page containing five (5) claims.

Petitioner asserts that the one (1) page containing five (5) claims were present on filing on 17 January, 2003. In support, petitioners supplied with the present petition, a copy of a postcard receipt itemizing the filing of, *inter alia*, "Specification 9 pages - Abstract 1 page (Total: 10 pages)." Petitioners also submitted a copy of an Express Mail customer label as evidence that the application, including the one page containing the claims, was deposited in Express Mail Post Office to Addressee service on 17 January, 2003. The "date-in" on the copy of the Express Mail label submitted with the present petition is not legible, although the Express Mail label also

contains an Official USPS Postmark dated 17 January, 2003. Petitioner has also included declarations of registered patent attorney Daniel Hansburg and counsel's employee Kim Dufault alleging, respectively, that this application claims priority to provisional Application No. 60/350,161 which did contain at least one claim, and that the present application as filed did contain one page containing five (5) claims.

A review of the record reveals that no one (1) page containing five (5) claims is located among the application papers deposited on 17 January, 2003. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioner believes the page was among the papers he included in the application is not more persuasive than the actual papers shown to have been received by the official file

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503). Unfortunately, petitioners' postcard receipt does not bear an Office-date stamp from the USPTO. As such, the postcard receipt does not serve as evidence that the items listed therein were received in the USPTO. If petitioner has a copy of the postcard receipt for this application with a USPTO "Office date" stamp, a copy of that postcard should be submitted with any renewed petition. Further, the application transmittal sheet evidences, at best, petitioner's intent to file 10 pages of specification.

Additionally, petitioner should note that the Express Mail mailing label is not persuasive evidence of the receipt of one (1) pages of five (5) claims on 17 January, 2003, because the other application papers filed by Express Mail were received on 17 January, 2003. Where there is a dispute as to the *contents* of correspondence submitted to the Office an applicant may not rely upon the provisions of 37 CFR 1.10(e) to establish what documents and or fees were filed in the Office with such correspondence. A petition under 37 CFR 1.10 is therefore inappropriate in the

present case.[1] A petition under 37 CFR 1.10(e) is only appropriate where the correspondence was sent by Express Mail but nothing was received by the Office.

Lastly, with regards to petitioner's argument this application claims priority to a prior-filed provisional application which does contain claims, the mere reference to another application is not an incorporation of anything therein into the application containing such reference.[2] In summary, petitioner simply has no evidence that a page containing claims was filed on 17 January, 2003.

The application file will be retained in the Office of Petitions for TWO (2) MONTHS from 1 April, 2003 (the date the original decision was mailed), to await petitioner's renewed petition accompanied by corroborating evidence (*e.g.*, a postcard bearing an Office date stamp of 17 January, 2003) itemizing the filing of ten pages of specification, including one page of abstract. Any request for reconsideration should be filed within **TWO MONTHS** of the date of the original decision in order to be considered timely. This time period may <u>not</u> be extended.[3]

If no response is received within TWO (2) MONTHS of 1 April, 2003, the application will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of 20 March, 2003, using the application papers deposited on 17 January, 2003, and the one page containing five (5) claims filed on 20 March, 2003. The copies of other application papers supplied with the present petition on will not be used for processing or examination purposes, but will be retained in the application file.

As the petition is due to a filing error on the part of applicant and not an error on the part of the USPTO, the petition fee of $130.00 assessed to counsel's deposit account will not be refunded.

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[2] <u>In re Seversky</u>, 177 USPQ 144, 146 (C.C.P.A. 1973) and <u>Dart Industries, Inc.</u> v. <u>Banner</u>, 207 USPQ 273, 276 (D.C. Cir. 1980).

[3] 37 CFR 1.181(f).

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

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

OR (after 1 May, 2003)[4]

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 concerning this matter may be directed to the undersigned at (703)308-6918.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[4]Effective 1 May, 2003, the U.S. Patent and Trademark Office is changing its address for some mail in preparation for its move to new office space in Alexandria, Virginia beginning at the end of 2003. See 68 Fed. Reg. 14332 (March 25, 2003).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DW 04-03

Paper No. 4

ROPES & GRAY
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

COPY MAILED

APR 0 1 2003

OFFICE OF PETITIONS

In re Application of	:	
Nicole Lesley Prokopishyn	:	
Application No. 10/346,990	:	DECISION DISMISSING
Filed: 20 March, 2003	:	PETITION
Attorney's Docket No. BRMZ-P01-004	:	

This is a decision on the petition entitled "Petition to Accord Filing Date" filed on 20 March, 2003, which is treated as a petition under 37 CFR 1.53(e) and 1.10(e) to accord the above-identified application a filing date of 17 January, 2003, including one (1) page containing five (5) claims as a part of the initial disclosure.

The petition is **DISMISSED**.

On 17 January, 2003, the application was deposited without claims. Accordingly, on 12 March, 2003, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that, *inter alia*, the application was incomplete because the specification does not include at least one claim, and that the filing date will be the date of receipt of at least one claim. In response, on 20 March, 2003, petitioner filed the present petition accompanied by, *inter alia*, one (1) page containing five (5) claims.

Petitioner asserts that the one (1) page containing five (5) claims were present on filing on 17 January, 2003. In support, petitioners supplied with the present petition, a copy of a postcard receipt itemizing the filing of, *inter alia*, "Specification 9 pages - Abstract 1 page (Total: 10 pages)." Petitioners also submitted a copy of an Express Mail customer label as evidence that the application, including the one page containing the claims, was deposited in Express Mail Post Office to Addressee service on 17 January, 2003. The "date-in" on the copy of the Express Mail label submitted with the present petition is not legible, although the Express Mail label also

contains an Official USPS Postmark dated 17 January, 2003. Petitioner has also included declarations of registered patent attorney Daniel Hansburg and counsel's employee Kim Dufault alleging, respectively, that this application claims priority to provisional Application No. 60/350,161 which did contain at least one claim, and that the present application as filed did contain one page containing five (5) claims.

A review of the record reveals that no one (1) page containing five (5) claims is located among the application papers deposited on 17 January, 2003. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioner believes the page was among the papers he included in the application is not more persuasive than the actual papers shown to have been received by the official file

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503). Unfortunately, petitioners' postcard receipt does not bear an Office-date stamp from the USPTO. As such, the postcard receipt does not serve as evidence that the items listed therein were received in the USPTO. If petitioner has a copy of the postcard receipt for this application with a USPTO "Office date" stamp, a copy of that postcard should be submitted with any renewed petition.

Furthermore, the declarations of petitioner's registered patent attorney, Daniel Hansburg, and counsel's assistant, Kim Dufault, that the papers filed on 17 January, 2003, included one page of specification including the claims is not more persuasive than the contents of the official USPTO file. The statements were made over two (2) months after the events in question and recite personal remembrances of the preparation and filing of the application with the PTO. The application does not appear to be unusual and it is not understood why the filing of this particular application would stand out in such detail in the

affiants' memory, particularly in view of the fact that affiants prepared and mailed similar papers to the PTO on a routine, daily basis. Likewise, the application transmittal sheet evidences, at best, petitioner's intent to file 10 pages of specification.

Additionally, petitioner should note that the Express Mail mailing label is not persuasive evidence of the receipt of one (1) pages of five (5) claims on 17 January, 2003, because the other application papers filed by Express Mail were received on 17 January, 2003. Where there is a dispute as to the *contents* of correspondence submitted to the Office an applicant may not rely upon the provisions of 37 CFR 1.10(e) to establish what documents and or fees were filed in the Office with such correspondence. A petition under 37 CFR 1.10 is therefore inappropriate in the present case.[1] A petition under 37 CFR 1.10(e) is only appropriate where the correspondence was sent by Express Mail but nothing was received by the Office.

Lastly, with regards to petitioner's argument this application claims priority to a prior-filed provisional application which does contain claims, the mere reference to another application is not an incorporation of anything therein into the application containing such reference.[2] In summary, petitioner simply has no evidence that a page containing claims was filed on 17 January, 2003.

The application file will be retained in the Office of Petitions for TWO (2) MONTHS to await petitioner's renewed petition accompanied by corroborating evidence (*e.g.*, a postcard bearing an Office date stamp of 17 January, 2003) itemizing the filing of ten pages of specification, including one page of abstract. Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely. This time period may <u>not</u> be extended.[3]

If no response is received within TWO (2) MONTHS, the application will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of 20 March, 2003, using

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[2] <u>In re Seversky</u>, 177 USPQ 144, 146 (C.C.P.A. 1973) and <u>Dart Industries, Inc.</u> v. <u>Banner</u>, 207 USPQ 273, 276 (D.C. Cir. 1980).

[3] 37 CFR 1.181(f).

the application papers deposited on 17 January, 2003, and the one page containing five (5) claims filed on 20 March, 2003. The copies of other application papers supplied with the present petition on will not be used for processing or examination purposes, but will be retained in the application file.

As the petition is due to a filing error on the part of applicant and not an error on the part of the USPTO, the petition fee of $130.00 assessed to counsel's deposit account will not be refunded.

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

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

OR (after 1 May, 2003)[4]

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 concerning this matter may be directed to the undersigned at (703)308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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[4]Effective 1 May, 2003, the U.S. Patent and Trademark Office is changing its address for some mail in preparation for its move to new office space in Alexandria, Virginia beginning at the end of 2003. See 68 Fed. Reg. 14332 (March 25, 2003).

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Alexandria, VA 22313-1450
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Mailed: NOV 26 2004

Paper Number _____

In re application of
Dr. Reinhard Geyer et al.
Serial No. 10/346,993
Filed: January 17, 2003
For: HIGHLY ACTIVE SPHERICAL METAL SUPPORT CATALYSTS

DECISION ON PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181, filed June 28, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of June 07, 2004, for failure to timely file a proper reply to the Notice of Missing Parts mailed March 07, 2003 be withdrawn since the applicants did timely file a reply on April 17, 2003. (Copies of the papers filed January 16, 2004 are attached to the instant petition as well as a copy of the USPTO date stamped postcard receipt dated January 16, 2004.)

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicant's reply was properly filed on April 17, 2003 as evidenced by the USPTO date stamped return receipt postcard indicating receipt of the reply at the USPTO on April 17, 2003. However an inspection of the file indicates that a letter withdrawing the abandonment was mailed June 28, 2004. Thus, this petition is moot.

The application shall be forwarded for appropriate action.

The Petition is **DISMISSED.**

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Randall B. Bateman
Bateman IP Law Group
4 Triad Center, Suite 825
P.O. Box 1319
Salt Lake City, UT 84110

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

RANDALL B. BATEMAN
BATEMAN IP LAW GROUP
8 EAST BROADWAY, SUITE 550
PO BOX 1319
SALT LAKE CITY UT 84110

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SEP 21 2005

OFFICE OF PETITIONS

In re Application of
Geyer, et al.
Application No. 10/346,993
Filed: January 17, 2003
Attorney Docket No. 2480.GLE.PT

DECISION GRANTING PETITION
UNDER 37 CFR 1.55(c)

This is a decision on the petition under 37 CFR 1.55(c), filed May 26, 2005 (certificate of mailing date May 24, 2005), for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of German Patent Application No. 10202127.9, filed January 22, 2002.

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

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

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

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

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

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

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

The above-identified pending nonprovisional application was filed on January 17, 2003, which is after November 29, 2000 and within 12 months of January 22, 2002 (the filing date of the foreign application to which benefit is now being claimed). On May 26, 2005 (certificate of mailing date May 24, 2005), an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of $1,370.00 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

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

A Corrected Filing Receipt which reflects the above-noted foreign application accompanies this decision on petition.

This application is being forwarded to Technology Center AU 1754 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any inquiries directly pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (571) 272-3230.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 05/15/08

TO SPE OF : ART UNIT 2862

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/347019** Patent No.: **6809521**

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

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

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

Angela Green
Certificates of Correction Branch
703.308.9380 ext. 123

Thank You For Your Assistance

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

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

Comments: The Certificate of Correction for an Applicant's mistake made in this case cannot be issued because the mistake is not of a clerical nature, a typographical nature, or a mistake of minor character. Moreover, the replacement of the alleged mistakes would have constituted new matter. MPEP 1481). The equation (8), which the Applicant points to, does not in anyway show the alleged mistake that the Applicant requests to correct. Nowhere in the disclosure of the case is the term "admittance" discussed . Although "admittance" and "conductivity" are the reciprocals of "impedance" and resistivity, it would have constituted "new matter," if the terms (i.e., impedance and resistivity) were amended and replaced by "admittance" and "conductivity," respectively, during the prosecution of the application; especially, the terms would have changed the scope of the claims 1 and 3 materially.

SPE AU 2862

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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KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

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JAN 09 2006

OFFICE OF PETITIONS

In re Application of	:	
Birkmayer, et al.	:	DECISION ON PETITION
Application No. 10/347,021	:	
Filed: January 17, 2003	:	
Docket No.: 12686/1	:	

This is a decision on the petition to revive under 37 CFR 1.137(a) filed July 28, 2004. This matter is, *sua sponte*, considered under 37 CFR 1.181 as a petition to withdraw the holding of abandonment.

This application was held abandoned January 17, 2004 for failure to timely reply to the Office communication mailed December 16, 2003. The Office communication set a one month shorted statutory period of time for reply. Notice of Abandonment was mailed July 26, 2004.

DECISION UNDER 37 CFR 1.181

Petitioner asserts non-receipt of the Office communication mailed December 16, 2003.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. *See*, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

In support of the petition, petitioners have provided a copy of the docket record where the Office communication would have been entered had it been received along with a statement from

practitioner that a search of the docket record and file jacket indicated that the Office communication was not received.

In view 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**.

DECISION UNDER 37 CFR 1.137(a)

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the 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).

In view of the withdrawal of abandonment, the petition to revive under 37 CFR 1.137(a) is hereby **DISMISSED AS MOOT**.

Petitioner may request a refund of the previously submitted $110.00 petition fee by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

The application file is being forwarded to Technology Center 3700 for further re-mailing of the Office communication dated December 16, 2003.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MUETING, RAASCH & GEBHARDT, P.A.
P.O. BOX 581415
MINNEAPOLIS MN 55458

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JUL 21 2006

OFFICE OF PETITIONS

In re Application of :
Sharma et al. :
Application No. 10/347,024 : ON PETITION
Filed: January 7, 2003 :
Attorney Dck't. No. 285.0001 0101 :

This is a decision on the communications filed January 13, 2006, and supplemented June 23 and June 30, 2006, which are collectively being treated as a petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.48(a)(2) for acceptance of an amendment to the inventive entity and acceptance of the concurrently filed supplemental declaration lacking execution by the legal representative of the deceased inventor.

The petitions are **granted**.

On February 22, 2006, the primary examiner favorably considered the petitions filed under 37 CFR 1.48 and accepted the amendment to the inventive entity. Where, as here, there is a concurrent request for waiver of the rules under 37 CFR 1.183, the intervention of the Office of Petitions is also required. See MPEP 201.03. In view of th showings adduced as to ownership and the other circumstances recounted in the petition, it is agreed that justice would be served by waiver of the rules. This decision ratifies the Office communication of February 22, 2006.

This allowed application is being referenced to the Office of Publications.

Telephone inquiries relative to this decision should be directed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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SEP 26 2003

Paper No. 3

In re Application of	:	
Christopher H. Morris	:	
Serial No. 10/347,078	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO MAKE SPECIAL
For: FOOTWEAR WITH SURROUNDING	:	
ORNAMENTATION	:	

Applicant's petition, filed February 18, 2003, seeks to have this application made special pursuant to the Accelerated Examination Program. The petition is GRANTED.

The petition has been reviewed and is found to be in compliance with the requirements for special status as set forth in Section 708.02(VIII) of the Manual of Patent Examining Procedures (MPEP).

Applicant is advised that the examiner's search will be restricted to the subject matter encompassed by the claims. In the event that the application receives a first action rejection, applicant is encouraged to arrange for an interview with the examiner, and to provide the examiner with a working copy of any proposed amendment one working day prior to the interview. Any amendment filed in response to a first action rejection which would require broadening of the field of search will be treated as an improper response.

PETITION GRANTED.

E. Rollins-Cross

E. Rollins-Cross, Director
Technology Center 3700

Greenberg Traurig LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, CA 90404

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/347096

Paper No.: —

DATE : 8/11/05

TO SPE OF : ART UNIT 3679

SUBJECT : Request for Certificate of Correction on Patent No.: 6883836 B2

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

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

Virginia Tolbert

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 113

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

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

Comments:

The changes to claim 16, Col. 15, lines 36 and 39, constitute applicants' errors while the remainder constitute Office errors.

Daniel P Stodola
SPE

3679
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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JUL 0 9 2008

OFFICE OF PETITIONS

In re Application of	:	
Kane et al.	:	DECISION ON APPLICATION
Application No. 10/347,113	:	FOR
Filed: January 15, 2003	:	PATENT TERM ADJUSTMENT
Atty. Docket No. 07844-562001/P517	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed February 28, 2008. Applicant requests that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from one hundred twenty (120) days to one hundred thirty-seven (137) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one hundred thirty-seven (137) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 30, 2007, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date is one hundred twenty (120) days.

In response, applicant timely[1] filed the instant request for reconsideration of the patent term adjustment along with payment

[1] The Office records indicate that the Issue Fee payment was received on February 28, 2008.

of the fee set forth in 37 C.F.R. § 1.18(e). Applicant requests that the patent term adjustment be corrected to 137 days.

Applicant asserts that applicant's delay in responding to the final Office action of July 13, 2006, pursuant 37 C.F.R. § 1.704(b), should be calculated as ninety-five (95) days instead of one hundred twelve (112 days).

The application history has been reviewed and it has been determined that the initial patent term adjustment of 120 days is incorrect. The Office mailed an Office action under 35 U.S.C 1.132 on June 26, 2006; however, the Office action was not mailed to the correspondence address of record (but to an attorney not of record). The record supports a conclusion that this was due to an error on the part of the Office in mailing the Office action to applicant. Accordingly, a new Office action under 35 U.S.C. 1.132, setting a new period for reply was mailed to the correspondence address of record on July 13, 2006. Under the circumstances, it is appropriate to use the date of mailing of the Office action mailed July 13, 2006 for purposes of calculating patent term adjustment. (It is noted that the Office action mailed July 13, 2006 was still mailed within four months of applicant's response filed April 6, 2006. Therefore, there is no Office delay associated with the re-mailing of the Office action).

In response, applicant filed an amendment on September 13, 2006, which failed to place the application in condition for allowance. Thereafter, on January 16, 2007, applicant submitted a Request for Continued Examination ("RCE") and fee. Applicant's response in compliance with 37 C.F.R. 1.113(c), the RCE filed January 16, 2007, was not received within three months of the mailing of the Office action to the correspondence address of record on July 13, 2006. In accordance with 37 C.F.R. § 1.704(b), the period of adjustment of the term of the patent should have been reduced by 95 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 Office action under 35 U.S.C. 132, October 14, 2006, and ending on the date the reply in compliance with 37 C.F.R. 1.113(c) was filed, January 16, 2007.

In view thereof, the correct patent term adjustment at the time of the mailing of the Notice of Allowance is 137 days (360 days of Office delay - 223 days of applicant delay).

Submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is required.

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. 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 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 : Friday
Date: 5/23/2008

PALM INTRANET

Time: 14:08:09

PTA Calculations for Application: 10/347113			
Application Filing Date:	01/15/2003	PTO Delay (PTO):	360
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	240
Post-Issue Petitions:	0	Total PTA (days):	137
PTO Delay Adjustment:	17		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
88	05/23/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		95	
87	05/23/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	112		
77	11/30/2007	MAIL NOTICE OF ALLOWANCE			
76	11/30/2007	MAIL EXAMINER'S AMENDMENT			
75	11/30/2007	ISSUE REVISION COMPLETED			
74	11/26/2007	DOCUMENT VERIFICATION			
73	11/26/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
72	11/26/2007	EXAMINER'S AMENDMENT COMMUNICATION			
71	11/26/2007	NOTICE OF ALLOWABILITY			
70	09/18/2007	DATE FORWARDED TO EXAMINER			
69	09/05/2007	RESPONSE AFTER NON-FINAL ACTION		62	63
68	09/05/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
67	09/18/2007	CORRESPONDENCE ADDRESS CHANGE			
66	08/20/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
65	08/16/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
64	04/05/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
63	04/05/2007	MAIL NON-FINAL REJECTION			
62	04/02/2007	NON-FINAL REJECTION			
61	04/02/2007	DATE FORWARDED TO EXAMINER			
60	03/23/2007	SUPPLEMENTAL RESPONSE		66	48
54	03/22/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
53	03/20/2007	MISCELLANEOUS INCOMING LETTER			

52	02/28/2007	CASE DOCKETED TO EXAMINER IN GAU			
51	02/20/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
50	02/15/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
49	01/30/2007	DATE FORWARDED TO EXAMINER			
48	01/16/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		112	38
47	01/30/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
46	01/22/2007	MAIL ADVISORY ACTION (PTOL - 303)			
45	01/18/2007	ADVISORY ACTION (PTOL-303)			
44	01/16/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
43	01/16/2007	DATE FORWARDED TO EXAMINER			
42	09/13/2006	AMENDMENT AFTER FINAL REJECTION			
41	07/13/2006	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
40	07/07/2006	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
39	07/06/2006	CORRESPONDENCE ADDRESS CHANGE			
38	06/26/2006	MAIL FINAL REJECTION (PTOL - 326)			
37	06/23/2006	FINAL REJECTION			
36	04/12/2006	DATE FORWARDED TO EXAMINER			
35	04/06/2006	RESPONSE AFTER NON-FINAL ACTION			
34	02/03/2006	CORRESPONDENCE ADDRESS CHANGE			
33	01/10/2006	MAIL NON-FINAL REJECTION			
32	01/09/2006	NON-FINAL REJECTION			
31	11/10/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
30	11/10/2005	REFERENCE CAPTURE ON IDS			
29.7	11/10/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	11/10/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	11/23/2005	DATE FORWARDED TO EXAMINER			
27	11/10/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
26	11/23/2005	DATE FORWARDED TO EXAMINER			
25	11/10/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			

24	11/23/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
23	11/10/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
22	08/11/2005	MAIL FINAL REJECTION (PTOL - 326)			
21	08/08/2005	FINAL REJECTION			
20	06/14/2005	DATE FORWARDED TO EXAMINER			
19	06/10/2005	RESPONSE AFTER NON-FINAL ACTION			
18	03/10/2005	MAIL NON-FINAL REJECTION	360		-1
17	03/07/2005	NON-FINAL REJECTION			
16	02/02/2005	CASE DOCKETED TO EXAMINER IN GAU			
15	09/03/2004	REFERENCE CAPTURE ON IDS			
14.7	09/03/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	09/03/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	01/03/2005	CASE DOCKETED TO EXAMINER IN GAU			
12	07/12/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
11	01/15/2003	MISCELLANEOUS INCOMING LETTER			
10	03/19/2004	NEW OR ADDITIONAL DRAWING FILED			
9	04/11/2003	CASE DOCKETED TO EXAMINER IN GAU			
8	04/07/2003	APPLICATION DISPATCHED FROM OIPE			
7	04/04/2003	APPLICATION IS NOW COMPLETE			
6	03/17/2003	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
5	03/17/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	02/28/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
2	01/28/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/15/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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MAIL

DEC 30 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Nagase et al.
Application No. 10/347,118
Filed: January 17, 2003
For: HIERARCHICAL STORAGE APPARATUS AND CONTROL APPARATUS THEREOF

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed October 8, 2004, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

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. §1.102(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(h);

(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. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. 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.

Petition to Make Special is **GRANTED** since all of the requirements for special status under M.P.E.P. §708.02, Section VIII has been met.

The application file is being forwarded to the Examiner for accelerated examination in accordance with the procedures set forth in M.P.E.P. §708.02, Section VIII. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3595

HMJ: 12/08/04

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Paper No. 6

DONALD BOLLELLA, ESQ.
BURSTEIN TECHNOLOGIES, INC.
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IRVINE, CA 92618

COPY MAILED

APR 29 2005

OFFICE OF PETITIONS

In re Application of :
Pal, et al. :
Application No. 10/347,119 : ON PETITION
Filed: January 17, 2003 :
Attorney Docket No. BT12 :
02104901(USP) US

This is a decision on the petition under 37 CFR 1.137(b), filed September 8, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed March 6, 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 7, 2003. A Notice of Abandonment was mailed on February 3, 2004.

Please note, 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.

Furthermore, there is no indication that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted.

A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

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 (571)272-3228.

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

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

UNITED STATES DEPARTMENT OF COMMERCE
COMMISSIONER FOR PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

Date	: 2/25/2009
Patent No.	: 7,376,606 B2
Serial No.	: 10/347,128
Inventor(s)	: Jacobsen
Issue Date	: May 20, 2008
Title	: **METHOD AND APPARATUS FOR FULLY INSURING LARGE BANK DEPOSITS**
Doc./File No.	: **10837-3U1**

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 and 1.323.

Respecting the alleged error(s) in the References Cited, the patent is printed in accordance with the record, since there is no record of a 1449 or 892 with reference(s) considered by the Examiner. Not correction is in order here

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

However, further consideration will be given your request upon receipt of of a request for **Reconsieration** (w/supporting documentation) in this matter upon receipt of a copy of the 1449 or 892 with the requested reference(s) considered by the Examiner.

Ernest C. White, *LIE* (703) 308-9390 x122
Mary F. Diggs, *Supervisor* (703) 308-9390 x125
Decisions & Certificates of Correction Branch

PANITCH SCHWARZE BELISARIO & NADEL LLP
ONE COMMERCE SQUARE
2005 MARKET STREET, SUITE 2200
PHILADELPHIA PA 19103

ecw

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MAY - 6 2005

EDWARDS & ANGELL, LLP
P.O. BOX 55874
BOSTON MA 02205

In re Application of	:
Klim King et al	:
Serial No.: 10/347,141	: SUSPENSION OF ACTION
Filed: January 17, 2003	:
Attorney Docket No.: 60735CON3	:

This is in response to the paper entitled "Response and Requests for Suspension of Action" which is being treated as a petition under 37 CFR 1.103 (not M.P.E.P. 2284), filed February 2, 2005, to suspend prosecution of the above identified application for six months.

The petition fee of $200.00 will be charged to applicants' Deposit Account No. 04-1105, as directed.

Applicants seek suspension of prosecution in this application for a period of six months in view of a copending reexamination proceeding having identical rejections before the CAFC.

BACKGROUND

This application was filed January 17, 2003, and has been rejected in a non-Final Office action mailed September 2, 2004, which set a three month shortened statutory period for reply.

DISCUSSION

37 CFR 1.103. Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in §1.17(I). **Action will not be suspended when a reply by applicant to an Office action is required.**

M.P.E.P. 709 relates to suspension of action in an application. 37 CFR 1.103 permits the Office to suspend action upon petition by applicants for **good and sufficient cause** (emphasis added). Applicants state that this application was filed to provoke an interference with a patent now undergoing reexamination. The reexamination proceeding is now before the CAFC for review of the Office decision holding the claims unpatentable. All claims (most of which are copied from claims added to the patent undergoing reexamination during the proceeding) in this application have been rejected on the same grounds as in the reexamination proceeding. Applicants state that not to suspend prosecution would entail a waste of resources in filing Notices of Appeal or

RCE papers. It is further noted that applicants state that the rejection of record is with respect to all claims in the application only some of which are identical to the claims on appeal to the CAFC.

Applicants further refer to M.P.E.P. 2284 portions of which are excepted here:

> When an amendment seeking to provoke an interference with a patent involved in a reexamination proceeding is filed in a pending application, applicant must comply with 37 CFR 1.607(a) and (c), including identifying the patent under reexamination with which interference is sought. See MPEP § 2307. ... The corresponding application claims may be rejected on any applicable ground including, if appropriate, the prior art cited in the reexamination proceeding. See MPEP § 2307.02. **Prosecution of the application should continue as far as possible; if the application is placed in condition for allowance and still contains claims which interfere with claims of the patent under reexamination, then an interference should ordinarily be proposed between the application and the patent...**
> If the interference is not authorized (e.g., resolution of an issue in the reexamination proceeding is necessary to the interference), further action on the application should be suspended until the certificate on the reexamination proceeding has been issued.
> Once the reexamination certificate has issued, the examiner should review the certificate to see if it makes any changes in the patent claims and then evaluate whether the patent still contains claims which interfere with claims of the application.

Note that this section specifically states that prosecution of the application should continue as far as possible – i.e. until at least some, if not all, claims are found allowable. Only at the time of allowance will it be determined (or redetermined) whether an interference exists. Here, no claims have been found allowable in a non-Final Office action. In fact all claims proposed for the interference are under rejection for various reasons. Thus the application is not allowable. As the application has been only once rejected and is not under Final Office action neither a Notice of Appeal nor filing of RCE papers are appropriate. Prosecution should therefor continue until claims are allowed or finally rejected. Suspension is not appropriate.

Applicants cited the first sentence from the second paragraph above and argue that this mandates suspension. However, this is considered to relate to an application which is in condition for allowance except for the determination of interfering subject matter.

Further, applicants' paper entitled "Response and Request for Suspension of Action" cannot be considered a response to the outstanding Office action as it does not address any of the grounds of rejection other than to note that they are before the CAFC in an unrelated reexamination proceeding. (I.e. – the patent undergoing reexamination is owned by a different party than applicants of the instant application.) Applicants did file a request and fee for a two month extension of time with the "Response" thus extending the time for filing a *bona fide* response to the Office action. However, no such response, other than this paper which is considered to be a petition, has been filed. In view of this and the last sentence of 37 CFR 1.103(a), cited above, suspension cannot be granted.

DECISION

The petition to suspend action is <u>DENIED</u>. Applicant has not presented a *bona fide* reply to the outstanding Office action nor a good and sufficient cause warranting suspension of action by the examiner.

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

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at the general Office facsimile number 571-273-8300.

Jasemine C. Chambers

Jasemine C. Chambers
Director, Technology Center 1600

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:
Klim King et al	:
Application No. 10/347,141	:
Filed: January 17, 2003	:
Attorney Docket No. 50370-60735CON3	:

This is a decision on the petition under 37 CFR 1.137(b), filed September 6, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 11/220,363, filed September 6, 2005.

If the above is an incorrect interpretation, please notify the Office, since petitioner only stated in the petition filed September 6, 2005, that the response was the filing of a continuation application.

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

This matter is being referred to Files Repository.

Karen Creasy

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

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Paper No. 8

KNOBBE MARTENS OLSON & BEAR LLP
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SEP 16 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Kevin Robert McIntyre et al	:	
Application No. 10/347,155	:	
Filed: January 15, 2003	:	
Attorney Docket No. BT12 02104801(USP)US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 30, 2004, to revive the above-identified application.

The petition is **GRANTED**.

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 6, 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 7, 2003.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The application is being forwarded to the Initial Patent Examination Unit.

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

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JAN 31 2006

OFFICE OF PETITIONS

In re Application of	:	
Inger Byrjalsen et al	:	
Application No. 10/347,169	:	ON PETITION
Filed: January 17, 2003	:	
Attorney Docket No. 58536 (46865)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 29, 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 Notice to File Missing Parts of Nonprovisional Application (Notice) mailed March 5, 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 6, 2003.

Pursuant to petitioner's authorization, Deposit Account No. 04-1105 was charged $750.00 for the petition to revive an unintentionally abandoned application.

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

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

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions

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BOSTON, MA 02205

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OFFICE OF PETITIONS

In re Application of Byrjalsen et al. :
Application No. 10/347,169 :
Filing Date: January 17, 2003 :
Attorney Docket No. 58536 (303343) :

Decision on Petition

This is a decision on the petition under 37 CFR 1.47 filed May 11, 2009, 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 inventors.[1]

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

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.183."

Facts

The application was filed January 17, 2003.

A declaration executed by all three inventors was filed April 30, 2003. The declaration included handwritten annotations. For example, for the second inventor, the letter "M" in the box for middle name or initial was marked out and the name "Mose" was handwritten above the name "Larsen" in the box for the last name. The alterations on the declaration were neither initialed nor dated.

The Notice of Allowability mailed February 12, 2009, required the submission of a substitute oath or declaration. The attached examiner's amendment indicated the declaration filed April 30, 2003, was defective because it contained non-initialed and/or non-dated alterations. The examiner's amendment also correctly noted applicants had been informed of the problems with the declaration as early as July 16, 2007.

[1] Once an application containing 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.

Petitioner has submitted a declaration listing two inventors, Byrjalsen and Fey. The declaration is signed by Byrjalsen and Fey. The declaration does not list Peter Mose Larsen as an inventor and is not signed by Peter Mose Larsen.

Petitioner requests the new declaration be accepted with the signatures of only two of the three inventors.

Discussion

In order for the petition to be granted, the petition must be accompanied by:

(1) Proof that the non-signing inventor cannot be found or reached after diligent effort or that the inventor refuses to sign after having been presented with the application papers (specification, claims, and drawings),
(2) A proper oath or Declaration executed by the available joint inventor(s),
(3) The fee of $400 as specified in 37 CFR § 1.17(h), and
(4) The last known address of the omitted inventor(s).

The instant petition fails to satisfy item (2) above. A declaration must list all the inventors. In this case, the declaration does not list inventor Larsen. Therefore, the declaration cannot be accepted.

Petitioner may wish to note an acceptable substitute declaration can simply be a copy of a declaration identical to the declaration that would be filed if Larsen was willing to sign the declaration. Larsen's signature block may simply be left blank. A declaration signed by all the available joint inventors with the signature block of the nonsigning inventor left blank will be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor, unless otherwise indicated.

Unless filed by EFS Web, further correspondence with respect to this matter should be addressed as follows:

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

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

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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OFFICE OF PETITIONS

EDWARDS ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON, MA 02205

In re Application of Byrjalsen et al. :
Application No. 10/347,169 : Decision on Petition
Filing Date: January 17, 2003 :
Attorney Docket No. 58536 (303343) :

This is a decision on the petition under 37 CFR 1.183 filed October 6, 2009. The petition seeks waiver of 37 CFR §§ 1.67 and 1.63 where they require that a supplemental declaration be executed by the named inventors.

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

The Notice of Allowability mailed February 12, 2009, required the submission of a substitute oath or declaration. The attached examiner's amendment indicated the declaration filed April 30, 2003, was defective because it contained non-initialed and/or non-dated alterations.

Petitioner has submitted a substitute declaration which does not include inventor Larsen's signature. Petitioner requests waiver of the requirement for the declaration to include Larsen's signature.

In view of the efforts recounted in the petition to obtain the signature of Larsen, it is agreed that justice would be served by waiving the requirement for his signature on the supplemental declaration filed October 6, 2009.

The Office of Data Management, Patent Publication Branch, will be informed of the instant decision.

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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PENNIE & EDMUNDS, LLP
1667 K STREET, NW
SUITE 1000
WASHINGTON, DC 20006

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OFFICE OF PETITIONS

In re Application of	:
Qingbo Li	:
Application No. 10/347,187	: DECISION GRANTING PETITION
Filed: January 21, 2003	: UNDER 37 CFR 1.47(b)
For: EXTENDED PATHLENGTH DETECTION	:
IN SEPARATIONS	:

This is in response to the "Petition Under 37 CFR 1.47(b)," filed July 7, 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 declarations by Julius C. Fister and Thomas E. Kane establish that the inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that he sign the declaration. In addition, petitioner has shown that Spectrumedix, LLC has a proprietary interest in the above-identified application with the copy of the employment agreement showing that the inventor had an obligation to assign any patent rights to Spectrumedix, LLC. The petition fee has been paid. Lastly, petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and demonstrated that petitioner has shown that such action is necessary to preserve the rights of Spectrumedix, LLC.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status and the Office of Initial Patent Examination is authorized to:

(1) accept this application under Rule 1.47(b);

(2) process the application with the inventor being Qingbo Li and with the indication that the application was filed by

Spectrumedix, LLC as the party in interest under 35 U.S.C. § 118, using the Declaration filed on July 7, 2003; and

(3) mail a filing receipt with a filing date of January 21, 2003.

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703)306-9200

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

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QINGBO LI
2234 AUTUMNWOOD DRIVE
STATE COLLEGE, PA 16803

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JUL 2 4 2003

OFFICE OF PETITIONS

In re Application of
Qingbo Li
Application No. 10/347,187
Filed: January 21, 2003
For: EXTENDED PATHLENGTH DETECTION IN SEPARATIONS

Dear QINGBO LI:

You are named as the sole inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 118 (United States Code), and 37 CFR 1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as the sole 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)306-9200. Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

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

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WASHINGTON, DC 20006

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EDWARDS & ANGELL, LLP
P.O. BOX 55874
BOSTON MA 02205

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OFFICE OF PETITIONS

In re Patent of Bakthavatchalam et al. :
Patent No. 7,074,799 :
Issue Date: July 11, 2006 : Decision on Request for Reconsideration
Application No. 10/347,210 : of Patent Term Adjustment
Filing Date: January 17, 2003 :
Attorney Docket No. 60527 (72021) :

This is a decision in response to the "Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. §705(d)" filed September 11, 2006, which in essence requests that the Patent Term Adjustment for the above-identified patent be increased from 0 days to 106 days.

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

Any response to 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 NOT permitted.

The instant request was timely filed within 2 months of the date the patent issued. See 37 CFR 1.705(d).

On July 11, 2006, the application matured into U.S. Patent No. 7,074,799, with a revised patent term adjustment of 0 days. On September 11, 2006, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 106 days.

The revised adjustment determination was calculated as follows:

> The initial PTA determination of 66 days was reduced 68 days due to the Rule 312 amendment filed by applicants on May 5, 2006, after the mailing of the Notice of Allowance.

Prior to a discussion of the merits of patentees' arguments, the Office notes a reduction of 167 days is proper pursuant to 37 CFR 1.704(c)(8). 37 CFR 1.704(c)(8) states circumstances constituting a failure of the applicant to engage in reasonable efforts to conclude processing or examination includes the:

> Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which

> case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

A Request for Continued Examination was filed October 27, 2004. An Information Disclosure Statement (IDS) was filed April 12, 2005. The record fails to indicate the examiner expressly requested the filing of the IDS. Therefore, a reduction under 37 CFR 1.704(c)(8) is proper unless 37 CFR 1.704(d) is applicable.

37 CFR 1.704(d) states,

> 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 IDS was not accompanied by the statement required by 37 CFR 1.704(d). Therefore, a reduction of 167 days is proper for the period beginning on October 28, 2004, and ending on April 12, 2005.

Patentees assert the amendment filed May 5, 2006, should not have resulted in a reduction in the patent term adjustment because the examiner requested the amendment.

37 CFR 1.704(c)(10) states,

> [Upon] [s]ubmission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed ... 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.

As stated in 37 CFR 1.704(c)(8), a paper expressly requested by the examiner will not result in a reduction in patent term adjustment pursuant to 37 CFR 1.704(c)(8). However, 37 CFR 1.704(c)(10) does not include an exception for papers requested by the examiner. The Office has explicitly stated an amendment under 37 CFR 1.312 will result in a reduction in patent term adjustment pursuant to 37 CFR 1.704(c)(10).[1] Therefore, a reduction pursuant to 37 CFR

[1] *See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance Has Been Mailed*, 1247 OG 111 (June 26, 2001).

1.704(c)(10) is appropriate. A review of the record indicates the amendment was filed May 5, 2006, and the Office mailed a response on June 14, 2006. Therefore, the Office notes the appropriate reduction pursuant to 37 CFR 1.704(c)(10) is 41 days rather than the 68 days listed in PAIR on the screen showing PTA calculations for the instant patent. In other words, a 41 day reduction in patent term adjustment is proper for the period beginning on May 5, 2006, and ending on June 14, 2006.

A review of the record indicates a one (1) day reduction in patent term adjustment is proper pursuant to 37 CFR 1.704(c)(8) due to the petition filed July 14, 2004. On July 13, 2004, patentees filed a reply to a non-final Office action. On July 14, 2004, patentees filed a petition under 37 CFR 1.48. The examiner did not expressly request the petition. Therefore, a reduction of 1 day is appropriate pursuant to 37 CFR 1.704(c)(8).

Patentees state an increase in the PTA of 40 days is proper pursuant to 37 CFR 1.703(a)(6) because the Office failed to issue the patent within 4 months of the date the issue fee was paid. The issue fee was paid February 1, 2006. The patent issued July 11, 2006. Per 37 CFR 1.703(a)(6) an increase in patent term adjustment is appropriate for:

> [t]he number of days, if any, in the period beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.

An increase of 40 days is proper pursuant to 37 CFR 1.703(a)(6) for the time period from June 2, 2006, and ending on July 11, 2006.

The adjustments previously discussed in the instant decision result in the amount of "PTO Delay" shown on the PTA calculations in PALM increasing to 124 days. The adjustments result in the amount of "Applicant Delay" shown on the PTA calculations increasing to 227 days. Since the amount of "Applicant Delay" is greater than the amount of "PTO Delay," a patent term adjustment of 0 days is proper.

The record has been reconsidered, and it is concluded that the patent term adjustment of zero (0) days indicated on the patent is correct.

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

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

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

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

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of
Carl Christiansen
Application No. 10/347,227
Filed: January 21, 2003
Attorney Docket No. EHO 021611

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed March 30, 2005.

The petition is GRANTED.

The application became abandoned for failure to pay the issue fee on or before January 5, 2005. A Notice of Abandonment was mailed February 18, 2005. Receipt is acknowledged of the requisite issue/publication fee on March 30, 2005.

This matter is being referred to Publishing Division.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (703) 305-8283.

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

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

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:
Brian Sze-Ki Mo	:
Application No. 10/347,254	:
Filed: January 17, 2003	:
Attorney Docket No. 018865-001730US	:

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure submit the issue fee and in a timely manner in reply to the Notice of Allowance mailed February 24, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on May 25, 2004.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The application is being forwarded to the Publishing Division.

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

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MERCHANT & GOULD P.C.
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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OFFICE OF PETITIONS

In re Patent No. 6,926,184	:	
Issue Date: August 9, 2005	:	
Application No. 10/347,269	:	ON PETITION
Filed: January 21, 2003	:	
Attorney Docket No. 838.272US01	:	

This is a decision on the petition under 37 CFR 1.183, filed December 15, 2005, which is being treated under 37 CFR 3.81(b), to accept the correction of the assignee on the front page of the above-identified patent.

The petition is GRANTED.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction and to correct the other item listed in the draft Certificate of Correction.

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

Wan Laymon
Petitions Examiner
Office of Petitions

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

Mail Date: 04/21/2010

Applicant	: Nobuyuki Washio	: DECISION ON REQUEST FOR
Patent Number	: 7603279	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/347,320	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/21/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1289** 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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William S. Frommer
FROMMER LAWRENCE & HAUG LLP
745 Fifth Avenue
New York, NY 10151

In re Application of	:
LECOMTE, Jeanne-Marie et al.	:
US Application No.: 10/347,332	: DECISION ON
PCT Application No.: PCT/EP01/07086	:
Int. Filing Date: 22 June 2001	: PETITION UNDER
Priority Date: 23 June 2000	:
Attorney's File Reference: 454318-2020	: 37 CFR 1.137(b)
For: FORMULATION	:

This decision responds to applicants' "PETITION UNDER 37 CFR 1.137(b) TO REVIVE AN APPLICATION ABANDONED UNINTENTIONALLY", filed 13 January 2003, requesting revival of the US national stage application of international application number PCT/EP01/07086 for the purpose of obtaining copendency with US application number 10/347,332, filed 13 January 2003, in accordance with 35 USC 120 and 365.

BACKGROUND

On 22 June 2001 the applicants filed international application number PCT/EP01/07086 claiming a priority date of 23 June 2000 and designating the US. On 08 January 2002, the applicants filed a Demand for international preliminary examination. Accordingly, the 30-month time period for entering the national stage in the US expired at midnight on 23 December 2002.

On 13 January 2003, the applicants filed, inter alia, 1) US application number 10/347,332, 2) a transmittal letter stating, inter alia, that the US application is a continuation of international application number PCT/EP01/07086, 3) the present "Petition Under 37 CFR 1.137(b) to Revive an Application Abandoned Unintentionally", and 4) the $1,300 petition fee set forth in 37 CFR 1.17(m). The petition requests revival of the US national stage application of international application number PCT/EP01/07086 for the purpose of obtaining copendency between the US national stage application and US application number 10/347,332, filed 13 January 2003.

DISCUSSION

37 CFR 1.137(b) and (c) state, in part:

> (b) *Unintentional.* If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination proceeding terminated under §§ 1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
>
> (1) The reply required to the outstanding Office action or notice, unless previously filed;
>
> (2) The petition fee as set forth in § 1.17(m);
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional
>
> * * * * * * * * *
>
> (c) *Reply.* In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application.
>
> * * * * * * * * *

The papers submitted by the applicants on 13 January 2003 fulfill all of the requirements of 37 CFR 1.137(b).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.137(b) is **GRANTED**.

The US national stage application of international application number PCT/EP01/07086, is revived for purposes of continuity only. Since continuity is established by this decision reviving the US national stage application of international application number PCT/EP01/07086, the US national stage application is again abandoned in favor of the present continuing application number 10/347,332.

Diana L. Oleksa
Special Programs Examiner
PCT Special Programs Office
Telephone: 703-308-0890

Leonard Smith
PCT Legal Examiner
PCT Legal Office

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Manelli Denison & Selter
2000 M Street, NW
Suite 700
Washington, DC 20036-3307

Paper No. 3

In re application of
William O. Gohlke
Application No. 10/347,334
Filed: January 21, 2003
For: WALK-THROUGH CONTAINER AND METHOD FOR TRANSPORTING CARGO IN A TRAILER OF A TRUCK

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on January 21, 2003, under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a signed statement from the applicant stating that he is at least 65 years of age.

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

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

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

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121
(703) 605-0586 (facsimile)

RAR/tpl: 4/22/03

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STITES & HARBISON PLLC
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OFFICE OF PETITIONS

In re Application of :
William Herring :
Application No. 10/347,349 : DECISION ON
Filed: January 21, 2003 : PETITION
Atty Docket No. P07840US00/RFH:

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE NOTICE OF ALLOWANCE (UNDER MPEP § 711.03(c)(II)) filed January 31, 2006.

The above-identified application became abandoned for failure to timely pay the issue fee and publication fee within the three-month statutory period set in the Notice of Allowance and Fee(s) Due mailed December 28, 2004. No reply having been received, the above-identified application became abandoned on March 29, 2005. A courtesy Notice of Abandonment was mailed on May 26, 2006.

Petitioner state that they learned the application was abandoned based on a review of PAIR. In response, applicant filed the instant petition, asserting that the Office action was never received and requesting that the holding of abandonment be withdrawn. (Receipt of the status inquiry filed June 8, 2006 is acknowledged).

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

non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

An irregularity in the mailing of the Office action exists, in that, the Notice of Allowance is present in the application as returned by the Postal Service. Further, patent attorney Hunt has supported his claim of non-receipt with a persuasive showing of non-receipt, meeting the requirements set forth above. Having reviewed the Notices via PAIR, petitioner includes the required response, payment of the issue fee and publication fee[1].

In view thereof, the notice of abandonment mailed May 26, 2006 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

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

No fee is required on petition under § 1.181.

Technology Center AU 3752 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and thereafter, to forward the application to the Publishing Division for processing into a patent.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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[1] The Notice of Allowability set forth no concurrent requirements. If the Notice of Allowance is re-mailed, petitioner is reminded that timely response is required to avoid abandonment. Such response could include a statement that the issue fee and publication fee were previously paid on January 31, 2006.

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NIXON PEABODY, LLP
401 9TH STREET, NW
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WASHINGTON, DC 20004-2128

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OFFICE OF PETITIONS

In re Application of :
Shunpei Yamazaki, et al. :
Application No. 10/347,350 : ON PETITION
Filed: January 21, 2003 :
Attorney Docket No.: 740756-2577 :

This is a decision on the petition, filed September 28, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 22, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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

The application is being referred to Technology Center AU 2814 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

NIXON PEABODY, LLP
401 9TH STREET, NW
SUITE 900
WASHINGON DC 20004-2128

In re Application of	:	
Shunpei Yamazaki et al	:	
Application No. 10/347,350	:	DECISION GRANTING PETITION
Filed: January 21, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 740756-2577	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 28, 2007, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 21, 2007 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

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

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date : September 28, 2007

TO : Director, Office of Patent Publication

FROM : Office of Petitions

SUBJECT : Withdrawal from Issue of **Application No. 10/347,350**

Applicant(s) : Shunpei Yamazaki et al
Application No. : 10/347,350
Filed : January 21, 2003

The above-identified application has been assigned Patent No. 7,276,734 and an issue date of October 2, 2007.

It is hereby directed that this application be withdrawn from issue at the request of the applicant. Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of October 2, 2007:

> **"All reference to Patent No. 7,276,734 to Shunpei Yamazaki et al of Japan for SEMICONDUCTOR DEVICE AND METHOD OF FABRICATING THE SAME appearing in the Official Gazette of October 2, 2007 should be deleted since no patent was granted."**

Karen Creasy
Petitions Examiner
Office of Petitions

cc: Paul Harrison
Deneise Boyd
Mary Louise McAskill
Niomi Farmer
Mary E. Johnson (Cookie)
Duane Davis (CDS)
Brad Harris
Kim Terrell
Kay Pinkney
Betty Powell

DATE: 9-28-07 APPLICATION NUMBER: 10/747350

DOC CODE: Pet.W45 DOC DATE: 9-28-07

DELIVER THE ATTACHED FILE/DOCUMENT TO THE TC SCANNIG CENETER

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

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

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, Washington, D.C. 20231-1450, or being facsimile transmitted to the USPTO at 571-273-0025, on September 28, 2007.

Pamela L. Patrick

FAX RECEIVED
SEP 28 2007
OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT Application of:	)	
Shunpei YAMAZAKI et al.	)	Group Unit: 2814
Serial No. 10/347,350	)	Examiner: Nathan W. Ha
Filed: January 21, 2003	)	Confirmation No. 6573
For: SEMICONDUCTOR DEVICE AND METHOD OF	)	
FABRICATING THE SAME	)	

PETITION FOR WITHDRAWAL FROM ISSUE TO PERMIT CONSIDERATION OF INFORMATION DISCLOSURE STATEMENT UNDER SECTION 1.97 IN A CONTINUING APPLICATION

Mail Stop 313(c)
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition for the withdrawal of this application from issue. The issue fee for this case was paid on August 21, 2007.

The reason for withdrawal from issue of this application is for consideration of information in a continuing application. The continuing application is filed as a Request for Continued Prosecution Application (RCE). The RCE, which is entitled to priority under 35 U.S.C. 120 from this application, is being filed on the same date as this petition and accompanies this petition.

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01 FC:1464 130.00 DP

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Docket No. 740756-2577
Serial No. 10/347,350

The Commissioner is authorized to charge the Petition Fee of $130.00 or any deficiencies (except the issue fee) or credit any overpayment to Deposit Account No. 19-2380 (740756-2577). A duplicate copy of this sheet is attached.

Respectfully submitted,

Jeffrey L. Costellia
Registration No. 35,483

NIXON PEABODY LLP
401 9TH STREET, N.W.
SUITE 900
Washington, D.C. 20004
(202) 585-8000
(202) 585-8080 (Fax)

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

Mail Date: 04/21/2010

Applicant	: Toshio Yoshida	: DECISION ON REQUEST FOR
Patent Number	: 7590827	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/347,407	: OF WYETH
Filed	: 01/21/2003	:
		:

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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 7, 2006

TO SPE OF : ART UNIT 2115

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/347423 patent No.: 7,089,412

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

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

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

Magdalene Talley

Certificates of Correction Branch

703-308-9390 ext. 116

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

SPE

Art Unit

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OFFICE OF PETITIONS

MCDERMOTT, WILL & EMERY
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096

In re Application of	:	
Atsuhiko Gotou, et al.	:	
Application No. 10/347,440	:	ON PETITION
Filed: January 21, 2003	:	
Attorney Docket No. 50353-613	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed April 10, 2006, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on March 15, 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]

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.

[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 3682 for further processing of the request for continued examination under 37 CFR 1.114 filed April 10, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: JOHN A. HANKINS
MCDERMOTT, WILL & EMERY
4370 LA JOLLA VILLAGE DRIVE, SUITE 700
SAN DIEGO, CA 92122

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Commissioner for Patents
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SEP 13 2004

Paper No. 3

In re Application of
Sajid Ali Mirza Khan
Application No. 10/347,443
Filed: January 21, 2003
For: Fulcrum of Windpower

: DECISION ON PETITION

This is a decision on the petition to make special filed on January 21, 2003. The petition is based upon the practice described in MPEP § 708.02(V) "Environmental Quality" and MPEP § 708.02(VI) "Energy." Therefore, no petition fee is required.

The petition is granted.

The petition to make special based upon the practice in the above mentioned MPEP sections is deemed to satisfy all of the requirements thereof. 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 3745 is being informed of this decision, and will advise the examiner to take future action consistent therewith. The granting of this petition is not to be taken as an endorsement of the invention that is disclosed and claimed.

PETITION GRANTED.

Stephen Marcus, Special Program Examiner,
Technology Center 3700

Sajid Ali Mirza Khan
2 Union Place
Ridgefield Park, NJ 07660

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COMMISSIONER FOR PATENTS
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Paper No.

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

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OFFICE OF PETITIONS

In re Application of	:	
Horvitz et al.	:	
Application No. 10/347,470	:	LETTER REGARDING
Filed: January 17, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 01997/542003	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed June 17, 2008. Pursuant to their duty of candor and good faith to the Office, applicants disclose that the initial determination of patent term adjustment should be less than the three hundred twenty-one (321) days calculated by the Office.

The request for review of the patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred twenty-two **(222)** days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On March 20, 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 321 days. Applicants do not disclose a basis for their disclosure that the correct patent term adjustment is less than calculated by the Office.

Nonetheless, a review of the record reveals that in response to the final Office action mailed March 20, 2007, applicants did

not file a response in compliance with §1.113(c) until September 24, 2007, three months and 96 days later. As such, a period of reduction of 96 days is being entered pursuant to 37 C.F.R. §1.704(b).

In addition, applicants' response to the Notice to File Missing Parts of Application mailed April 9, 2003, was received in the Office on August 25, 2003, not August 22, 2003. In this regard, applicants' attention is directed to 37 CFR 1.703(f), which provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. See also, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000). Thus, the certificate of mailing dated August 22, 2003 on this response should not have been taken into account in this calculation. Using the proper date of August 25, 2003, the period of reduction pursuant to 37 C.F.R. §1.704(b) is 47 days, not 44 days, and is being corrected accordingly.

In view thereof, the correct initial determination of the patent term adjustment at the time of the mailing of the notice of allowance is two hundred twenty-two (222) 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 PALM Screen

Day : Wednesday

PALM INTRANET

Date: 8/20/2008
Time: 13:01:26

PTA Calculations for Application: 10/347470			
Application Filing Date:	01/17/2003	PTO Delay (PTO):	555
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	234
Post-Issue Petitions:	0	Total PTA (days):	222
PTO Delay Adjustment:	-99		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
67	08/20/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		96	
66	08/20/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		47	
65	08/20/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	44		
54	03/20/2008	MAIL NOTICE OF ALLOWANCE			
53	03/14/2008	ISSUE REVISION COMPLETED			
52	03/14/2008	DOCUMENT VERIFICATION			
51	03/14/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
50	03/14/2008	NOTICE OF ALLOWABILITY			
49	02/21/2008	DATE FORWARDED TO EXAMINER			
48	01/22/2008	RESPONSE AFTER NON-FINAL ACTION		3	45
47	10/23/2007	ELECTRONIC REVIEW			
46	10/20/2007	EMAIL NOTIFICATION			
45	10/19/2007	MAIL NON-FINAL REJECTION			
44	10/15/2007	NON-FINAL REJECTION			
43	10/15/2007	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
42	06/25/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
41	09/24/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
40	09/24/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
39	09/28/2007	DATE FORWARDED TO EXAMINER			
38	09/24/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
37	09/28/2007	DATE FORWARDED TO EXAMINER			
		REQUEST FOR CONTINUED EXAMINATION			

36	09/24/2007	(RCE)			
35	09/28/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
34	09/24/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
33	09/24/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	09/24/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
31	06/25/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	06/25/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	03/20/2007	MAIL FINAL REJECTION (PTOL - 326)			
28	03/15/2007	FINAL REJECTION			
27	01/10/2007	DATE FORWARDED TO EXAMINER			
26	12/18/2006	RESPONSE AFTER NON-FINAL ACTION		96	24
25	12/18/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
24	06/13/2006	MAIL NON-FINAL REJECTION			
23	06/10/2006	NON-FINAL REJECTION			
22	07/03/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
21	03/30/2006	DATE FORWARDED TO EXAMINER			
20	03/24/2006	RESPONSE TO ELECTION / RESTRICTION FILED		91	18
19	03/24/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
18	09/23/2005	MAIL RESTRICTION REQUIREMENT	555		-1
17	09/19/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
16	06/22/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
15.7	07/03/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	07/03/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	06/21/2004	CASE DOCKETED TO EXAMINER IN GAU			
13	09/15/2003	APPLICATION DISPATCHED FROM OIPE			
12	09/16/2003	APPLICATION IS NOW COMPLETE			
11	08/22/2003	ADDITIONAL APPLICATION FILING FEES		44	7
10	08/22/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			

9	08/22/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	09/09/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
7	04/09/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
6	01/17/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
5	03/29/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
4	02/13/2003	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
3	02/04/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/17/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	01/17/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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

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TECHNOLOGY CENTER 2100

NIXON & VANDERHYE P.C.
901 North Glebe Road, 11th Floor
Arlington, VA 22203

In re Application of:
FLYNN et al.
Application No. 10/347,481
Filed: January 21, 2003
For: A DATA PROCESSING APPARATUS AND METHOD FOR SWAPPING DATA VALUES

DECISION ON PETITION

This is a decision on the petition filed on October 5, 2007, requesting withdrawal of Notice of Non-compliant appeal brief mailed September 5, 2007. This petition is being treated as petition under 37 CFR 1.181(a) to invoke Supervisory Authority with respect to the Office communication mailed on September 5, 2007, and withdraw the Notice of non-compliant Appeal Brief.

The Petition is **DISMISSED as moot.**

37 CFR § 41.37(c)(1)(v) states:

> *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

As per the above rule, applicant is required to make a "concise explanation" of the subject matter defined in each of the independent claims involved in the appeal. A review of the application indicates that (1) the Appeal Brief filed on April 10, 2007 included multiple page explanation for some claim limitations, and failed to include any explanation for some claim limitations, and hence, failed the requirement under 37 CFR 41.37(c)(1)(V); thus, the Notification of Non-complaint Appeal Brief mailed August 31, 2007 was not a mistake and (2) the Appeal Brief filed on October 1, 2007 has addressed these deficiencies noted in the Notice of Non-Compliant appeal brief; the Appeal Brief filed on October 1, 2007 has been found to be in compliance with all provisions of 37 CFR 41.37 and the examiner has already mailed an answer to the brief, thus providing the relief sought be applicant.

For the above stated reasons, the petition is **DISMISSED AS MOOT**.

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-4210.

Mano Padmanabhan, WQAS
Technology Center 2100
Computer Architecture, Software, and
Information Security

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COMMISSIONER FOR PATENTS
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LAW OFFICE OF MICHAEL A. SANZO, LLC
15400 CALHOUN DR.
SUITE 125
ROCKVILLE MD 20855

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OFFICE OF PETITIONS

In re Application of :
Rieping, et al. : DECISION ON APPLICATION
Application No. 10/347,484 : FOR PATENT TERM ADJUSTMENT
Filed: January 21, 2003 :
Atty. Dkt. No.: 7601/80186 :

This is a decision on the "Request for Reconsideration of Patent Term Adjustment Calculation," filed July 6, 2007. This matter is being properly treated under 37 CFR 1.705(b) as an application for patent term adjustment. Applicants are seeking a PTA of 469 days at the time of the mailing of the Notice of Allowance.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED IN PART**.

The correct determination of PTA at the time of the mailing of the Notice of Allowance is **492 days**.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b), mailed May 4, 2007, indicated a patent term adjustment (PTA) to date of 358 days. The instant application for PTA was timely filed July 6, 2007.

Applicants do not contest the adjustments of 530 days under 37 CFR 1.702(a)(1) and 16 days under 37 CFR 1.702(a)(2). Further, applicants do not contest the reduction of 38 days under 37 CFR 1.704(b).

Applicants contest the reduction of 150 days in connection with applicants' response to the Notice of Missing Parts mailed May 2, 2003. A review of the record reveals that a reply to the Notice of Missing Parts was timely received July 2, 2003. Accordingly, there was no failure to engage in reasonable efforts to conclude prosecution within the meaning of 37 CFR 1.704(b).

Applicants further advise that the adjustment of 16 days in connection with the mailing of the Notice of Allowance is in error. A review of the record reveals that applicants are correct. There was no delay in mailing the Notice of Allowance

within the meaning of 37 CFR 1.702(a)(2). An amendment placing the application in condition for allowance was filed March 20, 2007. The Notice of Allowance was timely mailed in response thereto on May 4, 2007.

In view thereof, at the time of allowance, the application is entitled to an adjustment of 492 days.

Applicants further advise that further reduction is appropriate in connection with the Rule 312 amendment filed June 6, 2007. Applicants are advised that post-allowance adjustments and reductions, if appropriate, will be reflected at the time of Issue Notification.

Receipt is hereby acknowledged of the required PTA application fee of $200.00.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

The application file is being forwarded to the Office of Patent Publication for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

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

Enclosure: Adjusted PAIR Calculation

Day : Thursday
Date: 9/13/2007

PALM INTRANET

Time: 11:57:12

PTA Calculations for Application: 10/347484

Application Filing Date:	01/21/2003	PTO Delay (PTO):	546
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	188
Post-Issue Petitions:	0	Total PTA (days):	492
PTO Delay Adjustment:	134		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
90	09/13/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	134		
74	05/04/2007	MAIL NOTICE OF ALLOWANCE	16		60
73	05/04/2007	MAIL EXAMINER'S AMENDMENT			
72	05/02/2007	ISSUE REVISION COMPLETED			
71	05/02/2007	DOCUMENT VERIFICATION			
70	05/02/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
69	05/02/2007	EXAMINER'S AMENDMENT COMMUNICATION			
68	04/30/2007	NOTICE OF ALLOWABILITY			
67	03/27/2007	DATE FORWARDED TO EXAMINER			
66	03/20/2007	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
65	03/07/2007	MAIL ADVISORY ACTION (PTOL - 303)			
64	03/05/2007	ADVISORY ACTION (PTOL-303)			
63	01/03/2007	CORRESPONDENCE ADDRESS CHANGE			
62	12/28/2006	DATE FORWARDED TO EXAMINER			
61	12/18/2006	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
60	12/18/2006	NOTICE OF APPEAL FILED		38	57
59	12/18/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
58	12/14/2006	CORRESPONDENCE ADDRESS CHANGE			
57	08/10/2006	MAIL FINAL REJECTION (PTOL - 326)			
56	08/07/2006	FINAL REJECTION			
55	05/26/2006	DATE FORWARDED TO EXAMINER			
54	05/23/2006	RESPONSE AFTER NON-FINAL ACTION			
53	02/23/2006	MAIL NON-FINAL REJECTION			

52	02/21/2006	NON-FINAL REJECTION			
51	09/12/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
50	07/02/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
49	12/06/2005	DATE FORWARDED TO EXAMINER			
48	12/01/2005	RESPONSE AFTER NON-FINAL ACTION			
47	09/02/2005	MAIL NON-FINAL REJECTION	530		-1
46	08/22/2005	NON-FINAL REJECTION			
45	11/22/2004	MISCELLANEOUS INCOMING LETTER			
44	07/26/2004	MISCELLANEOUS INCOMING LETTER			
43	05/06/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
42	05/06/2004	CASE DOCKETED TO EXAMINER IN GAU			
41	12/30/2003	PRELIMINARY AMENDMENT			
40	10/20/2003	PRELIMINARY AMENDMENT			
39	09/12/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38	09/12/2003	PRELIMINARY AMENDMENT			
37	07/02/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
36	07/02/2003	PRELIMINARY AMENDMENT			
35	01/21/2003	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
34	01/16/2004	APPLICATION DISPATCHED FROM OIPE			
33	01/16/2004	APPLICATION IS NOW COMPLETE			
32	12/30/2003	ADDITIONAL APPLICATION FILING FEES		150	7
31	12/30/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
30	01/14/2004	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
29	10/31/2003	SEQUENCE ERRORS			
28	10/20/2003	ADDITIONAL APPLICATION FILING FEES			
27	10/20/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
26	10/30/2003	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
25	09/29/2003	SEQUENCE ERRORS			
24	01/21/2003	CLAIM PRELIMINARY AMENDMENT			
23	01/21/2003	DRAWING PRELIMINARY AMENDMENT			

22	09/12/2003	ADDITIONAL APPLICATION FILING FEES			
21	09/12/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
20	09/24/2003	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
19	08/19/2003	SEQUENCE ERRORS			
17	07/02/2003	ADDITIONAL APPLICATION FILING FEES			
14	07/02/2003	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
13	07/02/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
12	07/02/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
11	01/21/2003	CLAIM PRELIMINARY AMENDMENT			
9	01/21/2003	A DOCUMENT THAT CONTAINS, AT LEAST IN PART, A WRITTEN DESCRIPTION OF AN INVENTION, AND OF THE MANNE			
8	07/16/2003	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
7	05/02/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
6	01/21/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
4	04/11/2003	CLEARED BY L&R (LARS)			
3	03/29/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/31/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/21/2003	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back use Back button on your browser toolbar.

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

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JUL 1 8 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Thomas Hermann, et al. :
Application No. 10/347,492 :
Filed: January 21, 2003 :
Attorney Docket No. P 0300240 000261 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 14, 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 June 3, 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 at midnight on September 3, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137 (b) in that (1) the reply in the form of an Amendment; (2) the petition fee; (3) the required statement of unintentional delay have been received. Accordingly, the petition filed March 14, 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 matter is being referred to Technology Center 1600, Art Unit 1652 for further processing.

Retta Williams

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

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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 7

INTELLECTUAL PROPERTY GROUP
FREDRIKSON & BYRON, P.A.
4000 PILLSBURY CENTER
200 SOUTH SIXTH STREET
MINNEAPOLIS MN 55402

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JUN 1 6 2003

OFFICE OF PETITIONS

In re Application of Trpkovski Application No. 10/347,500 Filed: January 15, 2003 Attorney Docket No. 44046.103.215.3 For: METHODS AND APPARATUS FOR HANDLING FRAGILE BARS	: : : : : :	DECISION GRANTING PETITION

This is a decision on the petition, filed April 22, 2003, requesting, in effect, withdrawal of the February 27, 2003 Notice to File Missing Parts of Nonprovisional Application (Notice), insofar as it alleges that Figure 19 was omitted from the application when it was filed on January 15, 2003. The petition will be treated under 37 CFR 1.53(e).

The application was filed on January 15, 2003. On February 27, 2003, the Office of Initial Patent Examination mailed a Notice informing petitioner that Figure 19 described in the specification appeared to have been omitted.

In response to the Notice, petitioner timely filed the present petition. Petitioner requests that Figure 19 be accorded a filing date of January 15, 2003 on the basis that 19 sheets of drawing figures, including Figure 19, were received in the Patent and Trademark Office (PTO) on January 15, 2003. In support, the petition is accompanied by a copy of applicant's itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing January 15, 2003 as the date of receipt. The postcard lists, *inter alia*, that the filing included 19 pages of figures.

The return postcard constitutes *prima facie* evidence that 19 pages of drawing figures were filed on January 15, 2003. MPEP 503. A review of the application file reveals that there only 18 pages of drawings are present. Accordingly, the request is granted.

Pursuant to petitioner's authorization, the $130.00 petition fee will be credited to deposit account no. 06-1910.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of January 15, 2003, using the copy of Figure 19 submitted with the instant petition. Office records will be corrected to show that 19 sheets of drawings were present on filing.

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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FOLEY & LARDNER
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON, WI 53701-1497

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OFFICE OF PETITIONS

In re Application of :
Gary Ashley, et al. :
Application No. 10/347,512 :
Filed: January 17, 2003 :
Attorney Docket No. 026579-0102 :

ON PETITION

This is a decision on the petition, filed June 8, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on May 7, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220.

The application is being referred to Technology Center AU 1623 for further processing of the request for continued examination under 37 CFR 1.114 and consideration of the petition under 37 CFR 1.48(a).

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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Paper No.

Date : June 18, 2004

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Gary Ashley, et al.
Application No. : 10/347,512
Filed : January 17, 2003

The above-identified application has been assigned Patent No. 6,759,391 and an issue date of July 6, 2004.

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

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of July 6, 2004:

> "All reference to Patent No. 6,759,391 to GARY ASHLEY, ET AL. of CALIFORNIA for AMIDO MACROLIDES appearing in the Official Gazette of July 6, 2004, should be deleted since no patent was granted."

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

cc: Geraldine Dozier, Crystal Park 3-44l (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite ll00 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-9l0 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane K.Davis, P/OCS, CM1-6A07
Tamara K. Greene, PK3-910

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LERNER GREENBERG STEMER LLP
P O BOX 2480
HOLLYWOOD FL 33022-2480

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OFFICE OF PETITIONS

In re Patent No. 6,877,931	:	
Application No. 10/347,537	:	
Filed: January 17, 2003	:	ON PETITION
Issued: April 12, 2005	:	
Attorney Docket No. WFP-0201	:	

This is a decision on the petition under 37 CFR 3.81(b), filed May 26, 2005, to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

The patent file is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to Petitions Examiner Liana Walsh at (571) 272-3206. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Frances Hicks
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

BAKER BOTTS L.L.P.
30 ROCKEFELLER PLAZA
NEW YORK NY 10012-4498

In re application of
Timm J. Fenton et al
Application No. 10/347,541
Filed: January 17, 2003
Attorney Docket No. A35252 072841.0166

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

This 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) 272-3208.

Karen Creasy
Petitions Examiner
Office of Petitions

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TC 3600

CHRISTOPHER JOHN RUDY
STE. 8
209 HURON AVE.
PORT HURON, MI 48060

In re Application of Richard H. Hall et al Application No. 10/347,545 Filed: January 21, 2003 Attorney Docket No.: BLKT-358/DIV For: INERT GAS BLANKET FOR PROTECTION FROM OXIDATION	DECISION ON PETITION UNDER 37 CFR 1.181

This is a decision on applicants' petitions under 37 CFR 1.181 filed July 8, 2004 to withdraw the election of species requirement of June 30, 2003 and filed August 12, 2004 requesting withdrawal of the finality of the Office action mailed May 10, 2004 or that the amendment under 37 CFR 1.116 July 8, 2004 be entered.

Both petitions are **DENIED.**

The record reflects that on June 30, 2003 a non-final Office action was mailed setting forth an election of species requirement. On July 17, 2003 applicants filed a response to the election of species requirement, electing the embodiment of Figure 2 with traverse. On September 26, 2003 a non-final Office action was mailed acknowledging applicants' election, responding to applicants' traversal thereof and making the requirement Final, withdrawing claims 14-20 from consideration, rejecting claim 5 under 35 U.S.C. §112, and rejecting claims 1-4 and 6-13 under 35 U.S.C. §102. On November 26, 2003 applicants filed an amendment amending claims 1-8, canceling claims 9-20, and adding new claims 21-30. On January 30, 2004 an Office action was mailed indicating the reply of November 26, 2003 was not fully responsive. On February 24, 2004 applicants filed an amendment amending claims 1 and 21-30, and adding new claims 31-33. On May 10, 2004 a final Office action was mailed withdrawing claims 1-7 and 29-31 from consideration, rejecting claims 21-28, 32, and 33 under 35 U.S.C. §112, rejecting claims 21, 22, and 33 under 35 U.S.C. §102, and rejecting claims 21-28 and 32 under 35 U.S.C. §103. On July 8, 2004 applicants filed an amendment under 37 CFR 1.116 amending claims 21-28, 32, and 33. On August 9, 2004 an Advisory Action was mailed denying entry of the amendment filed July 8, 2004.

In the petition filed July 8, 2004 requesting withdrawal of the election of species requirement, applicants argue withdrawn claims 1-7 and 29-31 should be examined because subject matter therein is found in examined claims 21-28, 32, and 33. Specifically, applicants state that examined claim 25 requires a catalytic converter and therefor, claim 1 which was withdrawn from consideration because of the inclusion of a catalytic converter, not illustrated in the elected embodiment of Figure 2, should be examined. Applicants further argue that the specification states that a catalytic converter can be found on an airplane.

In the petition filed August 12, 2004 to withdraw the finality of the Office action mailed May 10, 2004 or enter the amendment under 37 CFR 1.116 filed July 8, 2004, applicants argue that the amendment of February 24, 2004 did not necessitate a new grounds of rejection because it did not change the scope of the claimed subject matter from that of former claim 26. Applicants further argue that the amendment under 37 CFR 1.116 should be entered because the amendment to claim 21 requires the limitations of former claim 26 into claim 21, and the amendment to claim 33 is made to include the subject matter of former claims 21 and 23.

37 CFR 1.181(f) states: The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provide. This two-month period is not extendable.

MPEP 801.01(a) sets forth: Election of species should be required prior to a search on the merits (A) in all applications containing claims to a plurality of species with no generic claims, and (B) in all applications containing both species claims and generic or Markush claims.

MPEP 706.07 sets forth that the examiner should never lose sight of the fact that in every case the applicant is entitled to a fair and full hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal; and that in making the final rejection, the grounds of rejection must be clearly developed to such an extent that applicant may readily judge the advisability of appeal unless a single previous Office action contains a complete statement supporting the rejection. Furthermore, MPEP 706.07(a) sets forth that the second or any subsequent action on the merits shall be made final except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

With regard to the election of species requirement, it is noted that the petition is not timely. Nevertheless, it is maintained that applicants' first argument, that examined claim 25 requires a catalytic converter, is not persuasive. Claim 25 sets forth among other things, "a carburetor; fuel injector; catalytic converter; and/or a pilot, driver or

passenger cabin or compartment". Due to the use of the alternative language, claim 25 does not specifically require a catalytic converter as it only requires one of the components listed be present, not all of the elements. Next, applicants' argument that the specification requires a catalytic converter in the embodiment of Figure 2 is not persuasive in view of the fact that a catalytic converter is not shown as part of the Figure 2 embodiment.

With regard to the propriety of the finality of the Office action mailed May 10, 2004, it is noted that newly filed claims 21-33 were not present in the application at the time of the non-final Office action mailed September 26, 2003. Claims 21-33 that were filed after the September 26, 2003 Office action required oxidizable material that includes "combustible insulation of the wiring." No claim examined previous to the September 26, 2003 Office action required such a limitation. Accordingly, the newly submitted claims necessitated the new grounds of rejection.

With regard to the non-entry of the amendment filed July 8, 2004, the proposed change to claim 33 would change the scope of the claim, thus raising a new issue. Accordingly, the examiner's decision not to enter the amendment was proper.

SUMMARY: The petition to withdraw the election requirement is **DENIED**.
The petition to withdraw the finality of the May 10, 2004 Office action is **DENIED**.

Robert J. Oberleitner, Director
Patent Technology Center 3600
(703) 308-1134

RJO/dab

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DAVID T. BOOTZ
5795 W. EDGEWOOD DRIVE
APPLETON WI 54915

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OFFICE OF PETITIONS

In re Application of
David Thomas Bootz
Application No. 10/347,546
Filed: January 21, 2003
For: 2 STROKE PAINTING SYSTEM

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed August 22, 2005, 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 an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action of May 25, 2004, is accepted as having been unintentionally delayed.

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.

Additionally, petitioner should note **37 CFR 1.4(c)**, where a separate paper is required for each distinct subject.

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

This matter is being referred to Technology Center AU 3727.

Karen Creasy

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

cc:
WILHELM LAW SERVICE
100 W. LAWRENCE STREET, THIRD FLOOR
APPLETON, WISCONSIN 54911

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OFFICE OF PETITIONS

WILHELM LAW SERVICE, S.C.
100 W LAWRENCE ST
THIRD FLOOR
APPLETON WI 54911

In re Application of	:	
Bootz	:	
Application No. 10/347,546	:	DECISION
Filed: 21 January, 2003	:	
Attorney Docket No. 29869	:	

This is a decision on the petition filed on 18 May, 2007, to revive an application under 37 C.F.R. §1.137(a) as having been abandoned due to unavoidable delay.

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. §1.137(a) is **DISMISSED**.

The Revocation/Power of Attorney filed on 9 March, 2007, is accepted and has been made of record.

NOTES:

Any petition (and fee) for reconsideration of this decision must be submitted within two (2) months from the mail date of this decision.

Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(a)."

[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.**

Thereafter, there will be no further reconsideration of this matter.[2]

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to a final Office action mailed on 7 April, 2006 (copy enclosed), with reply due absent extension of time on or before 7 July, 2006;
- the application went abandoned by operation of law after midnight 7 July, 2006;
- it does not appear that the Office mailed the Notice of Abandonment before the instant petition was filed;
- on 18 May, 2007, Petitioner expressly submitted the instant petition under 37 C.F.R. §1.137(a) and expressly alleged unavoidable delay, without reply, and averred as his statement of unavoidable delay that the Office action was mailed to his client, rather than to his office as directed by the Revocation/Power of Attorney mailed by him and received by the Office on 9 March, 2006, almost a month before the Office action was mailed, and in support of the averment, while Petitioner did not submit a copy of the Revocation/Power of Attorney, Petitioner did provide a copy of the date-stamped ("MAR 09 2006") receipt card (see: MPEP §503[1]). While Petitioner is cautioned always to

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2 For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Louden, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R.§§1.181, 182, 183.

1 MPEP §503 provides in pertinent part:

§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application.for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

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

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application

provide copies of documents he avers have been filed, in the instant case a copy of the document in question does appear in the file.

Nonetheless, Petitioner has failed to satisfy all of the regulatory requirements of the petition under 37 C.F.R. §1.137(a) alleging unavoidable delay, to wit: petition, fee, reply, showing of unavoidable delay.

Petitioner clearly failed to provide a reply.

(If Petitioner intended to file a petition under 37 C.F.R. §1.181, he failed to do so and make the required showings and statements (see: the guidance in the Commentary at MPEP §711.03(c)), and: (a) the time for doing so has passed. and (b) the Office is not at liberty to undertake this allegation on behalf of Petitioner.)

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 should note that those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[4]

---

filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

[4] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

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 —

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).[6]

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.

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6]

And the Petitioner must be diligent in attending to the matter.[7] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(4) Imposing a monetary sanction;
(5) Requiring a terminal disclaimer for the period of the delay; or
(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).

[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

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

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

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

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

As to Allegations
of Unavoidable Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(a) are the petition and fee, a proper reply, a showing of unavoidable delay, and–where appropriate—a terminal disclaimer and fee.

Petitioner does not appear to have satisfied the "reply" requirements under the regulation.

CONCLUSION

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

ALTERNATIVE VENUE

If Petitioner is unable to make a showing of unavoidable delay, Petitioner's only alternative to irretrievable abandonment is to file a petition under 37 C.F.R. §1.137(b) (state therein that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional").

Petitioner may wish to refer to the guidance (as to revival of abandoned applications) found at the Office website at http://www.uspto.gov/web/offices/pac/dapp/petitionspractice.html#lapse and/or review the guidance at http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c

Thus, Petitioner may wish to supplement the petition to plead alternatively under 37 C.F.R. §1.137(b) wherein the "showing" burden is much less onerous.

Further correspondence with respect to this matter should be addressed as follows: [9]

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

By FAX: IFW Formal Filings
(571) 273-8300
ATTN.: Office of Petitions

[9] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

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

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[10]) 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

[10] 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.
10/347,546	01/21/2003	David Thomas Bootz	29869	6155

7590 04/07/2006

David T. Bootz
5795 W. Edgewood Drive
Appleton, WI 54915

EXAMINER
CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 04/07/2006

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

Office Action Summary	Application No.	Applicant(s)	
	10/347,546	BOOTZ, DAVID THOMAS	
	Examiner	Art Unit	
	Stephen J. Castellano	3727	

-- 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 *23 January 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) *3-8* 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) *3-8* 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 _____ 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 *3-24-06*.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

Claims 1 and 2 are canceled. Claims 3-8 are pending.

Claim 4 is objected to and is incomplete because it depends from canceled claim 1.

New matter has been added to the drawings and the specification. The drawings include Fig. 3 a cross sectional representation where no cross sectional representation had been previously submitted as the original filing included what is believed to be an elevation or side view of the apparatus. Figure 3 shows the thickness and vertical length dimensions of the inner ring wall which had not been originally disclosed. There may be other instances of new matter in the drawings. Applicant should carefully review the drawings to make sure to remove all new matter. The specification includes in the first paragraph of the BACKGROUND OF THE INVENTION section an indication of a more general use "relates generally to tools, devices, and/or other implements commonly used by users of paint, ... other trades persons, and/or others." This more general usage was not originally supported by applicant's disclosure. Another example, on page 22, line 17, "opening passage "OP" is adapted and configured to enable a paint brush to pass therethrough." This method of use was not originally disclosed. There may be other instances of new matter in the specification. Applicant should carefully review the entire specification to make sure to remove all new matter.

Drawing Fig. 3 is objected to because the section lines have not been shown and it is believed that no section would show internal portions of the ring at the same time as external portions such as the lifting tab

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.

Claim 4 is 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.

The metes and bounds of claim 4 can't be determined since it depends from canceled claim 1.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Sasse.

Sasse discloses an apparatus for fitting over the rim of an open paint can comprising a generally annular outer rim cover, a brush dipping cavity, a brush wiping cavity and an opening passage between and connecting the dipping and wiping cavities. Sasse discloses a linear wiping edge (wiping bar 72) with two ends and first and second arcuate projecting members (lugs 74, arcuate at their bottom edge), the arcuate projecting members are connected to respective ends of the wiping edge. A plane parallel to and touching both of the right side vertical surfaces of the lugs 74 as shown in Fig. 2 and 3 delineates an opening passage that separates a wiping cavity on the left side of the plane from a dipping cavity on the right side of the plane.

Re the dimensional relationships, these dimensional relationships are shown by Sasse. In Fig. 1 of the present invention, all lengths extend in a direction from top to bottom in Fig. 1 while all widths extend in a direction from left to right. By rotating Fig. 2 of Sasse 90 degrees counterclockwise the length and width directions will be similarly oriented to Fig. 1 of the

present invention, the dipping cavity will be above the wiping cavity in Fig. 2. The dimensional limitations of claims 3-7 will be discussed in this rotated orientation of Fig. 2 of Sasse.

Re claims 3 and 7, the width of the wiping cavity (W_{BWC}) is greater than ½ the width of the dipping cavity (W_{BDC}).

Re claims 4 and 6, the width of the opening passage (W_{OP}) is greater than ½ the width of the dipping cavity (W_{BDC}).

Re claim 5, the width of the wiping cavity (W_{BWC}) is greater than the length of the wiping cavity (L_{BWC})(as the wiping cavity length extends from the opening passage plane to the inner annular surface of the rim cover).

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.

Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasse in view of Nelson.

This rejection is made should it be deemed that Sasse lacks a dimensional relationship. Nelson teaches several wiping bars (cross rods 30) at various locations extending from over the center of the opening to closely adjacent to the edge of the opening. It would have been obvious to place the wiping bar and corresponding lugs of Sasse at any desired location between over the center of the opening to closely adjacent to the edge of the opening as a matter of design choice. Therefore, the dimensional relationships between wiping cavity, dipping cavity and opening

passage claimed would be met. Also, there is no criticality to the placement of the wiping cavity, dipping cavity and opening passage set forth in applicant's specification.

Applicant's arguments with respect to claims 3-8 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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).

S Castellano

Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc

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

WILHELM LAW SERVICE, S.C.
100 W LAWRENCE ST
THIRD FLOOR
APPLETON WI 54911

In re Application of	:	
Bootz	:	
Application No. 10/347,546	:	DECISION
Filed: 21 January, 2003	:	
Attorney Docket No. 29869	:	

This is a decision on the petition filed on 2 January, 2008, to revive an application under 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

The petition as considered under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to a final Office action mailed on 7 April, 2006 (copy enclosed with the 10 December, 2007, decision), with reply due absent extension of time on or before 7 July, 2006;

- the application went abandoned by operation of law after midnight 7 July, 2006;

- it does not appear that the Office mailed the Notice of Abandonment before the instant petition was filed;

- on 18 May, 2007, Petitioner submitted the original petition under 37 C.F.R. §1.137(a) and expressly alleged unavoidable delay, without reply, and averred as his statement of unavoidable delay that the Office action was mailed to his client, rather than to his office as directed by the Revocation/Power of Attorney mailed by him and received by the

Office on 9 March, 2006, almost a month before the Office action was mailed, and in support of the averment, while Petitioner did not submit a copy of the Revocation/Power of Attorney, Petitioner did provide a copy of the date-stamped ("MAR 09 2006") receipt card (see: MPEP §503[1]). While Petitioner is cautioned always to provide copies of documents he avers have been filed, in the instant case a copy of the document in question does appear in the file—however, because Petitioner failed to satisfy all of the regulatory requirements of the petition under 37 C.F.R. §1.137(a) alleging unavoidable delay, to wit: petition, fee, reply, showing of unavoidable delay, the petition was dismissed on 10 December, 2007;

- the instant petition, alleging unintentional delay seeks to overcome the former deficiencies—it is noted that while a request for continued examination (RCE) and fee was filed with a submission (in the form of an IDS) consistent with the regulations at 37 C.F.R. §1.114, no amendment was submitted (in reply to the final Office action of 7 April, 2006), however, Petitioner avers the filing on 18 May, 2007, of a continuation in part.

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[1] MPEP §503 provides in pertinent part:

§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

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

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

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items.
Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

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 should note that those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

STATUTES, REGULATIONS 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.

Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[4]

And the Petitioner must be diligent in attending to the matter.[5] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

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[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

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

[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: 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.[6]))

As to Allegations
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a proper reply, a statement/showing of unintentional delay, and–where appropriate—a terminal disclaimer and fee.

Petitioner appear to have satisfied the requirements under the regulation.

CONCLUSION

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

The instant application is released to Technology Center/AU 3781 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[7]) 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

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

[7] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OFFICE OF PETITIONS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
LANGLEY RESEARCH CENTER
3 LANGLEY BOULEVARD
MAIL STOP 212
HAMPTON, VA 23681-2199

In re Application of	:
Robert G. Bryant et al	:
Application No. 10/347,563	: DECISION GRANTING PETITION
Filed: January 16, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. LAR 16289-1	:

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 6, 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 2834 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 7

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OFFICE OF PETITIONS

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

In re Application of
Fichet et al.
Application No. 10/347,576
Filed: January 21, 2003
Attorney Docket No. 2182.0320006
For: Signal Generation and Broadcasting

: DECISION ACCORDING
: STATUS UNDER
: 37 CFR 1.47

This is in response to the petition under 37 CFR 1.47(a) filed September 4, 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.

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 should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
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. 8

Pierre De La Tullaye
La Saillére
49390 Sceaux d'Anjou
FRANCE

In re Application of	:	
Fichet et al.	:	
Application No. 10/347,576	:	Letter
Filed: January 21, 2003	:	
Attorney Docket No. 2182.0320006	:	
For: Signal Generation and Broadcasting	:	

Dear Mr. de la Tullaye:

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

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

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

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

cc: STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

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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Timothy J. Klima
Harbin King & Klima
500 Ninth Street, S.E.
Washington DC 20003

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JAN 12 2007

OFFICE OF PETITIONS

In re Application of
LUCA CERATI et. Al.
Application No. 10/347,618
Filed: January 22, 2003
Attorney Docket No. TK388

DECISION ON PETITION

This is a decision on the petition, filed November 28, 2005, 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.

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 4, 2006, to revive the above-identified application.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **DISMISSED** in view of petitioner's request on May 4, 2006 to withdraw the petition on November 28, 2005.

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

This application became abandoned for failure to timely pay the issue fee or before September 13, 2005, as required by the Notice of Allowance and Fee(s) Due, mailed June 13, 2005. Accordingly, the date of abandonment of this application is September 14, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,400 and the publication fee of $300, (2) the petition fee of $1,500; and (3) a proper statement of unintentional delay.

A duplicate publication fee payment of $300 was made with the filing of the petition on November 28, 2005. Accordingly $300 has been refunded to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Amelia Au at (571) 272-7414.

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

Amelia Au
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper 4

PATRICK J. FAY, ESQ.
FAY, KAPLUN & MARCIN, LLP
150 BROADWAY, SUITE 702
NEW YORK NY 10038

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JUN 0 3 2003

OFFICE OF PETITIONS

In re Application of
Ronald D. Adams et al.
Application No. 10/347,648
Filed: January 17, 2003
Attorney Docket No. 10121/00807

DECISION GRANTING PETITION

This is a decision on the petition filed April 17, 2003 under 37 CFR 1.53, in response to the "Notice of Omitted Items" mailed March 10, 2003.

The instant application was filed January 17, 2003 and a filing date was accorded. However, according to the Notice of Omitted Items, the application papers submitted did not include page 20 of the specification.

Petitioner asserts that page 20 was among the papers filed on January 17, 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 24 and bears a United States Patent and Trademark Office date-stamp of January 17, 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 17, 2003 and page 20 of the specification submitted April 17, 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

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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PATRICK J. FAY, ESQ.
FAY KAPLUN & MARCIN, LLP
SUITE 702
150 BROADWAY
NEW YORK NY 10038

MAILED

MAR 23 2010

OFFICE OF PETITIONS

In re Application of	:	
ADAMS, Ronald D. et al.	:	
Application No. 10/347,648	:	DECISION ON PETITION
Filed: January 17, 2003	:	TO WITHDRAW
Attorney Docket No. **10121/00807**	:	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 09, 2010.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request cannot be approved because the signature on the Request to Withdraw as attorney does not have an original signature. All correspondence filed in the Office should be an original document and must include an original signature. It appears that the top of the petition is original; however the bottom of the petition appears to have a copied signature, which is not permitted by the USPTO. Since the petition is half original and half copied it does not appear that an original could have been retained as set forth in 37 CFR 1.4 below.

§ 1.4 Nature of correspondence and signature requirements.

(d)(1)*Handwritten signature.* Each piece of correspondence, except as provided in paragraphs (d)(2), (d)(3), (e) and (f) of this section, filed in an application, patent file, or other proceeding in the Office which requires a person's signature, must:

(i)Be an original, that is, have an original handwritten signature personally signed, in permanent dark ink or its equivalent, by that person; or

(ii)Be a direct or indirect copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

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 571-272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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OPTV/MOFO
C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

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OFFICE OF PETITIONS

In re Application of	:	
MARKEL	:	
Application No. 10/347,656	:	DECISION ON PETITION
Filed: January 16, 2003	:	TO WITHDRAW
Attorney Docket No. 043978-017100	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 14, 2006.

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

A review of the file record indicates that the power of attorney to **OPTV/MOFO, C/O MORRISON & FOERSTER LLP** has been revoked by the assignee of the patent application on October 19, 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 indicated 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: **NIXON PEABODY, LLP**
401 9TH STREET, NW
SUITE 900
WASHINGTON, DC 20004-2128

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 NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/347,656	01/16/2003	Steven O. Markel	577172001420

CONFIRMATION NO. 6427

OC000000021502814

43997
OPTV/MOFO
C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

Date Mailed: 12/06/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/19/2006.

- 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).

PATRICIA A VOLPE
OP (571) 272-6825

FORMER ATTORNEY/AGENT COPY

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OPTV/MOFO
C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 300
MCLEAN, VA 22102

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JUN 11 2007

OFFICE OF PETITIONS

In re Application of	:	
Steven O. Markel, et al.	:	
Application No. 10/347,656	:	DECISION ON PETITION
Filed: January 16, 2003	:	TO WITHDRAW
Attorney Docket No. 577172001420	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed January 17, 2007.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to OPTV/MOFO C/O Morrison & Foerster has been revoked by the assignee of the patent application on October 19, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: MARC KAUFMAN, ESQ.
NIXON PEABODY, LLP
401 9TH STREET NW
SUITE 900
WASHINGTON, DC 20004

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/26/09

TO SPE OF : ART UNIT 2174

SUBJECT : Request for Certificate of Correction for Appl. No.: 10347656 Patent No.: 7526723 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square 9D40-D
Palm Location 7580
You can fax the Directors/SPE response to 571-270-9990

LAMONTE NEWSOME
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: The request is hereby approved.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Doon (Dennis) Chow AU 2174 7/31/09

SPE 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)
6726577	2004-04-27	10/347,720	2003-01-21	200202.401

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	/thomas e loop/	Date (YYYY-MM-DD)	2008-06-04
Name	Thomas E Loop	Registration Number	42810

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. 6726577
Issue Date: April 27,2004
Application No. 10347720
Filed: January 21,2003
Attorney Docket No. 200202.401

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

This is a decision on the electronic petition, filed June 4,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of June 4,2008 . 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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MAILED
MAY 20 2010
OFFICE OF PETITIONS

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Patent No. 7,615,084	:	DECISION ON REQUEST
Iijima, et al.	:	FOR
Issue Date: November 10, 2009	:	RECONSIDERATION OF
Application No. 10/347,744	:	PATENT TERM ADJUSTMENT
Filed: January 22, 2003	:	and
Atty Docket No.232210US	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 28, 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, five hundred and thirty-five (1,535) 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, five hundred and thirty-five (1,535) days is **GRANTED**.

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.

Deposit account 15-0030 will be charged $70.00 towards the satisfaction of the $200.00 fee under 37 CFR 1.18(e). No additional fees are due.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or

adjusted by **one thousand, five hundred and thirty-five (1,535) days.**

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,615,084 B2

DATED : Nov. 10, 2009

INVENTOR(S) : Iijima 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 (1162) days

Delete the phrase "by 1162 days" and insert – by 1535 days--

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Andrew M. Calderon
Greenblum and Berstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

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SEP 06 2006

OFFICE OF PETITIONS

In re Application of :

Christian Hunt et al. :
Application No. 10/347,764 : DECISION ON PETITION
Filed: January 2, 003 : TO WITHDRAW
Attorney Docket No. 07680001AA : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 18, 2006.

The request is **NOT APPROVED**.

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

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, **that Care Rehab & Orthopedic Products, Inc. has not remitted payment**, do not meet any of the conditions set forth in 37 CFR 10.40 because Care Rehab & Orthopedic Products, Inc. has not properly intervened in accordance with 37 CFR 3.73(b).

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

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

David Bucci
Petitions Examiner
Office of Petitions

cc: Christian Hunt
c/o Josh Witmer
Care Rehab & Orthopedic Products, Inc.
P.O. Box 580
McLean, VA 22101

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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
10/347,764	01/22/2003	Christian Hunt	07680001AA

CONFIRMATION NO. 6594

OC000000020056328

OC000000020056328

Andrew M. Calderon
Greenblum and Bernstein P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

Date Mailed: 08/16/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/18/2006.

- 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.

Terri S. Williams

TERRI S WILLIAMS
OP (571) 272-2991

FORMER ATTORNEY/AGENT COPY

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MILES & STOCKBRIDGE PC
1751 PINNACLE DRIVE
SUITE 500
MCLEAN VA 22102-3833

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In re Patent No. 6,717,835	:	
Issue Date: April 6, 2004	:	
Application No. 10/347,804	:	DECISION ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. XA-9530C	:	

This is a decision on the "REQUEST UNDER 37 C.F.R. § 3.81(b) FOR CORRECTION OF PATENT TO STATE ASSIGNEE NAME", filed March 16, 2008.

The petition is **GRANTED**.

An application may issue in the name of an assignee rather than the applicant if requested prior to issuance of a patent.[1] However, in the event the request is not made prior to issuance, a Certificate of Correction under 37 CFR 1.323 may be requested. A request for a Certificate of Correction under 37 CFR 1.323 to correct the assignee's name will not be granted unless a petition under 37 CFR 3.81(b) is granted. Such request under 37 CFR 3.81(b) should include:

(A) the processing fee required by 37 CFR 1.17(i);

(B) a request for issuance of the application in the name of the assignee, or a request that a patent be corrected to state the name of the assignee;

---

[1] See 37 CFR 3.81.

(C) a statement that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent; and

(D) a request for a certificate of correction under 37 CFR 1.323 accompanied by the fee set forth in 37 CFR 1.20(a).[2]

The $100 fee for the Certificate of Correction and the $130 processing fee set forth in 37 CFR 1.17(i) have been charged to Deposit Account No. 50-1165, as authorized.

The file is being forwarded to the Certificate of Corrections Branch for issuance of the requested Certificate of Correction.

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

Cliff Congo
Petitions Attorney
Office of Petitions

---

[2] MPEP 307.

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JJGJR.: 06-06

Paper No: __

AMD
ATTN:
SAMANTHA CARDONA
5204 E BEN WHITE, MS 562
AUSTIN TX 78741

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JUN 19 2006

OFFICE OF PETITIONS

In re Application of	:	
Pickett, et al.	:	
Application No. 10/347,822	:	DECISION
Filing Date: 21 January, 2003	:	
Attorney Docket No.: 5500-68901	:	

This is a decision on the petition filed on 29 March, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Notice of Allowance and Fees Due and Notice of Allowability mailed on 26 July, 2005, with reply due absent extension of time on or before 26 October, 2005;
- the instant application went abandoned after midnight 26 October, 2005;
- the attempt to pay the Issue Fee on 11 August, 2005, failed due to insufficient funds in the designated deposit account;
- the Office mailed a Notice of Abandonment on 1 March, 2006;

- on 1 March, 2006, Petitioner filed the original petition (with fee), reply in the form of fees due but failed to make the statement ("...the entire delay ... from the due date of the reply to the filing of a grantable petition ... was unintentional ...") nor showing of unintentional delay (docket records)–however, **the petition is read to so state, and Petitioner hereby is placed on notice that, under his duty of candor to the Office he must notify the Office is this reading is incorrect.**[1]

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

---

[1] 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 the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).

[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.

constitute the care required under Pratt,[7] and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

As to the Allegation
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995, or is a design application.

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

CONCLUSION

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

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

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

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

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[7] The test of diligence in the prosecution of an application before the Commissioner is, in the context of ordinary human affairs, the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

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

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DEC 30 2004

BELLSOUTH CORPORATION
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

In re Application of	:
Azhar I Khan	:
Serial No.: 10/347,833	: PETITION DECISION
Filed: January 21, 2003	:
Attorney Docket No.:	:
60027.0016USC1/BS01137	

This is in response to the petition under 37 CFR 1.181, filed November 18, 2004, for withdrawal of abandonment of the above identified application based on a timely response to the Office Action of March 24, 2004.

A review of the file history shows that the examiner mailed an Office action to applicants on March 24, 2004 , setting a three month shortened statutory period for reply. The file history shows that a timely response was received in TC 2600 on June 6, 2004. The abandonment was a clerical error. The examiner who abandoned the application in TC 1600 mistyped the serial number of the application for which abandonment for failure to reply was proper. The above identified application was then improperly re-docketed to the examiner in TC1600 and then erroneously abandoned. The Office apologizes for the error and the application is restored to pending status with the mailing of this decision.

The petition is **GRANTED**.

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

Should there be any questions about this decision please contact William Dixon, by letter addressed to Director, TC 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Jasemine Chambers
Director, Technology Center 1600

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FEB 23 2004

Paper No. 7

In re Application of
Carl E. Voigt, IV
Application No. 10/347,850
Filed: January 21, 2003
Attorney Docket No. 1008-0538009

DECISION ON PETITION

This is a decision on the petition to make special filed on January 20, 2004. 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 application is being forwarded to the Supervisory Patent Examiner of Patent Examining Art Unit 3713 who will forward the application to the examiner for action consistent with this Decision.

PETITION GRANTED.

Stephen Marcus, Special Program Examiner,
Patent Examining Groups 3710 and 3720

Paul J. Maginot, Esq.
Maginot, Moore & Bowman
111 Monument Circle, Suite 3000
Bank One Center/Tower
Indianapolis, IN 46204-5115

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/347,855	01/21/2003	Peter M. Bonutti	780-A03-015-8	8255

33771 7590 03/22/2007
PAUL D. BIANCO: FLEIT, KAIN, GIBBONS,
GUTMAN, BONGINI, & BIANCO P.L.
21355 EAST DIXIE HIGHWAY
SUITE 115
MIAMI, FL 33180

EXAMINER
HAYES, MICHAEL J

ART UNIT	PAPER NUMBER
3734	

MAIL DATE	DELIVERY MODE
03/22/2007	PAPER

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

DECISION ON REQUEST TO CORRECT INVENTORSHIP

In view of the papers filed January 3, 2006 and fee paid January 4, 2006, the inventorship in this nonprovisional application has been changed by the deletion of Mark V. Brillhart.

Applicant's request filed January 3, 2006 has been found to comply with all of the requirements under 37 CFR 1.48(b).

Therefore, the petition is GRANTED.

MJ Hayes

Michael Hayes
Supervisory Patent Examiner
Art Unit 3734

UNITED STATES PATENT AND TRADEMARK OFFICE

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JEFFREY DRYER
50 ROUND HILL RD.
KINGSTON MA 02364

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FEB 24 2010

OFFICE OF PETITIONS

In re Patent No. 6,776,616	:	
Issue Date: August 17, 2004	:	
Application No. 10/347,893	:	DECISION ON PETITION
Filed: Janaury 20, 2003	:	
Attorney Docket No. 12002-10001	:	

This is a decision on the petition under 37 CFR 1.378(c), filed February 3, 2010 to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on August 18, 2008 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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

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HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

Mail Date: 04/21/2010

Applicant	: G. Paul Koning	: DECISION ON REQUEST FOR
Patent Number	: 7627650	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/347,901	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/20/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **881** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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Paper No. 10

RICHMOND, HITCHCOCK, FISH & DOLLAR
P.O. Box 2443
Bartlesville OK 74005

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OFFICE OF PETITIONS

In re Application of
Khare
Application No. 10/347,915
Filed: January 21, 2003
Attorney Docket No. 33877US2
For: DESULFURIZATION PROCESS AND NOVEL BIMETALLIC SORBENT SYSTEMS FOR SAME

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on January 18, 2005 (certificate of mailing date January 13, 2005) to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the July 15, 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 16, 2003. A Notice of Abandonment was mailed on February 12, 2004.

Applicant has submitted an amendment in reply to the July 15, 2003 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the July 15, 2003 non-final Office action, and the petition fee.

Regarding fees, pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $1,020.00 extension of time submitted with the petition on January 18, 2005 (certificate of mailing date January 13, 2005) was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account. The $1,500.00 petition fee and the $130.00 terminal disclaimer fee will be charged to petitioner's deposit account.

The petition is **GRANTED**.

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

correspondence regarding this application will be mailed solely to the address of record.

After the mailing of this decision the application will be forwarded to Technology Center G.A.U. 1755's technical support staff for entry of the amendment filed on January 18, 2005 (certificate of mailing date January 13, 2005).

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

cc: BRONWYN A. WELVAERT
206 PLB, BARTLESVILLE TECHNOLOGY CENTER
BARTLESVILLE, OK 74004

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OFFICE OF PETITIONS

PETER J. GORDON, PATENT COUNSEL
AVID TECHNOLOGY, INC.
ONE PARK WEST
TEWKSBURY MA 01876

In re Application of	:	
Ian F. STEWART et al.	:	
Application No. 10/347,922	:	ON PETITION
Filed: January 20, 2003	:	
Attorney Docket No. A2003003	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed August 14, 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 above-identified application became abandoned on November 15, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a response to a non-final Office action; (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 August 14, 2006 is accepted as having been unintentionally delayed.

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

Telephone inquiries concerning this decision should be directed to Brian Sines at (571) 272-6051 or in his absence, the undersigned at (571) 272-7099.

The application file is being referred to Technology Center AU 2123 for appropriate action on the concurrently filed amendment.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 9

HARRINGTON & SMITH, LLP
4 RESEARCH DRIVE
SHELTON CT 06484-6212

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FEB 09 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of
Henry Haverinen et al.
Application No. 10/347,947
Filed: January 21, 2003
Attorney Docket Number: 881.0008.U1(US)

This is in response to the petition under 37 CFR 1.47(a)[1] filed January 30, 2004.

The petition is DISMISSED.

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

The above-identified application was filed January 21, 2003, without an executed oath or declaration. Accordingly, on March 17, 2003, a Notice to File Missing Parts of Nonprovisional Application was mailed, requiring an oath or declaration and a surcharge for its late filing. In response, the present petition, petition fee and late filing surcharge, and a declaration naming Henry Haverinen, Anton Bush, Jyri Rinnemaa, Mike P. Smith, Timo Takamaki, Jukka Tuomi, Hannu Tuominen as joint inventors and signed by all joint inventors except Bush on behalf of themselves and joint inventor Bush, was filed.

Petitioners assert that the assignment and declaration was sent by e-mail to joint inventor Bush, but that he failed to sign and return the declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
(3) the petition fee;
(4) a surcharge of $130 or $65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and
(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1).

With regard to item (1), petitioners have not shown sufficient proof that a copy of the application (specification including claims, drawings, if any, and the declaration) was sent

[1] A grantable petition under 37 CFR 1.47(a) requires:
(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
(3) the petition fee; and
(4) a statement of the last known address of the non-signing inventor.

or given to the non-signing inventor for review. While it is noted that petitioners attempted to send the assignment and declaration by e-mail to the non-signing inventor, petitioners have not provided sufficient proof that a complete copy of the application (specification including claims, drawings, if any, and the declaration) was sent. As well, sufficient proof has not been provided that the e-mail was actually received and opened by the non-signing inventor. If Petitioners had sent a complete copy of the application (specification including claims, drawings, if any, and the declaration), they would have to provide proof that the non-signing inventor received and read the e-mail. Alternatively, petitioners may mail or hand deliver a copy of the application (specification including claims, drawings, if any, and the declaration) to the non-signing inventor or provide details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Additionally, it appears that a physical attempt to deliver a package to the last known address of the non-signing inventor was unsuccessful. Petitioner's have not provided proof that the package returned by DHL contained a complete copy of the application (specification including claims, drawings, if any, and the declaration).

Likewise, before a *bona fide* refusal to sign the declaration can be alleged, petitioners must show that a copy of the application was sent or given to the inventor.

Furthermore, since the non-signing inventor could not be located at the address (last known address) provided on the airwaybill provided to DHL, and since petitioners have averred that only one attempt was made to locate Mr. Bush, petitioners must show further diligence to locate him. Details of other efforts (i.e. telephone, e-mail, or Internet searches) made to contact the inventor should also be presented through affidavits or declarations made by individuals having first-hand knowledge of the details. If repeated efforts to contact the inventor(s) are unsuccessful, petitioners will have demonstrated that despite diligent efforts, the non-signing inventor(s) could not be located.[2]

It should be noted that the undersigned searched the internet telephone directory and found at least five individuals in the UK by the name of "A. Bush". Unless attempts are made to determine whether any of these individuals is the Anton Bush named as a joint inventor on the above identified patent application, as well as other efforts, it can't rightfully be said that petitioners have attempted to locate Mr. Bush.

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 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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[2] See MPEP 409.03(d).

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Paper No. 10

HARRINGTON & SMITH, LLP
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SHELTON CT 06484-6212

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OFFICE OF PETITIONS

In re Application of
Henry Haverinen et al.
Application No. 10/347,947
Filed: January 21, 2003
Attorney Docket Number: 881.0008.U1(US)

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on January 30, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

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

This application became abandoned May 19, 2003, for failure to timely reply to the Notice to File Missing Parts mailed on March 17, 2003, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed January 30, 2004.

Since the petition filed January 30, 2004, under 37 CFR 1.47(a) was dismissed in a

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[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In 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)).

decision mailed February 9, 2004, the required reply under 37 CFR 1.137(b), item 1 is lacking.

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 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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OFFICE OF PETITIONS

In re Application of Henry Haverinen et al. Application No. 10/347,947 Filed: January 21, 2003 Attorney Docket No. 881.0008.U1(US)	DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the renewed petition filed under 37 CFR 1.47(a) on March 24, 2004.[1]

The petition is GRANTED.

The above-identified application was filed January 21, 2003, without an executed oath or declaration. Accordingly, on March 17, 2003, a Notice to File Missing Parts of Nonprovisional Application was mailed, requiring an oath or declaration and a surcharge for its late filing. In response, the present petition, petition fee and late filing surcharge, and a declaration naming Henry Haverinen, Anton Bush, Jyri Rinnemaa, Mike P. Smith, Timo Takamaki, Jukka Tuomi, Hannu Tuominen as joint inventors and signed by all joint inventors except Bush on behalf of themselves and joint inventor Bush, was filed.

By remarks made by Attorney Gerald J. Stanton, it was shown that the a search of the internet and of a telephone directory for the United Kingdom (UK) produced no contact address or phone number for joint inventor Anton Bush. Copies of internet search records and the telephone directory was submitted as proof. Additionally, copies of a more recent letter which included the complete application as filed, was addressed to Mr. Bush. Proof that the letter was mailed at least on two occasions, and that on both occasions, delivery was unsuccessful at the last known address.

The proof submitted substantiates the claim that while diligent efforts have been made, joint inventor Anton Bush cannot be located.

[1] A petition under 37 CFR 1.47(a) and dismissed in a decision mailed February 10, 2004.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). In view thereof, this application is hereby accorded Rule 1.47(a) status.

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

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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Paper No. 14

ANTON BUSH
37 DALLAS YORK ROAD
NOTTINGHAM, NG9 2EZ
UNITED KINGDOM

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MAY 0 7 2004

OFFICE OF PETITIONS

In re Application of
Henry Haverinen et al.
Application No. 10/347,947
Filed: January 21, 2003
For: METHOD AND APPARATUS FOR AUTHENTICATION IN A WIRELESS TELECOMMUNICATIONS SYSTEM

Dear Bush:

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 Petitions Attorney at (703) 305-4497. 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).

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

cc:

HARRINGTON & SMITH, LLP
4 RESEARCH DRIVE
SHELTON CT 06484-6212

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Commissioner for Patents
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Paper No. 15

HARRINGTON & SMITH, LLP
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SHELTON CT 06484-6212

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MAY 1 0 2004
OFFICE OF PETITIONS

In re Application of
Henry Haverinen et al.
Application No. 10/347,947
Filed: January 21, 2003
Attorney Docket Number: 881.0008.U1(US)

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b),[1] filed March 24, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned May 19, 2003, for failure to timely reply to the Notice to File Missing Parts mailed on March 17, 2003, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed January 30, 2004. A petition filed January 30, 2004 to revive the application was dismissed in a decision mailed February 10, 2004.

The reply in the form of an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116 and all other requirements of 37 CFR 1.137(b) have been properly remitted.

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

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

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

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

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

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United States Patent and Trademark Office
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ANDREA Q. RYAN
SANOFI-AVENTIS U.S. LLC
1041 ROUTE 202-206
MAIL CODE: D303A
BRIDGEWATER, NJ 08807

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OFFICE OF PETITIONS

In re Application of	:	
Thomas T. Ortyl et al	:	
Application No. 10/347,953	:	ON PETITION
Filed: January 21, 2003	:	
Attorney Docket No. M01811USCNT4	:	

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

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $1500; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 11/740,655.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $1020 extension of time submitted with the petition on January 8, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

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Paper No. 5

OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT PC
1940 DUKE STREET
ALEXANDRIA VA 22314

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JUN 19 2003

OFFICE OF PETITIONS

In re Application of :
Asakawa, et al. :
Application No. 10/347,956 : DECISION ON PETITION
Filed: January 22, 2003 :
Attorney Docket No. 233111US0SRDDIV:

This is a decision on the petition filed May 5, 2003, to accord the above-identified application a filing date of January 22, 2003, with page 114 of the specification as a part of the original disclosure.

Application papers in the above-identified application were filed on January 22, 2003. However, on April 4, 2003, the Initial Patent Examination Division mailed a "Notice of Omitted Items in a Nonprovisional Application," notifying applicant that the application had been accorded a filing date; however, page 114 of the specification appeared to have been omitted.

In response, on May 5, 2003, applicant filed the present petition to accord the application a filing date of January 22, 2003, with page 114 as part of the original disclosure. Applicant asserted that page 114 was with the application as originally filed on January 22, 2003. In support thereof, applicant submitted, *inter alia*, a postcard receipt identifying this application, itemizing "265 pp. Specification" as enclosed, bearing a United States Patent and Trademark Office date-stamp of January 22, 2003, and lacking any notation of non-receipt of any item listed.

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 petition is **GRANTED**.

The Notice of Omitted Items is hereby **VACATED**.

Given the basis for granting the petition, the $130 petition fee has been refunded to Deposit Account No. 15-0030.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of January 22, 2003, using the application papers received in the Office on that date and page 114 of the specification resupplied on petition filed May 5, 2003. Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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#12

KIRKPATRICK & LOCKHART
535 SMITHFIELD STREET
PITTSBURGH, PA 15222

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FEB 09 2004

OFFICE OF PETITIONS

In re Application of
John K. Apostolides
Application No. 10/347,958
Filed: January 21, 2003
Attorney Docket No. 00478CIPCONCON

ON PETITION

This is a decision on the petition, filed February 6, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 9, 2003 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (703) 306-5684.

After receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 3753 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 15

KIRKPATRICK & LOCKHART
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OFFICE OF PETITIONS

In re Application of :
John K. Apostolides :
Application No. 10/347,958 : NOTICE
Filed: January 21, 2003 :
Attorney Docket No. 00478CIPCONCON :

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 Publishing Division.

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

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Paper No. 5

JOHN S. FOX
684 POINSETTIA PARK SOUTH
ENCINITAS, CA 92024

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JUN 0 2 2004

OFFICE OF PETITIONS

In re Application of
Fox
Application No. 10/347,963
Filed: January 21, 2003
For: HIGH SENSITIVITY DETECTION OF AND MANIPULATION OF BIOMOLECULES AND CELLS WITH MAGNETIC PARTICLES

ON PETITION

This decision concerns the March 8, 2004 correspondence which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-referenced application.

The petition is **DISMISSED.**

The application became abandoned on June 3, 2003 for failure to timely submit a proper reply to the April 2, 2003 "Notice to File Corrected Application Papers" ("4/2/03 Notice"). Specifically, the application, upon filing on January 21, 2003, included claims which did not commence on a separate sheet of paper as required by 37 CFR 1.75(h). The 4/2/03 Notice set forth an extendable 2-month period for submitting a substitute specification with claims commencing on a separate sheet (see attached).

A Notice of Abandonment was mailed on February 19, 2004. The instant petition then followed, asserting non-receipt of the 4/2/03 Notice, implying that the application should not have been held abandoned.

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, in the instant case, consists of:[2]

(1) a statement from Applicant:

(A) that he did not receive the 4/2/03 Notice;

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[1] 1156 OG 53 (Oct. 25, 1993). The 4/2/03 Notice was mailed to Applicant's correspondence address.

[2] *Id.*

(B) attesting, by referencing the docket record in (2) below, that a search of the relevant docket records indicates that the 4/2/03 Notice was not received;

and

(2) a copy of the docket record where the 4/2/03 Notice would have been docketed had it been received.

The petition lacks items (1)(B) and (2) and is thus dismissed.

A renewed §1.181 petition (no petition fee) must be:

-filed within **TWO MONTHS** of the mailing date of this decision;
-comply with the above requirements; and

should be addressed to:

Mail Stop Petitions
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Applicant may submit, with the renewed §1.181 petition, a substitute specification with claims commencing on a separate sheet of paper.

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

RC Tang
Petitions Attorney
Office of Petitions

Attachments: 4/2/03 Notice to File Corrected Application Papers (copy)
Printout of 37 CFR 1.71-1.75

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Paper No. 8

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OFFICE OF PETITIONS

In re Application of
Fox
Application No. 10/347,963
Filed: January 21, 2003
For: HIGH SENSITIVITY DETECTION OF AND MANIPULATION OF BIOMOLECULES AND CELLS WITH MAGNETIC PARTICLES

ON PETITION

This decision concerns the June 21, 2004 correspondence which is in fact a renewed petition to withdraw the holding of abandonment in the above-referenced application.

The petition is **GRANTED.**

The application became abandoned on June 3, 2003 for failure to timely submit a substitute specification, containing claims that commence on a separate sheet, as required by the April 2, 2003 "Notice to File Corrected Application Papers" ("4/2/03 Notice").

The previous petition, filed on March 8, 2004, was dismissed on June 2, 2004.

The instant renewed petition includes a statement that a search of Applicant's docket records indicates that the 4/2/03 Notice was not received, and encloses a a copy of Applicant's docket record where the 4/2/03 Notice would have been docketed had it been received. The petition is thus granted.

The holding of abandonment in this application is hereby withdrawn and the February 19, 2004 Notice of Abandonment vacated.

Finally, the Office acknowledges receipt with the renewed petition of substitute claims that commence on a separate sheet.

The file is being returned to the Office of Initial Patent Examination for processing of the substitute claims. Upon completion of pre-examination, the file will be forwarded to Technology Center 1600 for examination in due course.

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

RC Tang
Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No.

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

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OFFICE OF PETITIONS

In re Application of	:	
Rowley et al.	:	
Application No. 10/347,972	:	
Filed: January 21, 2003	:	LETTER REGARDING
Attorney Docket No. 11754/3	:	PATENT TERM ADJUSTMENT

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed November 8, 2005, notifying the Office of an error in applicants' favor in the initial determination of patent term adjustment.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**. The determination of PTA at the time of the mailing of the Notice of Allowance is ZERO (0) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is **ZERO (0)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On August 8, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 46 days. Applicants state that this may extend the term of this patent by too many days. In particular, the delay calculated by the Office for applicant delay is 19 days too small and the delay calculated for Office delay is 106 days too small.

Applicants appear to be asking for additional patent term for Office delay. To the extent that applicants request reconsideration of the patent term adjustment, other than pursuant to their duty of candor and good faith to the Office, this paper is considered an application for patent term adjustment under § 1.705(b). Such a request is dismissed.

Applicants are advised that § 1.705(b) provides the avenue before the Office for requesting reconsideration of the patent term adjustment indicated in the notice of allowance. See § 1.702-1.705. Moreover, § 1.705(b) provides that:

> An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance. An application for patent term adjustment under this section must be accompanied by:
>
> (1) The fee set forth in § 1.18(e) ...

The instant request was filed after the mailing of the notice of allowance and on the same date as payment of the issue fee. However, neither the fee under § 1.18(e) nor a general authorization to charge any required fees, accompanied the request. The authorization submitted with this application and the issue fee authorizes only fees required under §§ 1.16 and 1.17. Accordingly, the request is dismissed for failure to comply with the requirement of paragraph (b)(1) to submit the fee under § 1.18(e).

As to the entry of too much patent term, applicants are correct to the extent indicated. Actually, the record reviews a basis for entering more than 19 days of reduction. First, applicant's response after non-final was received on March 30, 2005, not March 3, 2005. The period of reduction is 30 days (not 3 days) for applicants' taking in excess of three months to file a response to the Office action mailed November 30, 2004. See § 1.704(b).

In addition, after having filed the response on March 30, 2005, on June 30, 2005, applicants filed an Information Disclosure Statement (IDS). This IDS did not include a 1.704(d) statement. Nor does the record support a conclusion that the examiner expressly requested it. Accordingly, pursuant to 1.704(c)(8), a

period of reduction of 92 days should have been entered for this supplemental response.

Moreover, as the response after non-final Office action was received on March 30, 2005, the Office's delay in issuing a response is 9 days, not 36 days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is ZERO (0) days.

To the extent that this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the $200.00 application fee under 37 CFR 1.705(b). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

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

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PALM calculation

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United States Patent and Trademark Office
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OFFICE OF PETITIONS

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 8910
Reston, VA 20195

In re Application of :
Birkhoelzer, et al. : DECISION ON PETITION
Application No. 10/348,020 :
Filed: January 22, 2003 :
Atty. Dkt. No.: 32860-000488/US :

This is a decision on the petition to withdraw the holding of abandonment pursuant to 37 CFR 1.181 filed September 11, 2006.

The petition is hereby DISMISSED.

This application became abandoned May 4, 2003 for failure to timely submit a proper reply to the Notice mailed March 3, 2003. Notice of Abandonment was mailed May 26, 2004.

Petitioners allege that a response to the Notice was timely submitted May 3, 2003. Petitioner further indicates that a petition along with supporting documentation to this effect was submitted to the Office on June 30, 2004.

The application file does not contain either the purported timely response nor the petition and supporting documentation previously filed. Accordingly, the petition is submit to dismissal as there is no documentation of record to support petitioners' contention that a response to the Notice was timely submitted.

Any renewed petition should be accompanied by a copy of the original response purported to have been timely filed as well as a copy of the previously submitted petition.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

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

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

By facsimile: (571) 273-8300

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

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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KEATING & BENNETT LLP
SUITE 312
10400 EATON PLACE
FAIRFAX VA 22030

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Norio Sakai et al	:	
Application No. 10/348,024	:	
Filed: January 22, 2003	:	
Attorney Docket No. 36856.1022	:	

This is a decision on the petition, filed March 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 January 13, 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 3729 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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FEB 26 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Randall B. Bateman
MORRISS, BATEMAN, O'BRYANT & COMPAGNI
Suite 700
136 South Main Street
Salt Lake City UT 84101

In re Application of
Wiseman.
Application No. 10/348,032
Filed: January 21, 2003
For: **TRAFFIC CONTROL SYSTEM**

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on May 6, 2003 and the corrected Request to Withdraw as Attorney/Agent of record filed November 21, 2003.

The original request filed May 6, 2003 is **DISMISSED** in view of the corrected request filed November 21, 2003.

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

Attorneys/Agents of record requesting the withdraw are withdrawn, except for Randall B. Bateman, who remains the Attorney of record.

Accordingly, the November 21, 2003 request is **GRANTED**.

All future communications from the Office will continue to be directed to Randall B. Bateman at 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.

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

cc:
Randall B. Bateman
P.O.Box 1319
Salt Lake City, UT 84110-1319

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Commissioner for Patents
United States Patent and Trademark Office
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Paper No. 7

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BURSTEIN TECHNOLOGIES, INC.
163 TECHNOLOGY DRIVE
IRVINE, CA 92618

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Siegfried Richard Krutzik :
Application No. 10/348,049 :
Filed: January 21, 2003 :
Attorney Docket No. BT12 01103903(USP6) :
USP6X1

This is a decision on the petition under 37 CFR 1.137(b), filed August 30, 2004, to revive the above-identified application.

The petition is **GRANTED**.

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 April 8, 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 June 9, 2003.

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

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The application 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

cc:

Knobbe, Martens, Olson & Bear
2040 Main Street, 14th Floor
Irvine, CA 92614

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2040, MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

In re Application of:
KRUTZIK et al.
Serial No.: 10/348,049
Filed: January 21, 2003
Attorney Ref No.: NAGACO.037CP1

PETITION DECISION

This letter is in response to the Petition under 37 C.F.R. 1.144, filed on August 12, 2005, to request the review and withdraw of the restriction requirement. The delay in acting on this petition is regretted.

BACKGROUND

A review of the file history shows that the application was filed as Continuation-in-Part of application SN 10/194,396 filed July 12, 2002.

On February 4, 2005 a restriction requirement under 35 U.S.C. 121 was made among the 150 original claims designating inventions corresponding to groups I through XX as follows,

I. Claims 1-5, 34, and 149-150, drawn to an optical bio-disc, classified in class 422, subclass 57.
II. Claims 6-11, drawn to an optical bio-disc, classified in class 422, subclass 64.
III. Claims 35-42 and 47-53, drawn to an optical bio-disc, classified in class 422, subclass 58.
IV. Claims 54-71, 90, 92-96, 126, and 136, drawn to an optical bio-disc, classified in class 422, subclass 72.
V. Claims 72-89, 91, 97-99, 112, and 127-128, drawn to an optical bio-disc, classified in class 422, subclass 82.05.
VI. Claims 43-46 and 135, drawn to an optical disc and drive system, classified in class 422, subclass 82.09.
VII. Claims 12-21, drawn to a method of using, classified in class 435,

subclass 973.

VIII. Claims 113-123 and 133-134, drawn to a method of using, classified in class 436, subclass 157.

IX. Claims 124-125, drawn to a method of using, classified in class 436, subclass 164.

X. Claims 22-33, drawn to a method of making, classified in class 435, subclass 287.9.

XI. Claims 100-111 and 129-132, drawn to a method of making, classified in class 435, subclass 288.5.

XII. Claims 137 and 148, drawn to a method of attaching, classified in class 436, subclass 533.

XIII. Claim 138, drawn to a method of attaching, classified in class 525, subclass 54.1.

XIV. Claim 139, drawn to a method of attaching, classified in class 436, subclass 111.

XV. Claims 140-141 , drawn to a method of attaching, classified in class 436, subclass 120.

XVI. Claims 142-143, drawn to a method of immobilizing, classified in class 436, subclass 524.

XVII. Claim 144, drawn to a method of immobilizing, classified in class 436, subclass 525.

XVIII. Claim 145, drawn to a method of immobilizing, classified in class 436, subclass 532.

XIX. Claim 146, drawn to a method of immobilizing, classified in class 435, subclass 345.

XX. Claim 147, drawn to a method of immobilizing, classified in class 435, subclass 7.5.

The examiner argued that the inventions of Groups I through VI and the methods of using and making of Groups VII through XI and the method of attaching and immobilizing of Groups XII though XX were distinct for various reasons. Examiner argued for example that the invention of Group I is an optical bio-disc with the limitation of at least one capture agent that binds to a metal layer, and a target zone disposed between the center and the outer edge. Examiner argued that the bio-disc of Group II did not require that the capture agent bind to a metal layer. Similarly, he argued that the inventions are independent from each other because the bio-disc of Group III differed from that of the other Groups in that the cap portion integrally attached to the metal layer by an adhesive member and so on. Thus the Examiner clearly distinguished the inventions from each other based on their structural differences and different modes of operation.

On April 1, 2005, applicants elected with traverse the subject matter of Group XII (claims 137 and 148), arguing that the Examiner has not met the requirements of Restriction as laid down in M.P.E.P. § 808.02. Applicants argued in the traversal that Examiner only noted that the

different claims include unique limitations but does not explain how having different limitations leads to different modes of operation and function. Applicants also made an issue of classification of the different groups and argued that all optical bio-discs perform the same function (bio-assays) and have the same mode of operation (providing a substrate for the assay). Applicants argued that a search for one Group may be in places where art for the other Groups exist.

In response to the election, the Examiner acknowledged the election of Group XII, (claims 137 and 148), found the traversal non-persuasive and made the restriction requirement FINAL, in the Office action mailed June 14, 2005. A first Office action on the merits was also mailed as a part of this same communication, in which claims 137 and 148 were rejected under 35 U.S.C. 102(e).

In response to the Office action of June 14, 2005, applicants filed the instant petition requesting the review of restriction requirement. Applicants also replied to the Examiner's first action on the merits on September 12, 2005 traversing all rejections including the rejection under 35 U.S.C. 102(e).

DISCUSSION

The application, file history and petition under 37 C.F.R. 1.144, to request review of the restriction requirement has been considered. Applicants' arguments have been considered in full. Prior to the discussion of the merits of the petition, it is noted that those claims currently being examined are drawn to Group XII, claims 137 and 148.

Applicants submit that the restriction requirement mailed February 4, 2005, is improper and maintain that the over burdensome restriction to 20 groups of inventions is not warranted. Applicants suggest a compromise of a more reasonable grouping of claims into 4 groups as noted below and emphasize that they in no way admit that the different groups are in fact directed to independent or distinct inventions. Applicants propose:

Group A, claims 1-11, 34-99, 112, 126-128, 135-136, 149-150, (Examiner's Groups I-VI),
Group B, claims 12-21, 113-125, 133-134, (Examiner's Groups VII-IX),
Group C, claims22-33, 100-11, 129-32, (Examiner's Groups X and XI),
Group D, claims 137-148, (Examiner's Group XII-XX).

Applicants argue that a restriction requirement is appropriate only if the different Groups are independent and distinct (M.P.E.P. § 802.01) and that inventions are independent if they 1) have different modes of operation, functions, or effects; 2) are directed to process and apparatus where the apparatus cannot be used to practice the process; or 3) are directed to unrelated species under a genus. Applicant also argues that in making a restriction requirement, Examiners must set forth: 1) the reasons why the inventions are either independent or distinct and 2) the reasons for insisting upon restriction and where the inventions are related, the reasons for insisting upon

restriction must include at least one of the following: 1) each distinct subject has attained recognition in the art as a separate subject for inventive effort, 2) an explanation indicates a recognition of separate inventive effort by the inventors, or 3) each subject has a different field of search such that it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists.

In support of the proposed groupings applicants submit that Examiner asserts that Groups I-V are unrelated because the inventions have different modes of operation and different functions (i.e., they are independent) and appears to argue that because the different claims in the groups do not have the same limitations, they produce apparatuses that operate differently and that the Examiner does not explain how having different limitations necessarily leads to different modes of operation and functions. Applicants add that it is well recognized that multiple claims can be directed to the same invention. Applicants submit that the Examiner's Groups I-V are all directed to optical bio-discs. Applicants however, argue that the optical bio-discs differ only in some structural respects. Applicants maintain that all of the optical bio-discs perform the same functions (bio-assays) and have the same mode of operation (providing a substrate for the assay) and therefore they are not independent from each other.

Next, applicants argue that the Examiner stated that Groups I-V and VI are related as combination and subcombination (i.e., not independent), but argued that these groups were distinct and that combinations and subcombinations are distinct only if: 1) the combination does not require the particulars of the subcombination to show patentability and 2) the subcombination can be shown to have utility by itself or in other relations, M.P.E.P. § 806.05(c). Applicants submit that the subcombination (the optical bio-disc) is essential for the combination (the system of Group V), and that without the bio-disc limitations, Claim 43 would only contain: an optical disk drive, a light source, a detector for detecting light, and a processor.

Applicants propose a Group B (Claims 12-21, 113-125 and 133-134) comprising Examiner's Groups VII-IX. Applicants argue that the proposed Group B is directed to methods of using optical bio-discs to determine the presence and amount of reporters and that Examiner has asserted that Groups VII-IX are unrelated because the inventions have different modes of operation, different functions, and different effects (i.e., they are independent). Applicants argue that the Examiner only noted that the different claims in these groups include unique limitations and did not explain how having different limitations leads to different modes of operation, functions, and effects. Applicants continue that Examiner's Groups VII-IX are all directed to methods of using an optical bio-disc including providing a sample containing an analyte and scanning a beam of electromagnetic radiation and submits that there are no inventions independent from each other in Groups VII-IX.

Applicants' proposal to combine Examiner's groups X and XI (claims 22-33, 100-111 and 129-132) directed to methods of making optical bio-discs by depositing capture agents onto a metal layer on a substantially circular substrate has been considered. Applicants argue that the Examiner asserted that Groups X and Xl are unrelated because the inventions have different

modes of operation, different functions, and different effects (i.e., they are independent) due to the fact that they contain different limitations. Applicants note that Groups X and XI are both directed to methods of making an optical bio-disc including providing a substrate, depositing capture agents, incubating the capture agents, and washing excess agents and therefore have the same mode of operation (making a bio-disc using a substrate and deposited capture agents), the same function (to make an optical bio-disc), and the same effect (resulting in a bio-disc that can be used for analysis).

Applicants also propose a Group D comprising claims 137-148 (Examiner's Groups XII-XX) directed to methods of attaching or immobilizing capture agents. Applicants argue that the Examiner asserted that Groups XII-XX are unrelated because the inventions have different modes of operation, different functions, and different effects (i.e., they are independent) and have different claim limitations. Applicants note that Groups XII-XX are all directed to methods of attaching or immobilizing capture agents using chemical linking groups and therefore have the same mode of operation (using chemical functional groups to attach to a capture agent), the same function (to immobilize a capture agent to a substrate), and the same effect (resulting in an immobilized capture agent) and submit that there are no inventions independent from each other in Groups XII-XX.

All the above arguments have been considered in full and are found sufficiently persuasive to revise the restriction as set forth below. Although as pointed out by the Examiner, the optical bio-disc inventions are distinct and they have very similar modes of operations even though they have different structures. Devices which are structurally different may inherently operate differently even though the ultimate outcome of their operation may be similar or identical. Applicants agree that these inventions, even though they are all directed to bio-discs, have structural differences, but argue, as above that the differences are minor in nature and do not function/operate differently since the overall outcome of their operation is the same. Therefore, the restriction requirement has been revised as follows.

I. Claims 1-11, 34-42, 43-99, 112, 126-128, 135-136 and 149-150 drawn to optical biodiscs, classified in class 422, various subclasses.
II. Claims 12-21, 113-125 and 133-134, drawn to method of using an optical biodisc classified in class 435, subclass 973.
III. Claims 22-33, 100-111and 129-132, drawn to method of making an optical biodisc classified in class 435, subclass 287.9.
IV. Claim 137-148, drawn to a method of attaching or immobilizing capture agents, classified in class 436, various subclasses.

The bio-discs of the above Group I do not significantly differ from each other with respect to their structure, the way the samples are presented for the assay or the way the results of the assay are concluded. Applicants' main argument appears to be that the biodiscs are structurally different but have the same function (bio-assays) and have the same mode of operation (providing a substrate for the assay). This is found persuasive in the context of these claims. While the mode of operation may be similar when considered broadly, subtle but

distinct differences exist as to how the substrate is provided for the assay and the assay conducted and the results concluded from said assays. In accord with applicants' arguments, these inventions, although independent and distinct, are closely related and should not be divided by restriction. While there exists a serious search burden on the Office to examine all the claims it is not unduly burdensome.

Applicants' argument of the Examiner's holding that (Examiner's) Groups I-V and VI are related as combination and subcombination (i.e., not independent) has been considered and found persuasive. This is because, contrary to applicant's argument, the subcombination (the optical-biodisc) is not essential for the combination. The combination is an entity which functions only in the presence of a disk having information on it which needs to be read. The bio-disc has information on it which can only properly be read by the apparatus set forth. Thus, the subcombination could be separately examined, however the apparatus which requires the disk cannot be separately examined since the subcombination is required for it to function properly. Therefore, the inventions of (Examiner's) Groups I-V and VI are grouped together.

Applicants' proposal of a Group B (Claims 12-21, 113-125. and 133-134) comprising Examiner's Groups VII-IX has been considered and found to be persuasive. Accordingly Examiner's groups VII through IX have been combined to form a single Group II above in the revised restriction.

Applicants' proposal to combine Examiner's Groups X and XI (claims 22-33, 100-111 and 129-132) directed to methods of making optical bio-discs by depositing capture agents onto a metal layer on a substantially circular substrate into one single Group has been considered and found persuasive. Accordingly Examiner's Groups X and XI have been combined to form a single Group III above in the revised restriction.

Applicants' proposal of a Group D comprising claims 137-148 (Examiner's Groups XII-XX) as directed to methods of attaching or immobilizing capture agents has been considered and found to be persuasive. Claims 137-148 are indeed drawn to different, but closely related methods of attaching the capture agent onto the bio-disc. However, because different reagents are used and the method of attachment may differ, these claims may be subject to an election of species requirement in a further examination.

DECISION

For these reasons, the petition under 37 C.F.R. 1.144, requesting the withdrawal of the restriction is **GRANTED.**

Inasmuch as applicants have elected Examiner's Group XII (claims 137 and 148) which is now part of Group IV in the revised restriction, prosecution will continue on the elected claims and Group as revised above.

The application will be forwarded to the examiner to take appropriate action as a result of this petition decision and to consider the amendments and arguments filed by applicants on September 12, 2005.

Should there be any questions regarding this decision, please contact Special Program Examiner Marianne Seidel, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 703-273-8300.

George C. Elliott

George Elliott
Director, Technology Center 1600

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OFFICE OF PETITIONS

In re Application of	:	
Baird, et al.	:	
Application No. 10/348,051	:	ON PETITION
Filed: January 17, 2003	:	
Attorney Docket No. 760100.433C2	:	

This is a decision on the petition under 37 CFR 1.53 filed on October 8, 2003, requesting that the above-identified application be accorded a filing date of January 17, 2003, including page 98 of the specification.

The application was filed on January 17, 2003. However, on April 4, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice To File Missing Parts OF Nonprovisional Application" that stated the application had been accorded a filing date, but page 98 of the specification appears to have been omitted.

In response, on October 8, 2003, the instant petition was submitted. Petitioner contends "that although page 98 was not numbered, it was in fact submitted as part of the specification between pages 97 and 99 entitled "Sequence Listing." A review of the application file indicates the presence of the page 98 of the specification, not numbered and entitled "Sequence Listing." As such, page 98 of the specification was, in fact, submitted with the application papers on January 17, 2003. It is noted that Applicant has submitted a preliminary amendment which deletes this page.

In view of the above, the petition is <u>granted</u>.

The $130.00 petition fee, submitted October 8, 2003, will be refunded to deposit account no. 19-1090.

This application will be returned to OIPE for further processing with a filing date of January 17, 2003, with a note that page 98 of the specification was filed on January 17, 2003.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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ROSS J. OEHLER
SANOFI-AVENTIS U.S. LLC
1041 ROUTE 202-206
MAIL CODE: D303A
BRIDGEWATER, NJ 08807

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MAY 03 2007

OFFICE OF PETITIONS

In re Application of Korn et al. :
Application No. 10/348,081 : Letter Regarding PTA
Filing Date: January 21, 2003 :
Atty. Docket No. DEAV2002/0004 US NP :

This letter is in response to the letter filed December 11, 2006, requesting the initial determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**. The determination of PTA at the time of the mailing of the Notice of Allowance is one hundred and forty-seven (147) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is one hundred and forty-seven (147) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 14, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one hundred and seventy-seven (177) days.

The Office initially determined a patent term adjustment of one hundred and seventy-seven (177) days based on an adjustment for PTO delay of two hundred and ninety-nine (299) days, pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. 1.703(a)(1), reduced by sixty-five (65) days and fifty-seven (57) days of applicant delay pursuant to 37 C.F.R. 1.704(b).

A review of the record reveals that Applicants should have been assessed an additional delay of one hundred and thirty-two (132) days pursuant to 37 CFR 1.704(c)(7).

A "Notice to File Missing Parts of Nonprovisional Application" was mailed April 11, 2003. The Notice to File Missing Parts required the submission of a signed oath or declaration, a $130 surcharge, a statement that the content of the sequence listing information recorded in computer readable form is identical to the written sequence, listing, and a copy of the sequence listing in computer readable format. A reply was filed June 13, 2003. The reply included a signed declaration and the $130 surcharge but did not include the required sequence listing "statement"

and the sequence listing in computer readable form. A "Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures" was mailed on June 23, 2003. A reply to the Notice was mailed pursuant to 37 CFR 1.8 on October 21, 2003. The reply was received on October 23, 2003.

Per 37 CFR 1.704(c)(7), if a reply is submitted which has an omission (§ 1.135(c)), then the period of adjustment will be reduced from the time beginning on the day after the submission until the date a reply or other paper correcting the omission is filed.

MPEP 2732 states,

> 37 CFR 1.704(c)(7) establishes submission of a reply having an omission (37 CFR 1.135(c)) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Submitting a reply having an omission requires the Office to issue an action under 37 CFR 1.135(c) and await and process the applicant's reply to the action under 37 CFR 1.135(c) before the initial reply (as corrected) can be treated on its merits. In addition, 37 CFR 1.704(c)(7) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed. The reference to 37 CFR 1.135(c) is parenthetical because 37 CFR 1.704(c)(7) is not limited to Office actions under 37 CFR 1.135(c) but applies when the Office issues any action or notice indicating that a reply has an omission which must be corrected: e.g., (1) a decision on a petition under 37 CFR 1.47 dismissing the petition as lacking an item necessary to grant the petition; or (2) a notice indicating that the computer readable format sequence listing filed in reply to a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (PTO-1661) does not comply with 37 CFR 1.821 et seq.

In the instant application, the reply filed June 13, 2003, was incomplete in so far as the reply did not include a statement that the content of the sequence listing information recorded in computer readable form is identical to the written sequence, listing, and a copy of the sequence listing in computer readable format. The missing items were not filed until October 23, 2003.[1] The delay beginning on June 14, 2003, the day after the incomplete was filed, until October 23, 2003, is one hundred and thirty-two days.

In view of the facts above, the correct determination of PTA at the time of the mailing of the Notice of Allowance is 45 days (299 days of PTO delay, reduced by 254 (132 + 65 + 57) days of applicant delay).

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[1] Per 37 CFR 1.703(f), "The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation." Therefore, the last day of the period of delay was the date the reply was received.

The instant letter was the result of the good faith and candor of applicant. Since the instant letter was only filed to advise the Office of an Office error, and not to increase the patent term adjustment, the $200.00 application fee under 37 C.F.R. 1.705(b) has been credited back to deposit account no. 18-1982.

The application file is being forwarded to the Office of Publications for issuance of the patent. The patent term adjustment shown on the patent (and in the Issue Notification mailed approximately three weeks prior to issuance) will include any additional patent term accrued pursuant to sections 1.702(a)(4) and 1.703(b).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Wednesday

PALM INTRANET

Date: 5/2/2007
Time: 19:10:44

PTA Calculations for Application: 10/348081			
Application Filing Date:	01/21/2003	PTO Delay (PTO):	299
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	122
Post-Issue Petitions:	0	Total PTA (days):	45
PTO Delay Adjustment:	-132		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
53	05/02/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		132	
45	09/14/2006	MAIL NOTICE OF ALLOWANCE			
44	09/14/2006	MAIL EXAMINER'S AMENDMENT			
43	09/09/2006	ISSUE REVISION COMPLETED			
42	09/09/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
41	09/09/2006	CASE DOCKETED TO EXAMINER IN GAU			
40	04/13/2005	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
39	09/09/2006	EXAMINER'S AMENDMENT COMMUNICATION			
38	08/21/2006	NOTICE OF ALLOWABILITY			
37	08/03/2006	DATE FORWARDED TO EXAMINER			
36	08/02/2006	RESPONSE AFTER NON-FINAL ACTION		57	34
35	08/02/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
34	03/06/2006	MAIL NON-FINAL REJECTION			
33	02/21/2006	NON-FINAL REJECTION			
32	11/28/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	12/06/2005	DATE FORWARDED TO EXAMINER			
30	11/28/2005	RESPONSE AFTER NON-FINAL ACTION		65	26
29	11/28/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
28	11/28/2005	REFERENCE CAPTURE ON IDS			
27	11/28/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26	06/24/2005	MAIL NON-FINAL REJECTION			
25	06/22/2005	NON-FINAL REJECTION			

24	04/22/2005	DATE FORWARDED TO EXAMINER			
23	04/14/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
22	04/14/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
21	01/14/2005	MAIL RESTRICTION REQUIREMENT	299		-1
20	01/13/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
19	07/29/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
18	06/13/2003	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
17	07/28/2004	CASE DOCKETED TO EXAMINER IN GAU			
16	11/06/2003	APPLICATION DISPATCHED FROM OIPE			
15	11/06/2003	APPLICATION IS NOW COMPLETE			
14	10/21/2003	ADDITIONAL APPLICATION FILING FEES			
13	10/21/2003	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
12	10/21/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
11	11/04/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
10	06/23/2003	SEQUENCE ERRORS			
7	06/11/2003	ADDITIONAL APPLICATION FILING FEES			
6	06/11/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	04/01/2003	CLEARED BY L&R (LARS)			
3	03/29/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/31/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/21/2003	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/2/04

TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction on Patent No.: 6750343

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

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

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

Lamonte Newsome

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

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

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

Comments:

Applicants filed an additional amendment on 1/20 which was printed on the patent. The claims filed 1/12 were allowed. These claims are now presented in this certificate of correction. Applicants should pay fee.

SPE — 1623 Art Unit

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Michael O. Sturm
STURM & FIX LLP
Suite 1213
206 Sixth Avenue
Des Moines IA 50309-4076

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APR 0 1 2004

OFFICE OF PETITIONS

Applicant: Ribadeau-Dumas et al.
Appl. No.: 10/348,120
Filing Date: January 21, 2003
Title: METHOD FOR PREPARING NON WRAPPED HARD CANDIES BASED ON MALTITOL SYRUP
Pub. No.: US 2003/0215553 A1
Pub. Date: November 20, 2003

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on December 23, 2003.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication does not include the supplemental amendment filed January 21, 2003including the foreign priority information and the reference to the French Application is missing from published application.

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 missing priority information on the front page of the published patent application is an Office error but it is not a material error, as required by 37 CFR 1.221(b). The error in the omitted foreign priority claim is not a material mistake because it does not affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent. The specification and claims were accurately published, thus one can read and understand the content of the application. The error also do not affect the use of the patent application publication as a prior art reference, because the foreign priority date is not useable as a reference date.

To avoid this type of problem in the future, applicant's representative should review the Filing Receipt and make a request for a corrected filing receipt using the facsimile number (703-746-9195) on the Filing Receipt.

The specification of the patent application publication does not include a mistake in the publication by the Office because patent application publications do not include preliminary

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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).

amendments, according to 37 CFR 1.215(a), which says the following, in part:

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

§ 1.215(c) says the following:

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

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

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

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

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

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

The application will be examined in due course.

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

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

Enclosure: Corrected Filing Receipt

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

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AUG 17 2006

OFFICE OF PETITIONS

In re Application of :
Holtslag, et al. :
Application No. 10/348,121 :
Filing Date: 21 January, 2003 :
Attorney Docket No.: PHN 13,547Y :

DECISION

This is a decision on the petition filed on 19 June, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 4 November, 2005, with reply due absent extension of time on or before 6 February, 2006;

- the instant application went abandoned by operation of law after midnight 4 February, 2006;

- it does not appear that the Office mailed a Notice of Abandonment before the instant petition was filed;

- on 19 June, 2006, Petitioner filed the instant petition (with fee), reply in the form of an amendment, and made the statement of unintentional delay.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(4) Imposing a monetary sanction;
(5) Requiring a terminal disclaimer for the period of the delay; or
(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).
[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

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,[7] and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

As to the Allegation
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a

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

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

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

[5] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] The test of diligence in the prosecution of an application before the Commissioner is, in the context of ordinary human affairs, the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

[8] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) hereby is **granted**.

The instant application is released to Technology Center 2600 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[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

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[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

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OFFICE OF PETITIONS

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In re Application of	:	
Holtslag, et al.	:	
Application No. 10/348,121	:	DECISION
Filing Date: 21 January, 2003	:	
Attorney Docket No.: PHN 13,547Y	:	

This is a decision on the petition filed on 23 March, 2007, alleging unintentional delay under 37 C.F.R. §1.137(b).

For the reasons set forth below, the petition under 37 C.F.R.§1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Notice of Allowance/Allowability and Feeds Due mailed on 1 December, 2006, with reply due under a non-extendable deadline on or before 1 March, 2007;
- the instant application went abandoned by operation of law after midnight 1 March, 2007;
- it does not appear that the Office mailed a Notice of Abandonment before the instant petition was filed;

- on 23 March, 2007, Petitioner filed the instant petition (with fee), reply in the form of the fees due, and made the statement of unintentional delay;

- the Office mailed the Notice of Abandonment on 29 March, 2007.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—
(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and
(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —
(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;
(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.
(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —
(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(4) Imposing a monetary sanction;
(5) Requiring a terminal disclaimer for the period of the delay; or
(6) Terminating the proceedings in the Patent and Trademark Office.
(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).
[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt,[7] and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

---

[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[4] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[5] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] The test of diligence in the prosecution of an application before the Commissioner is, in the context of ordinary human affairs, the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

[8] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

As to the Allegation
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) hereby is **granted**.

The instant application is released to Publications Branch to be processed into a patent in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[9]) and the 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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 02/04/06

TO SPE OF : ART UNIT **PETITIONS OFFICE**

SUBJECT : Request for Certificate of Correction on Patent No.: 10/348123 6964747

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance

Angela Green
Certificates of Correction Branch
Tel. No. 703-305-9380 ext. 123

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

_____

_____

_____

_____

_____

SPE _____ **Art Unit** 1711

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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DRINKER BIDDLE & REATH
ATTN: INTELLECTUAL PROPERTY GROUP
ONE LOGAN SQUARE
18TH AND CHERRY STREETS
PHILADELPHIA PA 19103-6996

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SEP 1 1 2006
OFFICE OF PETITIONS

In re Patent No. 6,964,747	:	
Issue Date: November 15, 2005	:	
Application No. 10/348,123	:	ON PETITION
Filed: January 21, 2003	:	
Attorney Docket No. 42970-4	:	

This is a decision on the petition filed January 26, 2006, which is being treated as a request under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is GRANTED.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3205. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

ALESIA M. BROWN
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

MBHB/TRADING TECHNOLOGIES
300 SOUTH WACKER DRIVE
SUITE 3200
CHICAGO, IL 60606

Mail Date: 04/20/2010

Applicant	: Ryan N. Andrews	: DECISION ON REQUEST FOR
Patent Number	: 7620576	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/348,134	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/21/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1639** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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 - 6 2005

Marine Innovation & Technology
2610 Marin Avenue
Berkeley, CA 94708

In re Application of :
Catherine Busso : **DECISION ON PETITION**
Application No. 10/348,135 : **TO WITHDRAW THE**
Filed: January 21, 2003 : **HOLDING OF ABANDONMENT**
For: MINIMUM FLOATING OFFSHORE PLATFORM

This is a decision on the petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office on September 13, 2004.

The petition is **GRANTED**.

A review of the file record reveals that an Office action was mailed on December 1, 2003, with a three-month shortened statutory period for response. The application was held abandoned for failure to timely respond to the Office action mailed on December 1, 2003, and a Notice of Abandonment was mailed on September 9, 2004.

Petitioner contends, that an Assignment, and Change of Correspondence Address were filed on November 18, 2003, that the Office action was mailed to an incorrect correspondence address on December 1, 2003, and that applicant never received the Office action. In support thereof, petitioner submits, *inter alia.*, a copy of a correspondence address change request for the present application bearing a USPTO date stamp of November 18, 2003.

The correspondence address change, submitted on November 18, 2003 appears to have not been entered into the USPTO database. As a result, the December 1, 2003 Office action was mailed to an incorrect address. The USPTO database has since been corrected.

Since the Office action was not properly addressed, the petition to withdraw the holding of abandonment is **granted**.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the holding of abandonment, and restore the application to pending satus before re-dating and re-mailing the Office action (non-final rejection) previously mailed on December 1, 2003.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/rwg: 5/27/05

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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TROP PRUNER & HU, PC
1616 S. VOSS ROAD, SUITE 750
HOUSTON TX 77057-2631

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OFFICE OF PETITIONS

In re Application of	:	
Li Hsiang Kao	:	
Application No. 10/348,136	:	ON PETITION
Filed: 21 January, 2003	:	
Attorney Docket No.	:	
SIS.0188US(PE-28650-AM)	:	

This is a decision in reference to the petition under 37 CFR 1.181 filed on 12 December, 2005, to withdraw the holding of abandonment.

The petition is **DISMISSED**.

This application became abandoned on 3 June, 2005, for failure to submit a proper response to the non-final Office action mailed on 2 December, 2004, which set a three (3) month shortened statutory period for reply. A Request for Continued Examination (RCE) Request Transmittal form was filed on 2 June, 2005 along with a three (3) month extension of time. Notice of Abandonment was mailed on 16 November, 2005.

Petitioner asserts that a proper reply to the non-final Office action was timely filed, in that the RCE and extension of time were filed.[1]

Petitioner's argument has been considered, but is not persuasive. 37 CFR 1.114 states, in pertinent part:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

[1] Petitioner references an RCE filed on 25 October, 2004, in the petition. However, a subsequent RCE Request was filed on 2 June, 2005, in response to the non-final Ofice action of 2 December, 2004.

(2) Abandonment of the application; or
(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

(c) A submission as used in this section includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. If reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of § 1.111.

As such, an RCE is not a proper reply to the non-final Office action mailed on 2 December, 2004, as prosecution is not closed.

Furthermore, assuming, *arguendo*, an RCE could have been filed, petitioner did not include a submission under 37 CFR 1.114.

As petitioner did not file a proper reply to the non-final Office action mailed on 2 December, 2004, the application is properly held abandoned.

Petitioner may wish to consider filing a petition to revive the application, accompanied by a proper reply.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. **This period may not be extended.**[2]

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

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[2] 37 CFR 1.181(f).

The address in the petition is different than the correspondence address. A copy of this decision will be forwarded to the address in the petition. All future correspondence, however, will be mailed solely to the address of record.

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

cc: TROP, PRUNER & HU, P.C.
8554 KATY FREEWAY, SUITE 100
HOUSTON TX 77024

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of	:	
Li Hsiang Kao	:	
Application No. 10/348,136	:	ON PETITION
Filed: 21 January, 2003	:	
Atty Docket No. SIS.0188US(PE-28650-AM)	:	

This is a decision on the petition filed on 10 October, 2006, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 3 June, 2005, for failure to timely submit a proper response to the non-final Office action mailed on 2 December, 2004, which set a three (3) month shortened statutory period for reply. A Request for Continued Examination

---

[1] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

(RCE) Request Transmittal form was filed on 2 June, 2005, along with a three (3) month extension of time. Notice of Abandonment was mailed on 16 November, 2005. The petition to withdraw the holding of abandonment filed on 12 December, 2005, was dismissed on 11 September, 2006.

The petition is accompanied by an amendment containing arguments in support of allowability.

The application is being referred to Technology Center Art Unit 3727 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 6

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OFFICE OF PETITIONS

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

In re Application of :
Karal :
Application No. 10/348,141 : ON PETITION
Filed: January 20, 2003 :
Attorney Docket No.: 2600-000001 :

This is a decision on the "PETITION TO OBTAIN FILING DATE" filed, April 14, 2003 (Certificate of Mailing date of April 7, 2003). This petition is being treated under 37 CFR 1.53 as a petition to accord the above-identified application a filing date of January 20, 2003.

The petition to accord the application a filing date of January 20, 2003 is hereby **GRANTED**.

The application was deposited on January 20, 2003. On March 7, 2003, a Notice of Incomplete Nonprovisional Application ("Notice") was mailed indicating that the application had not been accorded a filing date because the application was deposited without drawings as required under 35 U.S.C. 113. The Notice required applicant to submit the drawings and a newly executed oath or declaration covering the drawings.

Petitioner asserts that the application as deposited included drawings. As evidence of this assertion petitioner has included affidavits from Stephen T. Olson and Carol Darnielle along with a copy of a return postcard date stamped by the Office.

The affidavit of Stephen T. Olson details the application review process in place at Harness, Dicket & Pierce, P.L.C. The affidavit of Carol Darnielle details the mailing of the instant application and alleges the items in question were enclosed upon mailing.

The filing date of a nonprovisional application for patent is the date upon which the specification and any required drawings are received in the Patent and Trademark Office. *See*, 35 U.S.C. 111(a)(4). The Patent and Trademark Office file is the official record of the papers originally filed in this application. A review of the official application file reveals that neither an oath or declaration or drawings were not present on January 20, 2003. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. As set forth in MPEP 503, "[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." The copy of applicants' postcard submitted herewith indicates receipt of a check in the amount of $375.00; utility patent application transmittal form; fee transmittal (in duplicate); 16-page patent application; and return postcard. The items not submitted to the USPTO were four (4) sheets of drawings, a declaration, and power of attorney as

those items listed were crossed off on the postcard and the postcard initialed by USPTO staff in accordance with MPEP 503. The postcard, therefore, does not serve as *prima facie* evidence of receipt in the USPTO of the items in question.

However, as MPEP 601.01(f) provides, it is the practice of the USPTO to treat a nonprovisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence). As the instant application discloses method claims directed to the invention, drawings are not necessary for an understanding of the subject matter sought to be patented.

In view of the above, the Notice mailed March 7, 2003 was mailed in error and is hereby withdrawn.

The application will be processed with only the papers present on filing on January 20, 2003. The drawings filed April 14, 2003 will not be processed for filing date purposes, but will be retained in the application file.

The application is being accorded a filing date of January 20, 2003 without drawings as part of the original disclosure. The petition fee of $130.00 is unnecessary and has been refunded to petitioner's Deposit Account.

The application is being returned to the Office of Initial Patent Examination for reprocessing with a filing date of January 20, 2003, using only the application papers filed on that date, and an indication in USPTO records that zero (0) sheets of drawings were present on filing.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

Alesia M. Brown
Petitions Attorney

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Paper No. 9

HARNESS DICKEY & PIERCE
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

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DEC 02 2003

OFFICE OF PETITIONS

In re Application of :
Karel Karal :
Application No. 10/348,141 : NOTICE
Filed: January 20, 2003 :
Attorney Docket No. 2600-000001 :

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 3673.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

#6

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UNITED STATES PATENT AND TRADEMARK OFFICE
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DEC 0 8 2004

TECHNOLOGY CENTER 3600

Harness, Dickey & Pierce, P.L.C.
P.O. Box 828
Bloomfield Hills, MI 48303

In re Application of
Guy A. Lambiaso
Application No. 10/348,184
Filed: January 21, 2003
For: CABLE ACCESS BOX FOR COMMERCIAL AIRCRAFT

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicant's petition to withdrawal the holding of abandonment filed on October 13, 2004.

The petition is **GRANTED** in view of the following evidence of timely filing :

☒ Postcard receipt dated January 7, 2004.

☐ USPTO return facsimile receipt dated _____, which references the application by serial number and the amendment that was filed on that date.

☐ Certificate of Mailing/Transmission signed on _____. and supported by a statement under 37 C.F.R. 1.8(b)(3).

☐ Hand Delivery Receipt of the specific documents submitted dated _____.

☐ Certificate of Transmission of CPA under 37 C.F.R. 1.6 filed on _____.

☐ Express Mail Receipt under 37 C.F.R. 1.10 dated _____.

This application is being forwarded to the Supervisory Legal Instruments Examiner for entry of the response filed with the petition, then to the examiner for prompt action on the response.

SNM/rwg: 12/02/04

STEVEN N. MEYERS
SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 3600

UNITED STATES PATENT AND TRADEMARK OFFICE

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MACMILLAN, SOBANSKI & TODD, LLC
ONE MARITIME PLAZA-FOURTH FLOOR
720 WATER STREET
TOLEDO, OH 43604

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MAY 1 8 2005

OFFICE OF PETITIONS

In re Application of	:	
Glunk et al.	:	
Application No. 10/348,197	:	ON PETITION
Filed: January 21, 2003	:	
Attorney Docket No. 73556	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 30, 2005, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the non-final Office action mailed March 25, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on June 26, 2004. A Notice of Abandonment was mailed November 2, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

This matter is being referred to Technology Center 3600 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 6

HAMILTON BROOK SMITH & REYNOLDS P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

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OCT 3 1 2003

OFFICE OF PETITIONS

In re Application of:	
Griffin K. Gothard, Kenneth M. Gainey and Bing Chiang	
Application No. 10/348,202	
Filed: January 20, 2003	DECISION GRANTING
Title of Invention: BEAMFORMING USING A BACKPLANE AND PASSIVE ANTENNA ELEMENTS	STATUS UNDER 37 CFR 1.47

This Decision is in response to a Petition Under 37 C.F.R. 1.47(a), filed APRIL 28, 2003, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **granted**.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

Petitioner has shown that the non-signing inventor, Kenneth M. Gainey, 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 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
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Mr. Kenneth M. Gainey
441 Thrush Drive
Satellite Beach, FL 32937

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OCT 3 1 2003

OFFICE OF PETITIONS

In re Application of:
Griffin K. Gothard, Kenneth M. Gainey
and Bing Chiang
Application No. 10/348,202
Filed: January 20, 2003
Title of Invention: BEAMFORMING USING A
BACKPLANE AND PASSIVE ANTENNA ELEMENTS

LETTER

Dear Mr. Gainey:

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: HAMILTON BROOK SMITH & REYNOLDS P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

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Paper No. 7

B. Noel Kivlin
Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767

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OCT 0 8 2003

OFFICE OF PETITIONS

In re Application of
McMillan, Turvey, and Birt
Application No. 10/348,209
Filed: January 21, 2003
Attorney Docket No. 5681-61300
For: KEY MANAGEMENT

: DECISION ACCORDING
: STATUS UNDER
: 37 CFR 1.47

This is in response to the petition under 37 CFR 1.47(a) filed September 8, 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 or cannot be located.

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 to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 8

Simon Birt
7A Flask Walk
London, NW3 1HJ
United Kingdom

COPY MAILED

OCT 0 8 2003

OFFICE OF PETITIONS

In re Application of :
McMillan, Turvey, and Birt :
Application No. 10/348,209 : Letter
Filed: January 21, 2003 :
Attorney Docket No. 5681-61300 :
For: KEY MANAGEMENT :

Dear Mr. Birt:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

cc: B. Noel Kivlin
Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

Paper No. 8

Lyon & Lyon, LLP
633 West Fifth Street
Suite 4700
Los Angeles, CA 90071

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MAR 0 8 2004

OFFICE OF PETITIONS

In re Application of
Alex Stenzler
Application No. 10/348,238
Filed: January 21, 2003
Attorney Docket No. 23086-81302

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 24, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 13, 2003, 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 after midnight November 13, 2003.

In response to the non-final Office action, petitioner submitted with the instant petition $1,330 for the petition to revive fee, an amendment, and a Terminal Disclaimer under 37 CFR 1.321, along with the $110 terminal disclaimer fee.

Since the requirements for a grantable petition have been met, the petition is **GRANTED**.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The application file is being forwarded to Technology Center 3700 for review of the amendment and terminal disclaimer filed February 24, 2004.

Telephone inquiries concerning this decision should be directed to Andrea Smith at (703) 308-6711.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

CC: Sidley Austin Brown & Wood, LLP
555 W. Fifth Street, Suite 4000
Los Angeles, CA 90013

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Zebadiah Kimmel
121 Windrose Drive
Mina, SD 57451

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DEC 0 4 2007

OFFICE OF PETITIONS

In re Application of :
Zebadiah Kimmel :
Application No. 10/348,262 :
Filed: January 21, 2003 :
Attorney Docket No. :
ZKIMMEL.001A

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 18, 2007. Petitioner requests, in effect, that this application be revived with no fee based on non-receipt of the October 2, 2006 Office action. Accordingly, the petition filed May 18, 2007 will be treated as a petition under 37 CFR 1.181(a) (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

In order to allow petitioner the opportunity to supply the evidence necessary to establish non-receipt of the October 2, 2006 Office action, a decision on the petition under 37 CFR 1.137(b) will be held in abeyance pending the final outcome of the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment. If applicant prevails in establishing non-receipt under 37 CFR 1.181(a) of the October 2, 2006 Office action, applicant may request a refund of the petition fee submitted.

Any request for reconsideration of this decision should be filed within **two (2) months** from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition to Revive."

This application was held abandoned for failure to reply to the non-final Office action mailed October 2, 2006, which set a three (3) month shortened statutory period for reply.

Petitioner asserts that the Office action dated October 2, 2006 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action and Office records fail to show that the action was returned to the Office as undeliverable. Therefore, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the applicant at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement that the Office action was not received by the applicant;

2. a statement from the applicant attesting to the fact that a search of the file jacket docket records indicates that the Office action was not received; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the applicant's statement.

The petition fails to satisfy items 2 and 3 above.

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).

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matters. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows when replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the Office action of October 2, 2006, was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period after the mailing of the October 2,

2006 Office action, to demonstrate non-receipt of the Office action. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to an Office action, and where petitioner would have entered the receipt date of the Office action had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from himself, or any other person at the address who may have handled the Office action, indicating that a search was conducted of the location where the correspondence from the USPTO would have been kept; however, the October 2, 2006 Office action was not found. Lastly, petitioner must state that he was, in fact, residing at the correspondence address of record for a reasonable time after October 2, 2006; the period when he would have received the Office action.

In the present petition, petitioner did not submit any statements, documentary evidence, or an explanation of his method for tracking due dates for filing responses to communications from the USPTO to show he did not receive the October 2, 2006 Office action. Accordingly, absent the required evidence to establish non-receipt of the Office action of October 2, 2006, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider pursuing the petition under 37 CFR 1.137(b).

A copy of the October 2, 2006 Office action accompanies this decision on petition in order that applicant may file the required reply to revive under the unintentional provisions of 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Copy of Office action of October 2, 2006

m-f

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.
10/348,262	01/21/2003	Zebadiah Kimmel	ZKIMMEL.001A	8454

7590 10/02/2006

Zebadiah Kimmel, MD,MS
121 WINDROSE DRIVE
MINA, SD 57451

EXAMINER
PIERRE, MYRIAM

ART UNIT	PAPER NUMBER
2626	

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/348,262	KIMMEL, ZEBADIAH
	Examiner	Art Unit
	Myriam Pierre	2626

-- 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 ____ 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 _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* 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 _____ 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. 60350891.

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/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. 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.

2. Claim 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerszberg et al. (6,377,664) in view of Rennard et al. (6,405,123).

As to claim 1, Gerszberg et al. teach a method of controlling a visual display using voice commands, the method comprising:

receiving an audio signal comprising voice commands from a user (col. 7 lines 60-65);

encoding the audio signal for transmission (col. 3 lines 47-50);

transmitting the encoded audio signal to a remote system in response to the transmission (col. 5 lines 23-29).

Gerszberg et al. do not teach receiving data from the remote system, wherein the data are configured to cause a display to display visual output and displaying the visual output on the visual display.

However, Rennard et al. do teach receiving data from the remote system, wherein the data are configured to cause a display to display visual output (col. 6 lines 8-16); and displaying the visual output on the visual display (col. 6 lines 10-16).

Therefore, it would have been obvious to on of ordinary skill in the art at the time of the invention to incorporate the video phone of Gerszberg et al. into the navigation system of

Rennard et al., because Rennard et al. teach that this would provide use in displaying maps and enhanced directional information, col. 6 lines 10-16.

As to claim 2, which depends on claim 1, Gerszberg et al. teach wherein the visual display is a display of a phone and wherein the audio signal is received by the mobile phone (Fig. 5 element 303; col. 8 lines 43-46).

Gerszberg et al. do not teach wherein the visual display is a display of a mobile phone.

However, Rennard et al. do teach wherein the visual display is a display of a mobile phone (col. 6 lines 10-16).

Therefore, it would have been obvious to on of ordinary skill in the art at the time of the invention to incorporate the video phone of Gerszberg et al. into the navigation system of Rennard et al., because Rennard et al. teach that this would provide use in displaying enhanced directional information, col. 6 lines 10-16.

As to claim 3, which depends on claim 2, Gerszberg et al. teach wherein the data is received from the remote system by the mobile phone (col. 5 lines 53-59 and col. 8 lines 43-46).

As to claim 4, which depends on claim 2, Gerszberg et al. teach wherein the audio signal is received and encoded by the mobile phone (col. 8 lines 43-46 and col. 3 lines 47-50).

As to claim 5, Gerszberg et al. teach, a method of controlling a visual display using voice commands, the method comprising: receiving a transmission of input data from a remote

location, wherein the input data is based at least upon voice commands spoken by a user at the remote location (col. 5 lines 23-29 and col. 7 lines 60-65); processing the input data using automated speech recognition to identify the voice commands (col. 7 lines 60-65); and based at least upon the identified voice commands, transmitting output data to the remote location, wherein the output data is responsive to the voice commands (col. 7 lines 60-65).

Gerszberg et al. do not teach wherein the output data is configured to effect output by the visual display.

However, Rennard et al. do teach wherein the output data is configured to effect output by the visual display (col. 6 lines 10-16).

Therefore, it would have been obvious to on of ordinary skill in the art at the time of the invention to incorporate the video phone of Gerszberg et al. into the navigation system of Rennard et al., because Rennard et al. teach that this would provide use in displaying enhanced directional information, col. 6 lines 10-16.

As to claim 6, which depends on claim 5, Gerszberg et al. teach wherein the transmission of the input data is received through a telephone system (col. 3 lines 35-45).

As to claim 7, which depends on claim 5, wherein the visual display is a visual display of a computer (Fig. 5 element 316 and Fig. 1 element 14).

As to claim 8, which depends on claim 5, Gerszberg et al. teach wherein the visual display is part of a video phone (Fig. 5 element 316 and Fig. 1 element 14).

Gerszberg et al. do not teach wherein the transmission of the input data is received from the video phone.

However, Rennard et al. do teach wherein the transmission of the input data is received from the video phone (col. 6 lines 10-16).

Therefore, it would have been obvious to on of ordinary skill in the art at the time of the invention to incorporate the video phone of Gerszberg et al. into the navigation system of Rennard et al., because Rennard et al. teach that this would provide real-time position an orientation information, col. 6 lines 10-20.

As to claim 9, which depends on claim 5, Gerszberg et al. teach method of controlling a visual display using voice commands (col. 7 lines 60-65).

Gerszberg et al. do not teach the output data comprise visual update instructions.

However, Rennard et al. do teach the output data comprise visual update instructions (col. 5 lines 58-62).

Therefore, it would have been obvious to on of ordinary skill in the art at the time of the invention to incorporate the video phone of Gerszberg et al. into the navigation system of Rennard et al., because Rennard et al. teach that this would provide instructions for completing a task, where, for example, electromechanical components are involved, col. 5 line 65- col. 6 line 4.

As to claim 10, which depends on claim 5, Gerszberg et al. teach wherein the visual display is a visual display of a phone and wherein the input data are transmitted by the mobile phone (Fig. 5 element 303; col. 8 lines 43-46).

Gerszberg et al. do not teach wherein the visual display is a display of a mobile phone.

However, Rennard et al. do teach wherein the visual display is a display of a mobile phone (col. 6 lines 10-16).

Therefore, it would have been obvious to on of ordinary skill in the art at the time of the invention to incorporate the video phone of Gerszberg et al. into the navigation system of Rennard et al., because Rennard et al. teach that this would provide use in displaying enhanced directional information, col. 6 lines 10-16.

As to claim 11, which depends on claim 5, Gerszberg et al. teach further comprising displaying the visual output on the visual display (Fig. 5 element 303; col. 8 lines 43-46).

As to claim 12, which depends on claim 5, Gerszberg et al. teach wherein the output data comprise HTML (col. 10 lines 38-40).

As to claim 13, which depends on claim 5, Gerszberg et al. teach wherein the output data are further configured to be interpreted by the visual display (Fig. 5 element 303; col. 8 lines 43-46).

As to claim 14, which depends on claim 5, Gerszberg et al. teach wherein the output data comprise an image (Fig. 5 element 303; col. 8 lines 43-46).

As to claim 15, which depends on claim 5, Gerszberg et al. teach method of controlling a visual display using voice commands (col. 7 lines 60-65).

Gerszberg et al. do not teach the output data comprise text.

However, Rennard et al. do teach the output data comprise text. (col. 6 lines 8-12).

Therefore, it would have been obvious to on of ordinary skill in the art at the time of the invention to incorporate the video phone of Gerszberg et al. into the navigation system of Rennard et al., because Rennard et al. teach that this would provide improved positioning accuracy of the system, where interaction is achieve through text, col. 5 line 65- col. 6 line 4.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 16 is rejected under 35 U.S.C. 102(e) as being anticipated by Gerszberg et al. (6,377,664).

As to claim 16 Gerszberg et al. teach

a system for controlling a visual display, the system comprising: a sound input device configured to receive, encode and transmit sounds (voice) (col. 3 lines 47-50;

analog or digital voice); a speech processing device located remote from the sound input device, the speech processing device configured to receive and process the encoded and transmitted sounds (col. 3 lines 47-50);

a server device configured to output data based upon output received from the speech processing device (col. 7 lines 45-54); and

output received from the server device (col. 7 lines 45-54 and Fig. 5 element 303; col. 8 lines 43-46).

5. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerszberg et al. (6,377,664) in view of Rennard et al. (6,405,123).

As to claim 17, which depends on claim 16, Gerszberg et al. teach wherein the sound input device is the mobile phone (col. 5 lines 23-29).

Gerszberg et al. do not teach wherein the visual display is a display of a mobile phone.

However, Rennard et al. do teach wherein the visual display is a display of a mobile phone (col. 6 lines 10-13).

Therefore, it would have been obvious to on of ordinary skill in the art at the time of the invention to incorporate the video phone of Gerszberg et al. into the navigation system of Rennard et al., because Rennard et al. teach that this would provide a wide range of navigational applications, col. 5 line 65- col. 6 line 4 and col. 6 lines 34-36.

As to claim 18, which depends on claim 16, Gerszberg et al. teach wherein the output received from the server device comprises HTML (col. 10 lines 38-40).

As to claim 19, which depends on claim 16, Gerszberg et al. teach wherein the output received from the server device comprises an image (col. 7 lines 45-54 and Fig. 5 element 303; col. 8 lines 43-46).

As to claim 20, which depends on claim 16, Gerszberg et al. teach method of controlling a visual display using voice commands (col. 7 lines 60-65).

Gerszberg et al. do not teach wherein the output received from the server device comprises text.

However, Rennard et al. do teach wherein the output received from the server device comprises text (col. 6 lines 24-34).

Therefore, it would have been obvious to on of ordinary skill in the art at the time of the invention to incorporate the video phone of Gerszberg et al. into the navigation system of Rennard et al., because Rennard et al. teach that this would provide a wide range of navigational applications, col. 5 line 65- col. 6 line 4 and col. 6 lines 34-36.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. see PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Myriam Pierre whose telephone number is 571-272-7611. The examiner can normally be reached on 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on 571-272-7602. 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.

Myriam Pierre
AU 2626
9/27/06

RICHEMOND DORVIL
SUPERVISORY PATENT EXAMINER

Notice of References Cited	Application/Control No. 10/348,262	Applicant(s)/Patent Under Reexamination KIMMEL, ZEBADIAH	
	Examiner Myriam Pierre	Art Unit 2626	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,377,664	04-2002	Gerszberg et al.	379/88.13
*	B	US-6,405,123	06-2002	Rennard et al.	701/200
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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Patent and Trademark Office
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Washington, D.C. 20231

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JUL 1 2 1999
CHRISTENSEN, O'CONNOR
JOHNSON & KINDNESS

Christensen, O'Conner, Johnson and Kindness, PLLC
1420 Fifth Avenue
Suite 2800
Seattle, WA 98101-2347

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SPECIAL PROGRAMS OFFICE
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MSFT-1-12519

In re Application of
Malamud, Elsbree, Gavriluk and Barnes
Application No. 09/234,624
Filed: January 21, 1999
For: INFORMATION POINTERS

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the "Petition Under 37 CFR 1.47(a)," filed January 21, 1999.

The petition is granted.

The above identified application was filed January 21, 1999, without an executed oath or declaration from the third inventor, Erik Gavriluk, and naming Mark Malamud, John Elsbree, Erik Gavriluk and David Barnes as inventors.

The petition signed by Marlene Klein was filed on January 21, 1999. Accompanying the petition is: a declaration of facts of Melissa Whitmore; a Combined Declaration and Power of Attorney signed by Mr. Malamud, Mr. Elsbree and Mr. Barnes on behalf of themselves and on behalf of the non-signing inventor; and a check in the amount of $130 for the petition fee.

Petitioner has shown that the non-signing inventor refuses to join in the filing of the above-identified application. Specifically, the declaration of facts of Ms. Whitmore establishes that a copy of the patent application, including the specification, claims, drawings, and oath or declaration was mailed to Mr. Gavriluk's home address, but that Mr. Gavriluk failed to comply with the request that he sign the declaration.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(a), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Declaration. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be returned to the Office of Initial Patent

COPY

Examination for further processing as a Rule 47 application with an indication on the PALM bib-data sheet that the application has been accorded Rule 47 status.

Telephone inquiries regarding this decision should be directed to the undersigned at (703)306-5586.

Eugenia A. Jones
Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

JS

OIPE JC48
APR 0 8 2003
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UNITED STATES DEPARTMENT OF COMMERCE
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Erik A. Gavriluk
3917 West Burbank Blvd.
Burbank, CA 91505

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SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of
Malamud, Elsbree, Gavriluk and Barnes
Application No. 09/234,624
Filed: January 21, 1999
For: INFORMATION POINTERS

Dear Mr. Gavriluk:

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)305-9285. 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).

Eugenia A. Jones
Eugenia A. Jones
Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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JJGJr.: 03-05

Paper No. __

Jay F. Moldovanyi
Fay, Sharpe, Fagan,
Minnich & McKee, LLP
1100 Superior Avenue, 7th Floor
Cleveland OH 44114-2518

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MAR 3 1 2005

OFFICE OF PETITIONS

In re Application of :
Mueller, et al. :
Application No. 10/348,306 :
Filed: 21 January, 2003 : ON PETITION
Attorney Docket No.: FFRZ 2 00208 :

This is a decision on the petition under 37 C.F.R. §1.78(a)(3), filed 29 September, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to:

Application No. 29/171,181, filed 18 November, 2002.

The Office regrets the delay in addressing this matter.

The petition is **GRANTED**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 C.F.R. §1.78(a)(2)(ii) and further failed to include a proper reference to the above-noted, prior-filed application as required by 37 C.F.R. §1.78(a)(2)(i) and §1.78(a)(2)(iii).

The instant application was filed 21 January, 2003. Therefore, since this application was filed after November 29, 2000, a petition under 37 C.F.R. §1.78(a)(3) is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application.

A petition for acceptance of a claim for late priority under 37 C.F.R. §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 C.F.R. §1.78(a)(2)(ii). In addition, the petition under 37 C.F.R. §1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. §120 and 37 C.F.R. §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 C.F.R. §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 granting of a petition to accept the delayed benefit claim to the prior-filed application(s) under 37 C.F.R. §1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under the statute and regulation must be met. Similarly, the fact that the correct Filing Receipt accompanying this decision includes the prior-filed application(s) should not be construed as meaning that the 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 entitle to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the above-noted, prior-filed nonprovisional application, accompanies this decision on petition.

This matter is being referred to Technology Center 3600 for further examination in due course.

Inquiries concerning this decision may be directed to John Gillon, Senior Attorney, Office of Petitions at (571) 272-3214.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

Encl.: Corrected Filing Receipt

[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).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

April 7, 2005

B. J. Sadoff
Nixon & Vanderhye
1100 North Glebe Rd., 8th Floor
Arlington, Va. 22201-4714

In re Application of:
Muller
Serial No: 10/348,321 On Petition
Filing Date: January 22, 2003
For: **MICROBIAL AGENT AND COMPOSITION FOR COSMETIC TREATMENT CONTAINING IT**

In response to the petitions received on November 3, 2004, to withdraw the holding of abandonment in the above application.

The petition is Granted.

The above-identified application became abandoned for failure to reply with the meaning of 37 C.D.R 1.113 in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed April 7, 2003. Which set forth a shortened statutory period for reply of two months. Accordingly, the above-identified application became abandoned June 10, 2003. The notice of abandonment was mailed on January 16, 2004.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Part of Nonprovisional Application on May 2, 2003.

The application was abandoned in error. The office regrets any inconvenience this may have caused the client.

Telephone inquiries concerning this application may be directed to Doshie E. Day (703) 308-3640.

Doshie E. Day
Program Management Assistant
Office of Initial Patent Examination

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1450 BROOKS ROAD
MEMPHIS TN 38116

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OFFICE OF PETITIONS

In re Application of :
Christopher McDonald et al. :
Application No. 10/348,343 : ON PETITION
Filed: January 22, 2003 :
Attorney Docket No.: 00167-467001

This is a decision on the petition filed April 27, 2006 under 37 CFR 1.181 to withdraw the holding of abandonment or in the alternative under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.
The petition under 37 CFR 1.137(b) is **GRANTED**.

Petitioner argues that the Notice of Allowability mailed October 21, 2005 required Corrected Drawings and that such a requirement was incorrect and thus no drawings were filed in response to the Notice.

Petitioners are advised that if an Office communication is mailed and that in the absence of that communication not being withdrawn by the USPTO, then by law a response is required. The failure to file a response causes the application to become abandoned, even

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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)).

if that communication was sent in error. There is no evidence that the applicants filed a written response or query as is required by 37 CFR 1.2. Therefore, applicants are not afforded an opportunity then to withhold a response based on a perceived error on the part of the USPTO. If applicants perceived an error with the request for "Corrected Drawings" they had an affirmative obligation to file a response that no such drawings should have been required.

This application properly became abandoned January 24, 2006 for failure to file a timely reply to the Notice of Allowability mailed October 21, 2005 and therefore the Notice of Abandonment mailed March 28, 2006 was appropriate.

In view thereof, the holding of abandonment will not be withdrawn.

With respect to the petition to revive, the petition fee in the amount of $1500.00 has been charged to deposit account no. 06-1050.

All other requirements under 37 CFR 1.137(b) having been met, this matter is being referred to the Publishing Division for review of the drawings shown as having been received in the PTO on April 27, 2006.

Additionally, 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 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

cc:

FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

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OFFICE OF PETITIONS

In re Patent of Itoh et al.	:	
Application Number:10/348,374	:	DECISION ON PETITION
Patent: 6,755,299 Filing Date: January 21, 2003	:	
Issue Date: June 29, 2004	:	

This is a decision on the petition to correct the name of the assignee under 37 CFR 1.183 filed on July 27, 2006. The petition is properly treated under 37 CFR 3.81 (b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **Granted**.

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

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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PORT JEFFERSON STATION NY 11776

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OFFICE OF PETITIONS

In re Application of
Macauley Duff Kerr
Application No. 60/351,688
Filed: January 22, 2002
Title: GOLF GREEN REPAIR TOOL

In re Application of
Macauley Duff Kerr
Application No. 60/355,055
Filed: February 7, 2002
Title: GOLF GREEN REPAIR TOOL

DECISION GRANTING PETITION

This is a decision on the paper titled "Petition to the Commissioner to Invoke the Supervisory Authority of the Commissioner Pursuant to 37 CFR § 1.181(a)(3)", filed in nonprovisional application no. 10/348,376 on February 10, 2003, which is being treated as a petition under 37 CFR 1.182 to merge provisional application no. 60/351,688 into provisional application no. 60/355,055, and to accord application no. 60/355,055 a filing date of January 22, 2002.

The petition under 37 CFR 1.182 is **GRANTED**.

Petitioner requests that provisional application 60/355,055 be accorded a filing date of January 22, 2002 and be refunded the filing fee of $80. As set forth on petition, pro-se applicant filed provisional application no. 60/351,688 via USPS Express Mail No. EE582748745US on January 22, 2002. However, after filing the application, petitioner queried the USPS on February 4, 2002 and learned that the USPS was unable to locate any delivery records. Accordingly, on February 7, 2002, applicant remailed the provisional application papers and the filing fee, together with a letter from the

USPS stating that the application was originally filed by Express Mail on January 22, 2002. These papers were treated as a new provisional application and assigned application no. 60/355,055.

Sometime after February 12, 2002, pro-se applicant received the postcard receipt for application no. 60/351,688, with a USPS date-stamp of January 22, 2002. Thereafter, applicant received a filing receipt for application no. 60/355,055, indicating a filing date of February 7, 2002.

Obviously, pro-se applicant did not intend to file two separate applications. It is appropriate to merge the file of application no. 60/351,688 into the file of application no. 60/355,055, and to accord application no. 60/355,055 a filing date of January 22, 2002.[1]

The $80 filing fee paid in application no. 60/351,688 will be refunded to petitioner under separate cover.

Application nos. 60/351,688 and 60/355,055 are being forwarded to the Office of Initial Patent Examination for merging the file of application no. 60/351,688 into the file of application no. 60/355,055. Application no. 60/351,688 will no longer be an active serial number. **The filing date of application no. 60/355,055 will also be corrected to January 22, 2002.**

Application no. 10/348,376 is being forwarded to Technology Center 3700 for consideration of the petition to make special, filed April 7, 2003, and to await for applicant's reply to the Notice to File Corrected Application Papers, mailed April 8, 2003.

Telephone inquiries related to this decision should be directed to the Petition Attorney Cliff Congo at (703) 305-0272.

Beverly Flanagan
Supervisory Petitions Examiner
Office of Petitions

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[1] While normally application no. 60/355,055 would be merged into application no. 60/351,688, nonprovisional application 10/348,376 claimed priority to application no. 60/355,055, not application 60/351,688.

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MAR -9 2004

Paper No. 8

In re Application of	:	
MacAuley Duff Kerr	:	
Serial No. 10/348,376	:	DECISION ON PETITION
Filed: January 21, 2003	:	TO MAKE SPECIAL
For: GOLF GREEN REPAIR TOOL	:	

Applicant's petition, filed April 7, 2003, seeks to have this application made special pursuant to the Accelerated Examination Program. The petition is GRANTED.

The petition has been reviewed and is found to be in compliance with the requirements for special status as set forth in Section 708.02(VIII) of the Manual of Patent Examining Procedures (MPEP).

Applicant is advised that the examiner's search will be restricted to the subject matter encompassed by the claims. In the event that the application receives a first action rejection, applicant is encouraged to arrange for an interview with the examiner, and to provide the examiner with a working copy of any proposed amendment one working day prior to the interview. Any amendment filed in response to a first action rejection which would require broadening of the field of search will be treated as an improper response.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Bernard S. Hoffman
460 Old Town Road, Suite 7F
Port Jefferson Station, NY 11776

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3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

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In re Application of	:	
Kreckel et al.	:	
Application No. 10/348,394	:	ON PETITION
Filed: January 21, 2003	:	
Attorney Docket No. 44880US029	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 12, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of January 17, 2008 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on March 18, 2008. See MPEP 1214.06.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114, (2) the petition fee of $1,540, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

This application is being referred to Technology Center AU 1794 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.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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Paper No. 5

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OFFICE OF PETITIONS

In re Application of
Gargiulo et al.
Application No. 10/348,426
Filed: January 21, 2003
Attorney Docket No. 34312US1

ON PETITION

This decision concerns the May 16, 2003 petition under 37 CFR 1.47(a).

The petition is **DISMISSED.**

Three inventors are named in this application which, upon filing, did not include an oath or declaration. A Notice to File Missing Parts of Nonprovisional Application was mailed on March 7, 2003, giving Applicants an extendable 2-month period to submit a properly signed oath/declaration. The instant petition then followed, stating that one of the joint-inventors, Christian Gargiulo ("Gargiulo"), "cannot be reached and/or refuses to sign" the declaration, and requesting that the signing inventors be allowed to file this application on behalf of themselves and Gargiulo. The petition is accompanied by a declaration signed by the 2 available inventors ("5/16/03 Declaration"), and a request for a 1-month extension of time and the requisite extension-of-time fee.

The available inventors may file the application on behalf of themselves as well as Gargiulo, provided that a *bona fide* attempt has been made to present to Gargiulo, for review and signature, **a copy of the entire application (specification including claims; drawings),**[1] and that the latter refuses to join in this application.[2]

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[1] MPEP section 409.03(d) (Rev.1, Feb. 2003) REFUSAL TO JOIN (A refusal . . . to sign . . . when the inventor['s representative] has not been presented with the application papers does not itself suggest that [he] is refusing to join in the application unless it is clear that [he] understands exactly what he is being asked to sign and refuses to accept the application papers.); also citing In re Gray, 115 U.S.P.Q. 80 (Comm'r Pat. 1956) (It is reasonable to require that the inventor['s representative] be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that [he] is apprised of the application to which the oath/declaration is directed.).

[2] See MPEP section 409.03(d) (Rev. 1, Feb. 2003) (Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted . . . When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts.).

To show that Gargiulo has refused to join in this application despite such a *bona fide* attempt, the petition must include, *inter alia*, a statement of facts, signed by a person with firsthand knowledge of the facts recited therein, concerning the circumstances of the presentation of the application papers to Gargiulo at his last known address,[3] and his subsequent refusal.[4]

The petition and the accompanying exhibits indicate that a Darlene Carpenter ("Carpenter"), an employee of Gargiulo's (former) employer, mailed Gargiulo at his last known address a declaration and power of attorney, an assignment, and a copy of the application specification.[5] There is no evidence that Gargiulo was mailed a copy of the drawings. Moreover, Carpenter's conclusion that Gargiulo refused to join in this application was based on Gargiulo's non-response to Carpenter's February 6, 2003 letter. There is no indication that Carpenter or anyone else attempted to verify that Gargiulo still resided at that address, and actually received Carpenter's February 6, 2003 letter and enclosures.

In view of the above, the Office is not able to conclude that a *bona fide* attempt has been made to present to Gargiulo a copy of the entire application (specification including claims; drawings), as required by 37 CFR 1.47. The petition is thus dismissed. The 5/16/03 Declaration is not accepted.

To prevent abandonment of this application,[6] one of the following must be submitted within **TWO MONTHS** of the mailing date of this decision:[7]

(1) an oath/declaration properly signed by all inventors, including Gargiulo;

or

(2) a renewed §1.47(a) petition (no fee) that includes proper statement(s)[8] of **facts** establishing that a *bona fide* attempt was made to present to Gargiulo, at his last

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[3] 37 CFR 1.47(a); MPEP section 409.03(e) (Rev. 1, Feb. 2003).

[4] *Id.*

[5] 2/6/03 letter, Carpenter to Gargiulo, 1st paragraph, item 3.

[6] See 37 CFR 1.53(f) (If an application which has been accorded a filing date . . . does not include an oath or declaration . . . pursuant to §1.63 . . . , applicant will be notified and given a period of time within which to . . . file an oath or declaration . . . to avoid abandonment).

[7] Unless proper extension(s) of time under 37 CFR 1.136(a) is (are) obtained.
Also, Gargiulo is the first inventor listed in the 5/16/03 Declaration. Therefore, the inventorship for the instant application has been corrected to "Gargiulo et al." from "Kothera et al." If the order appearing in the 5/16/03 Declaration was incorrect and is desired to be changed, a **supplemental declaration** listing the inventors in the proper order must be submitted, and be accompanied by a petition under 37 CFR 1.182, along with a $130 petition fee. **The §1.182 petition should be filed concurrently with the §1.47(a) petition. The §1.47(a) petition should only supplement, and not re-iterate, the information already provided in the instant petition.**

[8] **Statements based on hearsay will not be considered.**

known address, a copy of the entire application (**specification including claims; drawings**), and that Gargiulo nevertheless refused to sign the declaration.

The renewed §1.47(a) petition should be addressed as follows:

by mail/by hand:	Commissioner for Patents, USPTO Office of Petitions Crystal Plaza Four, Suite CP4-3C23 2201 South Clark Place Arlington, VA 22202
by fax:	(703) 308-6916 Attn: Office of Petitions

Finally, the Office acknowledges receipt of the $130 surcharge for failure to submit an acceptable oath/declaration upon filing of the application. Also, as authorized in the petition, the $130 petition fee has been charged to Deposit Account No. 16-0820.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 7

PEARNE & GORDON LLP
526 SUPERIOR AVENUE, EAST
SUITE 1200
CLEVELAND, OH 44114-1484

COPY MAILED

AUG 1 8 2003

OFFICE OF PETITIONS

In re Application of
Gargiulo et al.
Application No. 10/348,426
Filed: January 21, 2003
Attorney Docket No. 34312US1

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(a)

This decision concerns the July 30, 2003 renewed petition under 37 CFR 1.47(a).

The petition is **GRANTED.**

One of the three named inventors in this application, Christian Gargiulo ("Gargiulo"), did not sign the declaration submitted with the previous petition under 37 CFR 1.47(a), filed on May 16, 2003. That petition was dismissed on June 16, 2003 for lacking sufficient showing that Gargiulo could not be reached and/or refused to sign the declaration as alleged in the petition.

The instant renewed petition evidences that counsel for Assignee has conducted a search on Lexis.com for Gargiulo and located Gargiulo at a different address. Moreover, according to the statement of facts submitted with the renewed petition, application papers mailed by counsel to Gargiulo at that new address were returned to counsel as "unclaimed."

In view of the above, the Office concludes that a *bona fide* attempt was made, in vain, to secure Gargiulo's signature on the application declaration. The renewed petition is thus granted.

The "Declaration and Power of Attorney for Utility or Design Patent Application" signed by the two available inventors and submitted with the previous §1.47(a) petition on May 16, 2003 is hereby accepted. The application is now complete.

As provided in 37 CFR 1.47(c), the Office will forward notice of the filing of this application to Gargiulo at his last known address provided in the renewed petition:

29912 Cool Meadow Drive
Menifee, CA 92584

Notice of the filing of this application will also be published in the *Official Gazette*.

The application file is being forwarded to Technology Center 3700 for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

#3

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 03

Gary Abelev
BAKER & BOTTS
30 ROCKEFELLER PLAZA
44th Floor
NEW YORK, NY 10112

APR 30 2003

In re Application of:
SCALLANTE, *et al.*
Application No. 10/348,436
Filed: January 21, 2003
Attorney Docket No.:A35159
073621.0105

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition under 37 C.F.R. § 1.102, filed January 21, 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, © 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 contains items (a)-(e) in accordance with M.P.E.P., Section 708.02, Item VIII. Accordingly, the petition is GRANTED.

The application is being forwarded to the examiner for examination under the accelerated examination procedure.

If the examiner determines that restriction is necessary, he/she will follow the established telephone practice to resolve the restriction. If applicant elects with traverse the application will

be forwarded to the Special Programs Examination unit to vacate this decision, and the application will be taken up by the examiner for action in its regular turn.

If the examiner can make this application special without prejudice to any possible interfering applications, and he/she should make a rigid search for such, he/she is authorized to do so for the next action. Should the application be rejected, the application will not be considered special for the subsequent action unless the applicant promptly makes a bona fide effort to place the application in condition for allowance, even if it is necessary to have an interview with the examiner to accomplish this purpose.

If the examiner finds any interfering application for the same subject matter, he/she should consider such application simultaneously with this application and should state in the official letter of such application that she/he is taking it out of its turn because of possible interference. Should an appeal be taken in this application or should this application becomes involved in an interference, consideration of the appeal and the interference will be expedited by all Patent and Trademark Office officials concerned, contingent likewise upon diligent prosecution by the applicant.

After allowance, this application will be given priority for printing. See M.P.E.P. Section 1309. The petition is granted to the extent indicated.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (703) 308-2260.

Lissi Mojica Marquis, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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.

BASF CORPORATION
ANNE GERRY SABOURIN
26701 TELEGRAPH ROAD
SOUTHFIELD, MI 48034-2442

COPY MAILED

MAY 2 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Campbell et al.	:	
Application No. 10/348,484	:	ON PETITION
Filed: March 25, 2003	:	
Attorney Docket No. IN-5282DIV.2	:	

This is in response to the petition under 37 CFR 1.137(b), filed March 17, 2004.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper reply to the non-final Office action mailed August 4, 2003. This Office action set a three month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No extension of time having been obtained and no reply received, the instant application became abandoned effective November 5, 2003. A Notice of Abandonment was mailed on March 19, 2004.

The instant petition includes the required reply in the form of an amendment and the required statement of unintentional delay. The petition fee of $1,330 is being charged to Deposit Account No. 23-3425, as authorized.

Technology Center Art Unit 1713 has been advised of this decision. The amendment submitted on petition will be considered by the examiner in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 4

Gregory A. Nelson
Akerman, Senterfitt & Eidson, P.A.
222 Lakeview Avenue, 4th Floor
P.O. Box 3188
West Palm Beach, FL 33402-3188

MAILED

JUN 12 2003

OFFICE OF DIRECTOR
GROUP

In re Application of	:	
JACOBS et al.	:	DECISION ON PETITION
Application No.: 10/348,487	:	TO MAKE SPECIAL
Filing Date: January 21, 2003	:	
Attorney Docket No.: 5843-339	:	

This is a decision on the petition filed on May 12, 2003 requesting that the above-identified application be granted special status under 37 C.F.R. § 1.102(d) and examined out of turn on the ground of "INVENTIONS RELATING TO COUNTERING TERRORISM" as set forth in MPEP § 708.02 XI. The fee for this petition has been charged to the given Deposit Account as authorized in the petition.

The petition has been considered and found to comply with all the requirements set forth in MPEP § 708.02 XI. Petitioner's statement explaining how the invention contibutes to countering terrorism "by detection of harmful materials such as explosives when entry into the United States by sea or air is attempted" has been determined to satisfy the "statement" provision of MPEP § 708.02 XI. This statement is supported in the specification on page 17, lines 12-15, which explains how the applicant's system can be portable and "can detect explosives, such as plastic explosives, that are generally undetectable by conventional systems used at airports."

The petition is **GRANTED**.

The application is being forwarded to the examiner for expedited prosecution.

Edward Westin

Edward P. Westin, 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
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FEB 0 9 2006

OFFICE OF PETITIONS

Kenley Earl Brinkerhoff
3078 South Spruce Circle
Saint George, UT 84790

In re Application of
Kenley Earl Brinkerhoff
Application No. 10/348,509
Filed: January 21, 2003
Attorney Docket No.

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed January 19, 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 April 20, 2005, which set a shortened statutory period for reply of three (3) months from its mailing date. A request for an extension of time within the fourth month was requested. A proper response was not received within the allowed period, and the application became abandoned on October 21, 2005. A Notice of Abandonment was mailed on November 15, 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 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).

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[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The instant petition lacks items (2) 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). Petitioner mistakenly believed that the extension of time obtained to reply to the non-final Office action extended four months from the end of the shortened statutory set for reply.

As to item (2), the fee for the instant petition is $250.00. Petitioner only remitted $55.00. It is noted, however, that no petition fee is due because of the overpayment of the extension of time under 37 CFR 1.136(a). The additional funds remitted for the extension of time will be used towards the satisfaction of the petition fee.

With regard to item (3) above, the argument presented suggests that the delay in responding to the non-final Office action was unintentional, but not unavoidable. The shortened statutory period for reply to the non-final Office action was three months from the mailing date of the non-final Office action. The maximum statutory period for reply to the non-final Office action was a total of six months from the mailing date of the notice—with petitioner being able to purchase only three additional months for reply under 37 CFR 1.136(a). As stated previously, nonawarness of a USPTO rule does not constitute unavoidable delay, although it may be cause of unintentional delay in which case petitioner may file a petition under 37 CFR 1.137(b). The petition under 37 CFR 1.137(a) is dismissed, accordingly.

It is noted that the amount of $795.00 was remitted for the request for an extension of time within the fourth month. As stated previously, the extension of time within the fourth month was neither statutorily available nor necessary in this case. The extension of time within the third month was available the fee for which is $510.00. Petitioner has a credit of $340.00--$285.00 for the difference between the fee for the extension of time within the fourth month and the third month and the $55.00 payment remitted with the petition. Petitioner is advised that $250.00 will used for the satisfaction of the instant petition fee and $90.00 will be refunded to petitioner, in due course.

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

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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.

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

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/64

PTO/SB/64 (10-05)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

First named inventor:

Application No.: Art Unit:

Filed: Examiner:

Title:

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee $ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity – fee $ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____(identify type of reply):

☐ has been filed previously on _____.
☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of $ _____.

☐ has been paid previously on _____.
☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $ _____ for a small entity or $ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature	Date
Typed or printed name	Registration Number, if applicable
Address	Telephone Number
Address	

Enclosures: ☐ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

Date	Signature
	Typed or printed name of person signing certificate

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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Kenley Earl Brinkerhoff
3078 South Spruce Circle
Saint George, UT 84790

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MAR 0 9 2006

OFFICE OF PETITIONS

In re Application of

Kenley Earl Brinkerhoff

Application No. 10/348,509

Filed: January 21, 2003

Attorney Docket No.

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 24, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed April 20, 2005, which set a shortened statutory period for reply of three (3) months. Extension of time within the fourth month was obtained, but no response to the non-final Office action was received within the allowable period. Accordingly, the application became abandoned on October 21, 2005. A Notice of Abandonment was mailed on November 15, 2005.

The amendment filed February 24, 2006, is noted.

The application is being forwarded to Technology Center 2600, GAU 2652 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

MAY 5 2006

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450

ELIZABETH N. KAYTOR
FISH & RICHARDSON, P.C., P.A.
60 SOUTH STREET SUITE 3300
MINNEAPOLIS, MN 55402

In re Application of	:
Bianca A. Thomas et al	:
Serial No. 10/348,546	: DECISION ON PETITION
Filed: 21 January 2003	:
Attorney Docket No.: 7039-439001	:

This letter is in response to applicant's Petition under 37 C.F.R. 1.144, filed 23 February 2006 requesting review of the restriction requirement set forth in the communication mailed 25 July 2005 and made Final in the Office action mailed 20 October 2005.

BACKGROUND

This application was filed under 35 U.S.C. 111 on 21 January 2003 and contained 11 claims, as filed. On 25 July 2005 the examiner mailed to applicants a restriction requirement in which the eleven claims were divided into four groups as follows:

I. Claims 1 - 3 and 7 - 11, drawn to an isolated nucleic acid sequence SULT1A3 comprising a variant at position 702, classified in class 536, subclass 23.1.

II. Claims 1 - 2, 4, and 9 -10, drawn to an isolated nucleic acid sequence SULT1A3 comprising a variant at position 96, classified in class 536, subclass 23.1.

III. Claims 1 - 2, 5, and 9 - 10, drawn to an isolated nucleic acid sequence SULT1A3 comprising a variant at position 1325, classified in class 536, subclass 23.1.

IV. Claims 1 - 2, 6, and 9 - 10, drawn to an isolated nucleic acid sequence SULT1A3, classified in class 536, subclass 23.1.

The examiner provided explanations regarding why each of the above inventions is independent and distinct.

On 10 August 2005 applicants filed a response to the restriction requirement in which they elected, with traverse, the invention of Group I, claims 1- 3 and 7 - 11, wherein the variant is at position 702. Their traversal was based on MPEP 803.04 which states that,

in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction.

On 20 October 2005 the examiner mailed to applicants an Office action in which applicants' traversal was noted and commented on and the restriction requirement was made Final. Claims 1-3 and 11 were then rejected under 35 U.S.C. 1112, second paragraph, as indefinite. Claims 1-3 and 7-11 were also rejected under 35 U.S.C. 112, first p;aragraph as lacking written description and as lacking enablement. Claims 1-3 and 7-11 were further rejected under 35 U.S.C. 102(b)over Fodor et al.

On 23 February 2006 applicants filed a reply to the Office action cacnceling claims 2, 7-8 and 11, amending claims 1 and 3-6 and adding claims 12-16. Applicants further replied to the rejections of record.

On 23 February 2006 applicants also filed this petition under 37 CFR 1.144 requesting Director review of the restriction requirement.

DISCUSSION

The application, file history and petition have been considered carefully.

Applicants traverse the restriction for the following reasons.

(1) The different nucleic acids are simply single mutation variants and are not significant to the examination of the claims.

First of all, the claims are directed to isolated nucleic acids consisting essentially of variant SUL1V3 nucleic acid sequences wherein the variant sequences contain at least 10 contiguous nucleotides of SEQ ID NO. 1 and contains one of four recited variations. Additionally, the applicants point out that the recited nucleic acids are not required to encode polypeptides, and that any difference in function among the recited variants of SULT1A3 are not significant to examination of the instant claims.

Applicants' arguments have been fully considered but are not deemed persuasive. While there would be some overlap of nucleic acids comprising all nucleic acids with one or more of the four single base mutations, four separate searches would have to be performed in order to properly search all of the non-overlapping nucleic acids possessing a single point mutations. The Office would have to search four 19-mers, each one containing a different point mutation in its center in order to perform a complete and thorough search of the prior art. While four such searches do not appear to be excessive to applicants, the demand on the PTO's computers dedicated to sequence searches alone would be undue as would the time the examiner would need to review the findings of all four searches.

(2) Applicants argue that restriction to one nucleic acid variant is contrary to the permissive guidelines of MPEP 803.04.

Applicants emphasize that MPEP 803.04 states that ". . . normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction." Applicants' arguments have been fully considered but are not deemed persuasive."

As pointed out by the examiner, MPEP 803.04 permits up to ten independent and distinct sequences to be examined together. However, this is not a mandatory requirement but are "permissive guidelines." While ten sequences may be examined whenever there is no undue search burden on the examiner, such is not the case in the instant application. The claims are directed to four different single mutation variant nucleic acids. The nucleic acids have different exact sequences and can be used to detect different single point mutations in a patients DNA. Therefore, they have different structure and function.

The examiner is guided in this restriction by MPEP 803.02.

> Since the decisions In re Weber, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and *In re Haas*, 580 F2d. 461, 198 USPQ334 (CCPA 1978), it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. *In re Harnisch*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and *Ex parte Hozumi*, 3 USP!2d 1059 (Bd. Pat. App. & Int. 1984). Broadly, unity of invention exists where compounds included within a Markush group (I) share a common utility, and (2) share a substantial structural feature disclosed as being essential to that utility.

The instant nucleic acid variants lack unity of invention because they each have different sequence structures and different utilities: to detect different point mutations.

(3) Applicants argue further that it would be reasonable to assume that there is no undue burden on the examiner to examiner all four variant nucleic acids.

Applicant's argument has been fully considered but is not deemed persuasive. Applicant's assumption might have merit if only a text search was required for a complete search. However, a thorough search of all four variant sequences would require four separate sequence searches as well as text searching of patent and non-patent literature. Because of the exponential growth of sequence data bases in recent years combined with the unrelenting burden on the Office computers dedicated to sequencing searching, there is an undue burden on both the examiner and the Office.

4) Applicants plead that examination of only one nucleic acid sequence presents a greater hardship on the applicants that on the Office examining all four variants.

The Office regrets any hardship placed on the applicant by the current restriction practice. In the 28 years since the CCPA decided *In re Weber*, there has been an explosion in molecular biology, genomics, and proteonomics which has created an entirely unforeseeable search burden upon the Office. Even though initial sequence searching is done by computer, the examiner must review and analyze all of the references identified by the sequence search. Furthermore, a single experiment by an inventor can generate expression data on thousands of genes and gene products. The exponential increase in the size of the sequence data-bases created by the completion of the sequencing of the human (and other) genome has made the searching of more than a single sequence an undue burden on the Office.

In re Weber is correct that applicants do have the right to have their entire claimed invention examined so long as there exists a Unity of Invention among the various distinct and independent inventions which are claimed. However, where Unity of Invention is lacking, it is proper to restrict the patentably distinct and independent inventions under 35 U.S.C. 121. This approach is guided by case law and reflects a balance between the rights of the instant inventor and the rights of other inventors to have their inventions examined in a timely manner.

DECISION

For all of the above reasons, the Petition is **DENIED**.

Any request for reconsideration of this decision must be filed within two (2) months of the mailing date of this decision in order to be considered timely.

Should there be any questions regarding this decision, please contact Special Program Examiner, William R. Dixon, Jr. by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

George C. Elliott

George C. Elliott
Director, Technology Center 1600

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Paper No.

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

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AUG 14 2008

OFFICE OF PETITIONS

In re Application of	:	
Thomae et al.	:	DECISION ON APPLICATION
Application No. 10/348,546	:	FOR
Filed: January 21, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 07039-439001	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," filed May 22, 2008. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from four hundred twenty-three (423) days to five hundred nineteen (519) days.

The application for patent term adjustment is **DISMISSED**.

On March 11, 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 (PTA) to date is 423 days. On May 22, 2008, applicants timely submitted the instant application for patent term adjustment[1]. Applicants request that at the period for Office delay be increased from four hundred ninety-one (91) days to five hundred eighty-seven (587) days, and consequently, the total PTA be increased from four hundred twenty-three (423) days to five hundred nineteen (519).

Applicants' argument has been considered, but is not well taken. Pursuant to 37 C.F.R. § 1.702(a),

> 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] PALM records indicate that the Issue Fee payment was received on May 22, 2008.

(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;

On October 18, 2007, the examiner responded to applicants' amendment after non-final Office action filed August 6, 2007. As this was within four months of the filing date of the reply, no period of adjustment for Office delay was entered. A review of the record confirms that no period of adjustment for Office delay was warranted.

The subsequent mailing of a communication rescinding this action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(2) on October 18, 2007.

The determination of patent term adjustment at the time of the mailing of the Notice of Allowance of four hundred twenty-three (423) days is correct.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Paper No.

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED

MAR 3 1 2010

OFFICE OF PETITIONS

In re Patent No. 7,425,624	:	DECISION ON REQUEST
Thomae et al.	:	FOR
Issue Date: September 16, 2008	:	RECONSIDERATION OF
Application No. 10/348,546	:	PATENT TERM ADJUSTMENT
Filed: January 21, 2003	:	and
Attorney Docket No. 07039-439001	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on (Monday) November 17, 2008, 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 six hundred fourteen (614) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **six hundred thirteen (613)** days.

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 January 22, 2006 and ends on August 13, 2006, the day before the first RCE was filed. See 35 U.S.C. 154(b)(1)(B)(i). Thus, the B delay is 204 not 205 days. Thus, the patent term adjustment is 613, not 614 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 Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of 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 **six hundred thirteen (613)** 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 : 7,425,624 B1

DATED : **September 16, 2008** **DRAFT**

INVENTOR(S) : Thomae 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 409 days

Delete the phrase "by 409 days" and insert – by 613 days--

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APR 28 2005

OFFICE OF PETITIONS

In re Application of
Chaum
Application No. 10/348,547
Filed: January 21, 2003
Attorney Docket No. PCHA0001/MRK
For: SECRET-BALLOT SYSTEMS WITH VOTER-VERIFIABLE INTEGRITY

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on February 1, 2005 (certificate of mailing date January 25, 2005), to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the April 7, 2004 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 July 8, 2004. A Notice of Abandonment was mailed on December 2, 2004.

Applicant has submitted an amendment in reply to the April 7, 2004 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the April 7, 2004 non-final Office action, and the petition fee.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center A.U. 2876's technical support staff for entry of the amendment filed on February 1, 2005 (certificate of mailing date January 25, 2005).

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

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HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, NY 11791

MAILED

MAY 22 2009

OFFICE OF PETITIONS

In re Application of	:	
John Spiridigliozzi, et al.	:	
Application No. 10/348,575	:	DECISION ON PETITION
Filed: January 21, 2003	:	TO WITHDRAW
Attorney Docket No. 498-283 RCE III	:	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 16, 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. 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 Anna-Lisa Gallo on behalf of all attorneys of record. All attorneys/agents 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 John Spiridigliozzi at the address indicated below.

Telephone inquiries concerning this decision should be directed to Terri Williams at 571-272-2991.

Terri Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **John Spiridigliozzi**
125 Dana Avenue
Hyde Park, MA 02136

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/348,575	01/21/2003	John Spiridigliozzi	498-283 RCE III

CONFIRMATION NO. 9336

POWER OF ATTORNEY NOTICE

23869
HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

OC000000036107745

Date Mailed: 05/21/2009

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/16/2009.

- 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.

/tswilliams/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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JUN - 8 2000

Paper No. 8

In re Application of	:	
Anthony Baratta	:	
Serial No. 09/399,297	:	DECISION ON PETITION
Filed: September 17, 1999	:	TO MAKE SPECIAL
For: WASTE CONTAINMENT SYSTEM	:	
AND METHOD FOR AN ABRADING	:	
OR CUTTING DEVICE	:	

Applicant's petition, filed April 4, 2000, seeks to have this application made special based upon the Environmental Quality Program.

The petition has been reviewed and is found to be in compliance with the requirements for special status as set forth in Section 708.02(V) of the Manual of Patent Examining Procedure (MPEP).

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Henricks, Slavin & Holmes LLP
840 Apollo Street, Suite 200
El Segundo, CA 90245-4737

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EL SEGUNDO, CA 90245

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JUL 1 2 2004
OFFICE OF PETITIONS

In re Application of	:	
Anthony Baratta	:	
Application No. 10/348,578	:	DECISION ON PETITION
Filed: January 20, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 020100-019P1	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed April 23, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/399,297, filed September 17, 1999, the amendment of which is embodied in the instant petition.[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 20, 2003, and was pending at the time of filing of the instant petition. A reference to the above-noted, prior-filed nonprovisional

[1] Petitioner is advised that the amendment should have been included in a separate paper, since different matters are handled by different branches of the Office. *Note* 37 CFR 1.4(c).

application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 3723 for appropriate action on the amendment embodied in the instant petition filed on April 23, 2003, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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OFFICE OF PETITIONS

In re Application of	:
Anthony Baratta	:
Application No. 10/348,578	: DECISION ON PETITION
Filed: January 20, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 020100-019P1	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed April 23, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/399,297, filed September 17, 1999, the amendment of which is embodied in the instant petition.[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 20, 2003, and was pending at the time of filing of the instant petition. A reference to the above-noted, prior-filed nonprovisional

[1] Petitioner is advised that the amendment should have been included in a separate paper, since different matters are handled by different branches of the Office. *Note* 37 CFR 1.4(c).

application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 3723 for appropriate action on the amendment embodied in the instant petition filed on April 23, 2003, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HENRICKS SLAVIN & HOLMES LLP
840 APOLLO STREET, SUITE 200
EL SEGUNDO, CA 90245-4737

COPY MAILED

AUG 1 8 2005

OFFICE OF PETITIONS

In re Application of :
Anthony Baratta :
Application No. 10/348,578 :
Filed: January 20, 2003 :
Attorney Docket No. 020100-019P1

ON PETITION

This is a decision on the petition, filed August 16, 2005 under 37 CFR 1.313(c)(2), to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on April 6, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 3723 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).

11/210708

Atty Ref.: 201-019P1C1

PATENT

CERTIFICATE OF EXPRESS MAILING

Express Mailing Label No. EV 025987488 US.
I hereby certify that on August 23, 2005, I am depositing this correspondence and all identified attachments with the United States Postal Service "Express Mail Post Office to Addressee," service under 37 C.F.R. 1.10, addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By: James A. Henricks, 31,168

Applicant: Anthony BARATTA
Serial No.: Continuation of 10/348,578
Filed: August 23, 2005
Title: GUARD FOR A MOVING TOOL
Examiner: N/A
Group Art Unit: N/A 1731
Confirmation No: N/A 8-23-05

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO MAKE SPECIAL BECAUSE OF ENVIRONMENTAL QUALITY
(37 C.F.R. section 1.102(c) and M.P.E.P. section 708.02 IV)

Applicant hereby petitions to make this application special because it is for an invention that materially enhances the quality of the environment of mankind, by contributing to the restoration or maintenance of the basic life-sustaining material elements (air, water, and/or soil).

The accompanying declaration by the Applicant's undersigned attorney explains how this invention contributes to the restoration or maintenance of one of these life-sustaining elements.

PETITION GRANTED

Richard Crispino
Special Program Examiner
TC 1700

SEP 2 8 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

JAN 21 2004

Paper No. 4

In re Application of	:	
Simcha Borovsky	:	
Serial No. 10/348,625	:	DECISION ON PETITION
Filed: January 22, 2003	:	TO MAKE SPECIAL
For: CONTACT LENS CLEANING AND	:	
STORAGE CASE WITH CONTAMI-	:	
NANT SEPARATION	:	

Applicant's petition, filed January 22, 2003, seeks to have this application made special pursuant to the Accelerated Examination Program. The petition is GRANTED.

The petition has been reviewed and is found to be in compliance with the requirements for special status as set forth in Section 708.02(VIII) of the Manual of Patent Examining Procedures (MPEP).

Applicant is advised that the examiner's search will be restricted to the subject matter encompassed by the claims. In the event that the application receives a first action rejection, applicant is encouraged to arrange for an interview with the examiner, and to provide the examiner with a working copy of any proposed amendment one working day prior to the interview. Any amendment filed in response to a first action rejection which would require broadening of the field of search will be treated as an improper response.

PETITION GRANTED.

E. Rollins-Cross

E. Rollins-Cross, Director
Technology Center 3700

Richard M. Goldberg
25 East Salem Street, Suite 419
Hackensack, NJ 07601

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

Paper No. 5

ARLEN L. OLSEN
SCHMEISER OLSEN & WATTS
3 LEAR JET LANE, SUITE 201
LATHAM, N.Y. 12110

COPY MAILED

APR 0 2 2003

OFFICE OF PETITIONS

NOTICE

In re Application of :
Noah P. Montena :
Application No. 10/348,652 :
Filed: January 21, 2003 :
Attorney Docket No. H-PPC-3161US4 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 2800.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20061128

DATE : November 28, 2006

TO SPE OF : ART UNIT 1756

SUBJECT : Request for Certificate of Correction on Patent No.: 6,913,868

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

SPE: Mark F. Huff Art Unit 1756

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

September 1, 2009

Drew S. Hamilton
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14 Floor
Irvine, CA 92614

Patent No.: 7,565,153 B2
Application No.: 10/348,693
Inventor (s): William Guy Aclock, et al.
Issued: July 21, 2009
Title: **METHOD AND SYSTEM FOR DELIVERY OF LOCATION SPECIFIC INFORMATION**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions & Certificate of Correction Branch
(703) 756-1591

vt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

COPY MAILED

DEC 14 2009

OFFICE OF PETITIONS

In re Patent No. 7,565,153	:	
Issue Date: July 21 2009	:	
Application No. 10/348,693	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. 10049-001	:	

This is a decision on the petition filed October 14, 2009, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to Terri Johnson at (571) 272-2991. 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.

Chris Bottorff
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

RAM Fee History Query

Revenue Accounting and Management

Name/Number: 10348693 Total Records Found: 16

Start Date: Any Date End Date: Any Date

Accounting Date	Sequence Num.	Fee Type	Fee Code	Fee Amount	Mailroom Date	Payment Method
12/15/2009	00000014	4	1464	-$130.00	10/14/2009	OP
10/15/2009	00002546	4	1464	$130.00	10/14/2009	CC
08/25/2009	00007960	4	1811	$100.00	08/24/2009	CC
06/16/2009	00006676	4	1504	$300.00	06/15/2009	CC
06/16/2009	00006675	4	1501	$1,510.00	06/15/2009	CC
02/17/2009	00007034	4	1801	$810.00	02/13/2009	CC
12/01/2008	00000012	1	8021	$40.00	11/28/2008	CK
11/04/2008	00006453	4	2253	$555.00	11/03/2008	CC
11/04/2008	00009882	4	8021	$40.00	11/03/2008	DA 111410
03/03/2008	00004590	4	2253	$525.00	02/29/2008	CC
06/04/2007	00000003	1	2253	$510.00	05/29/2007	DA 090007
10/18/2006	00000001	1	1252	$450.00	10/10/2006	DA 090007
03/09/2006	00000213	1	2253	$510.00	03/01/2006	DA 090007
01/24/2003	00000016	1	8021	$40.00	01/22/2003	CK
01/24/2003	00000015	1	2202	$153.00	01/22/2003	CK
01/24/2003	00000014	1	2001	$375.00	01/22/2003	CK

Adjustment date: 12/15/2009 LDIEP1
10/15/2009 INTEFSW 00001556 10348693
01 FC:1464 -130.00 OP

12/15/2009 LDIEP1 00000008 7565153
01 FC:1808 130.00 OP

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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GROSSMAN, TUCKER, PERREALT & PFLEGER, PLLC
55 SOUTH COMMERICAL STREET
MANCHESTER NH 03101

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JUN 0 7 2004

OFFICE OF PETITIONS

In re Application of :
Yung-Lin Lin :
Application No. 10/348,748 :
Filed: January 22, 2003 :
Attorney Docket No. 02Micro 03.02 :

ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed May 20, 2004 by facsimile transmission to correct the name of the assignee.

The petition is **GRANTED**.

Assignment data printed on the patent is based solely on the information so supplied on the issue Fee Transmittal Form (PTOL-85B). A review of the record indicates that the Issue Fee Transmittal Form (PTOL-85B), submitted May 10, 2004 identified the assignee as 02Micro, Inc..

The patent will be issued in the correct name of the assignee, **02Micro International Limited**, if this can be accomplished without substantial disruption to the issue process.

If, however, for some reason the printing of the patent has in fact progressed to the point where the requested data cannot be included in the printed patent, petitioner can file a request for a Certificate of Correction under 37 CFR 1.323.

The petition fee in the amount of $130.00 will be charged to deposit account no. 50-2121.

The application is being forwarded to the Publishing Division to be processed into a patent with the corrected assignment information, **02Micro International Limited**, as indicated above.

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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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GROSSMAN, TUCKER, PERREAULT & PFLEGER
55 SOUTH COMMERCIAL STREET
MANCHESTER NH 03101

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AUG 0 6 2004

OFFICE OF PETITIONS

NOTICE

In re Application of :
Yung-Lin Lin :
Application No. 10/348,748 :
Filed: January 22, 2003 :
Attorney Docket No. 02MICRO 03.02 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED.**

Inquiries related to this communication should be directed to the undersigned at (703) 305-8859.

This file is being referred to the Files Repository.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ARENT FOX KINTNER PLOTKIN & KAHN PLLC
1050 CONNECTICUT AVENUE, NW
SUITE 400
WASHINGTON, DC 20036-5339

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FEB 08 2007

OFFICE OF PETITIONS

In re Application of	:
Ryuji Kondo et al	:
Application No. 10/348,771	: DECISION GRANTING PETITION
Filed: January 23, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 107317-00052	:

This is a decision on the petition, filed February 7, 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 December 8, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2878 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\Feb10\348771.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.*

UNITED STATES PATENT AND TRADEMARK OFFICE

DEC - 1 2003

MAILED

DEC - 1 2003

OFFICE OF THE DIRECTOR
TC 3600

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Ethan D. Civan
170 Somerset Drive
Blue Bell, PA 19422

Paper No. 3

In re application of
Michael Sulmone
Application No.10/348,791
Filed: January 22, 2003
For: FIRE HOSE CONNECTION WITH A PRESSURE RELIEVING SAFETY FEATURE

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the petition under 37 C.F.R § 1.102(d) filed August 4, 2003 to make the above-identified application special. The delay in deciding this petition is regretted.

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(h); (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 August 4, 2003 completes 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.

SUMMARY: Petition To Make Special is **GRANTED.**

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

SNM/cps: 11/24/03

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JACK SHORE
HAMMAN & BENN
SUITE 3300
10 SOUTH LASALLE ST
CHICAGO, IL 60603

COPY MAILED

MAY 1 2 2004

OFFICE OF PETITIONS

In re Application of	:
Bruce D. Lund et al	:DECISION GRANTING PETITION
Application No. 10/348,830	:UNDER 37 CFR 1.137(b)
Filed: January 22, 2003	:
Attorney Docket No. 4004041.0015	:

This is a decision on the petition, filed April 19, 2004 and supplemented on May 5, 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 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(f) is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on January 14, 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 USPTO of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(I) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of August 19, 2004 accompanies this decision on petition.

A Notice of Allowability and a Notice of Allowance and Fee(s) Due were mailed in this case on February 2, 2004. However, in view of the nonpublication request filed with the application, the Notice of Allowance and Fee(s) Due mailed in this case did not require the submission of a publication fee. Therefore, in view of the rescinding of the nonpublication request, a Notice of Publication Fee Due is being mailed under separate cover. Petitioner should note that payment of the publication fee is required to be filed within the period set forth in the Notice to avoid abandonment of the application.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Pursuant to petitioner's authorization, Deposit Account No. 13-4825 was charged $665.00 for the petition to revive an unintentionally abandoned application under 37 CFR 1.137(f).

This application file is being referred to Publishing Division to await a reply to the Notice of Allowance and Fee(s) Due mailed February 2, 2004 and to the Notice of Publication Fee Due mailed May 12, 2004.

Any inquiries concerning this decision may be directed to the undersigned at (703) 306-5685.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request
Notice of Publication Fee Due

cc: JACK SHORE
191 N. WACKER DRIVE
SUITE 1800
CHICAGO, IL 60606-1615

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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A PROFESSIONAL ASSOCIATION
P.O. BOX 142950
GAINESVILLE, FL 32614-2950

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FEB 07 2005

OFFICE OF PETITIONS

In re Application of	:	
Daniel P. Rini	:	
Application No. 10/348,850	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. RTI-99XC2	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 19, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure submit the Issue fee in a timely manner in reply to the Notice of Allowance mailed October 18, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on January 19, 2005.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matter is being forwarded to the Publishing Division.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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JUN 02 2003

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Paper No. 6

Ralph H. Torrey
2021 Sea Hawk Circle
Ponte Vedra Beach, FL 32082

In re Application of	:	**DECISION ON PETITION**
Ralph H. Torrey et al.	:	**TO MAKE APPLICATION**
Application No. 10/348,860	:	**SPECIAL (HEALTH) OR**
Filed: January 22, 2003	:	**(AGE)**
For: STRAP-FORM TIE WITH SPECIAL TAB		

This is in response to the petition filed on February 10, 2003 to make the above-identified application special on the basis of special examining procedure for certain new applications as set forth in MPEP § 708.02, Section III, Applicant's Health, or Section IV, Applicant's Age.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a signed statement from one of the applicant stating that he is at least 65 years of age.

For the above stated reasons, the petition is **GRANTED**.

In view of the granting of the Petition to make Special based upon applicants' age, any determination of the health grounds for making the application special is now moot and thus will not be treated on those grounds.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona fide*** effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED**.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121
(703) 605-0586 (facsimile)

RAR/tpl: 4/29/03

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Paper No. 4

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OFFICE OF PETITIONS

KINNEY & LANGE, P.A.
THE KINNEY & LANGE BUILDING
312 SOUTH THIRD STREET
MINNEAPOLIS MN 55415-1002

In re Application of :
Marino, et al. :
Application No. 10/348,864 : DECISION GRANTING PETITION
Filed: January 22, 2003 :
Attorney Docket No. C516.12-0020 :

This is a decision on the petition filed March 26, 2003, requesting that the above-identified application retain the presently accorded a filing date of January 22, 2003, with figures 4b and 4c of the drawings as part of the original disclosure.

On January 22, 2003, the above-identified application was filed. On March 18, 2003, the Office of Initial Patent Examination mailed a "Notice of Omitted Items of a Nonprovisional Application" (the "Notice"), stating that the application had been accorded a filing date of January 22, 2003, however, figures 4b and 4c of the drawings appeared to have been omitted. The Notice allowed a non-extendable two month period for reply beginning from the mailing date of the Notice.

In response, on March 26, 2003, applicants filed the present petition, a copy of figures 4b and 4c, and a postcard receipt date-stamped by the Office showing that, among other items, seven (7) sheets of drawings were received on January 22, 2003.

Upon review of the record, figures 4b and 4c of the drawings were not located among the application papers. However, the evidence is convincing that the application papers deposited January 22, 2003, included figure 4b and 4c of the drawings, which were subsequently misplaced by the Office. Figures 4b and 4c were contained on the same page. The review of the application file only revealed six pages of drawings. It is, therefore, logical to conclude that the seventh page was misplaced by the Office and that the seventh page contained figures 4b and 4c. Therefore, the application, including figures 4b and 4c of the drawings, was complete on filing and entitled to the presently accorded filing date of January 22, 2003.

Accordingly, the petition is granted.

Applicant is advised that the Notice was sent in error and is vacated. Therefore, no petition fee is necessary and the fee of $130.00 will be refunded in due course.

The application file is being returned to the Office of Initial Patent Examination for further processing with the presently accorded filing date of January 22, 2003, using the seven (7) pages of drawings filed January 22, 2003..

Any inquiries related to this decision should be directed to Kenya A. McLaughlin, Petitions Attorney, at (703)305-0010.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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Paper No. 7

WARNER-LAMBERT COMPANY
2800 PLYMOUTH ROAD
ANN ARBOR, MI 48105

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APR 0 7 2004

OFFICE OF PETITIONS

In re Application of
Repine, Joseph Thomas
Application No. 10/348,889
Filed: January 21, 2003
Attorney Docket No. A0000416-01-RG

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 10, 2004, to revive the above-identified application.

The petition is **granted.**

This application became abandoned for failure to timely reply within three months to the non-final Office action mailed July 25, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, this application became abandoned on October 26, 2003. A Notice of Abandonment was mailed on March 12, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $950.00 extension of time fee submitted with the petition on March 10, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

The file is now being forwarded to Technology Center 1600 for further examination on the merits.

Telephone inquiries should be directed to the undersigned at (703) 306-0482.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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Office of Patent Counsel
The Johns Hopkins University
Applied Physics Laboratory
11100 Johns Hopkins Road
Laurel, MD 20723-6099

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JAN 13 2006

OFFICE OF PETITIONS

In re Application of	:	
Thomas M. Murdock, et. al.	:	
Application No. 10/348,890	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. 1653-SPL	:	

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 application became abandoned for failure to reply to the non-final Office action mailed March 9, 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 application file is being referred to Technology Center Art Unit 2877, 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1-26-05

TO SPE OF : ART UNIT 2818

SUBJECT : Request for Certificate of Correction on Patent No.: 6762483

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

E. James
Certificates of Correction Branch

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

TP 05/05

- ☑ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes do not apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

(the incorrect info (spec. Dwgs, Abs.) was from app. 10/614,052)

SPE

2818
Art Unit

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OFFICE OF PETITIONS

In re Application of	:	
Kasapi et al.	:	
Application No. 10/348,923	:	DECISION ON PETITION
Filed: 21 January, 2003	:	
Atty Docket No. 15685P174	:	

This is a decision on the petition filed on 28 September, 2005, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

---

[1] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The application became abandoned on 9 June, 2005, for failure to timely pay the issue and publication fees as required by the Notice of Allowance and Fee(s) Due mailed on 8 March, 2005. Notice of Abandonment was mailed on 2 September, 2005.

This application is being referred to the Publishing Division for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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JUN 16 2005

Stuart T. Langley
HOGAN & HARTSON LLP
1200 17th Street, Suite 1500
Denver, CO 80202

In re application	:	**DECISION ON PETITION**
Scott T. Kimmel	:	**TO MAKE SPECIAL**
Application No. 10/348,931	:	**(PROSPECTIVE MANUFACTURE)**
Filed: January 22, 2003	:	

For: SYSTEM AND METHOD FOR IMPLEMENTING HEALTHCARE FRAUD COUNTERMEASURES

This is a decision on the petition under 37 C.F.R §1.102(d) filed March 17, 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 MPEP 708.02, item I: Prospective Manufacture.

MPEP 708.02 states that a Petition to Make Special based on Prospective Manufacture must have the following: (1) the appropriate petition fee under 37 CFR 1.17(h); (2) a statement by the assignee, applicant, or attorney alleging: (A) the possession by the prospective manufacturer of sufficiently available capital (stating approximately the amount) and facilities (stating briefly the nature thereof) or that sufficiently available capital and facilities will be made available upon grant of a patent, with the proviso that if the prospective manufacturer is an individual a corroborating statement from a responsible party is required; (B) that the prospective manufacturer will not begin or increase production unless certain that the patent will be granted; (C) that the prospective manufacturer obligates themselves to manufacture the invention in the U.S. in quantity immediately upon the allowance of claims or issuance of a patent which will protect the investment of capital and facilities; and (D) 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 March 17, 2005 includes 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.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(570) 272-6587

KJD/js : 06/01/05

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OFFICE OF PETITIONS

OLIFF & BERRIDGE
P.O. BOX 19928
ALEXANDRIA VA 22320

In re Application of	:	
Akira Morita	:	
Application No. 10/348,944	:	ON PETITION
Filed: January 23, 2003	:	
Attorney Docket No. 114788	:	

This is a decision on the petition, filed February 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 January 4, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2673 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[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 : May 10, 2006

TO SPE OF : ART UNIT 2874

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/348981 Patent No.: 6,968,097

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: _____

MJS

SPE

2874

Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : Jan. 3, 2006

TO SPE OF : ART UNIT 2861 (*David Talbott*)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,945,642

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 adding of reference cited & claim. 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 _____ **Art Unit** 2861

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20060802

DATE : August 2, 2006

TO SPE OF : ART UNIT 2861

SUBJECT : Request for Certificate of Correction on Patent No.: 6,945,642 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 3-910
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: Patel Vip **Art Unit** 2861

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UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,945,642 B2

DATED : September 20, 2005

INVENTOR(S) : Hajime Yamamoto, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Approved 12/2 9/06

ON THE COVER PAGE

Under (56) References Cited, the following reference should be added:
--6,540,132 4/2003 Lowry, et al 229/117.12--.

COLUMN 1

Line 51, "through" should read --though--.

COLUMN 2

Line 54, "hag" should read --has--.

COLUMN 3

Line 26, "its" should read --it--.

COLUMN 5

Line 59, "the" should be deleted.

COLUMN 6

Line 25, "a" should read --an--;
Line 36, "a" should read --an--; and
Line 66, "a" should read --an--.

COLUMN 13

Line 12, "eliminates" should read --eliminate--; and
Line 61, "increases" should read --increase--.

MAILING ADDRESS OF SENDER:

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. 6,945,642

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(Form#30)
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CERTIFICATE OF CORRECTION

PATENT NO. : 6,945,642 B2

DATED : September 20, 2005

INVENTOR(S) : Hajime Yamamoto, et al.

Approved KJ 8/08

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

COLUMN 21

Line 47, "Of" should read --of--.

COLUMN 31

Line 1, "to" should be deleted.

COLUMN 36

Line 14, "or optical or memory" should read --or optical memory or--.

MAILING ADDRESS OF SENDER:

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. 6,945,642

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McDermott, Will & Emery
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OFFICE OF PETITIONS

In re Patent of	:	
Taito et al.	:	
Patent No. 6,781,431	:	
Issued: August 24, 2004	:	ON PETITION
For: CLOCK GENERATING CIRCUIT	:	

This is a decision on the Petition, filed October 19, 2004, under 37 CFR 1.183, for waiver of 37 CFR 3.81(a), to correct the name of the assignee in the above-identified patent.

The Petition is **granted**.

The application is being forwarded to the Certificate of Corrections Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney/Advisor
Office of Petitions

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STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

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MAR 0 3 2004

OFFICE OF PETITIONS

Applicant: Staddon et al.
Appl. No.: 10/349,074
Filing Date: January 23, 2003
Title: USE OF VASCULAR ENDOTHELIAL GROWTH FACTOR (VEGF)
Attorney Docket No.: 0623.1090003/LBB/BJD/JKM
Pub. No.: US 2003/0129662 A1
Pub. Date: July 10, 2003

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on September 3, 2003.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication contains a mistake on page 1, paragraph 0002 in the discussion of the prior art wherein "α-catenin, a vinculin homologue, that links the complex to the actin-based cytoskeleton [see J Cell Biochem 1996 Jun 15;61(4):514-23" is misspelled as "x-catenin, a vinculin homologue, that links the complex to the actin-based cytoskeleton [see J Cell Biochem 1996 Jun 15;61(4):514-23".

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 typographical error in the background section of the patent application publication, wherein "α-catenin" is misspelled as "x-catenin" is an Office mistake, but it is not a material error. The mistake is a minor typographical error which is understandable from reading the specification and sentence in which the term is used, as terms are not read in a vacuum. The sentence in which the term is used further defines the term as a "vinculin homologue" and gives a citation to a scientific article. 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.

The applicant is advised that a "request for republication of an application previously published"

---

[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).

may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(b), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

By mail to: Mail Stop PGPUB
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: 703-305-8568

The application will be examined in due course.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

#3
Dw

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TC 3600

Milton M. Field
2212 White Oaks Drive
Alexandria VA 22306

In re application of
Warren E. Dennis
Application No.10/349,088 :
Filed: January 23, 2003 :
For: VEHICLE HINGE ASSEMBLEY :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the renewed request filed December 8, 2003, under 37 CFR 1.36 and MPEP 402.06, which has been treated as a petition 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).

BEST AVAILABLE COPY

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition B) above.

As to condition B), the reason for the request is "partial retirement". This statement does not satisfy one of the valid reasons for withdrawal under 37 CFR 10.40 (b)(1)-(4) or (c)(1)-(6). Condition B) can be met by *clearly specifying* one of the valid reasons for withdrawal listed under 37 CFR 10.40 (b)(1)-(4) or (c)(1)-(6).

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868

SNM/mjz: 2/23/04

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MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.
ONE FINANCIAL CENTER
BOSTON, MA 02111

COPY MAILED

FEB 27 2008

OFFICE OF PETITIONS

In re Application of	:	
Vincenzo D'Ottavi	:	
Application No. 10/349,124	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. 34106-602	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 12, 2007, 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 February 2, 2005. A Notice of Abandonment mailed on March 13, 2006. On November 12, 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 Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,540; and (3) an adequate statement of unintentional delay[1].

This application is being referred to Technology Center AU 3654 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] This application has been abandoned for an extended period of time. The U.S. Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." *See* Changes to Patent Practice and Procedure, 62 Fed. Reg., at 53160 and 53178; 1203 Off. Gaz. Pat. Office, at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the U.S. Patent and Trademark Office).

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In re Patent No. 6827720
Issue Date: December 7,2004
Application No. 10349126
Filed: January 23,2003
Attorney Docket No. LEALI-1

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed August 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 August 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.

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6827720	2004-12-07	10349126	2003-01-23	

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	/Eric Lamorte/	Date (YYYY-MM-DD)	2009-08-27
Name	Eric LaMorte	Registration Number	34653

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/349,132	01/21/2003	1733	880	GT/49	3	16	1

CONFIRMATION NO. 1193

UPDATED FILING RECEIPT

OC000000011067315

W.L. Gore & Associates, Inc.
551 Paper Mill Road
P.O. Box 9206
Newark, DE 19714-9206

Date Mailed: 10/20/2003

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Gerhard Burmann, Spalt, GERMANY;
Stephen J. Bowden, Pleomfe;d, GERMANY;

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 04/21/2003

Projected Publication Date: 07/22/2004

Non-Publication Request: No

Early Publication Request: No

Title

Apparatus useful for applying sealant material to a structural member

Preliminary Class

156

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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Paper No. 5

W. L. GORE & ASSOCIATES, INC.
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NEWARK, DE 19714-9206

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SEP 17 2003

OFFICE OF PETITIONS

In re Application of
Gerhard Burmann et al
Application No. 10/349,132
Filed: January 22, 2003
Attorney Docket No. GT/49

DECISION GRANTING PETITION
UNDER 37 CFR 10(d)

This is a decision on the petition, filed May 9, 2003, requesting that the above-identified application be accorded a filing date of January 21, 2003, rather than the presently accorded filing date of January 22, 2003, which latter date appears on the copy of the Express Mail label accompanying the instant petition. The petition is properly treated as one under the provisions of 37 CFR 1.10(d).

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited on January 21, 2003 with a United States Postal Representative to be delivered by "Express Mail Post Office to Addressee' service. In support, petitioner has supplied a copy of a "Pickup Service Statement for Express Mail, or Parcel Post" signed receipt bearing Express Mail label No. ET671784166US (the same Express Mail label number appears on the transmittal letter found on the certificate of mailing for the instant application papers) and a handwritten date of pickup of January 21, 2003, at 12:59 pm.

The showing establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service.

In view of the above, the application is entitled to a filing date of January 21, 2003. The petition is **granted**.

Telephone inquiries specific to this decision on petition should be directed to Frances Hicks at (703) 305-8680.

This application is being forwarded to the Office of Initial Patent Examination for processing with a filing date of January 21, 2003.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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#10

PETER M. KLOBUCHAR
311 SOUTH WACKER DRIVE, 53RD FLOOR
CHICAGO, IL 60606-6622

COPY MAILED

AUG 03 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Michel Thibaut :
Application No. 10/349,153 :
Filed: January 22, 2003 :
Attorney Docket No. 400 P 1051

This is a decision on the petition, filed July 30, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 9, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (703) 306-5684.

The file will be forwarded to Technology Center AU 3712 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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HARRINGTON & SMITH
4 RESEARCH DRIVE, SUITE 202
SHELTON CT 06484-6212

MAILED

MAY 10 2010

OFFICE OF PETITIONS

In re Application of
Olav Tirkkonen et al.
Application No. 10/349,168
Filed: January 23, 2003
Attorney Docket Number: 019B.0045.U1 (US)

ON PETITION

This is a decision on the petition, filed March 23, 2010 under 37 CFR 1.137(b)[1], to revive the above identified application.

The petition is **GRANTED**.

This application became abandoned February 1, 2010 for failure to timely pay the issue fee in response to the Notice of Allowance mailed October 29, 2009 which set a three month statutory period for response. Accordingly, the Notice of Abandonment was mailed February 18, 2010.

All other requirements of 37 CFR 1.137(b) having now been met, this matter is being referred to the Publishing Division to be processed into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In 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)).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 5-5-09

Paper No.: _____

TO SPE OF : ART UNIT 1616

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/319171 Patent No.: 7189707

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES: Should claims be Approved

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (C of C)
Randolph Square 9C62-D
Palm Location 7580

Ennis Young
Certificates of Correction Branch
703-756-1542

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: Typographical errors were made by the printing area.

/Johann Richter/
SPE 1616

SPE **Art Unit**

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BARRY E. BRETSCHNEIDER
MORRISON & FOERSTER
1650 TYSONS BOULEVARD
SUITE 300
McLEAN, VA 22102

COPY MAILED
JAN 2 8 2004
OFFICE OF PETITIONS

In re Application of	:	
Arnold Keller	:	
Application No. 10/349,175	:	NOTICE
Filed: January 23, 2003	:	
Attorney Docket No. 246472003700	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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BARRY E. BRETSCHNEIDER
MORRISON & FOERSTER
1650 TYSONS BOULEVARD
SUITE 300
McLEAN, VA 22102

COPY MAILED

JAN 2 8 2004

OFFICE OF PETITIONS

In re Application of	:	
Arnold Keller et al	:	
Application No. 10/349,183	:	NOTICE
Filed: January 23, 2003	:	
Attorney Docket No. 246472003600	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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JUN 06 2003

OFFICE OF PETITIONS

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNN LLP
1300 I STREET, NW
WASHINGTON DC 20005

In re Application of		
Heinegard, et al.		
Application No.	10/349,188	DECISION ON PETITION
Filed:	January 23, 2003	
Attorney Docket No.	02386.0046-01	

This is a decision on the "Petition for Withdrawal of Notice of Incomplete Nonprovisional Application, filed April 22, 2003, in response to the "Notice of Incomplete Nonprovisional Application" (the 'Notice") mailed April 4, 2003.

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 1.182." This is not a final agency decision.

The application was filed on January 23, 2003. The Notice, mailed April 4, 2003, indicated that the application had not been granted a filing date because the application was deposited without drawings.

Petitioner argues that drawings did accompany the original application papers. Petitioner maintains that the subject application is a continuation of application 09/609,383 which was incorporated by reference in its entirety into the subject application in a statement on the Application transmittal sheet. Petitioner maintains further that a complete copy of the prior application, including the oath or declaration and drawings, was filed with the subject application on January 23, 2003. Petitioner provided a duplicate copy of the prior application which petitioner maintains was filed originally on July 3, 2000, and again on January 23, 2003.

An applicant may incorporate by reference the prior application by including in the application-as-filed, a statement that such specifically enumerated prior application or application are "hereby incorporated by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior applications(s) will permit an applicant to amend the continuation application to include any subject matter in such prior application(s) , without the need for a petition. See MPEP 201.06(c).

A review of the application papers filed January 23, 2003, did not reveal any drawings as part of the subject application or as part of copy of the prior application. Further, petitioner did not provide an Office date-stamped postcard receipt that would support petitioner's contention that the drawings accompanied the original application papers. As no drawings accompanied the original application papers, the Notice was properly issued and the petition fee will not be refunded. In view of the incorporation by reference of the prior application, however, the twelve sheet of drawings filed April 4, 2003 are not new matter if they were a part of the disclosure of the prior application.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 23, 2003.

Thereafter, the application will be forwarded to the appropriate group art unit for consideration by the examiner of the petition filed April 22, 2003, as a supplemental preliminary amendment requesting entry

of the twelve pages of drawings filed April 22, 2003.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

By Hand: Office of Petitions
Crystal Plaza 4, 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries should be directed to Kenya A. McLaughlin, Petitions Attorney, at (703) 305-0010.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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MILTON S. GERSTEIN
MUCH, SHELIST, FREED
191 N. WACKER DRIVE
SUITE 1800
CHICAGO IL 60606

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OCT 18 2005

OFFICE OF PETITIONS

In re Application of :
Angela Petroski et al. :
Application No. 10/349,200 : ON PETITION
Filed: January 22, 2003 :
Attorney Docket No. 4001527.0012 :

This is a decision on the petition filed October 10, 2005, to revive the above identified application under 37 CFR 1.137(b)[1].

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned on April 12, 2005, for failure to file a timely response to a Restriction Requirement mailed March 11, 2005, which set a one month shortened statutory period for reply. No extensions of the time for reply under 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed September 26, 2005.

The petition fee in the amount of $1500.00 has been applied to the finance records for the instant patent application.

The response to the Restriction Requirement filed October 10, 2005 will be referred to Technology Center 3723 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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LADAS & PARRY
26 WEST 61ST STREET
NEW YORK NY 10023

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OFFICE OF PETITIONS

In re Application of	:	
KATO, et al.	:	
Application No. 10/349,205	:	DECISION GRANTING PETITION
Filed: January 22, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. U014388-2	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 8, 2006, 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 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Monica A. Graves at (571) 272-7253.

This application is being referred to Technology Center AU 2819 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Karen Creasy

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 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)
6634822	2003-10-21	10349214	2003-01-23	

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	/Chao-Chang David Pai/	Date (YYYY-MM-DD)	2008-02-29
Name	Chao-Chang David Pai	Registration Number	51195

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. 6634822
Issue Date: October 21,2003
Application No. 10349214
Filed: January 23,2003
Attorney Docket No. BHT-3125-111

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 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 March 1,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 04/20/2010

Applicant	: Alexander Tessarolo	: DECISION ON REQUEST FOR
Patent Number	: 7590677	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/349,224	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/22/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **885** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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Paper No. 12

BRADLEY N. RUBEN, PC
SUITE 5A
463 FIRST STREET
HOBOKEN, NJ 07030

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DEC 10 2004

OFFICE OF PETITIONS

In re Application of
Hugo Brown, et al.
Application No. 10/349,226
Filed: January 22, 2003
Attorney Docket No. 105SR-006

ON PETITION

This is a decision on the petition, filed October 4, 2004, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed March 26, 2004. A Notice of Abandonment was mailed on October 6, 2004.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The petition is found to comply with the requirements of 37 CFR 1.137(b). Accordingly, the petition is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries regarding this application should be directed to the Technology Center.

The application file is being forwarded to Technology Center AU 3632 for consideration of the response filed October 4, 2004.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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OFFICE OF PETITIONS

In re Application of	:	
Benoit Mory et al	:	
Application No. 10/349,239	:	DECISION ON PETITION
Filed: January 23, 2003	:	
Attorney Docket No. FR 020003	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 20, 2009, to revive the above-identified application.

The petition is **GRANTED**.
The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal rejection mailed April 9, 2008, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2424 for appropriate action by the Examiner in the normal course of business on the reply received April 20, 2009.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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JJGJr: 09-03

Paper No: 5

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PROPERTY–UW2220
P.O. BOX 1539
KING OF PRUSSIA, PA 19406-0939

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SEP 3 0 2003

OFFICE OF PETITIONS

In re Application of	:	
Aubart, et al.	:	
Application No. 10/349,253	:	DECISION ON PETITION
Filed: 21 January, 2003	:	
Attorney Docket No. GP70655-2C2	:	

This is a decision on the petition filed on 9 May, 2002, under 37 C.F.R. §1.53(b); and seeking to having accorded a filing date of 21 January, 2003, to pages 44 and 45 of the application, which the Office deemed omitted at the time of filing.

For the reasons set forth below, the petition under 37 C.F.R. §1.53(b) is **DISMISSED**.

This application was deposited on 21 January, 2003, however on 7 March, 2003, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application (Filed Under 37 C.F.R. §1.53," with a statement that "a filing date has been accorded" to the application. However, it appeared that "Page(s) 44,45 of the specification (description and claims)" appeared to have been omitted from the application.

In response, the instant petition under 37 C.F.R. §1.53 was filed on 8 May , 2003.

Petitioner contends that this application is a continuation of Application "No. 09/693,761 filed October 20, 2000,"which is incorporated herein by reference, and, therefore, the omitted Pages 44 and 45 do not constitute new matter.

Analysis

A search of the official file reveals that on 20 December, 2002, Applicants filed, inter alia, 46 pages of specification (description and claims), to wit: Pages 1 - 43 and 46-48.

There are no Pages 44 and 45--and if Petitioner was correct in his assertion of the presence of

that figure, of necessity either the receipt card would have to reflect 48 pages of specification (description and claims) or other pages would be missing.

Accordingly, the "Notice of Omitted Item(s)" mailed on 7 March, 2003, was correct in stating that Pages 44 and 45 of the specification (description and claims) had been omitted. Therefore, the "Notice of Omitted Item(s) was properly mailed and will not be withdrawn.

Accordingly, the petition is **dismissed**.

Because the 8 May, 2003, petition was not due to an error on the part of the Office, the petition fee authorized has been charged and will not be refunded.

Petitioner asserts, and it is noted, that the "Patent Application Transmittal" letter states that the application is a continuation of prior Application No. 09/693,761, and pending as of the filing of the instant application), and that "[t]he entire disclosure of the prior application . . . is hereby incorporated . . . by reference . . . ."

This incorporation may be proper in practice before the Office. (See: MPEP §201.06(c) (in pertinent part).) And, in view of the incorporation by reference, of the prior application, the drawing Fig. 4 is not new matter if it was part of the disclosure of the prior application.

The application is being returned to OIPE for further processing with a filing date of 21 January, 2003, including an indication in Office records that 46 pages of description (Pages 1-43 and 46-48) were present on filing.

Further, in the interest of time, Petitioner might wish to file immediately a copy of the claimed parent Application No. 09/693,761, as filed, as an amendment requesting entry of Pages 44 and 45.

Thereafter, the application will be forwarded to the Technology Center for consideration by the Examiner of the instant petition and copy of the parent, as an amendment requesting entry of Pages 44 and 45.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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JJGJr: 10-03

Paper No: 7

GLAXOSMITHKLINE
Corporate Intellectual Property - UW2220
P.O. Box 1539
King of Prussia PA 19406-0939

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OCT 2 8 2003

OFFICE OF PETITIONS

In re Application of
Aubert, et al.
Application No. 10/349,253
Filed: 21 January, 2003
Attorney Docket No. GP70655-2C2

DECISION ON PETITION

This is a decision on the petition filed under 37 C.F.R. §1.53(b) on 9 May, 2003, but apparently missing certain attachments, and resubmitted on 24 October, 2003, and seeking to have accorded a filing date of 21 January, 2003, to pages 44 and 45 of the application, which the Office deemed omitted at the time of filing.

For the reasons set forth below, and in light of the papers, previously submitted by Petitioner but not until this writing matched with the file, the petition under 37 C.F.R. §1.53(b) is **GRANTED in part and DISMISSED in part**, and the decision of 30 September, 2003, is vacated and amended in whole in the following particulars:

This application was deposited on 21 January, 2003. On 7 March, 2003, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application (Filed Under 37 C.F.R. §1.53," with a statement that "a filing date has been accorded" to the application, however, pages "44, 45 of the specification (description and claims)" appeared to have been omitted from the application.

In response, the instant petition under 37 C.F.R. §1.53 was filed on 9 May , 2003, over a 7 May, 2003, certificate of mailing.

The petition contends that, in the transmittal of the instant application:

- Petitioner sets forth (at box 17(c) a statement that this application is a continuation of Application "No. 09/910,411, filed July 20, 2001, which is a continuation of [nonprovisional] application Serial No. 09/693,761, filed October 20, 2000[,] which is a continuation-in-part of [nonprovisional application] Serial No. 09/497,790 filed February

3, 2000,] which is a continuation-in-part of [nonprovisional application] Serial No. 09/431,898 filed November 2, 1999"; and

- the incorporation-by-reference language is inserted and checked ("x") at box 6 of Petitioner's one- (1-) page application transmittal form).

It is noted that while the foregoing statement is made at box 17(c) and the incorporation-by-reference language is inserted and checked ("x") at box 6 of Petitioner's one- (1-) page application transmittal form, Petitioner did not:

- set forth the prior application number and filing date at box 17(a) to specify the parentage of the instant application to which priority as a continuation was claimed; or

- check ("x") box 17(c) to indicate that Petitioner seeks to have the priority information set forth therein as controlling.

However, the papers apparently originally filed with the instant petition but not matched with the file until this writing include:

- a two- (2-) page "Communication Response to File Missing Parts"; and

- a one- (1-) page photocopy containing what purports to be: (a) a copy of a portion the US Postal Service (USPS) Express Mail Label showing the Express Mail No. EL661360105US, (b) a copy of the USPS receipt, and (c) a copy of the Petitioner's date stamped ("01/21/03") receipt card.

Of particular note is that the receipt card, on which Petitioner originally set forth that "48 pages" comprised the specification, has been corrected by the Office to reflect that "47 pages" of specification were received by the Office.

Analysis

A search of the official file reveals that on 21 January , 2003, Applicants filed, inter alia, 47 pages of specification (description and claims), to wit: pages 1 - 43, page 44 (which is found out of order and at the end of the application), and pages 46-48.

There is no page 45, and a hand-stamp further completed by hand notation on the bottom of the one- (1-) page transmittal form indicates that "The PTO did not receive the following listed item(s): Page 45 is missing."

If Petitioner was correct in his assertion of the presence of page 45, of necessity either:

- the receipt card would have to reflect receipt of 48 pages of specification (description and claims); or
- other pages of the application would be missing.

Accordingly, the "Notice of Omitted Item(s)" mailed on 7 March, 2003, was correct in part in stating that page 45 of the specification (description and claims) had been omitted. Therefore, to that extent the "Notice of Omitted Item(s)" referencing the absence of page 45 was properly mailed and will not be withdrawn.

Accordingly, the petition is **granted** only to the extent that the referencein the 7 March, 2003, Notice of to File Missing Parts to the absence of page 44 is withdrawn, however, as to all other particulars the petition is **dismissed**.

Because the 9 May, 2003, petition was not due to Office error as to page 45 of the application, the petition fee authorized has been charged and will not be refunded.

Petitioner asserts, and it is noted, that the "Patent Application Transmittal" letter states that the application is a continuation of prior Application "No. 09/910,411, filed July 20, 2001," and pending as of the filing of the instant application), and that "[t]he entire disclosure of the prior application . . . is hereby incorporated . . . by reference . . . ."

This incorporation may be proper in practice before the Office. (See: MPEP §201.06(c) (in pertinent part).) If so, and, in view of such incorporation by reference of the prior application, the page 45 is not new matter if they were part of the disclosure of the prior application and that application was properly incorporated by reference into the instant application.

The application is being returned to OIPE for further processing with a filing date of 21 January, 2003, including an indication in Office records that 47 pages of description (pages 1-44 and 46-48) were present on filing.

Further, in the interest of time, Petitioner might wish to file immediately a copy of the claimed parent Application No. 09/910,411, as filed, as an amendment requesting entry of page 45.

Thereafter, the application will be forwarded to the Technology Center for consideration by the Examiner of the instant petition and copy of the parent, as an amendment requesting entry of page and 45.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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JJGJr: 10-03

Paper No: 7

GLAXOSMITHKLINE
Corporate Intellectual Property - UW2220
P.O. Box 1539
King of Prussia PA 19406-0939

In re Application of	:	
Aubert, et al.	:	
Application No. 10/349,253	:	DECISION ON PETITION
Filed: 21 January, 2003	:	
Attorney Docket No. GP70655-2C2	:	

This is a decision on the petition filed on 9 May, 2003, under 37 C.F.R. §1.53(b); and seeking to having accorded a filing date of 21 January, 2003, to pages 44 and 45 of the application, which the Office deemed omitted at the time of filing.

For the reasons set forth below, the petition under 37 C.F.R. §1.53(b) is **DISMISSED**, and the decision of 30 September, 2003, is amended in whole in the following particulars:

This application was deposited on 21 January, 2003. On 7 March, 2003, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application (Filed Under 37 C.F.R. §1.53," with a statement that "a filing date has been accorded" to the application, however, pages "44, 45 of the specification (description and claims)" appeared to have been omitted from the application.

In response, the instant petition under 37 C.F.R. §1.53 was filed on 9 May , 2003, over a 7 May, 2003, certificate of mailing.

The petition contends that, in the transmittal of the instant application:

- Petitioner sets forth (at box 17(c) a statement that this application is a continuation of Application "No. 09/910,411, filed July 20, 2001, which is a continuation of [nonprovisional] application Serial No. 09/693,761, filed October 20, 2000[,] which is a continuation-in-part of [nonprovisional application] Serial No. 09/497,790 filed February 3, 2000,] which is a continuation-in-part of [nonprovisional application] Serial No. 09/431,898 filed November 2, 1999"; and

- the incorporation-by-reference language is inserted and checked ("x") at box 6 of Petitioner's one- (1-) page application transmittal form).

However, it is noted that while the foregoing statement is made at box 17(c) and the incorporation-by-reference language is inserted and checked ("x") at box 6 of Petitioner's one-(1-) page application transmittal form, Petitioner did not:

- set forth the prior application number and filing date at box 17(a) to specify the parentage of the instant application to which priority as a continuation was claimed; or
- check ("x") box 17(c) to indicate that Petitioner seeks to have the priority information set forth therein as controlling.

Analysis

A search of the official file reveals that on 21 January , 2003, Applicants filed, inter alia, 46 pages of specification (description and claims), to wit: pages 1 - 43 and 46-48.

There are no pages 44 and 45--and if Petitioner was correct in his assertion of the presence of those pages, of necessity either the receipt card would have to reflect 48 pages of specification (description and claims) or other pages would be missing.

Moreover, Petitioner submits no receipt card evidencing the Office's acknowledgment of receipt of the pages in question.

Accordingly, the "Notice of Omitted Item(s)" mailed on 7 March, 2003, was correct in stating that pages 44 and 45 of the specification (description and claims) had been omitted. Therefore, the "Notice of Omitted Item(s)" was properly mailed and will not be withdrawn.

Accordingly, the petition is **dismissed**.

Because the 9 May, 2003, petition was not due to an error on the part of the Office, the petition fee authorized has been charged and will not be refunded.

Petitioner asserts, and it is noted, that the "Patent Application Transmittal" letter states that the application is a continuation of prior Application "No. 09/910,411, filed July 20, 2001," and pending as of the filing of the instant application), and that "[t]he entire disclosure of the prior application . . . is hereby incorporated . ... by reference . . . ."

This incorporation may be proper in practice before the Office. (See: MPEP §201.06(c) (in pertinent part).) If so, and, in view of such incorporation by reference of the prior application, the pages 44 and 45 is not new matter if they were part of the disclosure of the prior application and that application was properly incorporated by reference into the instant application.

The application is being returned to OIPE for further processing with a filing date of 21 January,

2003, including an indication in Office records that 46 pages of description (pages 1-43 and 46-48) were present on filing.

Further, in the interest of time, Petitioner might wish to file immediately a copy of the claimed parent Application No. 09/693,761, as filed, as an amendment requesting entry of pages 44 and 45.

Thereafter, the application will be forwarded to the Technology Center for consideration by the Examiner of the instant petition and copy of the parent, as an amendment requesting entry of pages 44 and 45.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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SCARBOROUGH STATION
SCARBOROUGH NY 10510-9227

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OFFICE OF PETITIONS

In re Application of
Herbert Kiesele et al.
Application No. 10/349,276
Filed: January 22, 2003
Attorney Docket No. **70724**

ON PETITION

This is a decision on the petition filed July 27, 2006 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition under 37 CFR 1.137 (b) is **GRANTED**.

This application became abandoned July 19, 2006 for failure to timely pay the issue fee on or before July 18, 2006. Accordingly, a Notice of Abandonment was mailed July 31, 2006, after the filing of the instant petition.

The issue fee, publication fee and petition fee have all been applied. All other requirements of 37 CFR 1.137(b) having now been met, this application file is being forwarded to the Publishing Division to be processed into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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FLYNN THIEL BOUTELL & TANIS, P.C.
2026 RAMBLING ROAD
KALAMAZOO MI 49008-1631

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OFFICE OF PETITIONS

In re Application of	:	
Kenichi WADA et al.	:	
Application No. 10/349,283	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. HTNAK-P-01	:	

This is in response to the petition under 37 CFR 1.183, filed March 16, 2006, which is being treated as petition requesting waiver of the requirements of 37 CFR 1.64.

The petition is **GRANTED.**

Petitioner has shown that the inability to again obtain the signature from the originally signing inventor Shoichi Nakaji is, not withstanding the exercise of reasonable care and diligence, due to circumstances beyond his control. Accordingly, the declaration submitted concurrently with the instant petition will be accepted.

It is noted that the original oath or declaration met the requirements of 37 CFR 1.63(c)(2) in that it identified the foreign application for patent for which a claim for priority pursuant to 37 CFR 1.55 was made. The priority claim was made in the transmittal letter and acknowledged on the filing receipt. Additionally, this change may have been made by submission of an Application Data Sheet (ADS) in accordance with 37 CFR 1.76.

Telephone inquiries regarding this decision should be directed to David Bucci at (571) 272-7099.

Brian Hearn
Petitions Examiner
Office of Petitions

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Paper No. 5

David D. Bahler
FULBRIGHT & JAWORSKI, L.L.P.
Suite 2400
600 Congress Avenue
Austin, TX 78701

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JUL 3 1 2003

OFFICE OF PETITIONS

In re Application of :
John M. Plgott :
Application No. 10/349,298 :
Filed: January 22, 2003 : Decision on Petition
Attorney Docket Number:
MOTB:024US

This is a decision on the Petition, filed May 5, 2003, requesting the application be accorded a filing date of January 22, 2003, including drawing Figures 11 and 12 described in the specification.

The petition is **granted**.

The application was filed on January 22, 2003. However, on April 4, 2003, the Initial Patent Examination Division mailed a Notice of Omitted Item(s) in a Nonprovisional Application, noting that the application had been accorded a filing date; however, drawing Figures 11 and 12 described in the specification appeared to have been omitted from the application.

In response, Petitioner files the instant petition wherein Petitioner avers that drawing Figures 11 and 12 described in the specification were filed with the application filing on January 22, 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, *inter alia*, 6 sheets of drawings on January 29, 2003.

A review of the return receipt postcard reveals that Petitioner is correct. The postcard acknowledges receipt of 6 sheets of drawings on January 22, 2003. Petitioner has also re-submitted sheets 5 and 6 of the drawings, which comprise drawing Figures 11 and 12, 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 copy of drawing Figures 11 and 12, supplied on May 5, 2003, will be used for examination purposes.

No petition fee is required. A refund of the petition fee, $130.00, 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 22, 2003, and an indication that 6 sheets of drawings were present on filing, using the sheets 5 and 6 filed on May 5, 2003.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

#6
DW

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

SEP 16 2003

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SEP 16 2003

OFFICE OF THE DIRECTOR
TC 3600

George J. Jakobsche
39 Old Farm Road
Concord, MA 01742

In re application of
Isadore W. Robinson
Application No. 10/349,300
Filed: January 22,2003
For: ADJUSTABLE MERCHANDISE DISPLAY APPARATUS

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on May 12, 2003, under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a birth certificate from the applicant showing that he is at least 65 years of age.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona fide*** effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED**.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703)308-0866

KJD/ekn 9/10/03

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : 3/28/05

TO SPE OF : ART UNIT 1724

SUBJECT : Request for Certificate of Correction on Patent No.: 6821315 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

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.

PHS 03/11/05 ☒ **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 1724

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

Joel R. Meyer
DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON, OR 97008

In re Application of: DELP, Edwards J. et. al.
Application No. **10/349,322**
Filed: January 21, 2003
Atty Docket No.: P0770
Title: TEMPORAL SYNCHRONIZATION OF VIDEO AND AUDIO SIGNALS

DECISION ON PETITION
UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed *July 02, 2009* under 37 CFR § 1.181 to invoke Supervisory Authority of the Commissioner to seek relief from Examiner's action in relation to the Final Office Action mailed ***March 02, 2009, namely,*** requesting the withdrawal of the finality thereof. Because according to Petitioner, the finality of the rejection was premature including new grounds of rejection "not triggered by any act of the Applicant that would entitle the Office to make the rejection final".

This petition is **GRANTED.**

RELEVANT HISTORY PROSECUTION

07/24/07 Non-Final action was mailed, which rejected:
claims 1-2, 5-6 and 16 as being unpatentable over Walker et. al. (US 6,785,401) in view of Fridrich, J. "Visual Hash for Oblivious Watermarking" Proceedings of SPIE Vol. 3971, 2000.
claims 3-4, 7-9, 11, 14-15 and 17-18 as being unpatentable over Walker et. al. in view of Fridrich further view of Beattie et. al. (US 6,804,374);
claim 10 as being unpatentable over Walker et. al. in view of Fridrich, J. and Beattie et. al. in further view of Moskowitz et. al. (US 5,889,868);
claims 12-13 as being unpatentable over Walker et. al. in view of Fridrich, J. and Beattie et. al. in further view of Shur, David. H. (US 2001/0049788);
claims 6 and 15 were objected as being improper dependent; and
claims 1-15 were rejected under 35 U.S.C. 112 second paragraph because the use of the claimed clause "*perceptually relevant*" in claim 1 and "*from time varying portions of a host signal, computing at least one perceptual feature from an image or audio signal representing perceptually relevant content in the time varying portions*" in claim 7.

01/24/08 After non-final amendment/reply under 37 C.F.R. §1.111 was filed which included amendments to: (i) claims 1, 7, 17, 18 and new claims 19-20.

Specifically,
claim 1 were amended to change "*perceptually relevant features*";
claim 7, removal of "*from time varying portions of a host signal*"; removal of "*perceptually relevant*" among other changes further limiting the claimed subject matter.
claims 17, and 18 substitution of "p*erceptible*" to -- *perceptual* –
claims 19-20 new

04/15/08 Final action was mailed, which rejected:
claims 1-2, 5-6 and 16 were rejected as being unpatentable over Walker et. al. in view of Glogau et. al. in further view of Fridrich, J.;
claims 3, 7-9, 11, 15 and 17-20 as being unpatentable over Walker et. al. in view of Fridrich further view of Glogau et. al. and Beattie et. al.;
Claim 10 as being unpatentable over Walker et. al. in view of Glogau et. al. in view of Fridrich, J. and Beattie et. al. in further view of Moskowitz et. al. (US 5,889,868);
Claims 12-13 as being unpatentable over Walker et. al. in view of Glogau et. al. in view of Fridrich, J. and Beattie et. al. in further view of Shur, David. H.;
Claims 1 and 14 are objected as allowable.
Claims 6 and 15 were objected as being improper dependent

09/15/08 Notice of Appeal was filed.

09/15/08 Pre-Appeal Conference request was filed.

12/30/09 Pre-Appeal Conference decision was mailed. Decision states: "The rejection is withdrawn and a New Office Action will be mailed. Prosecution on the merits remains closed. No further action is required by Applicant at this time".

03/02/09 Final Rejection in response to Pre-Appeal decision was mailed.

Claims 1-2, 5-6 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et. al. and view of Holliman et. al. in further view of Swanson et. al. (both Non-Patent Literature (NPL) references.

Claims 3, 7-9, 11, 15 and 17-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et. al. and view of Holliman et. al. in further view of Swanson et. al. and Beattie et. al.

Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et. al. and view of Holliman et. al. and Swanson et. al. and further view of Beattie et. al. and Moskowitz et. al.

Claims 12-13 was rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et. al. and view of Holliman et. al. and Swanson et. al. and further view of Beattie et. al. and Shur.

Claims 1-6 and 16 were rejected under 35 U.S.C. 112 second as being indefinite for the user of the clause in claim 1 "establishing initial Key relative to temporal location", "establishing of subsequent initial keys throughout the media signal to provide temporal synchronization with the initial keys"; "wherein the initial keys and subsequent derived keys"

Claims 1 and 14 are objected as allowable.
Claims 6 and 15 were objected as being improper dependent

REGULATION AND PROCEDURES

803.02 Amendments submitted after the final rejection further restricting the scope of the claim may be denied entry if they do not comply with the requirements of 37 C.F.R. §1.116. See MPEP § 714.13.

1.115 Preliminary Amendments: § 1.116 Amendments and affidavits or other evidence after final action and prior to appeal. (a) An amendment after final action must comply with § 1.114 or this section. (b) After a final rejection or other final action (§ 1.113) in an application or in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913, but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title): (1) An amendment may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action.

706.07(a) [R-6] Final Rejection, When Proper on Second Action

Under present practice, second or any subsequent actions on the merits shall be final, ***except*** *where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).* Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP § 609.04(b).

A second or any subsequent action on the merits in any application or patent involved in reexamination proceedings should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed. See MPEP § 904 et seq. However, note that an examiner cannot be expected to

foresee whether or how an applicant will amend a claim to overcome a rejection except in very limited circumstances (e.g., where the examiner suggests how applicant can overcome a rejection under 35 U.S.C. 112, second paragraph).

1207.04 [R-3] Reopening of Prosecution After Appeal

The examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed. The Office action containing a new ground of rejection may be made final if the new ground of rejection was (A) necessitated by amendment, or (B) based on information presented in an information disclosure statement under 37 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed. See MPEP § 706.07(a). Any after final amendment or affidavit or other evidence that was not entered before must be entered and considered on the merits.

DECISION

Final office action mailed March 02, 2009 for which Petitioner seeks relief of Examiner's action, specifically, the finality designation of this office action has been reviewed. Office action mailed March 02, 2009 was mailed in response to Amendment filed January 24, 2008 (according to PTO-326). After non-final amendment/reply under 37 C.F.R. §1.111 filed January 24, 2008 included amendments to: (i) claims 1,7, 17, 18 and new claims 19-20.

Specifically,
claim 1 were amended to change "*perceptually relevant features*";
claim 7, removal of "*from time varying portions of a host signal*"; removal of "*perceptually relevant*" among other changes further limiting the claimed subject matter.
claims 17, and 18 substitution of "*perceptible*" to -- *perceptual* –
claims 19-20 new

The final rejection mailed March 02, 2009 included a new rejection of claims 1-6 and 16 necessitated by amendments to claim 1, including at least the addition of claim limitation "and repeating the establishing of subsequent initial keys throughout the media signal to provide temporal synchronization with the initial keys".

The rejection of claims 1-2, 5-6 and 16 contains new grounds of rejection, **namely**, Walker et. al. and view of Holliman et. al. in further view of Swanson et. al. Specifically, Holliman appears to be relied upon to teach added/amended claim limitation "*and repeating the establishing of subsequent initial keys throughout the media signal to provide temporal synchronization with the initial keys*" *and* "based on the *perceptual features,* deriving changes to the initial keys for subsequent temporal locations in the media signal *between the temporal portions corresponding to the initial keys,...*"

Swanson appears to be relied upon to teach added/amended claim limitation, namely, "deriving *perceptual features* from perceptual image or data in *temporal location* of the media signal *relative to the locations of the initial keys*;

Thus, the rejection of claims 1-2, 5-6 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et. al. and view of Holliman et. al. in further view of Swanson et. al. was necessitated by amendment filed January 24, 2008.

The rejection of claims 3, 7-9, 11, 15 and 17-20 contains new grounds of rejection, namely, Walker et. al. and view of Holliman et. al. in further view of Swanson et. al. and Beattie et. al. Specifically, Holliman appears to be relied upon to teach *added/amended* claim limitation "computing at least one perceptual feature from an image or audio signal representing perceptual content in the time varying portions *of the host signal.* (independent claim 7)

Regarding independent claim 17, appears to be amended solely in response to rejection of claims 1-15 under 35 U.S.C. 112 second paragraph as being indefinite because of the use of the claimed term "perceptually relevant". Although claim 17 was not rejected under 35 U.S.C. 112-second on office action mailed 07/24/09, the amendment of claim 17 on response filed 1/24/08 is clearly in response to the 112-second rejection.

The amendment to claim 17 to change the claimed term from "perceptually relevant" to -- perceptual – was in response to requirements of previous action mailed 7/24/07 and does not appear to change the scope of the claim. Thus, new grounds of rejection of claim 17 from Walker et. al. in view of Fridrich further view of Glogau et. al. and Beattie et. al. accord to action mailed 4/15/08 to Walker et. al. and view of Holliman et. al. in further view of Swanson et. al. and Beattie et. al. according to action mailed 3/02/09 was neither (A) necessitated by amendment, or (B) based on information presented in an information disclosure statement under 37 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed. See MPEP § 706.07(a).

For the reason(s) above-mentioned this petition is hereby **granted.**

Finality of action mailed on March 2, 2009 is hereby **withdrawn.**

Application will be forwarded to the respective Technical Support Staff for withdrawal of finality of office action mailed March 2, 2009. Application will be forwarded to examiner for proper treatment of Applicant's response mailed January 24, 2009 and issuance of corresponding office action in due course.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, Kim Huynh, Quality Assurance Specialist, can be reached at (571) 272-4147.

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400,
Network, Multiplexing, Cable and Security

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/349,322	01/21/2003	Edward J. Delp	P0770	2059

23735 7590 08/11/2009
DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON, OR 97008

EXAMINER
GELAGAY, SHEWAYE

ART UNIT	PAPER NUMBER
2437	

MAIL DATE	DELIVERY MODE
08/11/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

OIPE JC174
SEP 1 5 2004
PATENT & TRADEMARK OFFICE

LHW
PET DEC

DOCKET NO. 1697.1001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Mark Holm et al.

Serial No: 10/349,324 Group Art Unit: 1761

Confirmation No. 2062

Filed: January 23, 2003 Examiner:

For: METHOD AND APPARATUS FOR BROWNING AND COOKING FOOD PRODUCTS WITH SUPERHEATED STEAM

NOV 2 6 2004
Approved
JMStone
Jacqueline M. Stone, Director
Technology Center 1700

REQUEST FOR WITHDRAWAL AS ATTORNEY/AGENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

1. Request for Withdrawal : Please withdraw me as attorney for the above-identified patent application, and the attorneys/agents associated with Customer Number 21171 in accordance with 37 C.F.R. §§ 1.36 (b) and 10.40.

2. Address of the Client/Assignee:

Pyramid Food Processing Equipment Manufacturing, Inc.
151 Lorum Street
Tewksbury, MA 01876

Attn: Mr. Jack Bresnahan
President

This application is the subject of an assignment from the inventors to the above-noted Assignee, which assignment is recorded at Reel 014827, Frame 0785.

Once the request for our withdrawal is approved, please direct all future correspondence regarding this application to the Assignee at the above-noted address.

3. Basis for Withdrawal Request

The attorneys under this Customer Number, particularly the undersigned, have rendered substantial legal services and expended substantial out-of-pocket sums on behalf of the Assignee.

Attached is a Statement of Account showing an unpaid balance of $15,689.35 for legal services performed on behalf of the client. The earliest debit memo is from December, 2003, about nine months ago. Numerous reminders have been sent to the client in regard to the need to pay the balance. While

a payment was received recently, it related only to debit memos from August, 2003, and it is not expected that further payments will be received very soon.

We believe that our firm will be harmed if we must continue to assume responsibility in any way over this application.

4. Ample Time for Assignee to Act

The status of the application is that it is pending and no Office Action has yet issued. Accordingly, there is no response due date set in this application at this time.

5. Notification of Client

In accordance with 37 C.F.R. § 10.40, a copy of this request is being sent to the Assignee at the above-noted address.

The undersigned has not been advised by the Assignee of any replacement counsel having been chosen yet.

In conclusion, due to the absence of receiving all our fees from the Assignee, we do now want to expend any further time or expense on this application or continue to be responsible in any way therefore. For this reason, we earnestly solicit the Commissioner's prompt consideration and approval of this application to withdraw.

The undersigned, as a Partner of the firm, signs on behalf of all attorneys/agents included in Customer No. 21171 of record in the above-referenced application.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 9/15/04

By: _____
William F. Herbert
Registration No. 31,024

1201 New York Ave, N.W., Suite 700
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501

OIPE JC174
SEP 1 5 2004
PATENT & TRADEMARK OFFICE

STAAS & HALSEY LLP
1201 New York Avenue, N.W.
Suite 700
Washington, DC 20005

Mr. Jack Bresnahan
PYRAMID FOOD PROCESSING EQUIP. MFG., INC.
152 Lorum Street
Tewksbury, MA 01876

September 8, 2004
Page: 1

Statement of Account

Date	Debit Memo Number	Amount
December 31, 2003	1697-160827	8,081.68
December 31, 2003	1697-160830	2,249.70
February 6, 2004	1697-162989	263.38
February 6, 2004	1697-162991	263.38
February 20, 2004	1697-162990	600.66
March 19, 2004	1697-164429	1,239.50
May 28, 2004	1697-167811	285.95
June 30, 2004	1697-169584	1,565.60
July 30, 2004	1697-171035	408.50
July 30, 2004	1697-171036	81.70
July 30, 2004	1697-171037	77.40
July 30, 2004	1697-171038	571.90
		$15,689.35

Ex. D. Lam

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 9/21/06

TO SPE OF : ART UNIT 2818

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/349,334 Patent No.: 6788589

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

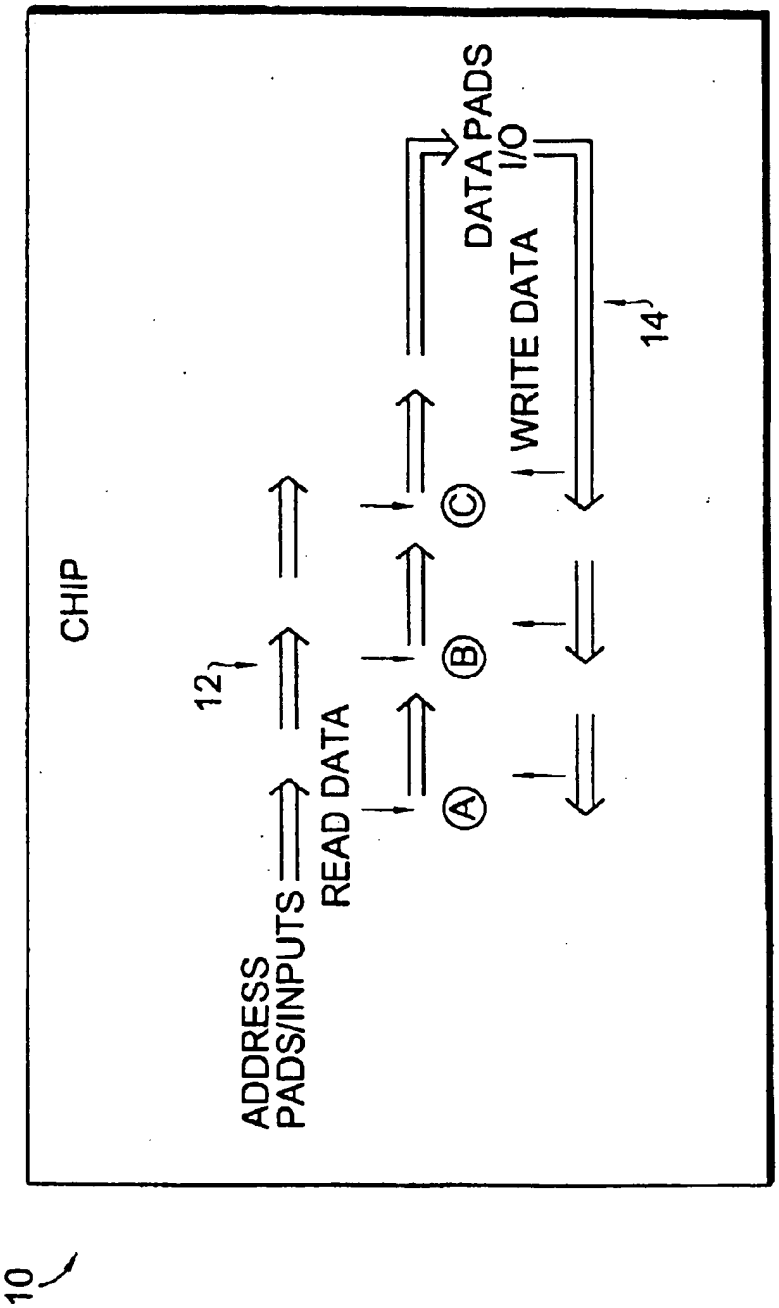
The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

2827 — SPE

2827 — Art Unit



PRIOR ART

Fig. 1

10/349,334

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,788,589 B2
DATED : September 7, 2004
INVENTOR(S) : Jon Allan Faue

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Title page,
Item [54], Title, after "**INTO**" insert -- **THE** --

Signed and Sealed this

First Day of February, 2005

Jon W. Dudas

JON W. DUDAS
Director of the United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

March 25, 2009

Quang D. Nguyen
Drinker Biddle & Reath, LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

Patent No.: 7,494,810 B2
Application No.: 10/349,335
Inventor(s): Carla H. Kuhner, et al.
Issued: February 24, 2009
Title: **METHOD FOR ACCESSING MICROBAL DIVERSITY**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-0025 ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Virginia Tolbert
For Mary Diggs, Supervisor
Decisions & Certificate of Correction Branch
(703) 305-8309 or (703) **308-9390 ext 113**

vt

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

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 04/20/2010

Applicant	: Alexander Tessarolo	: DECISION ON REQUEST FOR
Patent Number	: 7580967	: RECALCULATION of PATENT
Issue Date	: 08/25/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/349,336	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/22/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **798** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

COPY MAILED

JUN 18 2007

OFFICE OF PETITIONS

In re Patent No. 7,196,738	:	
Masaki Yamamoto	:	DECISION ON REQUEST
Issue Date: 27 March, 2007	:	FOR
Application No. 10/349,340	:	RECONSIDERATION OF
Filed: 21 January, 2003	:	PATENT TERM ADJUSTMENT
For: TUNER INTEGRATED CIRCUIT AND	:	
TELEVISION TUNER USING THE SAME	:	
CIRCUIT	:	

This is a decision on the "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed on 15 February, 2007. Patentees request that the patent term adjustment indicated in the patent be corrected from five hundred two (502) days to eight hundred one (801) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **DISMISSED**.

Patentees are given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under § 1.136.

On 27 March, 2007, the above-identified application matured into U.S. Patent No. 7,196,738. The instant request for reconsideration filed 15 February, 2007 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a Patent Term Adjustment of 502 days. Patentees request correction of the patent term adjustment to increase the patent term adjustment to 801 days on the basis

that the Notice of Allowance was issued 3 years and 299 days after the date on which the application was filed.

A review of the record reveals that the instant patent issued 3 years and 430 days after its filing date. However, § 1.703(b)(1) provides, in pertinent part that:

> the period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) … and ending on the date a patent was issued, but not including the sum of the following periods:
>
> (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

Thus, the filing of a request for continued examination (RCE) cuts-off the applicants' ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment.

In this instance, an RCE was filed on 12 June, 2006. Thus, the ability to accumulate additional patent term adjustment against the three-year pendency provision ended 12 June, 2006. Accordingly, the period of adjustment under § 1.702(b) is 47 days, counting the number of days beginning on 26 January, 2006, and ending on 12 June, 2006.

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 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of

Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). The 47 days of delay for Office issuance of the patent more than three (3) years after the filing date of the application overlap with the 549 days attributable to grounds specified in § 1.702(a)(1). Accordingly, no additional patent term accrued pursuant to § 1.703(b). Applicants do not dispute the entry of a period of reduction of 47 days.

In view thereof, the patent properly issued with a patent term adjustment of 502 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 Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 04/20/2010

Applicant	: Alexander Tessarolo	: DECISION ON REQUEST FOR
Patent Number	: 7580968	: RECALCULATION of PATENT
Issue Date	: 08/25/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/349,344	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/22/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **826** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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#7

Paper No.

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

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DEC 0 8 2003

OFFICE OF PETITIONS
ON PETITION

In re Application of
Peter Zhu
Application No. 10/349,363
Filed: June 22, 2003
Attorney Docket No. ASP-0029 US

This is a decision on the petition, filed December 3, 2003, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 24, 2003 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

After receipt of the file in the Office of Petitions, the application will be forwarded to Technology Center AU 1621 for processing of the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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 F. SCHIPPER
SUITE 808
111 N. MARKET STREET
SAN JOSE CA 95113

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JUN 13 2005

OFFICE OF PETITIONS

In re Application of :
Bruce Richman et al :
Application No. 10/349,379 : ON PETITION
Filed: January 21, 2003 :
Attorney Docket No. 6033-016 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 22, 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 September 15, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 16, 2004.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Mark Ragland at (571) 272-3295.

This matter is being referred to the Technology Center 2800, Group Art Unit 2828 for further processing.

Mark Ragland
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Irvin Dingle
Petitions Examiner

cc:

Herbart Burkard
Picarro, Inc.
480 Oakmead Parkway
Sunnyvale, CA 94085

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HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
P.O. BOX 272400
FORT COLLINS CO 80527-2400

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JUN 29 2007

OFFICE OF PETITIONS

In re Application of	:	
Amy E. Battles	:	
Application No. 10/349,383	:	ON PETITION
Filed: 01/21/2003	:	
Atty Dckt No. 200206045-1	:	

This is a decision on the petition filed on 27 April, 2007, under 37 CFR 1.137(a),[1] revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)" or "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency decision.

The application became abandoned on 5 January, 2007, for failure to file a timely response to the Office action mailed on 4 October, 2006, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in

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[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. 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(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)).

accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 23 April, 2007.

Petitioner assert unavoidable delay in that petitioner's counsel believed no response to the Office action mailed on 4 October, 2006 was required. Specifically, petitioner avers that during a telephone interview of 26 October, 2006, the examiner stated he would reissue the final Office action as a non-final Office action. Petitioner relies on the Interview Summary mailed on 16 November, 2006, as supporting her position that a new Office action would be mailed.

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".[2] 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.[3]

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).[4] Specifically, an application is "unavoidably" abandoned only

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[2] 35 U.S.C. § 133.

[3] 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).

[4] See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

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.[5]

Petitioner's argument has been considered, but is not persuasive. At the outset, the Interview Summary mailed on 16 November, 2006, states, in pertinent part that "[O]ut of coursey to the applicant, the examiner has agreed to make the previous office action non-final…" Rather than stating that a new Office action would be mailed, the Interview Summary simply reflected that the examiner would treat the Office action mailed on 4 October, 2006, as a non-final Office action rather than as a final Office action. Nowhere was it stated that a new Office action would be mailed, or that applicant was not required to timely file a response to the outstanding Office action.

Rather than unavoidable delay, the showing is that there was a misunderstanding on the part of petitioner's counsel. While such a misunderstanding is unfortunate, it does not constitute unavoidable delay.

The U.S. Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions.[6] Specifically, petitioner's delay caused by the mistakes or negligence of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. § 133.[7]

Further, to the extent that petitioner's counsel's notes reflect a belief or understanding that the examiner had agreed to remail the Office action, there is no showing in the written record to support that allegation. As MPEP 711.03(c) states, 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: (A) the applicants' reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicants of any deficiency in

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[5] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

[6] Link v. Wabash, 370 U.S. 626, 633-34 (1962).

[7] Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N. D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891).

sufficient time to permit the applicant to take corrective action.[8] Additionally, 37 CFR 1.2 states that the action of the U.S. 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.

As the showing of record 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. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The 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

---

[8] See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

A copy of the form for filing a petition under 37 CFR 1.137(b) to revive an application unintentionally abandoned is enclosed herewith for petitioner's convenience.

The fee for the petition under 37 CFR 1.137(a) will be charged to counsel's deposit account, as authorized in the petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571)272-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/64
Privacy Act Statement

PTO/SB/64 (04-07)
Approved for use through 09/30/2007. 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
DIW Sep-07

HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
P.O. BOX 272400
FORT COLLINS CO 80527-2400

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SEP 19 2007

OFFICE OF PETITIONS

In re Application of	:	
Amy E. Battles	:	
Application Number: 10/349383	:	DECISION ON PETITION
Filing Date: 01/21/2003	:	
Attorney Docket Number:	:	
200206045-1	:	

This is a decision on the petition filed on 23 July, 2007, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 5 January, 2007, for failure to file a timely response to the Office action mailed on 4 October, 2006, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 23 April, 2007. The petition under 37 CFR 1.137(a) filed on 27 April, 2007, was dismissed on 29 June, 2007.

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[1] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Although the Office action mailed on 4 October, 2006, was mailed as a final Office action, it is noted in the Interview Summary mailed on 16 November, 2006, that the examiner has agreed in an interview of 16 November, 2006, to make the Office action mailed on 4 October, 2006, non-final. As such, the amendment filed on 27 April, 2007, with the petition under 37 CFR 1.137(a) is an appropriate response to the Office action of 4 October, 2006.

The fee for a petition under 37 CFR 1.137(b) will be charged to counsel's deposit account, as authorized in the present petition.

The application is forwarded to Technology Center Art Unit 2622 for further processing.

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

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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ALTERA LAW GROUP
6500 CITY WEST PARKWAY
SUITE 100
MINNEAPOLIS, MN 55344-7704

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APR 3 0 2004

OFFICE OF PETITIONS

In re Application of :
Joo Weon Park et al :
Application No. 10/349,384 : NOTICE
Filed: January 21, 2003 :
Attorney Docket No. 11719US.00 :

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©) 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 referred to Technology Center AU 2818.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

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MAY 23 2005

OFFICE OF PETITIONS

In re Application of	:	
Eckstedt, Paul D.	:	
Application No. 10/349,393	:	DECISION GRANTING PETITION
Filed: January 21, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 3419.05US01	:	

This is a decision on the petition, filed March 7, 2005, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on January 21, 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 August 25, 2005 accompanies this decision on petition.

This matter is being referred to the Publishing Division for processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

Liana Chase

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8-24-05

TO SPE OF : ART UNIT 3636

SUBJECT : Request for Certificate of Correction on Patent No.: 6918213

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:

Certificates of Correction Branch - PK 3-922

Palm location **7580** - Tel. No. 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Check U.S. Application Data Info

C Young

Thank You For Your Assistance

Certificates of Correction Branch

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☑ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

The Related U.S. Application Data "Provisional application No. 60/376,658, filed on Apr. 29, 2002" has nothing to do with patent application 10/349,404, now U.S. Patent No. 6,918,213 B2 and its deletion from the cover page of the patent is proper.

SPE _____ **Art Unit** 3636

PTO/SB/44 (04-04)
Approved for use through 04/30/2007. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,918,213 B2

DATED : July 19, 2005

INVENTOR(S) : Michael G. Burkart

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Cover Page:
Please delete the "Related U.S. Application Data" information, Section (60).

MAILING ADDRESS OF SENDER:

Dennis J. Dupray
SHERIDAN ROSS P.C.
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

PATENT NO. 6,918,213

No. of additional copies

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This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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

IBM CORPORATION
LOTUS SOFTWARE
ONE ROGERS STREET
CAMBRIDGE, MA 02142

Mail Date: 04/20/2010

Applicant	: Antonio Estrada	: DECISION ON REQUEST FOR
Patent Number	: 7584114	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/349,427	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/22/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1522** 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

Larry J. Palguta
Honeywell Law Department
3520 Westmoor Street
South Bend IN 46628

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MAR 2 5 2005

OFFICE OF PETITIONS

In re Patent No. 6,782,701	:	
Issue Date: August 31, 2004	:	
Application No. 10/349,434	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. H0002910	:	

This is a decision on the petition filed December 17, 2004, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **granted**.

Petitioner may file a request for a Certificate of Correction with a $100.00 fee to the Certificate of Correction Branch. A copy of this decision should accompany the request. The Office finance records indicate that petitioner's Deposit Account was incorrectly charged a $400.00 petition fee. The current processing fee due is $130.00. Therefore, Deposit Account No. 01-1125 will be refunded the difference in the amount of $270.00.

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

UNITED STATES
PATENT AND
TRADEMARK OFFICE

FEB 25 2003

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

#4

STEVEN HOROWITZ
295 MADISON AVENUE
SUITE 700
NEW YORK, NY 10017

In re Application of	:	
Constance T. Holmes	:	
Serial No. 10/349,449	:	DECISION ON PETITION
Filed: January 22, 2003	:	TO MAKE SPECIAL
For: Femail Nipple Prosthetic Device	:	

This is in response to applicants' petition filed January 22, 2003 to make the above-identified application special under the provisions of 37 CFR 1.102(a), based on applicant's health condition.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, IV with supporting documentation. Therefore, the petition is hereby **GRANTED**.

The application will be forwarded to the examiner for action on the merits to commensurate with the decision.

Should there be any questions with regard to this letter please contact John E. Kittle by letter addressed to the Director, Technology Center 3700/2900, Washington, DC 20231, or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle
Director
Technology Center 3700/2900

OIPE
MAY 07 2007
PATENT & TRADEMARK OFFICE

AF/IFW

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH CHEUK MAU WONG

Appeal 2006-2846
Application 10/349,468
Technology Center 3600

Decided: March 14, 2007

Before BRADLEY R. GARRIS, JEFFREY T. SMITH, and LINDA M. GAUDETTE, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1 and 3-12, the only claims pending in this application. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 134.

We AFFIRM.

INTRODUCTION

Appellant invented a laminated container holder that protects a user's hand from the extreme temperatures of a container's contents and a method of making the laminated container holder (Specification 1). The laminated container holder is composed of a plurality of layers including a graphics objects display layer attached to a thermal insulating layer (Claim 1). The thermal insulating layer is composed of "a low density polyethylene material." Claims 1 and 7 are illustrative:

1. A laminated sleeve for use with a container, the sleeve comprising: a plurality of layers, wherein

at least one layer of the plurality of layers is a thermal insulating layer comprising a low density polyethylene material, and

at least one other layer of the plurality of layers is a graphic objects display layer suitable for printing at least one graphic object thereon.

7. A method for manufacturing a laminated sleeve for use with a container comprising the steps of:

a) providing a graphic objects display layer;

b) transferring at least one graphic object onto the graphic objects display layer;

c) providing at least one thermal insulating layer comprising a low density polyethylene material;

d) overlaying the graphic objects display layer onto the at least one thermal insulating layer to form a sheet;

e) cutting at least one sleeve pattern from the sheet; and

f) folding and assembling the sleeve pattern to form the laminated sleeve.

The Examiner relies on the following prior art references as evidence of unpatentability[1]:

Studen	US 3,473,682	Oct. 21, 1969
Henderson	US 4,540,611	Sep. 10, 1985
Shelby	US 5,445,315	Aug. 29, 1995
Dickert	US 5,826,786	Oct. 27, 1998
Welch	US 6,138,902	Oct. 31, 2000

Rosato, "Plastics Processing Data Handbook, Second edition, 1967.

The rejections as presented by the Examiner are as follows:

1. Claims 1, 7, and 9-12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Henderson in view of Studen.
2. Claims 1, 3, 4, and 6 are rejected under 35 U.S.C. § 103(a) as unpatentable over Shelby in view of Studen.
3. Claims 1 and 3-12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Dickert in view of either Welch or Shelby in further view of Studen.

Rather than reiterate the respective positions advocated by the Appellant and by the Examiner concerning these rejections, we refer to the Brief and to the Answer respectively for a complete exposition thereof.

OPINION

With regard to all of the § 103(a) rejections, Appellant argues none of the references discloses "a thermal insulating layer comprising a *low density* polyethylene material" (Br. 9, 11, 12). Appellant contends expanded

[1] In any further prosecution of this case, U.S. Patent 6,814,253 to Wong should be considered for double patenting.

polyethylene (EPE) is not the same as low density polyethylene (LDPE) (Br. 10-11). Appellant contends that LDPE has a unique polymer chain, namely a branched chain (Br. 10), whereas, EPE consists of "individual closed cells of inert gas suspended in a polyethylene medium" (Br. 10). Appellant also contends that the Examiner has not provided any evidence to support the assertion that EPE is an LDPE material (Br. 10).

The Examiner responds that expanded polyethylene foam (EPE) may be considered "a low density polyethylene material" as claimed (Answer 5). The Examiner relies on Rosato's disclosure in the Plastics Processing Data Handbook that "expanded polyethylene" (EPE) is "a low density, semirigid, closed-cell, weather-stable, PE homopolymer" (Answer 5). Based on Rosato's definition of "expanded polyethylene" the Examiner determines that Appellant's claim to the insulating layer "comprising a low density polyethylene material" is satisfied by Studen's disclosure of expanded polyethylene (Answer 5).

We agree with the Examiner's ultimate conclusion that the claims are unpatentable over the applied prior art of the § 103(a) rejections.

We adopt the Examiner's factual findings and conclusions set forth in the Answer. We add the following discussion primarily for emphasis and completeness.

Appellant's only argued distinction over the art of record is the claim feature "a thermal insulating layer comprising a low density polyethylene material." We must interpret the phrase "a low density polyethylene material."

During examination of an application, an Examiner gives a claim its broadest reasonable construction in light of the Specification as the claim

would be interpreted by one of ordinary skill in the art. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005). An applicant's specification is examined for the definition of any claim term that would govern the Examiner's interpretation of the particular claim term at issue. *Id.*

Appellant does not specifically define "low density polyethylene material" in the Specification. The Specification does, however, state that the insulating layer is "preferably" comprised of a "polymer material" such as "a low density polyethylene foam" or an "expanded polyethylene foam" (Specification 6). From such disclosure, we construe these two phrases, "a low density polyethylene foam" and "expanded polyethylene foam," as at least overlapping.

We are further in agreement with the Examiner's broad, but reasonable, construction of the phrase "a low density polyethylene material" as a material made of polyethylene that has a low density (Answer 5). Based on this claim construction, the Examiner reasonably determined Studen's "expanded polyethylene" satisfies Appellant's claim limitation requiring that the insulating layer is made of "a low density polyethylene material."

As evidence of the propriety of the Examiner's interpretation, the Examiner provides the definition of "expanded polyethylene" from the Plastics Processing Data Handbook, which defines the material as a "low density . . . PE [polyethylene] homopolymer." Appellant has not rebutted this evidence (i.e., the Plastics Processing Data definition of "expanded polyethylene") provided by the Examiner.

The definition of "expanded polyethylene" provided by the Examiner additionally supports the Examiner's reasonable determination that

Appellant's claim feature of "a low density polyethylene material" is satisfied by Studen's disclosure of "expanded polyethylene." We observe nothing in the claims expressly excluding "expanded polyethylene" from the claim feature "a low density polyethylene material." Based on the foregoing evidence, we determine, as the Examiner has previously indicated, that "a low density polyethylene material" includes "expanded polyethylene foam."

Accordingly, Appellant's only argued distinction, "a thermal insulating layer comprising a low density polyethylene material," is satisfied by the applied prior art. As a consequence, we affirm the following rejections: (1) claims 1, 7 and 9-12 under § 103(a) over Henderson in view of Studen, (2) claims 1, 3, 4, and 6 under § 103(a) over Shelby in view of Studen, and (3) claims 1 and 3-12 under § 103(a) over Dickert in view of either Welch or Shelby in further view of Studen.

CONCLUSION

The Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2006).

AFFIRMED

cam

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OFFICE OF PETITIONS

In re Application of :
John Charles Kath, et. al. :
Application No. 10/349,475 : DECISION ON PETITION
Filed: January 22, 2003 :
Attorney Docket No. PC10113C :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 24, 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 respond to the Restriction/Election Requirement mailed July 2, 2004. A Notice of Abandonment was mailed on April 7, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional

information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (3).

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

(1) the delay in reply that originally resulted in the abandonment;

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 **would not be granted where the abandonment** or the failure to pay the fee for issuing the patent **was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the

burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). *See* In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay (over 4 years) in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on August 3, 2004. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). AS Pfizer, Inc. was responsible for this application at the time of abandonment, they should explain why this application became abandoned while it was under their control and what efforts was made to reply and with whom this matter was discussed outside of Pzifer, Inc.. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from the responsible person and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons at Pfizer,Inc. and the responsible person(s) having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action. As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2):

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). *See* MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. *See* Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over 4 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons at Pfizer, Inc. and the responsible person(s) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

(A) the date that the applicant first became aware of the abandonment of the application; and

(B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

Any renewed petition may be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Mitchell Thompson et al	:	
Application No. 10/349,482	:	DECISION ON PETITION
Filed: January 22, 2003	:	TO WITHDRAW
Attorney Docket No. MSI-168	:	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 2, 2004.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to Paul A. Schwarz has been revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

The correspondence address of record remains unchanged, which is the address indicated below.

Telephone inquires concerning this decision should be directed to Irvin Dingle at 571-272- 3210.

Amelia Au
Petitions Examiner
Office of Petitions

cc: Plevy & Howard, P.C.
P.O. Box 226
Fort Washington, PA 19034

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In re Application of
Lassner et al
Serial No. : 10/349,508
Filed : 23 January 2003
Attorney Dkt No. : MONS:076USC1

Decision on Petition

This decision is in response to the petition under 37 CFR 1.144 filed 03 April 2006, to regarding a requirement for restriction.

BACKGROUND

This application was filed on 23 January 2003 under 35 USC 111(a). On 1 August 2005, the examiner required restriction between Group I, claims 34-38, drawn to a ATPT2 prenyltransferase, classified in Group 530, subclass 300 and Group II, claims 39-42, drawn to a isolated nucleic acid, classified in class 536, subclass 23.2.

On 1 September 2005, applicants elected Group I with traverse.

The examiner mailed an Office action on 17 October 2005, in which the traversal was considered and found not persuasive. The restriction requirement was made FINAL and claims 39-42 were withdrawn from consideration as being directed to a non-elected invention. Claims 35-36 were rejected under 35 USC 112, first paragraph for lack of adequate written description. Claims 34-38 were rejected under 35 USC 112, firs, for requiring a deposit of a biological material. Claims 35-38 were rejected under 35 USC 112, first for scope of enablement. Claims 37-38 were rejected under 35 USC 101, for lack of utility. Claims 34-38 were rejected under 102(a) as being anticipated by Rounsley.

On 03 April 2006, the petition was filed.

On 05 May 2005, as response and amendment was filed.

DISCUSSION

The petition and file have been reviewed carefully.

The petition cites MPEP 803:

> If a search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

The petition requests that the polypeptide and polynucleotide inventions of Group I and II would not impose an undue burden. The search and examination of the polynucleotide group would impose serious burden on the Office because it would require oligonucleotide-searches of the nucleic acid databases which are not required for the search and examination of the polypeptide of Group I.

The petition asserts that if the polypeptides of Group I are found to be novel and unobvious, the polynucleotides of Group II would by definition also be novel and unobvious. This is incorrect. Patentability of a polypeptide does not impart novelty and unobviousness to the polynucleotide. The polypeptide could be patentable over the prior art while the DNA may have been known in the prior art as a marker, without knowledge of its coding potential or identification of any particular open reading frame. Moreover, it is noted that polynucleotides, as claimed, encompass fragments as short as 30 in length, and reads upon polynucleotides oriented in the sense and antisense direction.

Applicants appear to be suggesting that the polynucleotide and polypeptide are obvious variants. If applicants intend to explicitly state on the record that the DNA and protein inventions are not patentably distinct, and that DNA is an obvious variant, under 35 USC 103, of the polypeptide invention, applicants are cautioned that if the examiner finds one of the inventions unpatentable over the prior art, the evidence of admission may be used in a rejection under 35 USC 103(a) for the other invention.

The petition also relates the informational content within the polynucleotides to the primary amino acid sequence of the polypeptides, however, this arguments lacks persuasion in view of the antisense language and 30-mer fragments of polynucleotide which are not required to, and indeed could not, encode the polypeptide of Group I.

The petition admits that the polynucleotide group also recites a 30-mer antisense fragment, but it claims that the polypeptide group encompasses the same language. This argument is not persuasive, for two reasons. First, the antisense DNA fragment could not encode the polypeptide of Group I. Second, in view of the amendment filed 05 May

2006, which removed the 30-mer language from the polypeptide group, the 30-mer limitation is no longer shared by both Group I and II.

DECISION

The petition to withdraw the restriction requirement is **DENIED**.

Any request for consideration must be filed within two (2) months of the mailing date of this decision.

The application will be forwarded to the examiner to consider the amendment and response filed on 05 May 2005 and to prepare an action which is consistent with this petition decision.

Should there be any questions regarding this decision, please contact Special Program Examiner Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 571-273-8300.

George C. Elliott

George Elliott
Director, Technology Center 1600

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April 3, 2006
Date

Robert E. Hanson

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PHONE: (512) 536-3085 **FAX:** (512) 536-4598

RE: Serial No. 10/349,508

NUMBER OF PAGES WITH COVER PAGE: 4 Originals Will Not Follow

Message:

Submitted for filing in Serial No. 10/349,508, please find a Petition Under 37 C.F.R. § 1.144 For Reconsideration of Determination of Finality of Restriction Requirement.

The Commissioner is authorized to deduct any petition fee required under 37 C.F.R. §§ 1.16 to 1.21 from Fulbright & Jaworski Deposit Account No. 50-1212/MONS:076USC1.

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OFFICE OF PETITIONS

In re Application of	:	
Sumio MORIOKA et al.	:	
Application No. 10/349,519	:	DECISION ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. JP20020002US1	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 26, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, September 22, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on December 23, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee $1,540; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of September 22, 2006 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

The application file is being referred to Technology Center AU 2137 for appropriate action on the concurrently filed amendment.

Michelle R. Eason

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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In re Application of	:	
Gene Stellon, et al.	:	
Application No. 10/349,524	:	DECISION ON PETITION
Filed: January 24, 2003	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 2656	:	

This is a decision on the petition, filed January 8, 2007, which is being treated under 37 CFR 1.78(a)(3) and 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §§ 119(e), 120 and 365(c) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

It is noted that the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The petition is **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(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.

The petition does not comply with item (1).

The reference to add the above-noted, prior-filed applications in the first sentence of the specification on page one following the title is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

Also, 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) require a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR §§1.78(a)(3) and 1.78(a))(6). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office.

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and either an Application Data Sheet or a substitute amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matter is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Frances M. Hicks
Petitions Examiner
Office of Petitions

cc: JOSEPH W. SCHMIDT
CARTER, DELUCA, FARRELL & SCHMIDT, LLP
445 BROAD HOLLOW ROAD, SUITE 225
MELVILLE, NY 11747

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

UNITED STATES SURGICAL,
A DIVISION OF TYCO HEALTHCARE
GROUP LP
195 MCDERMOTT ROAD
NORTH HAVEN CT 06473

COPY MAILED

JUN 22 2007

OFFICE OF PETITIONS

In re Application of	:	
Gene Stellon, et al.	:	DECISION ON PETITIONS
Application No.10/349,524	:	UNDER 37 CFR 1.78(a)(3) AND
Filed: January 24, 2003	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 2656	:	

This is a decision on the renewed petition, filed March 29, 2007, which is being treated under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §§120, 365(c) and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) 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.

The 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). Accordingly, 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 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.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

This application is being forwarded to Technology Center Art Unit 3734 for appropriate action on the amendment submitted March 29, 2007, 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.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/349,524	01/24/2003	3734	750	2656	14	2

CONFIRMATION NO. 1698

CORRECTED FILING RECEIPT

OC000000024449978

50855
UNITED STATES SURGICAL,
A DIVISION OF TYCO HEALTHCARE GROUP LP
195 MCDERMOTT ROAD
NORTH HAVEN, CT 06473

Date Mailed: 06/20/2007

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)

Gene Stellon, Southington, CT;
David C. Racenet, Litchfield, CT;
Ralph A. Stearns, Bozrah, CT;
Adam Lehman, Wallingford, CT;

Power of Attorney: The patent practitioners associated with Customer Number **50855**.

Domestic Priority data as claimed by applicant

This application is a CON of PCT/US01/24943 08/08/2001
which claims benefit of 60/223,811 08/08/2000

Foreign Applications

If Required, Foreign Filing License Granted: 03/10/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/349,524

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

MOLDED TROCAR LATCH

Preliminary Class

606

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).

OIPE JC125
FEB 2 4 2003
PATENT & TRADEMARK OFFICE

PATENT

#3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Delmar L. Logue

Serial No. [redacted] 10/349,526

Filed: 01/22/03, ~~[illegible]~~

For: POLAR COORDINATES SENSOR HAVING AN IMPROVED FLUX SUSPENSION SYSTEM ~~AN EXCITATION METHOD~~

Group Art Unit _____

Examiner _____

Assistant Commissioner for Patents
Washington, D.C. 20231
ATTENTION: Group Director, Group _____

CERTIFICATE OF MAILING (37 C.F.R. 1.8(a))

I hereby certify that this PETITION TO MAKE SPECIAL BECAUSE OF APPLICANT'S AGE (37 C.F.R. §1.102(c) AND M.P.E.P. §708.2 IV) (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231 on FEB. 14, 2003, 2003

Delmar L. Logue
Delmar Logue

PETITION TO MAKE SPECIAL BECAUSE OF APPLICANT'S AGE (37 C.F.R. § 1.102(c) AND M.P.E.P. § 708.02 IV)

Applicant hereby petitions to make this application special because applicant is over 65 years of age. As a showing of this fact, accompanying this petition is:

(check one of the following)

[ ] applicant's birth certificate.

[X] a declaration by the applicant that he is over 65 years of age.

No fee is required with this petition, in accordance with 37 C.F.R. § 1.102(c).

4. Attached to the Declaration is a copy of my driver's license issued by the State of Illinois which indicates that I am over 65 years of age.

5. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

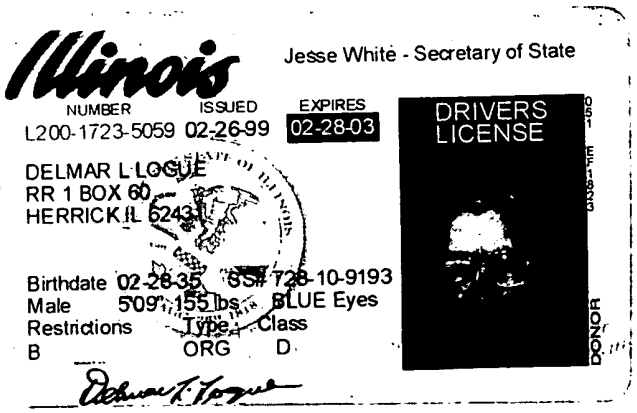
Respectfully submitted,

Delmar L. Logue

Delmar Logue
R.R. #1, Box 60
Herrick, Illinois 62431

(618) 428-5233

Enclosures
dhc\loguespc.sam


Illinois
Jesse White - Secretary of State
NUMBER ISSUED EXPIRES
L200-1723-5059 02-26-99 02-28-03
DELMAR L LOGUE
RR 1 BOX 60
HERRICK IL 62431
Birthdate 02-28-35 SS# 728-10-9193
Male 5'09" 155 lbs BLUE Eyes
Restrictions Type Class
B ORG D
DRIVERS LICENSE
DONOR

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ALEXANDRIA, VA 22313-1450
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JUL 01 2005

OFFICE OF PETITIONS

OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8403

In re Application of
Theone Luk
Application No. 10/349,530
Filed: January 21, 2003
Attorney Docket No. P/3987-36

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed May 11, 2005.

The petition is GRANTED.

The application became abandoned for failure to pay the issue fee on or before March 17, 2005. A Notice of Abandonment was mailed on April 28, 2005. Receipt is acknowledged of the requisite issue/publication fee on May 11, 2005.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

This matter is being referred to Publishing Division.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (703) 305-8283.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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 15 2004

Paper No. 4

In re Application of
Richard J. Brady
Application No. 10/349,533
Filed: January 23, 2003
Attorney Docket No. BRAR 7382USC1

DECISION ON PETITION

This is a decision on the petition to make special filed on February 19, 2004. 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 3724 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,
Patent Examining Groups 3710 and 3720

Polster, Lieder, Woodruff and Lucchesi
12412 Powers Court Drive
Suite 200
St. Louis, MO 63131-3615

SPE Chiang

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/24/06

TO SPE OF : ART UNIT 2825

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/349,540 Patent No.: 6944834

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: _____

Jack Chiang
JACK CHIANG
SUPERVISORY PATENT EXAMINER

_____ 2825
SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON TX 77056

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JAN 04 2010

In re Application of	:	
Santiago Quijano	:	
Application No. 10/349,576	:	ON PETITION
Filed: January 23, 2003	:	
Attorney Docket No. **SYMM1310-1**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 10, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to submit formal drawings in a timely manner in reply to the Notice of Allowability, mailed June 8, 2009, which set a period for reply of three (3) months. Accordingly, this application became abandoned on September 9, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of corrected formal drawings , (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at 571-272-4584

This application is being referred to the Office of Data Management for appropriate action in the normal course of business on the reply received.

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

AGILENT TECHNOLOGIES, INC.
LEGAL DEPARTMENT, DL429
INTELLECTUAL PROPERTY ADMINISTRATION
P.O. BOX 7599
LOVELAND, CO 80537-0599

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NOV 15 2004

OFFICE OF PETITIONS

In re Application of	:	
Theng-Hui Kek	:	
Application No. 10/349,598	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. 70020273-1	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 21, 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 June 4, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on September 7, 2004.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34, the signature of Marc Bobys 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. If Marc Bobys desires to receive future correspondence regarding this application, an appropriate power of attorney or authorization of agent must be submitted.

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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

The application matter is being forwarded to the Publishing Division for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES 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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THORP REED & ARMSTRONG, LLP
ONE OXFORD CENTRE
301 GRANT STREET, 14TH FLOOR
PITTSBURGH PA 15219-1425

COPY MAILED

MAR 1 0 2006

OFFICE OF PETITIONS

In re Application of
Kaigham J. GABRIEL, *et al.*
Application No. 10/349,618
Filed: January 23, 2003
Attorney Docket No. DB001043-000

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on January 23, 2006 to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee and the publication fee in a timely manner in reply to the Notice of Allowance and Fee(s) Due, mailed on September 15, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned, by operation of law, on December 16, 2005. A Notice of Abandonment was mailed on January 23, 2006.

The instant petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee and of the Publication Fee; (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the Issue fee and the Publication Fee payments are 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 all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Anatoly Vortman at (571) 272-6051, or in his absence to the undersigned at (571) 272-7099.

Application No. 10/349,618

The application file is being forwarded to the Office of Patent Publication.

David Bucci
Petitions Examiner
Office of Petitions

Cc: Edward L. Pencoske
One Mellon Center
500 Grant Street, Suite 3100
Pittsburgh, PA 15219

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
www.uspto.gov

Michelle M. Carniaux, Esq.
KENYON & KENYON LLP
One Broadway
New York, NY 10004-1007

Mail Date: 04/21/2010

Applicant	: Michael d. Hudson	: DECISION ON REQUEST FOR
Patent Number	: 7584285	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/349,622	: 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 **1479** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 12

VAN PELT & YI LLP
4906 EL CAMINO REAL
SUITE 205
LOS ALTOS, CA 94022

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OFFICE OF PETITIONS

In re Application of	:	
Maclean et al.	:	
Application No. 10/349,635	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. INT1P873C1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 15, 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 February 25, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on May 26, 2004. A Notice of Abandonment was mailed September 22, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The file is now being forwarded to Technology Center 2600 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: ROBYN WAGNER
VAN PELT, YI & JAMES, LLP
10050 N. FOOTHILL BLVD.
SUITE 200
CUPERTINO, CA 95014

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 12

VAN PELT & YI LLP
4906 EL CAMINO REAL
SUITE 205
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MAR 25 2005

OFFICE OF PETITIONS

In re Application of	:	
Maclean et al.	:	
Application No. 10/349,635	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. INT1P873C1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 15, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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The file is now being forwarded to Technology Center 2600 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: ROBYN WAGNER
VAN PELT, YI & JAMES, LLP
10050 N. FOOTHILL BLVD.
SUITE 200
CUPERTINO, CA 95014

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OFFICE OF PETITIONS

In re Application of	:	
Michael J. Mater	:	
Application No. 10/349,651	:	ON PETITION
Filed: January 23, 2003	:	
Attorney Docket No. COHE-P05	:	

This is a decision on the petition filed, August 14, 2006 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application is being revived solely for purposes of continuity with a Request For Continued Examination (RCE) filed on August 14, 2006.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matters is being referred to Technology Center AU 2877 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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WALL & TONG, LLP/
ALCATEL-LUCENT USA INC.
595 SHREWSBURY AVENUE
SHREWSBURY, NJ 07702

Mail Date: 04/30/2010

Applicant	: Oliver Haase	: DECISION ON REQUEST FOR
Patent Number	: 7610328	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/349,672	: 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 **905** 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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JJGJR.: 07-06

Paper No: __

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Application of	:	
Okada, et al.	:	DECISION
Application No.: 10/349,692	:	
Filing Date: 23 January, 2003	:	
Attorney Docket No. 12852-007001/102306-US-00	:	

This is a decision on the petitions filed on 26 September, 2005, as a request to withdraw the holding of abandonment considered under 37 C.F.R. §1.181, alternatively as a petition to revive under 37 C.F.R. §1.137(a) or (b).

NOTE:

It appears that, since the filing of the original petition, Petitioner has not inquired as to the Status of the instant matter–Petitioner is reminded that the filing of such inquiries at a minimum of three- (3-) month intervals may provide a showing of diligence should the extended delay be questioned (for example, as required under 37 C.F.R. §1.181).

For the reasons set forth below the petition as considered under 37 C.F.R. §1.181 is **GRANTED**; the petition under 37 C.F.R. §1.137(a) is **DISMISSED**; and the petition under 37 C.F.R. §1.137(b) is **DISMISSED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Restriction requirement mailed on 4 October, 2004, with reply due absent extension of time on or before 4 November, 2004;
- the instant application went abandoned after midnight 4 November, 2004;
- the Office mailed the Notice of Abandonment on 20 September, 2005;
- on 26 September, 2005, Petitioner filed the instant petitions, seeking withdrawal of the holding of abandonment, alternatively revival as abandoned due to unavoidable or unintentional delay, and averred timely filing of a reply in the form of an Election, with a copy of a receipt card (see: MPEP §503[1]) evidencing Office receipt that is date stamped with what appears to be a "NOV 12 2004" OIPE date stamp, and the receipt card lists an amendment/response, request and fee for extension of time within which to file; and what is averred to be a copy of the reply and request for extension of time submitted;
- out of an abundance of caution, Petitioners always are reminded that the filing of a

---

[1] MPEP §503 provides in pertinent part:

§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)), and those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

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[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;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(4) Imposing a monetary sanction;
(5) Requiring a terminal disclaimer for the period of the delay; or
(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).
[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6] And the Petitioner must be diligent in attending to the matter.[7] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal

---

[3] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[4] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[5] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[6] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[7] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[8] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

of a holding of abandonment.[9]

The commentary at MPEP §711.03(c) provides:

* * *

B. Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed

37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), * (e), or (g) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. §1.8(b) and MPEP § 512. As stated in 37 C.F.R §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous

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[9] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

> timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).
>
> 37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. 1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP § 512.
>
> * * *

And the regulation requires that relief be sought within two (2) months of the act complained of.

As of this writing Petitioner appears to have satisfied the showing and timing requirements described above.

Allegations as to
Unavoidable Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(a) are the petition and fee, a statement/showing of unavoidable delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

The matter is moot.

Allegations as to
Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

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.

The matter is moot.

CONCLUSION

Petitioner has satisfied the burdens set forth in Delgar v. Schulyer, the petition as considered under 37 C.F.R. §1.181 is **granted**; the petition under 37 C.F.R. §1.137(a) is **dismissed as moot**; and the petition under 37 C.F.R. §1.137(b) is **dismissed as moot**.

The instant application is released to the Examiner in Technology Center 2800 for further processing in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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Commissioner for Patents
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LAURA M. HAGAN
1025 STATE STREET
BOWLING GREEN, KY 42101

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OFFICE OF PETITIONS

In re Application of	:	
Stephen Craig McCoy	:	
Application No. 10/349,698	:	ON PETITION
Filed: January 22, 2003	:	
Attorney Docket No. 01-256	:	

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.

Petitioner has submitted $130 processing fee under 37 CFR 1.17(q), with the instant petition, submitted on July 28, 2004. Since the overpayment of $130.00 is not necessary, it is being refunded by treasury check in due course.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-5594.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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OFFICE OF PETITIONS

Allen D. Darden
P.O. Box 4412
Baton Rouge, LA 70821-4412

In re Patent No. 6,953,537 :
Issue Date: October 11, 2005 :
Application No. 10/349,719 : ON PETITION
Filed: January 23, 2003 :
Patentee(s): Scott David Trahan, et. al. :

This is a decision on the petition under 37 CFR 1.378(c), filed December 11, 2009, to accept the delayed payment of a maintenance fee for the above-identified patent.

Since petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional, the petition under 37 CFR 1.378(c) is hereby **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

This patented file is being forwarded to Files Repository.

Telephone inquiries should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Application Number	Application No.	Applicant(s)
	10/349,936	NOBLE ET AL
	Notice of Reissue Published in OG on 4/15/03	

Original Patent Number of Patent To Be Reissued is

6,267,392

The Maintenance fee status is:

- [x] up to date.
- [ ] not required.

This reissue patent is subject to A Terminal Disclaimer that:

- [ ] was filed during the prosecution of the reissue application.
- [ ] was of record prior to the filing of the reissue application.

Physical surrender of the letters patent

- [ ] was made.
- [ ] was not made, but a statement of loss/inaccessibility was provided.
- [x] is not required

Final SPRE Review

TKP

(INITIALS)

2/11/05

(DATE)

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WASHINGTON DC 20005

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In re Application of	:	
Goldstein, David	:	
Application No. 10/349,737	:	ON PETITION
Filed: January 21, 2003	:	
Attorney Docket No. 2222.2750001	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 31, 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 a Response to the Notice to File Missing Parts; (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.

On November 4, 2005, a Revocation of Power of Attorney was submitted by the assignee. Accordingly, the petitioner no long has power of attorney in the instant application. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

This matter is being referred to the Office of Initial Patent Examination for further processing..

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions

Cc:

SHEMWELL MAHAMEDI LLP
4880 STEVENS CREEK BOULEVARD, SUITE 201
SAN JOSE, CA 95129

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20100504

DATE : June 5, 2010

TO SPE OF : ART UNIT 2454

SUBJECT : Request for Certificate of Correction on Patent No.:

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - 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: Nathan Flynn **Art Unit** 2454

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

ANN R. POKALSKY, ESQ.
DILWORTH & BARRESE, LLP
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In re Patent No. 6,955,882	:	
Issue Date: October 18, 2005	:	
Application No. 10/349,782	:	NOTICE
Filed: January 23, 2003	:	
Attorney Docket No. 1187-15	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

There is no indication that the request is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Kendal M. Sheets 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, Mr. Sheets desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Mr. Sheets, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-6059.

The patent file will be forwarded to the Files Repository.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

cc: KENDAL SHEETS
COMPUTER PATENT ANNUITIES NORTH AMERICA
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ALEXANDRIA, VA 22314