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THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
BELLSOUTH I.P. CORP
100 GALLERIA PARKWAY
SUITE 1750
ATLANTA, GA 30339

COPY MAILED

AUG 09 2006

OFFICE OF PETITIONS

In re Application of	:	
Maria Adamczyk	:	
Application No. 10/355,931	:	DECISION ON PETITIONS
Filed: January 31, 2003	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 190252-1582	:	

This is a decision on the petition, filed February 8, 2006, 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 and 119(e) for the benefit of priority to the prior-filed applications set forth in the concurrently filed amendment. [1]

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) 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.

[1] Even though the provisional applications set forth in the amendment were present on filing, they were not acknowledged by the Office because this application was filed more than twelve (12) months from the filing date of the provisional applications.

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

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

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

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

Any questions concerning this matter may be directed to Sherry D. Brinkley at (571) 272-3204. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center Art Unit 2614 for consideration by the examiner of the claim for benefit of priority under 35 U.S.C. § §120 and 119(e) to the prior-filed nonprovisional and provisional applications.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Frances M. Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/355,931	01/31/2003	2614	1048	38949/280431 BS 99034CIP	4	19	5

CONFIRMATION NO. 3881
CORRECTED FILING RECEIPT
OC000000019936628
OC000000019936628

38823
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP/
BELLSOUTH I.P. CORP
100 GALLERIA PARKWAY
SUITE 1750
ATLANTA, GA 30339

Date Mailed: 08/08/2006

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

Applicant(s)

Maria Adamczyk, Alpharetta, GA;

Power of Attorney: The patent practitioners associated with Customer Number **38823**.

Domestic Priority data as claimed by applicant

This application is a CIP of 09/513,005 02/25/2000 PAT 6,882,708
which claims benefit of 60/121,893 02/26/1999
and claims benefit of 60/121,929 02/26/1999
This application 10/355,931
is a CIP of 10/232,749 09/03/2002 PAT 6,707,890

Foreign Applications

If Required, Foreign Filing License Granted: 03/13/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/355,931

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Systems and methods for originating and sending a voice mail message to an instant messaging platform

Preliminary Class

379

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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

GRANTED

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

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

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain

countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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

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J. David Dainow
Amster Rothstein & Ebenstein
90 Park Avenue
New York, NY 10016

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DEC 3 1 2008

OFFICE OF PETITIONS

In re Patent No. 7,391,456	:	
Issue Date: June 24, 2008	:	
Application No. 10/355,937	:	ON PETITION
Filed: January 31, 2003	:	
Attorney Docket No. 3500.3	:	

This is a decision on the Request for Certificate of Correction filed December 5, 2008, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to JoAnne Burke at (571) 272-4584. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Benjamin M. Halpern appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Mr. Benjamin M. Halpern desires to receive correspondence regarding this file, the appropriate power of attorney or authorization of agent documents must be submitted.

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.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
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Washington, D.C. 20231

AUG 2 0 2004

Applicant: Krivitski, Nikolai M.
Serial No.: 10/355,944
Filed: January 31, 2003
For: METHOD TO MEASURE BLOOD FLOW AND RECIRCULATION IN HEMODIALYSIS SHUNTS

DECISION ON PETITION

This is a decision on the petition filed April 30, 2004 and the submissions of verified statements filed with the petition in support thereof, to correct the inventorship of the present Patent under 37 CFR 1.48(b).

The requirements of 37 CFR 1.48(b) having been complied with, the Petition to Correct Inventorship is **GRANTED**.

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

Benjamin L. Utech
Supervisory Patent Examiner
Art Unit 1722
Technology Center 1700
Chemical Materials & Engineering

HARTER, SECREST & EMERY LLP
1600 Bausch & Lomb Place
Rochester, NY 14604

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

AUG 2 0 2004

Applicant: Krivitski, Nikolai M.
Serial No.: 10/355,944
Filed: January 31, 2003
For: METHOD TO MEASURE BLOOD FLOW AND RECIRCULATION IN HEMODIALYSIS SHUNTS

DECISION ON PETITION

This is a decision on the petition filed April 30, 2004 and the submissions of verified statements filed with the petition in support thereof, to correct the inventorship of the present Patent under 37 CFR 1.48(b).

The requirements of 37 CFR 1.48(b) having been complied with, the Petition to Correct Inventorship is **GRANTED**.

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

Benjamin L. Utech
Supervisory Patent Examiner
Art Unit 1722
Technology Center 1700
Chemical Materials & Engineering

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SEP 0 3 2004
TC 1700

HARTER, SECREST & EMERY LLP
1600 Bausch & Lomb Place
Rochester, NY 14604

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STEPHEN B. SALAI, ESQ.
HARTER, SECREST & EMERY LLP
1600 BAUSCH & LOMB PLACE
ROCHESTER NY 14604-2711

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OCT 0 8 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of
Nilolai M. Krivitski
Application No. 10/355,944
Filed: January 31, 2003
Attorney Docket No. 86017.000031

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on May 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 should be directed to the undersigned at (703) 305-8859.

The examiner of Technology Center AU 1723 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

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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).

DATE 8-22-07 APPLICATION NUMBER 10/355957

DOC CODE Ref Doc Pubs DOC DATE 8/23/07

DELIVER THE ATTACHED FIFLE/DOCUMENT TO THE TC SCANNING CENTER

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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FAY KAPLUN & MARCIN LLP
150 BROADWAY, SUITE 702
NEW YORK, NY 10038

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AUG 2 3 2007

OFFICE OF PETITIONS

In re Application of :
Michael Sanders et al :
Application No. 10/355,957 : DECISION ON PETITION
Filed: January 30, 2003 :
Attorney Docket No. :
40101/104901

This is a decision on the petition under 37 CFR 1.137(b), filed July 17, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before July 2, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed April 2, 2007. Accordingly, the date of abandonment of this application is April 3, 2007. A Notice of Abandonment was mailed on July 30, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,400 and the publication fee of $300, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

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

This application is being referred to Publishing Division for appropriate processing in accordance with this decision on petition accepting the unintentionally delayed payment of the issue and publication fees.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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FAY KAPLUN & MARCIN, LLP
150 BROAWAY, SUITE 702
NEW YORK, NY 10038

MAILED

MAY 10 2010

OFFICE OF PETITIONS

In re Application of	:	
Julian Bromwich et al	:	
Application No. 10/355,958	:	DECISION ON PETITION
Filed: January 30, 2003	:	TO WITHDRAW
Attorney Docket No. 40101/05801	:	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 9, 2010.

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, change of employment, do not appear to 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 Irvin Dingle at 571-272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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TROP, PRUNER & HU, P.C.
1616 S. VOSS ROAD, SUITE 750
HOUSTON, TX 77057-2631

Mail Date: 04/21/2010

Applicant	: Gary L. Graunke	: DECISION ON REQUEST FOR
Patent Number	: 7584354	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/355,967	: OF WYETH
Filed	: 01/31/2003	:
		:

The Patentee's Request for Recalculation is **DISMISSED.**

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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DUNLAP CODDING & ROGERS P.C.
PO BOX 16370
OKLAHOMA CITY, OK 73113

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OCT 0 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Steven A. Root et al	:	
Application No. 10/355,971	:	NOTICE
Filed: January 31, 2003	:	
Attorney Docket No. 8379.005	:	

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

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

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

Inquiries related to this communication should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 2857.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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DERMA MEDICAL INC.
11-26, 2 CHOME,
NAGATA-MINAMI, MINAMI-KU
YOKOHAMA
KANAGAWA 232-0-073
JAPAN

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OCT 17 2007

OFFICE OF PETITIONS

In re Application of	:	
Takashi Shinozaki	:	
Application Number: 10/355982	:	ON PETITION
Filing Date: 02/01/2003	:	
For: APPARATUS AND METHOD FOR	:	
DIGITAL CLOSE-UP PHOTOGRAPH OF	:	
SURFACES	:	

This is a decision on the "REQUEST FOR WITHDRAWAL OF NOTICE OF ABANDONMENT," which is treated as a petition under 37 CFR 1.181, filed on 17 September, 2007.

This application became abandoned on 24 February, 2007, for failure to timely file a reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on 23 January, 2007, which set a thirty (30) day shortened period for reply. No extensions of time in accordance with 37 CFR 1.136(a) were obtained. On 8 August, 2007, a Notice of Abandonment was mailed.

Petitioners assert that a response (amendment) was filed on 16 February, 2007, via the Japanese mail service. A copy of the response has been filed with the present petition.

Petitioners evidence has been considered, but is not persuasive:

37 CFR 1.8 states, in pertinent part:

> 1.8 Certificate of mailing or transmission.
>
> (a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is

followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

As petitioner did not submit the correspondence in question via the United States Postal Service (USPS) and in accordance with 37 CFR 1.8, the correspondence cannot be considered to have been filed on 16 February, 2007, or on any date other than the actual date of receipt, which is 17 September, 2007. There is no provision in the rules to accord a filing date of the date of deposit of papers in the Japanese postal service.

As such, the application was properly held abandoned.

The petition is **DISMISSED.**

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision.

ALTERNATIVE VENUE

Petitioner may wish to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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

(1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing

either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).

(2) The petition fee as set forth in 37 CFR 1.17(m), **$750.00 for a small entity;**

(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. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the $770.00 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

A copy of the form for filing a petition under 37 CFR 1.137(b) and the current fee schedule are enclosed for petitioner's reference.

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

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

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

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

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: PTO/SB/64
Fee Schedule

PTO/SB/64 (10-07)
Approved for use through 10/31/2007. 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
Effective September 30, 2007 *

Any fee amount paid on or after September 30, 2007, must be paid as shown in the revised fee schedule.
The fees subject to reduction for small entities that have established status (37 CFR 1.27) are shown in a separate column.
For additional information, please call the USPTO Contact Center at (571) 272-1000 or (800) 786-9199.

* The effective date for the fee amounts for PCT fee codes 1602 and 1604 is November 9, 2007.
The effective date for the fee amount for Trademark fee code 7212 is November 10, 2007.
The effective date for the fee amounts for PCT fee codes 1701, 1702, and 1710 is November 15, 2007.

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
Patent Application Filing Fees				
1011/2011	1.16(a)(1)	Basic filing fee - Utility *filed on or after December 8, 2004*	310.00	155.00
4011†	1.16(a)(1)	Basic filing fee - Utility (electronic filing) *filed on or after December 8, 2004*	N/A	75.00
1001/2001	1.16(a)(2)	Basic filing fee - Utility *filed before December 8, 2004*	810.00	405.00
1201/2201	1.16(h)	Independent claims in excess of three	210.00	105.00
1202/2202	1.16(i)	Claims in excess of 20	50.00	25.00
1203/2203	1.16(j)	Multiple dependent claim	370.00	185.00
1051/2051	1.16(f)	Surcharge - Late filing fee or oath or declaration	130.00	65.00
1081/2081	1.16(s)	Utility Application Size Fee - for each additional 50 sheets	260.00	130.00
1012/2012	1.16(b)(1)	Basic filing fee - Design *filed on or after December 8, 2004*	210.00	105.00
1002/2002	1.16(b)(2)	Basic filing fee - Design *filed before December 8, 2004*	360.00	180.00
1017/2017	1.16(b)(1)	Basic filing fee - Design (CPA) *filed on or after December 8, 2004*	210.00	105.00
1007/2007	1.16(b)(2)	Basic filing fee - Design (CPA) *filed before December 8, 2004*	360.00	180.00
1082/2082	1.16(s)	Design Application Size Fee - for each additional 50 sheets	260.00	130.00
1013/2013	1.16(c)(1)	Basic filing fee - Plant *filed on or after December 8, 2004*	210.00	105.00
1003/2003	1.16(c)(2)	Basic filing fee - Plant *filed before December 8, 2004*	570.00	285.00
1083/2083	1.16(s)	Plant Application Size Fee – for each additional 50 sheets	260.00	130.00
1014/2014	1.16(e)(1)	Basic filing fee - Reissue *filed on or after December 8, 2004*	310.00	155.00
1004/2004	1.16(e)(2)	Basic filing fee - Reissue *filed before December 8, 2004*	810.00	405.00
1019/2019	1.16(e)(1)	Basic filing fee - Design Reissue (CPA) *filed on or after December 8, 2004*	310.00	155.00
1009/2009	1.16(e)(2)	Basic filing fee - Design Reissue (CPA) *filed before December 8, 2004*	810.00	405.00
1204/2204	1.16(h)	Reissue independent claims in excess of three	210.00	105.00
1205/2205	1.16(i)	Reissue claims in excess of 20	50.00	25.00
1084/2084	1.16(s)	Reissue Application Size Fee – for each additional 50 sheets	260.00	130.00
1005/2005	1.16(d)	Provisional application filing fee	210.00	105.00
1085/2085	1.16(s)	Provisional Application Size Fee - for each additional 50 sheets	260.00	130.00
1052/2052	1.16(g)	Surcharge - Late provisional filing fee or cover sheet	50.00	25.00
1053	1.17(i)	Non-English specification	130.00	
Patent Search Fees				
1111/2111	1.16(k)	Utility Search Fee	510.00	255.00
1112/2112	1.16(l)	Design Search Fee	100.00	50.00
1113/2113	1.16(m)	Plant Search Fee	310.00	155.00
1114/2114	1.16(n)	Reissue Search Fee	510.00	255.00
Patent Examination Fees				
1311/2311	1.16(o)	Utility Examination Fee	210.00	105.00
1312/2312	1.16(p)	Design Examination Fee	130.00	65.00
1313/2313	1.16(q)	Plant Examination Fee	160.00	80.00
1314/2314	1.16(r)	Reissue Examination Fee	620.00	310.00
Patent Post-Allowance Fees				
1501/2501	1.18(a)	Utility issue fee	1,440.00	720.00
1502/2502	1.18(b)	Design issue fee	820.00	410.00
1503/2503	1.18(c)	Plant issue fee	1,130.00	565.00
1511/2511	1.18(a)	Reissue issue fee	1,440.00	720.00
1504	1.18(d)	Publication fee for early, voluntary, or normal publication	300.00	
1505	1.18(d)	Publication fee for republication	300.00	

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

† The 4000 series fee code may be used via EFS-Web at *www.uspto.gov/ebc/efs/*.

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
Patent Maintenance Fees				
1551/2551	1.20(e)	Due at 3.5 years	930.00	465.00
1552/2552	1.20(f)	Due at 7.5 years	2,360.00	1,180.00
1553/2553	1.20(g)	Due at 11.5 years	3,910.00	1,955.00
	1.20(h)	Surcharge - Late payment within 6 months	130.00	65.00
1557	1.20(i)(1)	Surcharge after expiration - Late payment is unavoidable	700.00	
1558	1.20(i)(2)	Surcharge after expiration - Late payment is unintentional	1,640.00	
Miscellaneous Patent Fees				
1801/2801	1.17(e)	Request for Continued Examination (RCE) (see 37 CFR 1.114)	810.00	405.00
1808	1.17(i)	Processing fee, except in provisional applications	130.00	
1803	1.17(i)	Request for voluntary publication or republication	130.00	
1802	1.17(k)	Request for expedited examination of a design application	900.00	
1804	1.17(n)	Request for publication of SIR - Prior to examiner's action	920.00*	
1805	1.17(o)	Request for publication of SIR - After examiner's action	1,840.00*	
1806	1.17(p)	Submission of an Information Disclosure Statement	180.00	
1807	1.17(q)	Processing fee for provisional applications	50.00	
1809/2809	1.17(r)	Filing a submission after final rejection (see 37 CFR 1.129(a))	810.00	405.00
1810/2810	1.17(s)	For each additional invention to be examined (see 37 CFR 1.129(b))	810.00	405.00
Post Issuance Fees				
1811	1.20(a)	Certificate of correction	100.00	
1812	1.20(c)(1)	Request for ex parte reexamination	2,520.00	
1813	1.20(c)(2)	Request for inter partes reexamination	8,800.00	
1821/2821	1.20(c)(3)	Reexamination independent claims in excess of three	210.00	105.00
1822/2822	1.20(c)(4)	Reexamination claims in excess of 20	50.00	25.00
1814/2814	1.20(d)	Statutory disclaimer	130.00	65.00
Patent Extensions of Time Fees				
1251/2251	1.17(a)(1)	Extension for response within first month	120.00	60.00
1252/2252	1.17(a)(2)	Extension for response within second month	460.00	230.00
1253/2253	1.17(a)(3)	Extension for response within third month	1,050.00	525.00
1254/2254	1.17(a)(4)	Extension for response within fourth month	1,640.00	820.00
1255/2255	1.17(a)(5)	Extension for response within fifth month	2,230.00	1,115.00
Patent Appeals/Interference Fees				
1401/2401	41.20(b)(1)	Notice of appeal	510.00	255.00
1402/2402	41.20(b)(2)	Filing a brief in support of an appeal	510.00	255.00
1403/2403	41.20(b)(3)	Request for oral hearing	1,030.00	515.00
Patent Petition Fees				
1462	1.17(f)	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I)	400.00	
1463	1.17(g)	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II)	200.00	
1464	1.17(h)	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III)	130.00	
1451	1.17(j)	Petition to institute a public use proceeding	1,510.00	
1452/2452	1.17(l)	Petition to revive unavoidably abandoned application	510.00	255.00
1453/2453	1.17(m)	Petition to revive unintentionally abandoned application	1,540.00	770.00
1454	1.17(t)	Acceptance of an unintentionally delayed claim for priority, or for filing a request for the restoration of the right of priority	1,410.00	
1455	1.18(e)	Filing an application for patent term adjustment	200.00	
1456	1.18(f)	Request for reinstatement of reduced term	400.00	
1457	1.20(j)(1)	Extension of term patent	1,120.00	
1458	1.20(j)(2)	Initial application for interim extension (see 37 CFR 1.790)	420.00	
1459	1.20(j)(3)	Subsequent application for interim extension (see 37 CFR 1.790)	220.00	

* Reduced by basic filing fee paid.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
PCT Fees - National Stage				
1631/2631	1.492(a)	Basic National Stage Fee	310.00	155.00
1641/2641	1.492(b)(2)	National Stage Search Fee - U.S. was the ISA	100.00	50.00
1642/2642	1.492(b)(3)	National Stage Search Fee - search report prepared and provided to USPTO	410.00	205.00
1632/2632	1.492(b)(4)	National Stage Search Fee - all other situations	510.00	255.00
1633/2633	1.492(c)(2)	National Stage Examination Fee - all other situations	210.00	105.00
1614/2614	1.492(d)	Claims - extra independent (over three)	210.00	105.00
1615/2615	1.492(e)	Claims - extra total (over 20)	50.00	25.00
1616/2616	1.492(f)	Claims - multiple dependent	370.00	185.00
1681/2681	1.492(j)	National Stage Application Size Fee - for each additional 50 sheets	260.00	130.00
1617/2617	1.492(h)	Oath or declaration after 30 months from priority date	130.00	65.00
1618	1.492(i)	English translation after 30 months from priority date	130.00	
PCT Fees - International Stage				
1601	1.445(a)(1)	Transmittal fee	300.00	
1602	1.445(a)(2)	Search fee - regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16)	1,800.00	
1604	1.445(a)(3)	Supplemental search fee when required, per additional invention	1,800.00	
1605	1.482(a)(1)	Preliminary examination fee - U.S. was the ISA	600.00	
1606	1.482(a)(1)	Preliminary examination fee - U.S. was not the ISA	750.00	
1607	1.482(a)(2)	Supplemental examination fee per additional invention	600.00	
1619		Late payment fee	VARIABLE	
1621		Transmitting application to Intl. Bureau to act as receiving office	300.00	
PCT Fees to Foreign Offices *				
1701		International filing fee (first thirty pages) - PCT Easy	1,080.00	
1702		International filing fee - (first thirty pages)	1,163.00	
1703		Supplemental international filing fee (for each page over thirty)	12.00	
1704		International search (EPO)	2,197.00	
1705		Handling fee	155.00	
1706		Handling fee – 75% reduction, if applicant(s) meets criteria specified at: *www.wipo.int/pct/en/fees/fee_reduction.pdf*	38.75	
1708		International CD applications	4,800.00	
1709		International search (KIPO)	232.00	
1710		International filing fee (first 30 pages) – filed electronically w/ PCT Easy file	997.00	
Patent Enrollment Fees				
9001	1.21(a)(1)(i)	Application fee (non-refundable)	40.00	
9003	1.21(a)(2)	Registration to practice or grant limited recognition under §11.9(b) or (c)	100.00	
9004	1.21(a)(3)	Reinstatement to practice	40.00	
9005	1.21(a)(4)	Certificate of good standing as an attorney or agent	10.00	
9006	1.21(a)(4)	Certificate of good standing as an attorney or agent, suitable for framing	20.00	
9010	1.21(a)(1)(ii)(A)	For test administration by commercial entity	200.00	
9011	1.21(a)(1)(ii)(B)	For test administration by the USPTO	450.00	
9012	1.21(a)(5)(i)	Review of decision by the Director of Enrollment and Discipline under §11.2(c)	130.00	
9013	1.21(a)(5)(ii)	Review of decision of the Director of Enrollment and Discipline under §11.2(d)	130.00	
9014	1.21(a)(10)	Application fee for person disciplined, convicted of a felony or certain misdemeanors under §11.7(h)	1,600.00	

* PCT Fees to Foreign Offices are subject to periodic change due to fluctuations in exchange rates. Refer to the *Official Gazette of the United States Patent and Trademark Office* for current amounts.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee
Patent Service Fees			
8001	1.19(a)(1)	Printed copy of patent w/o color, delivery by USPS, USPTO Box, or electronic means	3.00
8003	1.19(a)(2)	Printed copy of plant patent in color	15.00
8004	1.19(a)(3)	Color copy of patent (other than plant patent) or SIR containing a color drawing	25.00
8005	1.19(a)(1)	Patent Application Publication (PAP)	3.00
8007	1.19(b)(1)(i)(A)	Copy of patent application as filed	20.00
8008	1.19(b)(1)(i)(B)	Copy of patent-related file wrapper and paper contents of 400 or fewer pages	200.00
8009	1.19(b)(1)(i)(C)	Each additional 100 pages of patent-related file wrapper and (paper) contents, or portion thereof	40.00
8010	1.19(b)(1)(i)(D)	Certification of patent-related file wrapper and (paper) contents	25.00
8011	1.19(b)(1)(ii)(B)	Copy of patent-related file wrapper and contents if provided electronically or on a physical electronic medium as specified in § 1.19(b)(1)(ii)	55.00
8012	1.19(b)(1)(ii)(C)	Each continuing physical electronic medium in single order of § 1.19(b)(1)(ii)(B)	15.00
8041	1.19(b)(2)(i)(A)	Copy of patent-related file wrapper contents, other than as available in § 1.19(b)(1); first physical electronic medium in a single order	55.00
8042	1.19(b)(2)(i)(B)	Each continuing copy of patent-related file wrapper and contents as specified in § 1.19(b)(2)(i)(A)	15.00
8043	1.19(b)(2)(ii)	Copy of patent-related file wrapper contents other than as available in § 1.19(b)(1); provided electronically other than on a physical electronic medium	55.00
8013	1.19(b)(3)	Copy of office records, except copies of applications as filed	25.00
8014	1.19(b)(4)	For assignment records, abstract of title and certification, per patent	25.00
8904	1.19(c)	Library service	50.00
8015	1.19(d)	List of U.S. patents and SIRs in subclass	3.00
8016	1.19(e)	Uncertified statement re status of maintenance fee payments	10.00
8017	1.19(f)	Copy of non-U.S. document	25.00
8050	1.19(g)	Petitions for documents in form other than that provided by this part, or in form other than that generally provided by Director, to be decided in accordance with merits	AT COST
8019	1.21(d)	Local delivery box rental, annually	50.00
8020	1.21(e)	International type search report	40.00
8902	1.21(g)	Self-service copy charge, per page	0.25
8021	1.21(h)	Recording each patent assignment, agreement or other paper, per property	40.00
8022	1.21(i)	Publication in *Official Gazette*	25.00
8023	1.21(j)	Labor charges for services, per hour or fraction thereof	40.00
8024	1.21(k)	Unspecified other services, excluding labor	AT COST
8025	1.21(l)	Retaining abandoned application	130.00
8026	1.21(n)	Handling fee for incomplete or improper application	130.00
8027	1.296	Handling fee for withdrawal of SIR	130.00

GENERAL FEES

Finance Service Fees			
9201	1.21(b)(1) or 2.6(b)(13)(i)	Establish deposit account	10.00
9202	1.21(b)(2) or 2.6(b)(13)(ii)	Service charge for below minimum balance	25.00
9202	1.21(b)(3)	Service charge for below minimum balance restricted subscription deposit account	25.00
9101	1.21(m) or 2.6(b)(12)	Processing each payment refused or charged back	50.00
Computer Service Fees			
8031/8531		Computer records	AT COST

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee
Trademark Processing Fees *			
6001	2.6(a)(1)(i)	Application for registration, per international class (paper filing)	375.00
7001	2.6(a)(1)(ii)	Application for registration, per international class (electronic filing)	325.00
7007	2.6(a)(1)(iii)	Application for registration, per international class (electronic filing, TEAS Plus)	275.00
6002/7002	2.6(a)(2)	Filing an Amendment to Allege Use under § 1(c), per class	100.00
6003/7003	2.6(a)(3)	Filing a Statement of Use under § 1(d)(1), per class	100.00
6004/7004	2.6(a)(4)	Filing a Request for a Six-month Extension of Time for Filing a Statement of Use under § 1(d)(1), per class	150.00
6005/7005	2.6(a)(15)	Petitions to the Director	100.00
6006	2.6(a)(19)	Dividing an application, per new application (file wrapper) created	100.00
6008/7008	2.6(a)(1)(iv)	Additional fee for application that doesn't meet TEAS Plus filing requirements, per class	50.00
6201/7201	2.6(a)(5)	Application for renewal, per class	400.00
6203/7203	2.6(a)(6)	Additional fee for filing renewal application during grace period, per class	100.00
6204	2.6(a)(21)	Correcting a deficiency in a renewal application	100.00
6205/7205	2.6(a)(12)	Filing § 8 affidavit, per class	100.00
6206/7206	2.6(a)(14)	Additional fee for filing § 8 affidavit during grace period, per class	100.00
6207	2.6(a)(20)	Correcting a deficiency in a § 8 affidavit	100.00
6208/7208	2.6(a)(13)	Filing § 15 affidavit, per class	200.00
6210	2.6(a)(7)	Publication of mark under § 12(c), per class	100.00
6211	2.6(a)(8)	Issuing new certificate of registration	100.00
6212/7212	2.6(a)(9)	Certificate of correction, registrant's error	100.00
6213	2.6(a)(10)	Filing disclaimer to registration	100.00
6214	2.6(a)(11)	Filing amendment to registration	100.00
6401/7401	2.6(a)(16)	Petition for cancellation, per class	300.00
6402/7402	2.6(a)(17)	Notice of opposition, per class	300.00
6403/7403	2.6(a)(18)	Ex parte appeal, per class	100.00
Trademark Madrid Protocol Fees *			
6901/7901	7.6(a)(1)	International application based on single application or registration, per class	100.00
6902/7902	7.6(a)(2)	Certifying an International application based on more than one basic application	150.00
6903/7903	7.6(a)(3)	Transmitting a Request to Record an Assignment or restriction under § 7.23 or 7.24	100.00
6904/7904	7.6(a)(4)	Filing a Notice of Replacement, per class	100.00
6905/7905	7.6(a)(5)	Filing an affidavit under § 71 of the Act	100.00
6906/7906	7.6(a)(6)	Surcharge for filing affidavit under § 71 of the Act during grace period, per class	100.00
6907/7907	7.6(a)(7)	Transmitting a subsequent designation	100.00
Trademark Service Fees			
8501	2.6(b)(1)	Printed copy of registered mark, delivery by USPS, USPTO Box, or electronic means	3.00
8503	2.6(b)(4)(i)	Certified copy of registered mark, with title and/or status, regular service	15.00
8504	2.6(b)(4)(ii)	Certified copy of registered mark, with title and/or status, expedited local service	30.00
8507	2.6(b)(2)	Certified copy of trademark application as filed	15.00
8508	2.6(b)(3)	Certified or uncertified copy of trademark-related file wrapper and contents	50.00
8513	2.6(b)(5)	Certified or uncertified copy of trademark document, unless otherwise provided	25.00
8514	2.6(b)(7)	For assignment records, abstracts of title and certification per registration	25.00
8902	2.6(b)(9)	Self-service copy charge, per page	0.25
8521	2.6(b)(6)	Recording trademark assignment, agreement or other paper, first mark per document	40.00
8522	2.6(b)(6)	For second and subsequent marks in the same document	25.00
8523	2.6(b)(10)	Labor charges for services, per hour or fraction thereof	40.00
8524	2.6(b)(11)	Unspecified other services, excluding labor	AT COST
Fastener Quality Act Fees			
6991	2.7(a)	Recordal application fee	20.00
6992	2.7(b)	Renewal application fee	20.00
6993	2.7(c)	Late fee for renewal application	20.00

* The 7000 series fee code (e.g., 7001, 7002, etc.) is used for electronic filings via TEAS, which is available at *www.uspto.gov/teas/*. In addition, the 6000 series fee codes under the Trademark Madrid Protocol Fees are being offered for use as a paper-based filing alternative.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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DERMA MEDICAL INC.
11-26, 2 CHOME,
NAGATA-MINAMI, MINAMI-KU
YOKOHAMA
KANAGAWA 232-0-073
JAPAN

COPY MAILED

DEC 12 2007

OFFICE OF PETITIONS

In re Application of	:	
Takashi Shinozaki	:	
Application Number: 10/355982	:	ON PETITION
Filing Date: 02/01/2003	:	
For: APPARATUS AND METHOD FOR	:	
DIGITAL CLOSE-UP PHOTOGRAPH OF	:	
SURFACES	:	

This is a decision on the "REQUEST FOR WITHDRAWAL OF NOTICE OF ABANDONMENT," which is treated as a renewed petition under 37 CFR 1.181, filed on November 13, 2007.

This application became abandoned on February 24, 2007, for failure to timely file a reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on January 23, 2007, which set a thirty (30) day shortened period for reply. No extensions of time in accordance with 37 CFR 1.136(a) were obtained. On August 8, 2007, a Notice of Abandonment was mailed. On September 17, 2007, a petition to withdraw the holding of abandonment was filed. On October 17, 2007, the petition was dismissed.

Petitioner again asserts that a response (amendment) was filed on 16 February, 2007, via the Japanese mail service. A copy of the response has been filed with the present petition. Petitioner further avers that the response was delivered by the United States Postal Service (USPS) to the USPTO on February 23, 2007. In support, petitioner has provided a copy of a letter from the USPS showing that a document containing the Japanese Postal Service number delivered on February 23, 2007.

Petitioners evidence has been considered, but is not persuasive:

37 CFR 1.8 states, in pertinent part:

1.8 Certificate of mailing or transmission.

(a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

37 CFR 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 Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

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

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the

> correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
>
> (4) The petition includes a statement which establishes, to the satisfaction of the Director, 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.

As petitioner did not submit the correspondence in question via the United States Postal Service (USPS) first class mail, in accordance with 37 CFR 1.8, or USPS "Express Mail Post Office to Addressee Service," in accordance with 37 CFR 1.10, the correspondence cannot be considered to have been filed on February 16, 2007, or on any date other than the actual date of receipt, which is September 17, 2007. **There is no provision in the rules to accord a filing date of the date of deposit of papers in the Japanese postal service, or any other postal service that the United States Postal Service (USPS).**

Additionally, assuming, arguendo, the papers had been deposited with the USPS in "Express Mail Post Office to Addressee Service" or in regular first-class mail pursuant to 37 CFR 1.8 petitioner would still not have established that the papers were filed on February 16, 2007, because the copy of the papers filed with the first and renewed petition does not contain the Express Mail

number in accordance with 37 CFR 1.10, a certificate of mailing in compliance with 37 CFR 1.8.[1]

Simply put, there is no evidence to link the amendment petitioner alleges was timely filed in the subject application with the papers delivered by the USPS on February 23, 2007.

As such, the application was properly held abandoned.

The petition is again **DISMISSED.**

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision.[2]

ALTERNATIVE VENUE

Petitioner is urged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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

> (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).
>
> (2) The petition fee as set forth in 37 CFR 1.17(m), **$770.00 for a small entity;**
>
> (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. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's

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[1] It is further noted that petitioners have not presented any evidence of receipt of the papers in the USPTO, as an itemized postcard receipt in compliance with MPEP 503 has not been provided.

[2] 37 CFR 1.181(f).

convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the $770.00 petition fee.

A copy of the form for filing a petition under 37 CFR 1.137(b) is enclosed for petitioner's reference.

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

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

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

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

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: PTO/SB/64

PTO/SB/64 (12-07)
Approved for use through 12/31/2007. 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

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

NORTH WEBER & BAUGH LLP
2479 E. BAYSHORE RD., SUITE 707
PALO ALTO, CA 94303

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OFFICE OF PETITIONS

In re Application of	:	
Michael P. Flynn	:	
Application No. 10/355,992	:	DECISION ON PETITION
Filed: January 31, 2003	:	TO WITHDRAW
Attorney Docket No. 13547.4009	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 20, 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, application has been transferred to the assignee, do not appear to 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 Irvin Dingle at 571-272-3210.

David Bucci
Petitions Examiner
Office of Petitions

cc: Michael P. Flynn
1880 East St. Andrews Place
Santa Ana, CA 92705

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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GEORGE O. SAILE & ASSOCIATES
28 DAVIS AVENUE
POUGHKEEPSIE, NY 12603

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FEB 28 2005

OFFICE OF PETITIONS

In re Application of :
Yue-Der Chih, et al. :
Application No. 10/355,997 :
Filed: January 31, 2003 :
Attorney Docket No. TS01-1734 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 24, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed August 12, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned at midnight on November 12, 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 Howard Chen 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 Howard Chen 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.

This application file 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
www.uspto.gov

Paper No. 8

B.J. Boshears
Eastman Chemical Company
P.O. Box 511
Kingsport, TN 37662

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MAR 22 2004
OFFICE OF PETITIONS

In re Application of
Willham, et al.
Application No.: 10/356,011
Filed: January 31, 2003
Attorney Docket No: 05015.0403U1

ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), March 5, 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 application became abandoned for failure to respond in a timely manner to the "Notice to File Missing Parts of Nonprovisional Application" mailed April 15, 2003. The notice set a period for reply of two months from its mailing date. No response was received within the allowable period, and the application became abandoned on June 16, 2003. A Notice of Abandonment was mailed on February 2, 2004.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application 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 non-provisional 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 require additional information where there is a question whether the delay was unintentional; and

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

The instant petition does not satisfy the requirements of item (1) above.

The notice of April 15, 2003, required replacement drawings to be filed. No replacement drawings were found among the petition papers. Any renewed petition filed must be accompanied by replacement drawings as required by the notice of April 15, 2003.

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

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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. 12

B. J. Boshears
Eastman Chemical Company
PO Box 511
Kingsport, TN 37662

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APR 21 2004
OFFICE OF PETITIONS

In re Application of
Willham, et al.
Application No.: 10/356,011
Filed: January 31, 2003
Attorney Docket No: 05015.0403U1

ON PETITION

This is in response to the renewed petition under 37 CFR 1.137(b) filed April 12, 2004.

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

The above-cited application became abandoned for failure to respond in a timely manner to the "Notice to File Missing Parts of Nonprovisional Application" mailed April 15, 2003. The notice set a period for reply of two months from its mailing date. No response was received within the allowable period, and the application became abandoned on June 16, 2003. A Notice of Abandonment was mailed on February 2, 2004.

The declaration filed April 12, 2004, is noted and made of record.

The formal drawings filed April 12, 2004, are noted and made of record.

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

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BJ Boshears
Eastman Chemical Company
PO Box 511
Kingsport, TN 37662

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MAR 2 0 2006

OFFICE OF PETITIONS

In re Application of Willham et al. :
Application No. 10/356,011 : Decision on Petition
Filing Date: January 31, 2003 :
Attorney Docket No. 71543/US02 :

This is a decision on the petition under 37 CFR 1.137(b), filed December 19, 2005, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed July 12, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on October 13, 2005.

The instant petition requests revival of the application.

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

The Office of Publications will be informed of the instant decision so that steps may be taken to have the application issued as a patent.

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
www.uspto.gov

GENE SCOTT; PATENT LAW & VENTURE GROUP
3140 RED HILL AVENUE
SUITE 150
COSTA MESA, CA 92626-3440

COPY MAILED
AUG 23 2006
OFFICE OF PETITIONS

In re Application of	:	
Vaughan et al.	:	
Application No. 10/356,030	:	
Filed: January 30, 2003	:	ON PETITION
Attorney Docket Number:	:	
Vaugha.B-03	:	

This is a decision on the Petition Requesting Withdrawal of Abandonment, filed July 18, 2005. The petition is properly treated under 37 CFR 1.181. The delay in treating this petition is regretted.

The petition is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed 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 non-final Office action, mailed August 31, 2004. The Office actionn set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been filed, this application became abandoned on December 1, 2004. A Notice of Abandonment was mailed July 13, 2005.

The instant petition

Applicants files the instant petition and asserts non-receipt of the Office action. No documentary support for this assertion has been filed.

Applicble Law, Rules and MPEP

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

1. A statement from the Applicant stating that the Office communication was not received by the Applicant and attesting to the fact that a search of the file jacket and docket records indicate that the Office communication was not received.

2. A copy of the file jacket or docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in Applicant's statement.

MPEP 711.03(c).

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).

Analysis

Applicant has failed to provide a copy of the file jacket or docket record where the non-received Office communication would have been entered had it been received and docketed. Accordingly, Applicant's assertion, that the Notice was not received, is insufficient to justify granting of the petition. Applicant must also provide a copy of the file jacket and docket record where the non-received Notice would have been entered had it been received and docketed.

Conclusion

For the foregoing reasons, the petition is dismissed.

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

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

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

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

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PATENT LAW & VENTURE GROUP
2424 S.E. BRISTOL, SUITE 300
NEWPORT BEACH, CA 92660

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DEC 2 2 2006
OFFICE OF PETITIONS

In re Application of	:	
Vaughan et al.	:	
Application No.: 10/356,030	:	DECISION ON
Filing or 371(c) Date: 01/30/2003	:	PETITION
Title of Invention:	:	
CRANKLESS INTERNAL	:	
COMBUSTION ENGINE	:	

This is a decision in response to the Renewed Petition to Revive Under 37 CFR 1.137(a), filed September 24, 2006. The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition 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 [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the non-final office action, mailed August 31, 2004. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on December 1, 2004. A Notice of Abandonment was mailed July 31, 2005.

The July 18, 2005 petition

Applicant filed a petition July 18, 2005, and asserted that the delay was unavoidable because the Office action was not received.

The petition was dismissed in a Decision mailed August 23, 2006. The Decision dismissing the petition informed Applicant that in order to demonstrate non-receipt of an Office action, the showing required to establish nonreceipt of an Office communication must include

1) a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

2) A copy of the docket record where the 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.).

MPEP 711.03(c)

The present petition

Applicant files the present petition and a copy of what is putatively a copy of Applicant's file jacket and docket records where the non-received office communication would have been entered and noted had it been received and docketed.

Analysis and conclusion

A review of the attached file jacket and docket records reveal that the records are illegible. A legible copy of the file jacket and docket records is required.

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

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

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

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

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PATENT LAW & VENTURE GROUP
2424 S.E. BRISTOL, SUITE 300
NEWPORT BEACH, CA 92660

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APR 2 7 2007

OFFICE OF PETITIONS

In re Application of	:	
Vaughan et al.	:	
Application No.: 10/356,030	:	DECISION ON
Filing or 371(c) Date: 01/30/2003	:	PETITION
Title of Invention:	:	
CRANKLESS INTERNAL	:	
COMBUSTION ENGINE	:	

This is a decision in response to the Renewed Petition to Revive Under 37 CFR 1.137(a), filed January 25, 2007. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

Background

The above-identified application became abandoned for failure to timely and properly reply to the non-final office action, mailed August 31, 2004. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on December 1, 2004. A Notice of Abandonment was mailed July 31, 2005.

The July 18, 2005 petition

Applicant filed a petition July 18, 2005, and asserted that the delay was unavoidable because the Office action was not received.

The petition was dismissed in a Decision mailed August 23, 2006. The Decision dismissing the petition informed Applicant that in order to demonstrate non-receipt of an Office action, the showing required to establish nonreceipt of an Office communication must include

1) a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2) A copy of the docket record where the 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.).

MPEP 711.03(c)

The September 24, 2006 renewed petition

Applicant filed a renewed petition on September 24, 2006, along with what was putatively a copy of Applicant's file jacket and docket records where the non-received office communication would have been entered and noted had it been received and docketed. A review of the file jacket and docket records revealed that the records were illegible. A legible copy of the file jacket and docket records was required.

The present renewed petition

Applicant files the present renewed petition and a legible copy of the docket records. Applicant has demonstrated non-receipt of the Office action by a preponderance of the evidence. Accordingly, the petition is granted.

The application will be referred to Technology Center Art Unit 3745 for re-mailing of the Notice and re-setting the period for reply.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

6/6/07

Yousef Daneshvar, MD., F.A.C.C.
3425 Lone Pine, Rd.
West Bloomfield MI 48323

In re Application of: Y. DANESHVAR Serial No.: 10/356,040 Filed: Jan. 31, 2003 Docket: n/a Title: DANESHVAR WOUND DRESSING, SUPPORT UNITS AND METHODS, MODEL JASMINE	DECISION ON PETITION UNDER 37 CFR 1.181

This is a decision on the petition filed Jan. 25, 2006 to invoke the supervisory authority in this patent application.

The petition is **dismissed**.

The application was originally filed on Jan. 31, 2003. Applicant filed a Request for Continued Examination (RCE) on Spet.23, 2005 in this application. On Jan. 10, 2006, the examiner issued a non-final Office action. On Jan. 25, 2006, the applicant filed a response to the Office action of Jan. 10, 2006. The current petition to invoke the supervisory authority in this patent application was also filed on Jan. 25, 2006. In the petition, the applicant requested the Office to act on the amendments promptly. In addition, the applicant also pointed out the examiner has ignored the meaning of the word "directly" used in the claims.

Applicable Rules and Statutes

Relevant portion of **MPEP 708 Order of Examination** states:
Each examiner will give priority to that application in his or her docket, whether amended or new, which has the oldest effective U.S. filing date. Except as rare circumstances may justify Technology Center Directors in granting individual exceptions, this basic policy applies to all applications.

37 CFR 1.181(a)(1) states:
Petition may be taken to the Director: From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination preceding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court.

After a review of the application history, it is also noted that there was a non-final Office action issued on Aug. 25, 2006; a final rejection on Dec. 6, 2006; and an advisory action on Mar. 31,

2007. The past delays in acting on the applicant's amendments are regretted. The examiner is aware of the Office policy to work on the applications with the oldest effective US filing dates in strict compliance of MPEP 708.

With regard to petitioner's remaining concern relating to the examiner's interpretation of the word "directly" in the claims, this is an appealable issue in accordance with 37 CFR 1.181 (a). Applying the plain language of 37 CFR 1.181(a)(1), the issue presented by petitioner is clearly directed to the propriety of the examiner's interpretation of the language of the claims and prior art references, and whether the examiner's rejection of the claims is legally proper in view of the law governing claim interpretation. This issue is a matter for appeal, not for petition.

Conclusion

For the foregoing reasons, the relief requested by petitioners cannot be granted. Office actions have been issued. As to the examiner's rejection regarding the term "directly" used in the claims, this is not a petitionable matter. Accordingly, 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, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED

Karen M. Young

for Karen M. Young, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BLAIR R. PATTON
203 RICE AVE.
CHOTEAU, MT 59422

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AUG 0 8 2007

OFFICE OF PETITIONS

In re Application of :
Blair Richard Patton :
Application No. 10/356,051 : ON PETITION
Filed: January 31, 2003 :
Attorney Docket No. :

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

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of corrected drawings; (2) the petition fee; and (3) the required statement of unintentional delay have been received.

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

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

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

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Baker Botts LLP
Patent Department
98 San Jacinto Blvd., Suite 1500
Austin, TX 78701-4039

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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INGRASSIA FISHER & LORENZ PC
7150 E CAMELBACK
STE 325
SCOTTSDALE AZ 85251

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JUN 0 9 2005

OFFICE OF PETITIONS

In re Application of	:	
Yerkovich, et al.	:	DECISION REGARDING
Application No. 10/356,087	:	PATENT TERM ADJUSTMENT
Filed: August 30, 2002	:	
Attorney Docket No. 009.0054	:	

This letter is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT", filed February 17, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from fourteen (14) days to seventy-two (72) days.

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

On December 17, 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 fourteen (14) days. On February 17, 2005, Applicants timely[1] submitted an application for patent term

[1] Applicant filed the application for patent term adjustment prior to the issue fee.

adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is seventy-two (72) days.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of fourteen (14) days based on an adjustment for PTO delay of seventy-seven (77) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), reduced by Applicants' delay of sixty-three (63), pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8). The adjustment of sixty-three (63) days is at issue.

A review of the application files reveals that applicants filed an Information Disclosure Statement (IDS) on January 13, 2004, after they had previously filed a response on November 11, 2003. The IDS did not contain a 37 C.F.R. § 1.704(d) statement. Accordingly, applicant delay of sixty-three (63) days was properly assessed pursuant to 37 C.F.R. § 1.704(c)(8).

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **fourteen (14) days** (77 days of PTO delay reduced by 63 days of applicant delay).

The $200.00 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 50-2091, as authorized.

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

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

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

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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Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

MAILED

NOV 02 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

In re application of Patrick J. Donnelly, et al. Application No. 10/356,094 Filed: January 31, 2003 For: PATIENT CREDIT BALANCE ACCOUNT ANALYSIS, OVERPAYMENT REPORTING AND RECOVERY TOOLS	: : : :	**DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION)**

This is in response to the petition filed on June 8, 2004, 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).

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

In satisfaction of item (B) above, the petitioner states, "If the Office determines that all of the claims presented are not directed to a single invention, then Applicants will make an election without traverse as a prerequisite to the grant of special status."

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

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

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

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

SNM/rwg: 10/30/04

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20100713

DATE : 06/17/10

TO SPE OF : ART UNIT 3626

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/356,094 Patent No.: 7,606,721

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square 9D40-D
Palm Location 7580

You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome

Certificates of Correction Branch

703-756-1574

Thank You For Your Assistance

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

Note your decision on the appropriate box.

☐ **Approved** — **All** changes apply.

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

☑ **Denied** — State the reasons for denial below.

Comments: No correction is required--Claim 159 was not omitted, and was already allowed, and appears in the issued patent as renumbered claim 34, depending from claim 155, which was renumbered as claim 31.

/Gerald J. O'Connor/ — **SPE**

3626 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date Mailed : 07/14/10

Patent No. : 7606721 B1
Patent Issued : 10/20/09
Docket No. : **CDR-PT001**

Re: Request for Certificate of Correction

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

Respecting the alleged errors in the documents filed on 06/09/10; please see attachments. **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

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

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(703) 756-1814 or (703) 756-1574

VOLPE AND KOENIG, P.C.
UNITED PLAZA
30 SOUTH 17TH STREET
PHILADELPHIA PA 19103

LMN

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20100713

DATE : 06/17/10

TO SPE OF : ART UNIT 3626

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/356,094 Patent No.: 7,606,721

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square 9D40-D
Palm Location 7580

You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments:

No correction is required--Claim 159 was not omitted, and was already allowed, and appears in the issued patent as renumbered claim 34, depending from claim 155, which was renumbered as claim 31.

/Gerald J. O'Connor/ — SPE

3626 — 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

BRANDON N. SKLAR
KAYE SCHOLER
425 PARK AVENUE
NEW YORK, NY 10022

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MAY 0 5 2004

OFFICE OF PETITIONS

In re Application of	:	
Paul Bjorkholm	:	
Application No. 10/356,101	:	DECISION GRANTING PETITION
Filed: January 31, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 63314-1004	:	

This is a decision on the petition under 37 CFR 1.137(b), filed march 24, 2004, to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

The instant nonprovisional application is the subject of an application filed in an eighteen month publication country on January 19, 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 12, 2004 accompanies this decision on petition.

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

The application file is being referred to Technology Center AU 2882 for examination in due course.

Wan Laymon

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

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

KATTEN MUCHIN ZAVIS ROSENMAN
575 MADISON AVENUE
NEW YORK, NY 10022-2585

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JUN 0 2 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
David Rosenwasser et al :
Application No. 10/356,102 :
Filed: January 31, 2003 :
Attorney Docket No. R&M 16.355D :

This is a decision on the petition under 37 CFR 1.137(b), filed April 23, 2004, to revive the above-identified application.

The petition is GRANTED.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 13, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 14, 2003.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The application file is being forwarded to Technology Center AU 3725 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOHN H. DUKE
11 ELTON ST.
PROVIDENCE RI 02906

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NOV 17 2004

OFFICE OF PETITIONS

In re Application of
John Hincks Duke
Application No. 10/356,117
Filed: May 15, 2002
Title of Invention: DUAL SOLAR AND UNIVERSAL TIME WORLD CLOCK

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 7, 2004, to revive the above identified application.

The petition is **DISMISSED**.

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

This application became abandoned June 30, 2004 for failure to timely pay the issue fee on or before June 29, 2004. Accordingly, a Notice of Abandonment was mailed July 30, 2004.

Petitioner files the instant petition under 37 CFR 1.137(b). [1] Pursuant to 37 CFR 1.137(b)

---

[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)).

however, the instant petition lacks item (2) of the regulation. Effective October 1, 2004, the petition fee was set at $685.00 for a small entity and not $665.00 as indicated in the petition. Therefore and since no authorizations for debiting a deposit account for any deficiencies have been granted, the petition fee has not been paid.

In view of the above, the application will remain in an abandoned status until such time as an additional $20.00 has been paid for the petition fee.

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

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

By FAX: (703) 872-9306

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Alan W. Cannon
AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
P.O. Box 7599
Loveland, CO 80537-0599

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APR 1 4 2003

OFFICE OF PETITIONS

In re Application of Robert KINCAID et al. Application No. 10/356,122 Filed: January 30, 2003 Attorney Docket No. 10020715	: : : : :	DECISION ON PETITION 37 CFR 1.181

This is a decision on the petition filed March 28, 2003, under 37 CFR 1.183, requesting waiver of 37 CFR 1.84 to admit drawings containing images which have been intentionally blurred to better illustrate the claimed invention. The petition is being treated under the provisions of 37 CFR 1.181 to review the requirement for new drawings made in the Notice to File Corrected Application Papers, mailed March 13, 2003.

The petition is DISMISSED.

Applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.181". Any extensions of time will be governed by 37 CFR 1.136(a).

The aforementioned Notice specifically objected to the clarity of Figure 8; however, upon further review by the Official Draftsman, Figures 1, 2, and 4-10 were found to contain sufficient informalities to compel new drawing figures. See attached Notice of Patent Draftsperson's Patent Drawing Review, form PTO-948, attached to this decision. In particular, drawing Figures 1, 2 and 4-9 are not of sufficient quality to be effectively scanned and adequately reproduced without severely compromising understanding of the illustrated subject matter for use in the publication purposes (MPEP §507).

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

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

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

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

Inquiries regarding this communication may be directed to B. Dayoan at (703) 308-3865 or, in her absence, to the undersigned at (703) 305-1820.

Frances Dicks for
Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure:
Form PTO-948 (Notice of Draftsperson's Patent Drawing Review)

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

Alan W. Cannon
AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
P.O. Box 7599
Loveland, CO 80537-0599

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JUL 2 4 2003

OFFICE OF PETITIONS

In re Application of
Robert KINCAID et al.
Application No. 10/356,122
Filed: January 30, 2003
Attorney Docket No. 10020715

DECISION
ON PETITION
37 CFR 1.181

This is a decision on the renewed petition filed May 28, 2003, under 37 CFR 1.181, requesting review of the requirement for new drawings made in the Notice to File Corrected Application Papers, mailed March 13, 2003.

The petition is DISMISSED AS MOOT.

In response to the decision on petition mailed April 14, 2003, petitioners submit herewith new formal drawings addressing the deficiencies noted on the Notice of Draftsperson's Patent Drawing Review (Form PTO-948) mailed with the decision. Petitioners are advised that these new drawings have been approved by the Official Draftsman as to matters of form and therefore are in compliance with 37 CFR 1.84.

Inasmuch as petitioners have timely replied to the new Notice of Draftsperson's Patent Drawing Review (Form PTO-948) there is now no outstanding issue with respect to the Notice to File Corrected Application Papers. Therefore, the renewed petition to review the requirement of the Notice mailed March 13, 2003 is dismissed as moot.

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

Inquiries regarding this communication may be directed to B. Dayoan at (703) 308-3865 or, in her absence, to the undersigned at (703) 305-1820.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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AGILENT TECHNOLOGIES, INC.
LEGAL DEPARTMENT, DL429
INTELLECTUAL PROPERTY ADMINISTRATION
P O BOX 7599
LOVELAND, CO 80537-0599

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FEB 05 2007
OFFICE OF PETITIONS

In re Application of	:
Robert Kincaid et al	:
Application No. 10/356,122	: DECISION GRANTING PETITION
Filed: January 30, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 10020715	:

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 29, 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 2628 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\356122.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

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United States Patent and Trademark Office
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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 07/08/2010

Applicant	: Alan O'Neill	: DECISION ON REQUEST FOR
Patent Number	: 7647408	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/356,146	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/31/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1023** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

MAILED
APR 19 2005
Technology Center 2100

In re Application of: Oka
Application No. 10/356,162
Filed: January 31, 2003
For: BACKUP METHOD AND STORAGE CONTROL DEVICE USING THE SAME

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER MPEP §708.02 (VIII)

This is a response to the petition filed 20 January 2005, under 37 CFR §1.102(d) and MPEP §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

MPEP §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.

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

The application file is being forwarded to the Examiner of Record for accelerated examination according to the procedures set forth in MPEP § 708.02, Section VIII.

Pinchus M. Laufer
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3599

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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SEP 06 2006

Technology Center 2100

Townsend and Townsend and Crew, LLP
Two Embarcadero Center
Eighth Floor
San Francisco, CA 94111-3834

In re Application of: Nobuyuki OKA	)	
Application No. 10/356,162	)	DECISION ON PETITION FOR
Attorney Docket No. 16869P-069000US	)	SUPERVISORY REVIEW
Filed: January 31, 2003	)	UNDER *37 CFR §1.181*
For: BACKUP METHOD AND STORAGE	)	
CONTROL DEVICE USING THE SAME	)	
	)	

This is a decision on the petition under 37 CFR § 1.181, filed April 13, 2006, requesting the Commissioner invoke his supervisory authority to enter the amendment filed with the Request for Continued Examination on January 26, 2006. The status letter filed May 15, 2006 is acknowledged.

§ 1.181 Petition to the Director.
(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.
(f) 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.

The petition filed April 13, 2006 complies with the requirements set forth in (b) above. Petitioner's attention is directed to *(f)* above.

The petition is **DISMISSED**.

RECENT PROSECUTION HISTORY

(1) On October 27, 2005, a final Office action, rejecting all pending claims, was mailed.

(2) On December 27, 2005, an after-final amendment including remarks was filed.

(3) On January 9, 2006, an advisory action was mailed.

(4) On January 26, 2006, a Request for Continued Examination (RCE), amendment and remarks was filed.

(5) On March 15, 2006 a Letter, notifying Applicant of Non-Compliant Amendment, was mailed.

(6) On April 13, 2006, the instant petition was filed.

(7) On May 15, 2006, a status letter was filed.

RELIEF REQUESTED

The instant petition filed under 37 CFR § 1.181 requests entry of the amendment filed with the RCE on January 26, 2006. Note, a petition to make special under MPEP § 708.02 (VIII) was granted on April 19, 2005.

ANALYSIS

The relevant sections of the MPEP concerning petitions to make special, entry of amendments and filing of an RCE are set forth below.

MPEP § 708.02 states in-part:

APPLICATIONS — ACCELERATED EXAMINATION
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: ... Presents all claims directed to a single invention.***

Once a request has been granted, prosecution will proceed according to the procedure set forth below; ***there is no provision for "withdrawal" from this special status.***

The examiner's search will be restricted to the subject matter encompassed by the claims.

MPEP § 706.07(h) states in-part:

SUBMISSION REQUIREMENT
A "submission" as used in 37 CFR 1.114 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. See 37 CFR 1.114(c). ***If a reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of 37 CFR 1.111.*** See 37 CFR 1.114(c).

NOT FULLY RESPONSIVE SUBMISSION
(B) Presentation of claims for different invention - ***Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions). See 37 CFR 1.145.*** If an RCE is filed with an amendment canceling all claims drawn to the elected invention and presenting only claims drawn to a nonelected invention, the RCE should be treated as a proper RCE but the amendment should not be entered. The amendment is not fully responsive and applicant should be given a time period of one month or thirty days (whichever is longer) to submit a complete reply. See MPEP § 821.03.

If reply to a final Office action is outstanding and the submission is not fully responsive to the final Office action, then it must be a bona fide attempt to provide a complete reply to the final Office action in order for the RCE to toll the period for reply.

The RCE will not toll the period for reply and the application will be abandoned after the expiration of the statutory period for reply if no submission complying with 37 CFR 1.111 is filed.

If the submission is a bona fide attempt to provide a complete reply, applicant should be informed that the submission is not fully responsive to the final Office action, along with the reasons why, and given a new shortened statutory period of one month or thirty days (whichever is longer) to complete the reply. See 37 CFR 1.135(c).

OPINION

A review of the file prosecution shows that independent claims 1, 6 and 9 were substantially amended in the amendment filed simultaneously with the RCE of January 26, 2006. The claim language identified by the Examiner in the Letter of Non-Compliant Amendment in the above noted claims (i.e. "determining whether the storage device is to continue operating ...." and "disconnecting the copy volume in which the virus is detected and the paired primary volume ...."), does not appear in the original claims for which "special" status was granted. Since the proposed claim amendments goes beyond the subject matter encompassed by the claims for which "special" status was granted, it has been determined to be subject matter that was not considered in the Examiner's original search (see MPEP § 708.02 above). In addition, Applicant cannot find relief by way of the filing of an RCE to claims that are independent and distinct from the claims previously presented. Since such amendment is not entered as a matter of right (MPEP § 706.07 (h)), the amendment is considered to be not fully responsive to the previous Office action.

The Examiner's treatment of the proposed amendment filed with the RCE on January 26, 2006, as addressed in the Letter of Non-Compliant Amendment mailed on March 15, 2006, was proper. Thus, for the reasons stated therein and above, the Examiner's refusal to enter the proposed amendment filed with the RCE in an application that has been granted "special" status under MPEP § 708.02 (VIII) is correct and consistent with Office policy and practice.

CONCLUSION

Accordingly, for the above stated reasons, the petition requesting entry of the amendment filed with the RCE on January 26, 2006 is **DISMISSED**. The period for response ***continues*** to run from the mailing date of the Letter of Non-Compliant Amendment (March 15, 2006). Extensions of time may be granted under 37 CFR § 1.136(a), as set forth in the Letter.

Any inquiries related to this decision may be directed to Specials Program Examiner Brian Johnson at (571) 272-3595.

Jack Harvey, Group Director
Technology Center 2100
Computer Architecture, Software, and Information Security

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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JAN 22 2004

Paper No. 5

In re Application of	:	
Michael J.G. Gliessner et al.	:	
Serial No. 10/356,166	:	DECISION ON PETITION
Filed: January 30, 2003	:	TO MAKE SPECIAL
For: VIDEO BASED LANGUAGE	:	
LEARNING SYSTEM	:	

Applicant's petition, filed December 4, 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

Blakely, Sokoloff, Taylor and Zafman
12400 Wilshire Blvd., 7th Floor
Los Angeles, CA 90025

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 5-22-07

Paper No.: _____

TO SPE OF : **Technology Center** 2821

10/356168

SUBJECT : Request for Certificate of Correction on Patent No.: 6963595 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:

_____

_____

_____

_____

_____

DOUGLAS W. OWENS
SUPERVISORY PATENT EXAMINER

Douglas W. Owens
SPE

2821
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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GOODWIN PROCTER LLP
901 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20001

Mail Date: 07/14/2010

Applicant	: Denis O'Leary	: DECISION ON REQUEST FOR
Patent Number	: 7676431	: RECALCULATION of PATENT
Issue Date	: 03/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/356,171	: OF WYETH
Filed	: 01/31/2003	:
		:

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

PRO-TECHTOR INTERNATIONAL
20775 Norada Court
Saratoga, CA 95070-3018

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AUG 0 2 2004
OFFICE OF PETITIONS

In re Application of	:	
You-Chun Liu	:	
Application No. 10/356,182	:	ON PETITION
Filed: January 30, 2003	:	
Attorney Docket No. 1071003	:	

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

The petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-3475.

The application file is being referred to the Publishing Division to be processed into a patent.

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

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Patterson, Thuente, Skaar & Christensen, P. A.
4800 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2100

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APR 22 2005

OFFICE OF PETITIONS

In re Patent No. 6,843,589 :
Issue Date: January 18, 2005 :
Application No. 10/356,183 : DECISION GRANTING PETITION
Filed: January 30, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 531 :

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 accept an unintentionally delayed notification to the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

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

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on January 27, 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. Therefore, pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), petitioner failed to timely notify the USPTO of the filing of a counterpart application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification to the USPTO of the filing of a counterpart application in an eighteen month publication country must be accompanied by:

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

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

This application matured into Patent No. 6,843,589 on January 18, 2005. Therefore, no further action being required, this patented file is being referred to Files Repository.

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

Marianne E. Jenkins

Marianne E. Jenkins
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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LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

Mail Date: 05/04/2010

Applicant	: Abel G. Pereira	: DECISION ON REQUEST FOR
Patent Number	: 7611725	: RECALCULATION of PATENT
Issue Date	: 11/03/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/356,208	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/31/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **850** 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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DANIEL J. MEANEY, JR., ESQ.
P.O. BOX 22307
SANTA BARBARA, CA 93121

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MAR 2 2 2006

OFFICE OF PETITIONS

In re Application of :
Michael G. Fisher et al. :
Application No. 10/356,213 : ON PETITION
Filed: January 30, 2003 :
Attorney Docket No: 5623.1 413415/051

This is a decision on the petition filed January 12, 2006 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed February 8, 2005. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been requested, this application became abandoned May 9, 2005. Accordingly, a Notice of Abandonment was mailed on October 5, 2005.

This matter is being referred to Technology Center 3732 for appropriate action on the amendment filed January 12, 2006.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

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

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

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

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Paper No.

Robert F. Frijouf
FRIJOUF, RUST & PYLE, P.A.
201 East Davis Boulevard
Tampa FL 33606

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JUN 09 2009

OFFICE OF PETITIONS

In re Application of	:	
Raymond T. Westfall et al.	:	
Application No. 10/356,220	:	
Patent No. 6,822,778	:	DECISION ON PETITION
Filed: January 31, 2003	:	UNDER 37 C.F.R. § 1.378(C)
Issue Date: November 23, 2004	:	
Attorney Docket No.: 2002-0155	:	
Title: ELECTROCHROMIC LAYER	:	

This is a decision on the petition filed on January 21, 2009, pursuant to 37 C.F.R. § 1.378(c), to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

This petition pursuant to 37 C.F.R. § 1.378(c) is **GRANTED**.

The patent issued on November 23, 2004. The grace period for paying the 3½-year maintenance fee provided in 37 C.F.R. § 1.362(e) expired at midnight on November 23, 2008, with no payment received. Accordingly, the patent expired on November 23, 2008 at midnight.

A grantable petition pursuant to 37 C.F.R. § 1.378(c) must be accompanied by:

(1) The maintenance fee as set forth in 37 C.F.R. §§ 1.362(e) and 1.20;

(2) The surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee, as set forth in 37 C.F.R. § 1.20;
(3) A statement that the delay was unintentional from a proper party in interest, and;
(4) The petition must be filed within 24 months of the date of expiration.

With this petition, Petitioner submitted the surcharge associated with a petition to accept late payment of a maintenance fee as unintentional, the 3½-year maintenance fee, and a statement that the delay in payment of the maintenance fee was unintentional. This petition was timely filed within twenty-four months after the expiration of the six-month grace period.

Petitioner has met each of the requirements of Rule 1.378(c).

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.[1] Inquiries pertaining to the submission of maintenance fees should be directed to the Maintenance Fee branch at 571-272-6500.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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 any further action(s) of Petitioner.

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Paper No. 5

MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MS-LC340
MINNEAPOLIS, MN 55432-5604

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OCT 0 8 2003

OFFICE OF PETITIONS

In re Application of	:
Williams, Lovewell, and McGaffigan	: DECISION REFUSING
Application No. 10/356,226	: STATUS UNDER
Filed: January 31, 2003	: 37 CFR 1.47(a)
Attorney Docket No. P-10833.00US	:
For: APPARATUS FOR TREATING PROSTATE CANCER AND METHOD FOR SAME	:

This is a decision on the petition under 37 CFR 1.47(a), filed August 18, 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. 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.**

A grantable petition under 37 CFR 1.47(a) requires

(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 $130 as specified in 37 CFR § 1.17(h), and
(4) the last known address of the omitted inventor(s).

In addition to the above requirements, the signing inventors must sign the declaration on behalf of the non-signing inventor. See MPEP 409.03(a).

The instant petition fails to satisfy (1).

In certain circumstances, constructive refusal may be inferred. For example, if the declaration and application are sent to the last known address of the inventor and the inventor fails to respond then the Office *might*[1] infer constructive refusal. However, petitioner has failed to establish that the non-signing inventors were presented with copies of the application. An inventor cannot sign a declaration stating he or she has "reviewed and understands the application papers" when the inventor has not been presented with a copy of the application and

[1] The Office will consider all facts and circumstances. The inference may not be proper if the record indicates the inventor no longer resides at the last known address. In this case, the record does not indicate that the inventor no longer resides at the address. Specifically, the mail was not returned as undeliverable.

therefore has not reviewed the application. Refusal within the meaning of 37 CFR 1.47 requires that an inventor be presented with the application papers and given adequate time to review the contents of the application. Until the inventor reviews the papers and reads the specification and claims, he cannot know if he is actually an inventor of the claimed invention. Petitioner should send a copy of the application to the inventors along with instructions setting a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as a certified mail return receipt, cover letter of instructions, telegram, etc.

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

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

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

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

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries 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
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MAR 0 4 2004

OFFICE OF PETITIONS

MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MS-LC340
MINNEAPOLIS, MN 55432-5604

In re Application of
Williams, Lovewell, and McGaffigan
Application No. 10/356,226
Filed: January 31, 2003
Attorney Docket No. P-10833.00US
For: APPARATUS FOR TREATING PROSTATE CANCER AND METHOD FOR SAME

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the renewed petition under 37 CFR 1.47(a), filed January 29, 2004.

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 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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MORGAN & FINNEGAN LLP
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

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JAN 0 5 2006

OFFICE OF PETITIONS

In re Application of	:
Yoshifumi Kato	:
Application No. 10/356,232	: DECISION GRANTING PETITION
Filed: January 31, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 5000-5096	:

This is a decision on the petition, filed December 27, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 14, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2871 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

---

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

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Paper No. 7

Robert E. Purcell
Wall Marjama & Bilinski LLP
Suite 400
101 S. Salina Street
Syracuse, NY 13202

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JAN 13 2004

OFFICE OF PETITIONS

In re Application of :
Easter, et al. :
Filed: January 31, 2003 : ON PETITION
Application No. 10/356,239 :
Attorney Docket No.: 1036_001CON :

This is a decision on the petition under 37 CFR 1.182, filed December 29, 2003, to change the order of inventors in the above-identified application.

The current Office procedure for changing the order of inventors named in an application involves submitting a petition under 37 CFR 1.182 signed by either the attorney or agent of record or all of the applicants designating the desired changed.

The instant petition has met the criteria for changing the order of named inventors. Accordingly, the petition is **GRANTED**.

The order of inventors will be changed as follows:

1. EASTER, David A.
2. KARNOWKA, Thomas P.
3. TEEN, Timothy N.
4. MILBY, Douglas K.
5. ROSENBERG, Armand

This application is being forwarded to the Office of Initial Patent Examination for correction of the file wrapper label and the PALM database regarding the order of inventorship thereafter the application will be forwarded to Technology Center 2800 for further processing.

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

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 11 2004

SHELDON & MAK PC
9TH FLOOR
225 SOUTH LAKE AVENUE
PASADENA CA 91101

In re Application of	:
Shahrokh Shabahang et al	:
Serial No.: 10/356,245	: PETITION TO MAKE SPECIAL
Filed: January 30, 2003	:
Attorney Docket No.: 13070-2	:

This is in response to applicants' petition filed March 12, 2004 (originally filed with the application), to make the above-identified application special under the provisions of 37 CFR 1.102(d).

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

The following condition applies to the grant of this petition: If, upon examination, it is determined that a restriction requirement is necessary because of multiple inventions being claimed, applicant will be required to make an election without traverse of a single invention to be prosecuted. Failure to make an election without traverse will void the special status accorded in this decision.

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

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at the general Office facsimile number, (703) 872-9306.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4-28-06

TO SPE OF : ART UNIT 3732

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/356263 Patent No.: 6994730

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

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

Please Check claims

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

[signature]

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: It does not affect the scope of the claims.

Cris L Rodriguez — **SPE**

3732 — **Art Unit**

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Paper No. 10

GARY CREASON
Biogen, Inc.
14 Cambridge Center
Cambridge MA 02142

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AUG 2 7 2004
OFFICE OF PETITIONS

In re Application of :
Dinah Wen-Yee Sah et al. :
Application No. 10/356,264 :
Filed: January 31, 2003 :
Attorney Docket No. A111 US CP :
Title: POLYMER CONJUGATES OF MUTATED NEUBLASTIN :

DECISION ON PETITIONS UNDER 37 C.F.R. §§1.53 AND 1.181

BACKGROUND

This is a decision on the two petitions under 37 C.F.R. §§1.181 and 1.53, concurrently filed April 21, 2004, requesting that the holding of abandonment be withdrawn and that a filing date be accorded to the above-identified application.

On January 31, 2003, the above-identified application was deposited. On September 5, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application - Filing Date Not Granted (notice)", advising applicant that the application was deposited without drawings, and that a filing date would be accorded upon the submission of drawings. The notice further indicated that the copy of the sequence listing which had been provided was not acceptable, and that a substitute computer readable form (CRF) would be required. The notice set a time period for response of two months. No response was received, and no extensions of time pursuant to 37 C.F.R. were requested. Accordingly, the application went abandoned on November 6, 2003. A Notice of Abandonment was mailed February 17, 2004.

With the instant petitions, Petitioner has submitted what appears to be a CRF, as well as the fee associated with the filing of a petition under 37 C.F.R. §1.53.

THE RELEVANT STATUE AND RULE

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.

ANALYSYS

The petition under 37 C.F.R. §1.181:

With the instant petition, Petitioner has asserted that the notice was not received. Petitioner has submitted a declaration of facts asserting that the notice was not received, a statement that a search of the file jacket was performed, and a printout of "all action items that have been docketed for U.S.S.N. 10/356,264[1]."

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 the file jacket was reviewed, Petitioner has not set forth a statement that a search was made of the place where communications such as this would normally be kept, and the item was not located.

Furthermore, 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 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 report associated with the instant file fails to show the correspondence at issue was not received, and merely misplaced and filed with another file.

As such, Petitioner has not established non-receipt of the communication.

Details of the efforts to locate the missing communication by searching the locations where the item might be located should be set forth in an affidavit or declaration of facts by the person with first hand knowledge of the details.

CONCLUSION

As such, the petition under 37 C.F.R. §1.181 is **DISMISSED**.

---

1 Declaration of facts, paragraph 4.

Since the application has not been revived, a decision on the accompanying petition under 37 C.F.R. §1.53 will not be issued at this time.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence unless a Change of Correspondence Address Form (PTO/SB/122) is submitted for the above-identified application. A blank Change of Correspondence Address Form (PTO/SB/122) may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

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.

When filing the renewed petition under 37 C.F.R. §1.181, a duplicate copy of the petition under 37 C.F.R. §1.53 is not required.

The renewed petition should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner.

To help assure prompt and proper attention to your response, please see Request for Alert Concerning Submitted Petitions, 1282 Official Gazette (May 18, 2004) for further information on how to assist the Office in delivering your submission to the correct location. The Petitioner may wish to consider telephoning the undersigned one month after the submission is made to confirm that the documents were properly delivered.

Any renewed petition may be submitted by mail[2], hand-delivery[3], or facsimile[4].

---

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

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

4 (703) 872-9306 - please note this is a central facsimile number, and as

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

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-272-3282, and the telephone number for the undersigned will change to 571-272-3225.

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

cc: Jack Brennan
Fish & Richardson P.C.
45 Rockefeller Plaza, Suite 2800
New York, New York 10111

---

such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 13

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON MA 02110

COPY MAILED

DEC 0 1 2004

OFFICE OF PETITIONS

In re Application of :
Dinah Wen-Yee Sah et al. :
Application No. 10/356,264 :
Filed: January 31, 2003 :
Attorney Docket No. A111 US CP :
Title: POLYMER CONJUGATES OF :
MUTATED NEUBLASTIN :

DECISION ON RENEWED PETITIONS UNDER 37 C.F.R. §§1.137(B) AND 1.53

BACKGROUND

This is a renewed decision on the two renewed petitions under 37 C.F.R. §§1.137b and 1.53, concurrently filed October 29, 2004, requesting that the above-identified application be revived and that a filing date be accorded to the above-identified application.

On January 31, 2003, the above-identified application was deposited. On September 5, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application - Filing Date Not Granted (notice)", advising applicant that the application was deposited without drawings, and that a filing date would be accorded upon the submission of drawings. The notice further indicated that the copy of the sequence listing which had been provided was not acceptable, and that a substitute computer readable form (CRF) would be required. The notice set a time period for response of two months. No response was received, and no extensions of time pursuant to 37 C.F.R. §1.136 were requested. Accordingly, the application went abandoned on November 6, 2003. A Notice of Abandonment was mailed February 17, 2004.

The original petitions were filed under 37 C.F.R. §§1.181 and 1.53. The former was dismissed via the mailing of a decision on August 27, 2004, and the latter was not addressed. Petitioner has previously submitted what appears to be a CRF, as well as the fee associated with the filing of a petition under 37 C.F.R. §1.53.

ANALYSYS

The petition under 37 C.F.R. §1.137(b):

With the instant petition, Petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of the filing of the petition under 37 C.F.R. §1.53, the payment of the petition fee, and has made the proper statement of unintentional delay.

As such, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

The petition under 37 C.F.R. §1.53:

With the original petition submitted on April 19, 2004, Petitioner submitted a statement that although the specification refers to four drawings, these figures were omitted on filing, and; an assertion that the drawings are not necessary for an understanding of the subject matter sought to be patented. No drawings were submitted.

The attorney of record has stated, over his registration number, that "drawings are not necessary to understand the subject matter sought to be patented in the present application[1]."

Based solely on the Attorney's attestation, the petition is **GRANTED**.

The petition fee of $130.00 will not be refunded, as this petition was not necessitated by any error on the part of the Office.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 31, 2003, and for **mailing of an updated filing receipt**, using only the original application papers filed on that date.

---

1 Petition, page 1.

The Change of Correspondence Address has been entered and made of record.

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12-1-05

TO SPE OF : ART UNIT 2863

SUBJECT : Request for Certificate of Correction on Patent No.: 6,810,332

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.

Certificates of Correction Branch

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments:

Amendments OK for Entry

/John E Barlow Jr./
SPE

2863
Art Unit

U.S. DEPARTMENT OF COMMERCE Patent and Trademark O

PTOL-306 (REV. 7/03)

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : October 24,2007

TO SPE OF : ART UNIT 2165

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/356,270 Patent No.: 7231404 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: _____

SPE

2165
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OFFICE OF PETITIONS

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

In re Application of	:	
LYMAN, Stewart D. et al.	:	
Application No. 10/356,289	:	DECISION ON PETITION
Filed: January 31, 2003	:	TO WITHDRAW
Attorney Docket No. **39766-0067CON**	:	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 13, 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 Ginge Dreger on behalf of all attorneys of record who are associated.
All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **STEWART LYMAN**
312 NORTH 45TH STREET
SEATTLE, WA 98103

cc: **RANDY MOHR**
SENIOR COUNSEL
ONE AMGEN CENTER DRIVE, MS 29-2-C
THOUSAND OAKS, CA 91320

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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RUDEN MCCLOSKY SMITH SCHUSTER & RUSSELL P.A.
P.O. BOX 1900
FORT LAUDERDALE, FL 33301

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DEC 2 0 2005

OFFICE OF PETITIONS

In re Application of	:	
Linda Levy et al	:	
Application No. 10/356,291	:	DECISION ON PETITION
Filed: January 31, 2003	:	TO WITHDRAW
Attorney Docket No. 454590003	:	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 1, 2005.

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

While an attorney or agent at Ruden McClosky Smith Schuster & Russell P.A. submitted the above-identified application, a review of the official file record indicates that Stanley A. Kim and those practitioners associated with Customer No. 20822 were not giving power of attorney. Accordingly, the request to withdraw under 37 C.F.R. § 1.136(b) is moot.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by a registered practitioner given power of attorney in this application, an assignee, or the applicants. See 37 CFR 1.33(a)(2).

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

Dean Porter for

David Bucci
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

RUDEN, MCCLOSKY, SMITH, SCHUSTER & RUSSELL, P.A.
P.O. BOX 1900
FORT LAUDERDALE, FL 33301

In re Application of	:	
Linda Levy, et al.	:	
Application No. 10/356,291	:	DECISION ON PETITION
Filed: January 31, 2003	:	TO WITHDRAW
Attorney Docket No. 45459-0003	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) filed June 27, 2007.

The request is **NOT APPROVED**.

A review of the file record indicates that Ruden, McClosky, Smith, Schuster & Russell, PA does not have power of attorney in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

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

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: LINDA LEVY
19500 TURNBERRY WAY
PENTHOUSE AB
AVENTURA, FL 33180

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DIW 03-03

Paper No. 3

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN
12400 WILSHIRE BLVD, 7TH FLOOR
LOS ANGELES, CA 90025-1026

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MAR 3 1 2003

OFFICE OF PETITIONS

In re Application of	:
Jae-Wook Kim	: DECISION GRANTING
Application No. 10/356,301	: PETITION
Filed: 30 January, 2003	:
Attorney Docket No. 006500.P002	:

This is a decision on the petition under 37 CFR 1.10(c), filed on 11 March, 2003, requesting that the above-identified application be accorded a filing date of 30 January, 2003, rather than the presently accorded filing date of 31 January, 2003.

Petitioner alleges that the application was deposited in Express Mail service on 30 January, 2003. In support, petitioner supplied, with the present petition, a copy of Express Mail Label No. EL651847661US (the same Express Mail number found on the utility patent application transmittal sheet accompanying the original application papers located in the official file). The "date-in" on the Express Mail label appears to be 01-30-03. Additionally, a review of the USPS Internet Track & Confirm records shows that this application was accepted by the USPS on 30 January, 2003.

In view of the above, the petition is granted. No petition fee is required and none has been charged.

The application is being returned to the Office of Initial Patent Examination (OIPE) for correction of the filing date to 30 January, 2003, and for issuance of a corrected Filing Receipt.

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

DWood

Douglas I. Wood
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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Paper No. 5

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OFFICE OF PETITIONS

DARBY & DARBY P.C.
Post Office Box 5257
New York, NY 10150-5257

In re Application of	:
Jurgens and Geier	: DECISION REFUSING
Application No. 10/356,330	: STATUS UNDER
Filed: January 31, 2003	: 37 CFR 1.47(a)
Attorney Docket No. 03463/000M522-US0	:
For: METHOD AND DEVICE FOR PRODUCING SPHERICAL PARTICLES FROM A POLYMER MELT	:

This is a decision on the petition under 37 CFR 1.47(a), filed October 17, 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. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The merits of a petition under 37 CFR 1.47 will not be considered if the application is abandoned. The instant application appears to be abandoned. Office records fail to indicate the receipt of the required $130 fee for the late submission of the declaration. Therefore, since the fee was not timely paid in response to the Notice of Missing Parts, the application became abandoned on October 28, 2003. Petitioner should either prove timely payment of the fee or file a petition to revive under 37 CFR 1.137.

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

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. 7

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DEC 0 8 2003

OFFICE OF PETITIONS

DARBY & DARBY P.C.
Post Office Box 5257
New York, NY 10150-5257

In re Application of Jurgens and Geier Application No. 10/356,330 Filed: January 31, 2003 Attorney Docket No. 03463/000M522-US0 For: METHOD AND DEVICE FOR PRODUCING SPHERICAL PARTICLES FROM A POLYMER MELT	DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

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

The petition fee of $130 has been charged to petitioner's deposit account.

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

Rudolf Geier
4 Isabellastrass
Essen 45130
GERMANY

COPY MAILED

DEC 0 8 2003

OFFICE OF PETITIONS

In re Application of
Jurgens and Geier
Application No. 10/356,330
Filed: January 31, 2003
Attorney Docket No. 03463/000M522-US0
For: METHOD AND DEVICE FOR PRODUCING SPHERICAL PARTICLES FROM A POLYMER MELT

Letter

Dear Mr. Geier:

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: DARBY & DARBY P.C.
Post Office Box 5257
New York, NY 10150-5257

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.

Kenneth R. Allen
TOWNSEND AND TOWNSEND AND CREW, LLP
Two Embarcadero Center
Eighth Floor
San Francisco, CA 94111-3834

MAILED

JUN 2 5 2005

Technology Center 2100

In re Application of:
Dziawa, Michael
Application No. 10/356,336
Filed: January 31, 2003
For: NETWORK SYNCHRONIZATION ARCHITECTURE FOR A BROADBAND LOGO CARRIER (BLC) SYSTEM

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed September 27, 2004.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed September 27, 2004 meets all the requirements. Accordingly the request is **GRANTED**.

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

James R. Matthews

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

cc: Kris V. Kalidindi, Esq.
POTOMAC PATENT GROUP, PLLC
2010 Corporate Ridge, Suite 700
McLean, VA 22102

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WOLF GREENFIELD & SACKS, PC
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 02210-2211

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SEP 16 2005

OFFICE OF PETITIONS

In re Application of :
Ganesh Venkataraman, et al. :
Application No. 10/356,349 : ON PETITION
Filed: January 31, 2003 :
Attorney Docket No.: M00656.70089.US :
:

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2863 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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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Date : September 16, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Ganesh Venkataraman, et al.
Application No. : 10/356,349
Filed : January 31, 2003

The above-identified application has been assigned Patent No. 6,947,849 and an issue date of September 20, 2005.

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

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of September 20, 2005:

> "All reference to Patent No. 6,947,849 to GANESH VENKATARAMAN, ET AL. of MASSACHUSETTS for METHOD FOR IDENTIFYING OR CHARACTERIZING PROPERTIES OF POLYMERIC UNITS appearing in the Official Gazette of September 20, 2005, should be deleted since no patent was granted."

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

cc: Paul Harrison, Crystal Park 3-44l (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-9l0 (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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MCDERMOTT, WILL & EMERY
18191 VON KARMAN AVE.
SUITE 500
IRVINE CA 92612- 7108

MAIL

MAY 1 4 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Kenneth J. Triebes :
Application No. 10/356,359 :DECISION ON REQUEST TO
Filed: January 31, 2003 :WITHDRAW AS ATTORNEY
For: MULTI-BEAM LASER TERMINAL AND METHOD :

This is a decision on the request to withdraw as attorney/agent of record filed on March 18, 2004.

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

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

Attorney requesting withdraw is not of record due to a Revocation of Power of Attorney executed by the assignee on April 5, 2004.

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

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

cc: Richard T. Ogawa
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER, 8TH FLOOR
SAN FRANCISCO, CA 94111-3834

BEST AVAILABLE COPY

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20050829

DATE : September 6, 2005

TO SPE OF : ART UNIT 3753

SUBJECT : Request for Certificate of Correction on Patent No.: 6915812

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:

Approved as requested in paper filed on 8-22-05.

SPE: Justine R. Yu **Art Unit** 3751

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MAY 16 2006

Director's Office
Group 3700

Bernard S. Klosowski, Jr.
DORITY & MANNING, P.A.
POST OFFICE BOX 1449
GREENVILLE SC 29602-1449

In re Application of FROHWEIN, AXEL
Appl. No.: 10/356,380
Filed: January 31, 2003
For: LOW PERMEATION WELDABLE FUEL TANK ASSEMBLY

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed January 12, 2005, to expunge information from the above identified application.

The petition is dismissed.

Petitioner requests that a document entitled 'Trade Secret document', filed January 12, 2005, be expunged from the record.

The petition is deficient because:

1. the petition does not contain a commitment on the part of petitioner to retain the information to be expunged for the life of any patent with regard to which such information has been submitted.

2. the petition does not contain a clear statement that the information requested to be expunged is either: (1) a trade secret, proprietary, and/or subject to a protective order; or (2) was unintentionally submitted and 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.

3. the petition does not contain a statement that the petition is being submitted by, or on behalf of, the party in interest who originally submitted the information.

Further, the petition was not accompanied by the required fee under 37 CFR 1.17(g). It is noted that a petition fee of $130 (37 CFR 1.17(h)) was paid, and the petition includes an authorization to charge any underpayment of fees to Deposit Account No. 04-1403. Accordingly, the application is being forwarded to Head Supervisory Applications Examiner to charge the $70 deficiency to the authorized deposit account.

Due to the deficiencies outlined above, the petition under 37 CFR 1.59(b), filed January 12, 2005, to expunge information from the above identified application can not be granted.

Petitioner may request reconsideration of the petition. Any such request must be resubmitted within two months of the mailing date of this decision and supply the omitted statements.

Any questions regarding this petition decision should be directed to Jessica Harrison, Technology Center 3700 Special Programs Examiner at 571-272-4449.

PETITION DISMISSED

Karen M. Young

Karen M. Young, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Bernard S. Klosowski, Jr.
DORITY & MANNING, P.A.
POST OFFICE BOX 1449
GREENVILLE SC 29602-1449

MAILED JUN 09 2006

In re Application of FROHWEIN, AXEL
Appl. No.: 10/356,380
Filed: January 31, 2003
For: LOW PERMEATION WELDABLE FUEL TANK ASSEMBLY

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed January 12, 2005, to expunge information from the above identified application.

Upon reconsideration, the prior petition decision is amended as set forth herein below. The prior requirement for a clear statement that the information is either (1) a trade secret, proprietary, and/or subject to a protective order appeared in error, as it can be inferred from the petition that petitioner has identified the information as being a trade secret document. This decision replaces the prior decision, and re-starts the two-month period for requesting reconsideration of the petition.

The petition is dismissed.

Petitioner requests that a document entitled 'Trade Secret document', filed January 12, 2005, be expunged from the record.

The petition is deficient because:

1. the petition does not contain a commitment on the part of petitioner to retain the information to be expunged for the life of any patent with regard to which such information has been submitted.

2. the petition does not contain a statement that the petition is being submitted by, or on behalf of, the party in interest who originally submitted the information.

Further, the petition was not accompanied by the required fee under 37 CFR 1.17(g). It is noted that a petition fee of $130 (37 CFR 1.17(h)) was paid, and the petition includes an authorization to charge any underpayment of fees to Deposit Account No. 04-1403. Accordingly, the application is being forwarded to Head Supervisory Applications Examiner to charge the $70 deficiency to the authorized deposit account.

Due to the deficiencies outlined above, the petition under 37 CFR 1.59(b), filed January 12, 2005, to expunge information from the above identified application can not be granted.

Petitioner may request reconsideration of the petition. Any such request must be resubmitted within two months of the mailing date of this decision and supply the omitted statements.

Any questions regarding this petition decision should be directed to Jessica Harrison, Technology Center 3700 Special Programs Examiner at 571-272-4449.

PETITION DISMISSED

Karen M. Young

Karen M. Young, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Bernard S. Klosowski, Jr.
DORITY & MANNING, P.A.
POST OFFICE BOX 1449
GREENVILLE SC 29602-1449

AUG 29 2006

In re Application of FROHWEIN, AXEL
Appl. No.: 10/356,380
Filed: January 31, 2003
For: LOW PERMEATION WELDABLE FUEL TANK ASSEMBLY

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed January 12, 2005 and renewed on June 19, 2006 to expunge information from the above identified application.

The petition is granted.

Petitioner requests that a document entitled Information Disclosure Statement, filed January 12, 2005, be expunged from the record. Petitioner states that either (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(g) has been paid.

The information in question has been determined by the undersigned to not be material to the examination of the instant application. Removal of the material also appears to have been approved in a request for certificate of correction, which was approved by the Supervisory Primary Examiner on September 6, 2005 further attesting to determination that the information is not material to the examination of the instant application.

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

The expunged material has been removed from the official file. It is contained in a non-public Artifact folder associated with the file and will not be returned to applicant.

Any questions regarding this petition decision should be directed to Jessica Harrison, Technology Center Special Programs Examiner at 571 – 272-4449.

Karen M. Young

Karen M. Young, Director
Technology Center 3700

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OCT 17 2005

OFFICE OF PETITIONS

PSC SCANNING, INC. - STOEL RIVES
C/O STOEL RIVES
900 SW 5TH AVENUE
SUITE 2600
PORTLAND OR 97204

In re Application of	:	
Harold C. Clifford et al	:	
Application No. 10/356,384	:	ON PETITION
Filed: January 31, 2003	:	
Attorney Docket No. 51306/816:3	:	

This is a decision on the petition, filed October 14, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on April 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 2632 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

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Paper No. 7

FOLEY & LARDNER
777 EAST WISCONSIN AVENUE, SUITE 3800
MILWAUKEE, WI 53202-5308

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OCT 15 2003
OFFICE OF PETITIONS

In re Application of	:
Edgar A. Dallas et al	:
Application No. 10/356,385	: DECISION GRANTING STATUS
Filed: January 31, 2003	: UNDER 37 CFR 1.47(A)
For: MULTI-FUNCTION TOOL WITH	:
SPRING BIASED IMPLEMENT	:

This is in response to the petition under 37 CFR 1.47(a), filed July 14, 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 Technology Center AU 3723 for examination in due course.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
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PHILLIP A. MONTAGUE
17745 S.W. CHIPPEWA TRAIL
TUALATIN, OR 97062

COPY MAILED

OCT 15 2003

OFFICE OF PETITIONS

In re Application of
Dallas; Wallace Jr.; Nason; and Montague
Application No. 10/356,385
Filed: January 31, 2003
For: MULTI-FUNCTION TOOL WITH SPRING BIASED IMPLEMENT

Dear Mr. Montague:

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:
FOLEY & LARDNER
777 EAST WISCONSIN AVENUE
SUITE 3800
MILWAUKEE, WI 53202-5308

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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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SEP 06 2006

In re PATENT APPLICATION of:	:	
Randy T. Holmberg et al.	:	**DECISION ON PETITION**
Application No. 10/356,401	:	
Filed: January 31, 2003	:	
Attorney Docket No. 019162-003900US	:	

This is a decision on the petition filed on January 12, 2006 by which Petitioner requests reconsideration and withdrawal of the restriction requirement rendered July 19, 2005 and made final in the Office action dated November 2, 2005. The petition is considered pursuant to 37 CFR 1.144 and 37 CFR 1.181, and no fee is required.

The petition is granted.

Careful review of the record reveals that the Examiner required restriction in an Office action dated July 19, 2005 between five groups of claims. Although the Examiner proceeded to justify distinctness between groups I and III, groups II and III, groups IV and III, and groups V and III related as subcombinations usable together; and between groups II and I, groups IV and II and groups V and IV related as combination/subcombination, he failed to justify distinctness between groups I and IV, groups I and V and groups III and V.

Furthermore, for reasons clearly stated by Petitioner, the undersigned can only agree that the Examiner has not satisfied the basic requirements for restricting between the various delineated groupings, i.e. distinctness and reasons for insisting on restriction, i.e., the burden. Therefore, the restriction requirement rendered in the Office action dated July 19, 2005 is hereby vacated.

As stated in the MPEP section 808.02,

> Related inventions are distinct if the inventions *as claimed* are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art).

As stated in the MPEP section 806.05(d),

806.05(d) [R-3] Subcombinations Usable Together

Two or more claimed subcombinations, disclosed as usable together in a single combination, and which can be shown to be separately usable, are usually **>restrictable when the subcombinations do not overlap in scope and are not obvious variants<.

Form paragraph 8.16 may be used in restriction requirements between subcombinations.

**>

¶ *8.16 Subcombinations, Usable Together*

Inventions **[1]** and **[2]** are related as subcombinations disclosed as usable together in a single combination.The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case subcombination **[3]** has separate utility such as **[4]**. See MPEP § 806.05(d).

Examiner Note

1.

This form paragraph is to be used when claims are presented to subcombinations usable together (MPEP § 806.05(d)).

2.

In bracket 3, insert the appropriate group number or identify the subcombination.

3.

In bracket 4, suggest utility other than with the other subcombination.

4.

Conclude restriction requirement with one of form paragraphs 8.21.01 through 8.21.03.

<**

The examiner must show, by way of example, that one of the subcombinations has utility other than in the disclosed combination.

It is noted that the Examiner merely states, "In the instant case, invention III has separate utility such as for switching between transducers in conventional systems or systems not involving mini-dock or docking stand." Aside from the fact that Petitioners' invention contemplates using a conventional system (figure 6), the Examiners rationale does not state just how the subcombination of group III has utility other than with the other subcombinations or in the disclosed combination.

As stated in the MPEP section 806.05(c),

806.05(c) [R-3] Criteria of Distinctness *>Between< Combination *>and< Subcombination **

** To support a requirement for restriction >between combination and subcombination inventions<, both two-way distinctness and reasons for insisting on restriction are necessary, i.e., >there would be a seriuos search burden as evidenced by< separate classification, status, or field of search. See MPEP § 808.02.
The inventions are distinct if it can be shown that a combination as claimed:

(A) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and

(B) the subcombination can be shown to have utility either by itself or in **>another materially< different *>combination<.

When these factors cannot be shown, such inventions are not distinct.

In attempting to show distinctness between the Group II combination as claimed and the Group I subcombination as claimed, the Examiner states that, "the Group II docking station combination includes a mating base for a modular UTS apparatus and an in-built power supply". This does not state what particulars of the subcombination as claimed is not required in the combination as claimed. Also, the Examiner states that, "the Group I subcombination has utility for example in association with a modular power supply". The undersigned agrees with Petitioner that the power supply of the Group II combination can be modular.

In attempting to show distinctness between Group IV and Group II, the Examiner states that they are related as combination and subcombination. However, claims 8-11 are drawn to the embodiment illustrated in figure 3B, while claims 15-23 are drawn to the embodiment illustrated in figure 4. These embodiments are not related as combination and subcombination, but are considered related products. See MPEP 806.05(j).

In attempting to show distinctness between Group V and Group IV, the Examiner states that they are related as combination and subcombination. However, the undersigned again agrees with the Petitioner that the Examiner fails to satisfy the criteria for distinctness as spelled out in parts (A) and (B) above, particularly that the subcombination can have utility either by itself or in another materially different combination than that defined in the Group V claims.

AS stated in the MPEP section 808.02,

808.02 [R-3] **> Establishing Burden<

Where, as disclosed in the application, the several inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction under 35 U.S.C. 121 is never proper (MPEP § 806.05). If applicant **>voluntarily files claims to such related inventions in different applications<, double patenting may be held.

Where the related inventions as claimed are shown to be >independent or< distinct under the criteria of MPEP § 806.05(c) - *> § 806.06<, the examiner, in order to establish reasons for insisting upon restriction, must >explain why there would be a serious burden on the examiner if restriction is not required. Thus the examiner must< show by appropriate explanation one of the following:

(A) **Separate classification thereof**: This shows that each **>invention< has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification.

(B) **A separate status in the art when they are classifiable together**: Even though they are classified together, each *>invention< can be shown to have formed a separate subject for inventive effort when **>the examiner can show< a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.

(C) **A different field of search**: Where it is necessary to search for one of the **>inventions in a manner that is not likely to result in finding art pertinent to the other invention(s) (e.g., searching different classes /subclasses or electronic resources, or employing different search queries<, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Patents need not be cited to show different fields of search.

In attempting to satisfy the reasons for insisting, i.e., the burden, the Examiner states that Groups I, II, IV and V have acquired a separate status in the art as shown by their different classifications. However, since the claims within each of these Groups define docking stations for use with or in combination with diagnostic ultrasound apparatus, a search in each of the identified areas would be proper for a complete determination of the patentability of the claimed subject matter. In the absence of any further explanation to the contrary by the Examiner, the undersigned agrees with Petitioner that the Examiner has not fulfilled the requirements proving that the examination of all the alleged inventions would constitute a burden.

From Petitioners' disclosure, it is quite clear that a basic component of the disclosed invention is illustrated in figures 1A and 1B and includes a modular diagnostic ultrasound apparatus with core module 10 having an electronics package 14 within housing 11 connected to I/O/ port 12. The core unit is adapted to be connected to

several different embodiments. A first embodiment is illustrated in figure 1C, wherein the core unit is contained within a clamshell unit having a portable laptop configuration. A second embodiment is illustrated in figure 2, wherein the core unit can be connected to a "mini-dock" unit 30 for connecting peripheral devices to the modular diagnostic ultrasound apparatus via ports 34. The I/O port 12 of the control module is plugged into receptacle 32. A third embodiment, in which core module 10 is inserted into another type of docking unit 40, is illustrated in figure 3A and only briefly described. As a fourth embodiment, the "mini-dock" unit 30 is combined with a base unit 42 having a built-in power supply as illustrated in figure 3B. In a fifth embodiment, the "mini-dock" unit 30 is mounted on a cart as a mobile docking station as illustrated in figure 4. As illustrated in figure 5, a "multi-transducer interface module" 50 can be connected to the docking station 40 shown in figure 3A or to transducer connector aperture 24 shown in figure 1C, for connecting different types of probes thereto. The module includes switches 53 for selecting among the different probes. Finally, as shown in figure 6, Petitioners' invention contemplates the use of multiple desktop and mobile docking stations wherein a core module 10 is easily transported from one docking station to another in order to cut costs.

Although Petitioner is granted relief from the restriction requirement for the reasons outlined above, a question remains as to whether the search and examination of all the disclosed embodiments of Petitioners' invention as claimed would constitute a heavy burden on the Examiner. The amendment presented January 12, 2006 is deemed responsive to which a new Office action will be rendered. The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3737 who will have the Examiner promulgate an action on the merits of the presently pending claims not inconsistent with this decision.

PETITION GRANTED

Frederick Schmidt, Director
Technology Center 3700

DAVID TANNENBAUM, ESQ.
FULLBRIGHT & JAWORSKI, LLP
2200 ROSS AVENUE
DALLAS, TX 75201

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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FULBRIGHT & JAWORSKI L.L.P
2200 ROSS AVENUE
SUITE 2800
DALLAS, TX 75201-2784

Mail Date: 04/21/2010

Applicant	: Randy T. Holmberg	: DECISION ON REQUEST FOR
Patent Number	: 7591786	: RECALCULATION of PATENT
Issue Date	: 09/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/356,401	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/31/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1324** 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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JAN 16 2004

OFFICE OF PETITIONS

CARY R. REEVES
P.O. BOX 1268
ALEDO, TX 76008

In re Application of
Thomas M. Coon et al
Application No. 10/356,404
Filed: February 3, 2003
Attorney Docket No. ZM9353

ON PETITION

This is in response to the petition under 37 CFR 1.47(a), filed October 10, 2003.

The petition is dismissed.

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

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) and (2) set forth above.

As to item (1), rule 47 applicants must demonstrate with documented evidence that the inventors refuses to join in the application after having been presented with the application papers (specification, claims, drawings and oath or declaration). There is no indication in the present case whether joint inventors Thomas M. Coon, Alfred J. Tria, Donald M. Smucker and Richard R. Van Zile were ever presented with a copy of the complete application papers for the instant nonprovisional application. The fact that an application may contain proprietary information does not relieve the 37 CFR 1.47 applicant of the responsibility to present the application papers to the inventors if the inventors are willing to receive the papers. If the non-signing inventors were not presented with a copy of the application papers for the instant nonprovisional application, then they could not attest that they have "reviewed and understands the application papers" and could not execute the declaration which was requested for them to sign. Did joint inventors Thomas M. Coon, Alfred J. Tria, Donald M. Smucker and Richard R. Van Zile receive a copy of the application papers? 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 to the non-signing inventors for signature. Unless petitioner can show that a copy of the application papers was presented to the non-signing inventors or that the non-signing inventors refused to accept delivery of the papers or expressly stated that the application papers should not be sent, then petitioner will have to mail a copy of the complete application papers (specification, claims and drawings) to the non-signing inventors' last known address, return receipt requested. A cover letter of instructions should accompany the mailing of the application papers setting a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. **The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as certified mail return receipt, cover letter of instructions, telegram, etc.** See MPEP 409.03(d).

The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. If the inventors orally refuses to join in the application, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. If, on the other hand, petitioner receives 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 rule 47 petitioner that the omitted inventors' conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

Whenever the omitted inventors gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

As to item (2), the declaration is defective in that it has been amended. In this regard, the post office address block of Thomas M. Coon has been amended. Also, the address and citizenship of Toby Farling is missing. Since the declaration cannot be amended, altered or changed, the signatures of the signing inventors (Marlowe E. Goble, Warren Scott, Robert A. Hodorek, Daniel F. Justin and Toby Farling) are required on the substitute declaration. See MPEP 602.01.

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

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

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

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

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the Customer Window located at:

2011 South Clark Place
Crystal Plaza Two, Lobby
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306.**

Telephone inquiries related to this decision should be directed to Irvin Dingle at (703) 306-5684.

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

cc:

Todd A. Dawson
Zimmer, Inc.
P.O. Box 0708
Warsaw, IN 46581-0708

03-16-04

DAC

#1

OIPE JC132
MAR 1 5 2004
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

Appl. No.	:	10/356,404 Confirmation No. 1802
First Named Inventor	:	Coon, Thomas M.
Filed	:	02/03/2003
Title	:	Instruments For Knee Surgery And Method Of Use
PTO Office	:	Office of Petitions
PTO Attorney	:	Irvin Dingle
Atty. Docket No.	:	0102-0015 (ZM9353)
Customer No.	:	34086

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

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop PETITION, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450

3-15-04
Date of Deposit

Signature of person mailing paper or fee

Sir:

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 CRF 1.47(a)

Please enter this response to the Decision dated January 16, 2004. The Decision identified two issues relative to the 37 CFR 1.47(a) Petition and the Declaration in this case: (1) the Office deemed the proffered proof that the non-signing inventor cannot be reached insufficient; and (2) the Office deemed the Declaration defective in that it had been amended. Applicant spoke to Irvin Dingle, an employ in the Office of Petitions on February 5, 2004, who verified that providing a fully executed copy of a proper Declaration without amendments in this case would be a complete response to the Decision satisfying both issues.

Applicant submits the following enclosures in complete response to the Decision:

1. Copy of the Decision

2. Newly executed Declaration signed by all inventors:
   a. Copy 1, 2 pages with signature of Thomas M. Coon
   b. Copy 2, 2 pages with signatures of E. Marlowe Goble and Daniel F. Justin
   c. Copy 3, 2 pages with signature of Alfred J. Tria, Jr.
   d. Copy 4, 2 pages with signature of Warren Scott Gareiss

e. Copy 5, 2 pages with signatures of Robert A. Hodorek and Toby N. Farling
f. Copy 6, 2 pages with signature of Donald M. Smucker
g. Copy 7, 2 pages with signature of Richard R. Van Zile

Applicant believes that no further fees are due in this case. However, should any fees become due in reference to this response, the Office is hereby authorized to charge deposit account No. 50-2779, Zimmer Technology Inc., any fees required in this response.

Respectfully submitted,

Date: March 15, 2004

By: Cary R Reeves

Cary R. Reeves
Registration No. 35,334
P.O. Box 1268
Aledo, TX 76008
817-595-5994

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 8

CARY R. REEVES
P.O. BOX 1268
ALEDO, TX 76008

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MAR 3 0 2004

OFFICE OF PETITIONS

In re Application of	:	
Thomas M. Coon et al.	:	
Application No. 10/356,404	:	DECISION NOTING JOINDER
Filed: February 3, 2003	:	OF INVENTORS AND PETITION
Attorney Docket No. ZM9353	:	UNDER 37 CFR 1.47 (a) MOOT

Papers filed on March 15, 2004 in response to a "Decision Refusing Status Under 37 CFR 1.47 (a)," mailed January 16, 2004, included a Declaration signed by previously nonsigning inventors Thomas M. Coon, Alfred J. Tria, Donald M. Smucker and Richard R. Van Zile in compliance with 37 CFR 1.63.

In view of the joinder of the inventors, further consideration under 37 CFR 1.47 (a) is moot; this application does not have any rule 1.47 (a) status and no such status should appear on the file wrapper. This application need not be returned to this office for any further consideration under 37 CFR 1.47 (a).

This application is being forwarded to Technology Center AU 3732 for examination in due course.

Telephone inquiries related to this decision should be directed to Irvin Dingle at (703) 306-5684.

Frances Hicks

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

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FREESCALE SEMICONDUCTOR, INC.
LAW DEPARTMENT
7700 WEST PARMER LANE MD:TX32/PL02
AUSTIN TX 78729

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APR 19 2007

OFFICE OF PETITIONS

In re Application of :
Davir, et al. :
Application No. 10/356,419 : DECISION ON PETITION
Filed: January 31, 20003 :
Attorney Docket No. CML00909T :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 11, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed June 7, 2006, which set a shortened statutory period for reply of three (3) months. No petition for extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on September 8, 2006.

The petition has been carefully reviewed and found to have met the requirements of 37 CFR 1.137(b). Accordingly, the failure to timely reply to the final Office action is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU2841 for further processing.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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IRVINE, CA 92618

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OFFICE OF PETITIONS

In re Application of :
Chen, Ho-Tien :
Application No. 10/356,445 :
Filed: January 28, 2003 :
Attorney Docket No. UCIP338 :

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 23, 2004, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the non-final Office action mailed February 12, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on May 13, 2004. A Notice of Abandonment was mailed September 17, 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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DUCKOR SPRADLING METZGER
401 WEST A STREET, SUITE 2400
SAN DIEGO, CA 92101-7915

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MAY 16 2006

OFFICE OF PETITIONS

In re Application of	:	
Michael Hutchinson	:	
Application No. 10/356,452	:	DECISION ON PETITION
Filed: January 30, 2003	:	TO WITHDRAW
Attorney Docket No. 6541-102	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 24, 2005.

The request is **APPROVED**.

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

The request was signed by Bernard L. Kleinke on behalf of all attorneys/agents of record.

All attorneys/agents of record 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 named inventor; or (2) the assignee of the entire interest. All future communications from the Office will continue to be directed to the named inventor or the assignee of the entire interest at the below-listed address until otherwise properly notified by the applicants.

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

This application is being referred to Technology Center AU 1641 to await a reply to the final Office action mailed May 4, 2006.

David Bucci
Petitions Examiner
Office of Petitions

cc: BENEDICT ZIN, MIZUHO USA, INC.
12131 COMMUNITY ROAD
POWAY, CA 92064

MICHAEL HUTCHINSON
791 CALEY ROAD
KING OF PRUSSIA, PA 19406

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401 WEST A STREET, SUITE 2400
SAN DIEGO, CA 92101-7915

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OFFICE OF PETITIONS

In re Application of	:	
Benedict Zin et al	:	
Application No. 10/356,453	:	DECISION ON PETITION
Filed: January 30, 2003	:	TO WITHDRAW
Attorney Docket No. 6541-101	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 24, 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, the assignee company has not paid their account with our firm for services performed, do not appear to 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 Irvin Dingle at 571-272-3210.

David Bucci
Petitions Examiner
Office of Petitions

cc: Benedict Zin
Mizuho USA, Inc.
12131 Community Road
Poway, CA 92064

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OBLON, SPIVAK, MCCLELLAND, MAIER
& NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of	:	
Naohiro Hirose et al	:	
Application No. 10/356,464	:	ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. 251645US40DIV	:	

This is a decision on the petition, filed July 6, 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 June 12, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 3729 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions

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

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OLIFF & BERRIDGE
P.O. BOX 19928
ALEXANDRIA, VA 22320

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Yoshitaka Hayashi :
Application No. 10/356,478 :
Filed: February 3, 2003 :
Attorney Docket No. 114869 :

This is a decision on the petition under 37 CFR 1.313 (c)(2), filed May 16, 2005, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on March 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 Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 2837 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

www.uspto.gov

Date : May 17, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Yoshitaka Hayashi
Application No. : 10/356,478
Filed : February 3, 2003

The above-identified application has been assigned Patent No. 6,897,632 and an issue date of May 24, 2005.

It is hereby directed that this application be withdrawn from issue at the request of the applicant. Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of May 24, 2005:

"All reference to Patent No. 6,897,632 to Yoshitaka Hayashi of Oobu-shi, JAPAN for ROTATIONAL DIRECTION DETECTING APPARATUS FOR A THREE-PHASE BRUSHLESS DC MOTOR appearing in the Official Gazette of May 24, 2005 should be deleted since no patent was granted."

Wan Laymon

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

cc: Paul Harrison; Crystal Park 3, Suite 441 (FAX-703-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane Davis (CDS), CM1-6A07
Tamara K. Greene, PK3-910

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WADDEY & PATTERSON
414 UNION STREET, SUITE 2020
BANK OF AMERICA PLAZA
NASHVILLE, TN 37219

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APR 1 5 2004

OFFICE OF PETITIONS

In re Application of
Miceli et al.
Application No. 10/356,493
Filed: February 3, 2003
Attorney Docket No. N9493-ICW

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 2, 2004, to revive the above-identified application.

The petition is **granted.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed March 14, 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 15, 2003. A Notice of Abandonment was mailed on February 2, 2004.

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

Petitioner stated that an assignment accompanied the Power of Attorney submitted on April 2, 2004. However, after a review of the application file, an assignment cannot be found. Petitioner should resubmit the assignment to the USPTO.

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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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
1300 I STREET, NW
WASHINGTON DC 20005

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JUN 17 2004

OFFICE OF PETITIONS

Applicant: Yu
Appl. No.: 10/356,523
Filing Date: February 3, 2003
Title: COMPOSITIONS COMPRISING AT LEAST ONE SILICONE, AT LEAST ONE COMPOUND COMPRISING AT LEAST ONE ESTER GROUP, AND AT LEAST ONE COPOLYMER, AND METHODS FOR USING THE SAME
Attorney Docket No.: 5725.1172-00
Pub. No.: US 2003/0191244 A1
Pub. Date: October 9, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on December 9, 2003 for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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#4 S

April 16, 2004

Stuart B. Shapiro
EDELL, SHAPIRO & FINNAN, LLC
Suite 400
1901 Research Blvd.
Rockville, MD 20850

In re Application of:	:	
SHECHTER, *et al.*	:	DECISION ON PETITION TO MAKE SPECIAL
Application No. 10/356,532	:	
Filed: February 03, 2003	:	
Attorney Docket No. **0208.0105C**	:	

This is a decision on the petition under 37 C.F.R. §1.102(d), filed February 03, 2003, to make the above-identified application special.

The petition requests that the above-identified application be made special under the accelerated examination procedure set forth in the Manual of Patent Examining Procedure (M.P.E.P.), Section 708.02, Item II: Infringement.

A grantable petition under 37 C.F.R. ' 1.102(d), M.P.E.P. § 708.02, Section II, must be accompanied by the required fee pursuant to 37 C.F.R. ' 1.17(i) and a statement by the applicant, assignee, or an attorney/agent registered to practice before the Office alleging:

(A) That there is an infringing device or product actually on the market or method in use;

(B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(C) That he or she has good knowledge of the pertinent prior art.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petition satisfies the above-listed requirements for special status.

Accordingly, the petition is **granted**.

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

If the examiner can make this application special without prejudice to any possible interfering applications, and he/she should make a rigid search for such, he/she is authorized to do so for the next action. Should the application be rejected, the application will not be considered special for the subsequent action unless the applicant promptly makes a bona fide effort to place the application in condition for allowance, even if it is necessary to have an interview with the examiner to accomplish this purpose.

If the examiner finds any interfering application for the same subject matter, he/she should consider such application simultaneously with this application and should state in the official letter of such application that he/she is taking it out of its turn because of possible interference.

Should an appeal be taken in this application or should this application becomes involved in an interference, consideration of the appeal and the interference will be expedited by all Patent and Trademark Office officials concerned, contingent likewise upon diligent prosecution by the applicant.

After allowance, this application will be given priority for printing. See M.P.E.P. § 1309.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

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

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MAR 2 5 2009
OFFICE OF PETITIONS

In re Patent No. 6,908,307	:	
Issue Date: June 21, 2005	:	
Application No. 10/356,572	:	NOTICE
Filed: February 3, 2003	:	
Patentee(s): David B. Schick	:	

This is a Notice regarding your request filed on February 21, 2009, which is being treated as a request under 37 CFR 1.28(c) for acceptance of a fee deficiency submission.

The request is **dismissed**.

It is noted that the request to change entity status and fee deficiency is signed by Peter Sommer, as a Patent Attorney. However, since no registration number is present on the request, it is unclear whether the attorney is registered to practice before the United States Patent and Trademark Office. Therefore, the request cannot be accepted at this time.

Petitioner is reminded that the request 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.

If the request is signed on behalf of the assignee, 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 Statement under 37 CFR 3.73(b) is enclosed for petitioner's convenience.

A courtesy copy of this decision is being mailed to the address given on the petition. However, if petitioner desires to receive future correspondence regarding maintenance fees for the above patent, the appropriate power of attorney or authorization of agent and a "Fee Address Indication" and/or "Request for Customer Number" forms must be submitted (See USPTO forms PTO/SB/47 and PTO/SB/125). All future correspondence will be mailed solely to the address of record until otherwise instructed.

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

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office 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.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Enclosure: Privacy Act Statement
Blank Statement under 37 CFR 3.73(b)

cc: Peter Sommer/Christine Prell-Bscheid
European Patent Annuity Service
z. Hd. Frau Prell
Barer StraBe 62
80799 Munchen

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

March 1, 2005

Gavin N. Manning
Oyen Wiggs Green & Mutala
#480 – The Station
601 West Cordova St.
Vancouver, B.C.
Canada V6B 1G 1

In re Application of:
Cummings, Calvin D.
Serial No: 10/356,574 On Petition
Filing Date: February 3, 2003
For: PRINTING PLATE REGISTRATION AND IMAGING

In response to the petitions received by fax on June 11, 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 11, 2003. Which set forth a shortened statutory period for reply of two months. Accordingly, the above-identified application became abandoned June 12, 2003. The notice of abandonment was mailed on May 26, 2004.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Parts of Nonprovisional Application Papers on June 9, 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 Day

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

OIPE JC19
NOV 29 2004
PATENT & TRADEMARK OFFICE

JACK PAAVILA
PATENT AGENT

BOX 1151
ALEXANDRIA, ONTARIO
K0C 1A0

T.613-525-1399
F.613-525-4805

FILE COPY

PETITION TO MAKE SPECIAL
UNDER 37 CFR 1.102 AND MPEP 708.02 (VIII)

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

Nov. 23, 2004

Atty. Dock. 236-3US

SUBJECT: Appl. Ser. No.: 10/356,612
Art Unit: 1744 Graham, G
Filing Date: 02/03/2003
Examiner: Not Known
Title: Toothbrush With Stand
Confirmation No. 3569

11/30/2004 HDEMESS1 00000124 10356612
01 FC:1464 130.00 OP

Sir:

Applicant requests that this application, as amended by applicant's amendment letter dated Nov. 5, be granted accelerated examination under 37 CFR 1.102. A copy of the amendment letter of Nov. 5 is enclosed.

More specifically applicant, under MPEP 708.2 (VIII):

A) submits this written petition to make the application special along with a money order for $130.00 to cover the cost of the petition fee;

B) presents all claims in the application to be directed toward one invention;

C) submits in this letter statements that a pre-examination search was made in the US Patent Office and that a preliminary patentability search was also made by the PCT European Patent Office;

D) submits one copy of each of the references deemed most closely related to the subject matter encompassed by the claims; and

E) discusses how the claimed subject matter is distinguishable over the references most closely related.

In more detail:

With respect to paragraph A) a payment by Credit Card Payment Form PTO-2038 is enclosed to pay the petition fee of $130.00.

With respect to paragraph B), the application has a single

BEST AVAILABLE COPY

fee paid 11-30-04

PETITION GRANTED
Richard Crispino
Special Program Examiner
TC 1700 FEB 28 2005

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HUMAN GENOME SCIENCES INC
INTELLECTUAL PROPERTY DEPT.
14200 SHADY GROVE ROAD
ROCKVILLE MD 20850

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MAR 16 2004

OFFICE OF PETITIONS

Applicant: Le et al.
Appl. No.: 10/356,619
Filing Date: February 3, 2003
Title: IMMUNE CELL CYTOKINE
Attorney Docket No.: PF229D2
Pub. No.: US 2003/0143227 A1
Pub. Date: July 31, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on September 26, 2003 for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

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DIW 06-03

Paper No. 4

JOSEPH T. GUY PH.D.
NEXSEN PRUET JACOBS & POLLARD LLP
201 W. MCBEE AVENUE
GREENVILLE SC 29603

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JUL 0 1 2003

OFFICE OF PETITIONS

In re Application of	:	
Struye et al.	:	
Application No. 10/356,621	:	DECISION GRANTING
Filed: 20 November, 2002	:	PETITION
Attorney Docket No. 27500-129	:	

This is a decision on the petition filed on 8 May, 2003, under 37 CFR 1.10(c) requesting that the above-identified application be accorded a filing date of 20 November, 2002, rather than the presently accorded filing date of 31 January, 2003.

Petitioner alleges that the application was deposited in Express Mail service on 20 November, 2002. In support, on 8 May, 2003, petitioner supplied a copy of a USPS Express Mail Post Office to Addressee label bearing Express Mail label No. EV153115507US (the same Express Mail number found on the itemized transmittal sheet accompanying the original application papers located in the official file) and a "date-in" of 11/20/02.

In view of the above, the petition is granted. No petition fee is due and none has been charged.

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to 20 November, 2002, and for issuance of a corrected filing receipt.

Thereafter, the application will be forwarded to Technology Center 2800 for examination in due course.

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

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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 8910
Reston VA 20195

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OFFICE OF PETITIONS

In re Application of Li et. al. :
Application No. 10/356,622 :
Filing Date: February 3, 2003 :
Attorney Docket No. 29250-000829/US :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed March 8, 2010, to revive the application.

The petition is **granted**.

The application became abandoned for failure to timely pay the issue and publication fees on or before February 8, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed November 6, 2009, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on February 9, 2010. A Notice of Abandonment was issued on February 26, 2010.

The instant petition requests revival of the application.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed,
(2) The petition fee,
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

As to item (1), petitioner has filed the fees required in the notice of allowance and fee(s) due.

As to item (2), petitioner has paid the petition fee of $1620.

As to item (3), petitioner has stated 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 has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

The Office of Data Management will be informed of the instant decision and the application will be further processed in due course.

Telephone inquiries regarding this communication should be directed to Steven Brantley at (571)272-3203 or in his absence to Amy Gandhi at (571) 272-6699.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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DAVID B. RITCHIE
THELEN REID & PRIEST
P.O. BOX 640640
SAN JOSE, CA 95164-0640

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SEP 1 0 2004

OFFICE OF PETITIONS

In re Application of :
John D. Hyde et al :
Application No. 10/356,645 :
Filed: January 31, 2003 :
Attorney Docket No. IMPJ-0018 :

NOTICE

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

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

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

Inquiries related to this communication should be directed to the undersigned at (703) 305-8859.

This file is being referred to Technology Center AU 2811

Karen Creasy

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

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Wong Cabello Lutsch Rutherford &
Brucculeri LLP
20333 Tomball Parkway, 6th Floor
Houston TX 77070

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AUG 3 1 2009

OFFICE OF PETITIONS

In re Application :
Lalsangi, et al. :
Application No. 10/356,654 : PATENT TERM ADJUSTMENT
Filed: January 31, 2003 :
Dkt. No.: 112-0099US :

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed June 23, 2009. Applicants submit that the correct patent term adjustment to be indicated on the patent is 1,337 days, not 917 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent and also on the basis that the two day reduction pursuant to 37 CFR 1.704(b) is improper.

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].

Applicants further contest the reduction of two days in connection with the reply filed January 8, 2007. Applicants argue that the due date for reply to the October 6, 2006 non-final Office action fell on Saturday, January 6, 2007. Applicants thus contend that the due date for reply was thus Monday, January 8, 2007, the date that the reply was submitted. Applicants cite 37 CFR 1.7(a) in support of this argument.

Applicants arguments have been carefully considered, but are not found convincing. In accordance with 37 CFR 1.702(f), the actual date of receipt of a reply is the date that controls for the purpose of patent term adjustment determination. See, also, MPEP 2731.

In view thereof, as of the time of allowance, the application is entitled to an adjustment of 917 days.

The patent term adjustment application fee of $200.00 is hereby acknowledged. See, 37 CFR 1.18(e).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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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.

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Wong Cabello Lutsch Rutherford & Brucculeri LLP
20333 Tomball Parkway, 6th Floor
Houston, TX 77070

Mail Date: 04/21/2010

Applicant	: Nagaraj Lalsangi	: DECISION ON REQUEST FOR
Patent Number	: 7600035	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/356,654	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/31/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2013** 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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PROSKAUER ROSE LLP
PATENT DEPARTMENT
1585 BROADWAY
NEW YORK, NY 10036-8299

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DEC 22 2005

OFFICE OF PETITIONS

In re Application of	:
Joseph D. Lipman et al	:
Application No. 10/356,657	: DECISION ON PETITION
Filed: January 31, 2003	: UNDER 37 CFR 1.181
Attorney Docket No. 38075-077	:

This is a decision on the petition filed June 21, 2005, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **dismissed**.

Any request for reconsideration should be filed within two (2) months from the mailing date of this decision. *Note* 37 CFR 1.181(f).

This application was held abandoned for failure to timely pay the issue and publication fees on or before April 18, 2005, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed January 18, 2005. A Notice of Abandonment was mailed on May 25, 2005.

Petitioner asserts that failure to timely reply was due to nonreceipt of the Notice of January 18, 2005.

The Office follows the guidelines set forth in MPEP § 711.03(c) (see also "Withdrawing the Holding of Abandonment When Notices Are Not Received," 1156 *Official Gazette* 53 (November 16, 1993), which sets forth that, in the absence of any irregularity in the mailing of the Notice, there is a strong presumption that the Notice was properly mailed to practitioner at the address of record.

A review of the written record indicates no irregularity in the mailing of the Notice and is presumed to have been properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received.

In this regard, the showing required to establish the failure to receive the Notice must consist of a statement from petitioner stating that the Notice was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received. **A copy of the docket record where the nonreceived Notice would have been entered had it been received must be attached to and referenced in petitioner's statement.**

Petitioner attests to the fact that he has "personally searched the **file jacket** of the above-identified application, where all correspondence from the Patent Office in the above-identified application is filed, and that the file jacket did not contain a Notice of Allowance." In support of nonreceipt of the Notice of January 18, 2004, petitioner has submitted a copy of the docket record where the nonreceived Notice would have been entered had it been received, which is a printout of the firm's PATTSY database of all the firm's items that were docketed for April 18, 2005, the due date for reply.

While petitioner has submitted a copy of the firm's database showing receipt of all items docketed for April 18, 2005, the showing is incomplete in that petitioner has not submitted a copy of the referenced file jacket which should show entries of all actions from the USPTO. The evidence required to establish nonreceipt should include a copy of **all** records maintained by the firm which would corroborate nonreceipt of the action at issue.

For the reasons stated above, the petition to withdraw the holding of abandonment cannot be granted at this time.

If petitioner cannot provide evidence of the nature required above or simply does not wish to, petitioner may wish to consider filing a petition under the unintentional provisions of 37 CFR 1.137(b). Public Law 97-247, which revised patent and trademark fees, provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." See 37 CFR 1.137(b) in effect as of December 1, 1997. *Note Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131 (October 10, 1997), 1203 Off. Gaz. Patent Office 63 (October 21, 1997).* An "unintentional" petition must be accompanied by the required petition fee.

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

A copy of the Notices mailed January 18, 2005 accompanies this decision.

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

ATTACHMENT: Copy of Notices mailed January 18, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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MAY 17 2006

OFFICE OF PETITIONS

In re Application of	:	
Joseph D. Lipman et al	:	
Application No. 10/356,657	:	DECISION ON PETITION
Filed: January 31, 2003	:	
Attorney Docket No. 38075-077	:	

This is a decision on the renewed petition under 37 CFR 1.181 (no fee), filed January 13, 2006, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before April 18, 2005, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed January 18, 2005. A Notice of Abandonment was mailed on May 25, 2005.

The showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from practitioner stating that the Notice was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and
3. a copy of the docket record where the nonreceived Notice would have been entered had it been received must be attached to and referenced in the practitioner'statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993). The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

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

This application is being referred to the Technology Center AU 3732 technical support staff for **re-mailing** the Notice of Allowability and the Notice of Allowance and Fee(s) Due of January 18, 2005. The period for paying the issue and publication fees will be reset to expire three (3) months from the date the Notices are re-mailed. Petitioner is reminded that this period is not extendable under the provisions of 37 CFR 1.136.

Frances Hicks
Petitions Examiner
Office of Petitions

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Wong Cabello Lutsch Rutherford & Brucculeri LLP
20333 Tomball Parkway, 6th Floor
Houston, TX 77070

Mail Date: 04/21/2010

Applicant	: Naveen S. Maveli	: DECISION ON REQUEST FOR
Patent Number	: 7606239	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/356,659	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/31/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2029** 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. 11

RITTER, LANG & KAPLAN
12930 SARATOGA AE. SUITE D1
SARATOGA CA 95070

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MAY 0 4 2004

OFFICE OF PETITIONS

In re Application of
Arun Kumar Gupta
Application No. 10/356,662
Filed: January 31, 2003
Attorney Docket Number: RATLP018C1

Title of Invention: METHOD FOR CONTROLLING ACCESS TO INFORMATION

DECISION REFUSING STATUS UNDER 37 C.F.R. §1.47(b)

This is in response to the petition under 37 C.F.R. §1.47(b), filed March 15, 2004, certificate of mailing March 11, 2004.

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 31, 2003, with the executed declaration from application 09/434,895 , and naming Arun Kumar Gupta as the sole inventor. However Examiner Robinson indicated in the September 11, 2003 Office Action that a new declaration was required because the original declaration contained non-initialed and/or non-dated alterations to the declaration.

A grantable petition under 37 C.F.R. §1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; (2) an acceptable oath or declaration; (3) the petition fee; (4) a statement of last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is necessary to preserve the rights of parties or to prevent irreparable damage. Rule 47 applicant has failed to provide item (2).

As to item (2), applicant failed to submit an executed oath or declaration with the petition. In addition to including the non-signing inventor's information, the granting of 47 status requires a rule 47 (b) applicant to make the oath required by 37 CFR §1.63

and §1.64. Where applicant is a corporation, an officer of the corporation normally is required to sign the oath or declaration. The declaration must state the full name, residence, post office address, and citizenship of the non-signing inventor. The title or position of the person signing must also be stated if signing on behalf of a corporation under 37 CFR §1.47(b). See MPEP 409.03(b).

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

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(703) 872-9306
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office 2011 South Clark Place Customer Window, Mail Stop Petition Crystal Plaza Two, Lobby, Room 1B03 Arlington, VA 22202

Telephone inquiries regarding this decision should 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
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Paper No. 14

RITTER, LANG & KAPLAN
12930 SARATOGA AE. SUITE D1
SARATOGA CA 95070

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JUL 1 5 2004

OFFICE OF PETITIONS

In re Application of
Arun Kumar Gupta
Application No. 10/356,662
Filed: January 31, 2003
Attorney Docket Number: RATLP018C1
Title: METHOD FOR CONTROLLING ACCESS TO INFORMATION

DECISION ON PETITION

This is in response to the renewed petition under 37 C.F.R. §1.47(b), filed July 6, 2004 certificate of mailing July 1, 2004. This petition is properly treated as a § 1.183 waiver of the requirement that all of the inventors sign the supplemental declaration.[1]

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 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 31, 2003, with the executed declaration from application 09/434,895 , and naming Arun Kumar Gupta as the sole inventor. However Examiner Robinson indicated in the September 11, 2003 Office Action that a new declaration was required because the original declaration contained non-initialed and/or non-dated alterations to the declaration.

Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather the remedy for treating an inventor's refusal to sign a supplemental declaration is waiver of 37 CFR 1.67. See MPEP 603. Nevertheless, it is appropriate to apply the principles of 37 CFR 1.47 thereof to the situation at hand.

---

[1] 37 CFR 1.47 only applies when an inventor refuses to sign the original 37 CFR 1.63 oath or declaration.

All available joint inventor(s) must sign the supplemental declaration on behalf of themselves, if appropriate and on behalf of the non-signing inventor. See MPEP 409.03(b)

Although petitioner has submitted a declaration which has been executed by C. Steven Kurlowecz, IP attorney, the declaration does not also contain the non-signing inventor's signature block (name, citizenship, address). The supplemental declaration must contain the signature block for non-signing inventor as well as a signature block which has been executed by the person executing on behalf of the non-signing inventor and the corporate applicant.

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

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(703) 872-9306
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office 2011 South Clark Place Customer Window, Mail Stop Petition Crystal Plaza Two, Lobby, Room 1B03 Arlington, VA 22202

Telephone inquiries regarding this decision should 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

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Paper No. 18

RITTER, LANG & KAPLAN
12930 SARATOGA AE. SUITE D1
SARATOGA CA 95070

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OCT 29 2004

OFFICE OF PETITIONS

In re Application of
Arun Kumar Gupta
Application No. 10/356,662
Filed: January 31, 2003
Attorney Docket No. RATP018C1
Title of Invention: METHOD FOR CONTROLLING ACCESS TO INFORMATION

DECISION ON PETITION

This is in response to the renewed petition under 37 C.F.R. §1.47(a), filed September 7, 2004. This petition is properly treated as a § 1.183 waiver of the requirement that all of the inventors sign the supplemental declaration.[1]

The petition is **Granted**.

The above-identified application was filed on March 15, 2000, with the executed declaration. However the Notice of Allowability required applicant to submit a supplemental declaration to correct deficiences noted.

Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather the remedy for treating an inventor's refusal to sign a supplemental declaration is waiver of 37 CFR 1.67. See MPEP 603. Nevertheless, it is appropriate to apply the principles of 37 CFR 1.47 thereof to the situation at hand. All available joint inventor(s) must sign the supplemental declaration on behalf of themselves, if appropriate and on behalf of the non-signing inventor. See MPEP 409.03(a).

In order for a petition under 37 CFR 1.183 to be granted to waive this requirement that joint inventor Gupta sign the supplemental declaration, petitioner must demonstrate that

[1] 37 CFR 1.47 only applies when an inventor refuses to sign the original 37 CFR 1.63 oath or declaration.

this is an extraordinary situation where justice requires waiver of the rules.

On petition, applicants have set forth the steps taken to obtain sole inventor Gupta's signature on the supplemental declaration. Applicants have shown that a *bona fide* effort was made to present the supplemental declaration and supporting documentation to inventor Gupta for signature and that by his conduct, inventor Gupta has refused to execute the declaration. The declaration presented is signed by attorney Kurlowecz on behalf of the assignee. Under the circumstances, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules.

This application does not have any Rule 1.47(a) status and no such status should appear on the file wrapper.

The revocation and appointment of new power of attorney submitted with the instant petition will not be entered because it is not signed by an attorney or agent of record. A person acting in a representative capacity may not sign a power of attorney or a document granting access to an application. See MPEP 402.

This application is being forwarded to the Technology Center 2100 for further processing.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: Mary Lou Wakimura
Hamilton Brook Smith and Reynolds
530 Virginia Road
P.O. Box 9133
Concord, Massachusetts 01742-9133

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Paper No. 8

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IRVINE, CA 92614

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SEP 16 2004

OFFICE OF PETITIONS

In re Application of :
Evgenia Matveeva et al :
Application No. 10/356,666 : ON PETITION
Filed: January 30, 2003 :
Attorney Docket No. NAGACO.022.CP1 :

This is a decision on the petition under 37 CFR 1.137(b), filed September 2, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed April 9, 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 10, 2003.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.[1]

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

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

[1] Effective September 27, 2004, the phone number will be 571-272-3220.

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GAMBURD LAW GROUP LLC
600 WEST JACKSON BLVD.
SUITE 625
CHICAGO, IL 60661

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OFFICE OF PETITIONS

In re Application of

Frank Motta :

Application No. 10/356,671

: DECISION ON PETITION

Filed: January 31, 2003

:

Attorney Docket No. 021202-002800US

This is a decision on the petition under 37 CFR 1.137(b), filed, September 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 January 14, 2005, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on April 15, 2006.

The amendment and drawings filed September 24, 2006, is noted.

The application is being forwarded to Technology Center 2100, GAU 2186 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2/21/07

TO SPE OF : ART UNIT 2136

SUBJECT : Request for Certificate of Correction on Patent No.: 7111171

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:

NASSER MOAZZAMI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE

2136
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P.O. BOX 458
ALAMEDA CA 94501

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NOV 1 9 2003

OFFICE OF PETITIONS

In re Application of
Neil J. Lewis et al
Application No. 10/356,707
Filed: January 30, 2003
Attorney Docket No. 501-000910US

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed August 26, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of prior-filed provisional Application No. 60/354,064, filed January 30, 2002.

The petition is **Granted**.

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

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

(2) a statement that the entire delay between the date the claim was due lunder 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional; and

(3) the reference to the prior-filed provisional application supplied in an application data sheet (ADS)(37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. *See* 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5)(iii). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on January 30, 2003, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/354,064, which was filed on January 30, 2002, for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. *See* 35 U.S.C. §119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/354,064 is granted.

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

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

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

The examiner of Technology Center AU 2661 will consider the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/354,064, filed January 30, 2002.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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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QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA, CA 94501

Mail Date: 06/03/2010

Applicant	: Neil Jason Lewis	: DECISION ON REQUEST FOR
Patent Number	: 7639693	: RECALCULATION of PATENT
Issue Date	: 12/29/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/356,707	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/30/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1939** 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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BARRY E. BRETSCHNEIDER
MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

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JAN 15 2004

OFFICE OF PETITIONS

In re Application of
Arnold Keller et al
Application No. 10/356,711
Filed: February 3, 2003
Attorney Docket No. 246472003800

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

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

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

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the Customer Window located at:

2011 South Clark Place
Crystal Plaza Two, Lobby
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306.**

This file is being forwarded to Technology Center AU 3732.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1-30-07

TO SPE OF : ART UNIT 2621

SUBJECT : Request for Certificate of Correction on Patent No.: 7126992 B2 / 10/356719

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.

Priority Data (filing date) Thanks

Eva James

Thank You For Your Assistance

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

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

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

Comments:

_____

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SPE _____ Art Unit _____

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CHICAGO, IL 60606-1080

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APR 0 5 2005

OFFICE OF PETITIONS

In re Application of	:	
Jabbari et al.	:	
Application No. 10/356,734	:	DECISION ON PETITION
Filed: January 31, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 70025290.0015	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 24, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/919,607, filed July 31, 2002, as set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

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

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

The instant petition does not comply with item (1) above.

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

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the

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

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

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

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

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Window located at: U.S. Patent and Trademark Office Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(703) 872-9306 ATTN: Office of Petitions

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

Frances Hicks

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

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[1] *Note* 37 CFR 1.121

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CHICAGO, IL 60606-1080

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JUN 0 3 2005

OFFICE OF PETITIONS

In re Application of	:	
Jabbari et al.	:	
Application No. 10/356,734	:	DECISION GRANTING PETITION
Filed: January 31, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 70025290.0015	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed May 10, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/919,607, filed July 31, 2001, as set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

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

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 36 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

A second petition fee was submitted with the renewed petition on May 10, 2005, which is not required. Accordingly, $1370.00 will be credited to petitioner's credit card.

Any inquiries concerning this decision may be directed to Paralegal Liana Chase at (571) 272-3282.

This matter is being referred to the Publishing Division to await a response to the Notice of Allowance mailed April 21, 2005.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 6

HSI-YUAN SHAWN CHEN
58, MA YUAN WEST ST.
TAICHUNG TAIWAN

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APR 21 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of
Hsi-Yuan Shawn Chen
Application No.10/356,761
Filed: January 29, 2003
Attorney Docket Number: PUSA030116
Title of Invention: BRAKING DEVICE FOR AN EXERCISING CYCLE

This is a decision on the petition filed March 30, 2004, under 37 CFR 1.137(b) to revive the above-identified application.

This application became abandoned for failure to timely submit the issue and publication fees , as required by the Notice of Allowance and Fee (s) Due which was mailed October 23, 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 24, 2004. A Notice of Abandonment was mailed February 23, 2004.

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

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

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Spark Technology Corporation
185 Martinvale Lane
San Jose, CA 95119

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MAY 3 1 2007

OFFICE OF PETITIONS

In re Application of Jensen et al. Application No.: 10/356769 Filing or 371(c) Date: 02/03/2003 Title of Invention: METHOD AND APPARATUS FOR REMOTELY SELECTING THE MOST ECONOMICAL COMMUNICATIONS TRANSMISSION MEDIUM BY SELECTING FROM AMONG DIFFERENT MEDIUMS AND A PLURALITY OF SIMULATANEOUSLY OPERABLE COMMUNICATION DEVICES SHARING STANDARD TELEPHONE RESIDENTIAL WIRING	DECISION ON PETITION

This is a decision in response to the Petition for Revival of Application Abandoned Unintentionally Under 37 CFR 1.137(b), filed February 13, 2007. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely reply to the final office action, mailed July 15, 2005. The Office action set a three (3) period for reply. Extensions of time under 37 CFR 1.136(a) were available. Applicant filed an Amendment in response to the Office action on January 17, 2006, 2006; however, the amendments failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action mailed April 6, 2006. No complete and proper reply having been received, the application became abandoned on October 16, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

Applicant files the instant petition and RCE, and submission in the form of an amendment. Accordingly, the petition is granted.

This application is being referred to Technology Center Art Unit 2614 for continued processing in due course.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 6

DONALD J. BREH
GROUP TECHNOLOGY COUNSEL
ILLINOIS TOOL WORKS INC.
3600 WEST LAKE AVENUE
GLENVIEW, IL 60025-5811

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JUN 1 5 2004
OFFICE OF PETITIONS

In re Application of
Heerdt et al.
Application No. 10/356,771
Filed: February 1, 2003
Attorney Docket No. 13773-61

ON PETITION

This decision concerns the February 20, 2004 petition under 37 CFR 1.137(b) to revive the above-referenced application.

The petition is **GRANTED.**

The application became abandoned on June 26, 2003 for failure to timely submit replacement drawings as required by the April 25, 2003 Notice to File Corrected Application Papers.

The instant petition encloses the $1,330 petition fee, a set of replacement drawings which have been approved by the draftsperson, and a statement that the entire delay in filing the requested drawings was unintentional. The petition is thus granted.

The application is now complete.

The file is being forwarded to Technology Center 2800 for examination in due course.

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

RC Tang
Petitions Attorney
Office of Petitions

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HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
P.O. BOX 272400
FORT COLLINS CO 80527-2400

Paper No. 6
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DEC 2 2 2003

OFFICE OF PETITIONS

In re Application of
Rodriguez et al
Application No. 10/356,774
Filed: January 31, 2003
Attorney Docket No. 10019814-1

: DECISION GRANTING FILING
: DATE OF JANUARY 31, 2003

This is a decision on the petition filed November 25, 2003, under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of January 31, 2003, rather than the presently accorded date of January 31, 2002.

Petitioners allege that the application was deposited in Express Mail service on January 31, 2003. In support, the petition is accompanied by a copy of Express Mail receipt No. ET561929654US (the same Express Mail receipt number appears on the original "Utility Patent Application Transmittal") showing a "date in" of January 31, 2003. Additionally, the other available evidence, the letter from the USPS confirms that the above item was delivered on February 3, 2003 at 10:40 a.m. in Washington, DC to V register.

In view of the evidence in the file, it is concluded that the application was deposited in Express Mail service on January 31, 2003. Accordingly, the instant application is entitled to a filing date of January 31, 2003 and has been so accorded. A filing receipt with the corrected filing date will be mailed in due course.

The petition is **granted**.

Telephone inquiries specific to this decision on petition should be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to the Office of Initial Patent Examination for processing with a filing date of January 31, 2003. Afterwards, the application will be forwarded to Publishing Division.

Christina Tarrea Donnell for
Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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1860 Eastman Avenue
Ventura CA 93003

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JUN 06 2007

OFFICE OF PETITIONS

In re Application of	:	
Ashot Salvaryan	:	
Application No. 10/356798	:	DECISION
Filing or 371(c) Date: 02/03/2003	:	ON PETITION
Title of Invention:	:	
GEARBOX FOR COLD METAL CUTTING	:	
MACHINE	:	

This is a decision on the "Petition to Revive Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a), filed July 10, 2006. The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "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 Notice of Allowance and Issue Fee Due, mailed June 29, 2005. The Notice set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on September 30, 2005. A Notice of Abandonment was mailed November 3, 2005.

The present petition

Applicant files the instant petition and asserts that the payment of the issue fee was unavoidable because of extreme financial hardship over the time period involved. Applicant states that for the past five years he has been involved in his enterprise of developing and marketing his inventions, including the above-identified patent. Applicant's Declaration at p.1. Applicant states that his life savings of about $100,000 was consumed. In November 2005 Applicant says that he had to give up the security and steady income to devote full time to his enterprise. Id. Applicant states that it has not reached a milestone of 14 machines sold, helping him to pay off

some heavily accumulated debt. Id. Applicant states that during the during the period of time and continuing up to the present he has been continually financially stressed and unable to raise funds to get the patent issued. Id. At p.2.

Applicant's assertions are supported by those of his patent agent. The patent agent states that at the time of allowance of the subject application, Applicant's patent account was delinquent $4020 and has since increased to $5170 due to credit advances for ongoing prosecution of Applicant's other patent application. Declaration of Agent at p.1. The patent agent states that he has accepted the risk of financing the total cost of reviving subject application and bringing the patent to issue. Id. at p.2.

A Grantable Petition Under 37 CFR 1.137(a)

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (**1**) the required reply (unless previously filed), which may met by the filing of a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (**2**) the petition fee as set forth in 37 CFR 1.17(l); (**3**) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (**4**) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Applicant lacks item (**3**) as set forth above.

Applicable Law, Rules and MPEP

As to item (**3**), Applicant must 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 it is noted that the period that must be accounted for is "the due date for the reply until the filing of a grantable petition". In this instance, the period of delay that petitioner must account for begins with the due date for the reply, September 29, 2005, and runs until the filing of a grantable petition. Petitioner asserts financial inability as the cause of unavoidable delay, however, Petitioner has not provided any evidence outside of his own declaration and that of his patent agent to demonstrate his financial status during the period of delay. A showing of "unavoidable" delay based upon financial difficulty must establish that the responsible party (i.e., an individual or the company) lacked the financial resources to pay the issue fee for the above-identified application in a timely manner. To establish that the responsible party did not have the financial resources to pay the issue fee during the relevant period, petitioner should provide a month by month accounting of the responsible party's income, profits, credits, and asserts, as well as monthly obligations, expenses and bills (such as rent, mortgage, insurance, medical costs, utilities, etc.). Petitioner should also explain how much disposable income or profits the responsible party had on a monthly basis, which could have been used to pay the issue fee in a timely manner. The petitioner must provide the Office with copies of any documents that could confirm the responsible party's financial difficulty during the entire period from September 29, 2005, until the date of the filing of a grantable petition.

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.

Alternate venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required 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 revive under 37 CFR 1.137(b).

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 matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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J. E. MCTAGGART
SUITE 105
1860 EASTMAN AVENUE
VENTURA, CA 93003

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OFFICE OF PETITIONS

In re Application of
Ashot Salvaryan
Application No. 10/356,798
Filed: February 3, 2003
Attorney Docket No. 1407

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 24, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before September 29, 2005, as required by the Notice of Allowance and Fee(s) Due, mailed June 29, 2005. Accordingly, the date of abandonment of this application is September 30, 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 $700, (2) the petition fee of $750; and (3) a proper statement of unintentional delay.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

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

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: J. E. MCTAGGART
6650 CRESCENT STREET
SUITE 4
VENTURA, CA 93003

DEC 06 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/356,810	02/03/2003	Timothy A. Simpson	65,263-0001	5614

26127 7590 10/21/2004

DYKEMA GOSSETT PLLC
39577 WOODWARD AVENUE
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BLOOMFIELD HILLS, MI 48304-5086

EXAMINER
PASSANITI, SEBASTIANO

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 10/21/2004

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 131 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 131 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

PTOL-85 (Rev. 09/04) Approved for use through 04/30/2007.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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OCT 25 2004
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NOTICE OF ALLOWANCE AND FEE(S) DUE

26127 7590 10/21/2004

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BLOOMFIELD HILLS, MI 48304-5086

EXAMINER
PASSANITI, SEBASTIANO

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 10/21/2004

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/356,810	02/03/2003	Timothy A. Simpson	65,263-0001	5614

TITLE OF INVENTION: PRACTICE GOLF CLUB AND TARGET APPARATUS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	$685	$300	$985	01/21/2005

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PTOL-85 (Rev. 09/04) Approved for use through 04/30/2007.

OIPE JC
DEC 06 2004
PATENT & TRADEMARK OFFICE

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/356,810	02/03/2003	Timothy A. Simpson	65,263-0001	5614

26127 7590 10/21/2004
DYKEMA GOSSETT PLLC
39577 WOODWARD AVENUE
SUITE 300
BLOOMFIELD HILLS, MI 48304-5086

EXAMINER
PASSANITI, SEBASTIANO

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 10/21/2004

Notice of Fee Increase on October 1, 2004

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2004, then the amount due will be higher than that set forth in the "Notice of Allowance and Fee(s) Due" because some fees will increase effective October 1, 2004. See Revision of Patent Fees for Fiscal Year 2005; Final Rule, 69 Fed. Reg. 52604, 52606 (May 10, 2004).

The current fee schedule is accessible from WEB site (http://www.uspto.gov/main/howtofees.htm).

If the fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due" but not the correct amount in view of the fee increase, a "Notice of Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice of Pay Balance of Issue Fee," if the response to the Notice of Allowance is to be filed on or after October 1, 2004 (or mailed with a certificate of mailing on or after October 1, 2004), the issue fee paid should be the fee that is required at the time the fee is paid. See Manual of Patent Examining Procedure (MPEP), Section 1306 (Eighth Edition, Rev. 2, May 2004). If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously-paid issue fee should be paid. See MPEP Section 1308.01.

Effective October 1, 2004, 37 CFR 1.18 is amended by revising paragraphs (a) through (c) to read as set forth below.

Section 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
By a small entity (Sec. 1.27(a))..... $685.00
By other than a small entity..... $1,370.00
(b) Issue fee for issuing a design patent:
By a small entity (Sec. 1.27(a))..... $245.00
By other than a small entity..... $490.00
(c) Issue fee for issuing a plant patent:
By a small entity (Sec. 1.27(a))..... $330.00
By other than a small entity..... $660.00

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

PTOL-85 (Rev. 09/04) Approved for use through 04/30/2007.

OIPE JC04
DEC 06 2004
PATENT & TRADEMARK OFFICE

Notice of Allowability	Application No.	Applicant(s)	
	10/356,810	SIMPSON, TIMOTHY A.	
	Examiner	Art Unit	
	Sebastiano Passaniti	3711	

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

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *09/15/2004*.

2. ☒ The allowed claim(s) is/are *1-30*.

3. ☒ The drawings filed on *19 May 2003* are accepted by the Examiner.

4. ☐ 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 the:
      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)).

   * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
   (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
   (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

   Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____ .
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

S. Passaniti

Sebastiano Passaniti
Primary Examiner
Art Unit: 3711

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BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
ATTN: IP DEPARTMENT DOCKET CLERK
2300 BP TOWER, 200 PUBLIC SQUARE
CLEVELAND OH 44114

COPY MAILED
MAY 0 2 2006
OFFICE OF PETITIONS

In re Application of	:	
Vince et al	:	
Application No. 10/356,812	:	ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. 26336-65	:	

This is a decision on the petition, filed April 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 March 24, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 3737 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions

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

SPE R. Rada

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/356,818

Paper No.: _____

DATE : 6/20/05

TO SPE OF : ART UNIT 3721

SUBJECT : Request for Certificate of Correction on Patent No.: 6871478

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.

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

Comments:

Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700

SPE **Art Unit**

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GENENTECH, INC.
1 DNA WAY
SOUTH SAN FRANCISCO CA 94080

COPY MAILED

OCT 0 9 2003

OFFICE OF PETITIONS

Applicant: Hellmann et al.
Appl. No.: 10/356,824
Filing Date: February 3, 2003
Title: TREATMENT WITH ANTI-ERBB2 ANTIBODIES
Attorney Docket No.: P1256R1D1
Pub. No.: US 2003/0147884 A1
Pub. Date: August 7, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), which was received via facsimile transmission on September 25, 2003, for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

The application is being forwarded to the Office of PreGrant Publication (PG-PUB) in Crystal Park 3-905 for further processing.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

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SEP 13 2006

In re PATENT APPLICATION of:
GAIL M. GETZWILLER
Application No. 10/356,828
Filed: February 3, 2003
For: Exercise Mitt
Attorney Docket No. 6037.102US

DECISION ON PETITION

This is a decision on the petition filed on June 2, 2006 by which Petitioner requests reconsideration and withdrawal of the election of species requirement rendered in the non-final Office action dated March 27, 2006, and that a new Office action be required to include the examination of withdrawn claims 18-22. Although the requirement has not been made final as required by 37 CFR 1.144, this petition is considered as if pursuant to 37 CFR 1.144 and 37 CFR 1.181, and no fee is required.

The petition is granted.

A review of the record reveals that the disclosed invention basically includes two species of an exercise mitt: figure 1a for use on the hand, and figure 1b for use on the foot. On January 3, 2006, in accordance with 37 CFR 1.114, Petitioner made a request for continued examination (RCE) along with an amendment canceling original claims 1-17 and adding new claims 18-25. In response, an Office action dated March 22, 2006 was rendered in which claims 18-22 were withdrawn by the Examiner as being directed to an invention independent or distinct from the invention originally claimed. The Examiner justified this action by stating "claims 18-22 disclose the sleeve as having a thumb opening in combination with another opening."

However, of original claims 1-17, claims 1-9 and 14-17 are generic to both species, claims 10 and 12 are directed to the species illustrated in figure 1a, and claims 11 and 13 are directed to the species illustrated in figure 1b.

Of newly presented claims 18-25, claims 18-22 and 24 are directed to the species illustrated in figure 1a, while claims 23 and 25 are generic to both species.

Prior to the Office action dated March 22, 2006, no election of species requirement was made and claims 1-17 were rejected in a final Office action dated July 28, 2005.

In accordance with the MPEP 818.02(a) and 821.03,

818.02(a) By Originally Presented Claims

Where claims to another invention are properly added and entered in the application before an action is given, they are treated as original claims for purposes of restriction only.

The claims originally presented and acted upon by the Office on their merits determine the invention elected by an applicant in the application, and in any request for continued examination (RCE) which has been filed for the application. Subsequently presented claims to an invention other than that acted upon should be treated as provided in MPEP § 821.03.

821.03 [R-3] Claims for Different Invention Added After an Office Action

Claims added by amendment following action by the examiner, MPEP § 818.01, § 818.02(a), to an invention other than previously claimed, should be treated as indicated by 37 CFR 1.145.

37 CFR 1.145. Subsequent presentation of claims for different invention.

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in § § 1.143 and 1.144

the Examiner's rationale for holding claims 18-22 withdrawn cannot be maintained since claims 18-25 are directed to the same invention, i.e., to both species, as original claims 1-17. Note: even though none of claims 18-25 are specific to the species illustrated in figure 1b, generic claims 23 and 25 cover both species.

Furthermore, in order for the Examiner to maintain the promulgated election of species requirement, a showing that the invention defined by claims 18-22 are distinct from the inventions defined by claims 1-17. Such has not been done and cannot be done since new claim 18 anticipates original claim 12.

As per MPEP 803 in order to require petitioner to elect a single species for examination, two criteria must be satisfied:

1. that each species must be distinct as claimed, and

2. that there would be a serious burden on the examiner if the requirement was not made.

Aside from the fact that the first criteria above has not been shown by the Examiner, the undersigned concurs with petitioner that, in this case, restriction of the claims can not be proper because the subject matter of each of the pending claims has already been

searched. The examiner's willingness to examine the subject matter of all the pending claims (in this case, two different times) is a representation by the Patent Office that all pertinent areas have been searched and, in so doing, indicates that the Examiner did not believe that the examination of all the respective inventions imposed a burden as required for insisting upon restriction as per the guidelines in the MPEP, section 808.01(a) and 808.02.

For the reasons outlined above, the election of species requirement promulgated is not in accordance with proper Office procedure. Accordingly, the Office action dated March 27, 2006 is hereby vacated.

As a further procedural note, as this petition grants Petitioner relief from the election of species requirement, the previously withdrawn claims will be reinstated and all amendments thereto are deemed responsive to which a new Office action will be rendered. The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3765 who will have the examiner promulgate an action on the merits of the presently pending claims not inconsistent with this decision.

PETITION GRANTED.

Karen M. Young

Karen Young, Director
Technology Center 3700

LAWRENCE R. OREMLAND
5055 East Broadway Blvd., Suite C-214
Tucson, AZ 85711
Tel. (520)747-0999
Fax. (520)747-0977
E-mail : larry@oremland.com

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ROSS SPENCER GARSSON
WINSTEAD SECHREST & MINICK P.C.
P. O. BOX 50784
DALLAS TX 75201

COPY MAILED
SEP 14 2006
OFFICE OF PETITIONS

In re Application of :
James L. Tour et al. :
Application No. 10/356,841 : ON PETITION
Filed: February 3, 2003 :
Attorney Docket No. 1789-10101 :

This is a decision on the petition under 37 CFR 1.137(b)[1], filed April 10, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on June 3, 2005, for failure to timely file a reply to the final Office action mailed March 2, 2005, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, the Notice of Abandonment was mailed September 30, 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 $ 750.00; and (3) an adequate statement of unintentional delay.

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

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

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

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

The Examiner has determined that the amendment filed with the present petition is acceptable.

The matter is being referred to Technology Center 1752for appropriate action on the amendment filed January 23, 2006.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/356,841	02/03/2003	James M. Tour	1789-10101

CONFIRMATION NO. 5535

OC000000020433575

OC000000020433575

47744
ROSS SPENCER GARSSON
WINSTEAD SECHREST & MINICK P.C.
P. O. BOX 50784
DALLAS, TX 75201

Date Mailed: 09/14/2006

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/10/2006.

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

Patricia Faison-Ball

PATRICIA F FAISON BALL
OP (571) 272-3212

ATTORNEY/APPLICANT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/356,841	02/03/2003	James M. Tour	1789-10101

CONFIRMATION NO. 5535

OC000000020433554

OC000000020433554

Hugh R. Kress
5718 Westheimer
Suite 1800
Houston, TX 77057

Date Mailed: 09/14/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/10/2006.

- 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 Faison-Ball

PATRICIA F FAISON BALL
OP (571) 272-3212

FORMER ATTORNEY/AGENT COPY

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/356,841	02/03/2003	James M. Tour	1789-10101

CONFIRMATION NO. 5535

OC000000020433554

OC000000020433554

Hugh R. Kress
5718 Westheimer
Suite 1800
Houston, TX 77057

Date Mailed: 09/14/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/10/2006.

- 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).

Ross Spencer Garsson
Winstead Sechrest & Minick P.C.
PO Box 50784
Dallas, TX 75201

Patricia Faison-Ball

PATRICIA F FAISON BALL
OP (571) 272-3212

NEW ATTORNEY/AGENT COPY

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APR 2 0 2010

Ralph E. Jocke
Walker & Jocke
231 South Broadway
Medina, OH 44256

In re Application of	:	
DRUMMOND et al.	:	DECISION ON PETITION
Application No. 10/356,849	:	TO WITHDRAW
Filed: February 3, 2003	:	RESTRICTION REQUIREMENT
For: APPLICATION SERVICE PROVIDER	:	UNDER 37 CFR 1.144
AND AUTOMATED TRANSACTION	:	
MACHINE SYSTEM AND METHOD	:	

This is a decision on applicant's petition under 37 CFR 1.144 which was filed May 6, 2009 requesting withdrawal of an election of species requirement made final in an Office action dated March 17, 2009.

The petition is **DISMISSED as moot**.

A review of the record shows that in the Office action mailed on June 20, 2008, the examiner required a restriction between invention I of claims 1, and 3-17 directed to a computer readable medium including instructions executable by a computer in an ATM, and invention II of claims 18-21 directed to a computer readable medium including instructions executable by at least one computer in an automated banking machine with biometrics. A further election of species is required for the invention I, as well as for the invention II. Applicants filed a first response on July 21, 2008 provisionally electing with traverse invention I, and a second response on December 22, 2008 provisionally electing the species of claims 1, 3 and 15-17 following the mailing of a Notice of non-responsive amendment on November 26, 2008. The examiner, upon reconsideration, adhered to the restriction requirement and made the requirement final in an Office action mailed on March 17, 2009. This petition was then timely filed by applicants. Applicants' subsequent request to withdraw the petition on January 15, 2010 and the Notice of Allowance dated January 22, 2010 rendered the issues raised in the petition of May 6, 2009 moot. The petition is hereby dismissed.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Alexander Kalinowski at (571) 272-6771.

Wynn Coggins, Director
Technology Center 3600
571-272-5350

ak/lm: 3/26/10

LM

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Thomson Multimedia Licensing Inc.
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Princeton, NJ 08543-5312

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JUL 17 2009

OFFICE OF PETITIONS

In re Application of :
William Renault et al. :
Application No. 10/356,864 : DECISION ON PETITION
Filed: February 3, 2003 :
Attorney Docket No. PF020007 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 23, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a proper reply in a timely manner to the non-final Office action mailed October 20, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 21, 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 after non-final, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the amendment is accepted as being unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due

date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

This application is being referred to Technology Center AU 2425 for appropriate action by the Examiner in the normal course of business on the reply received April 23, 2009.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GENERAL ELECTRIC COMPANY
CRD PATENT DOCKET RM 4A59
M.N. SALAMONE, BLDG. K1
P.O. BOX 8
SCHENECTADY, NY 12301

COPY MAILED

JUN 2 8 2005

OFFICE OF PETITIONS

In re Application of :
Nick Andrew Van Stralen et al :
Application No. 10/356,872 : ON PETITION
Filed: February 3, 2003 :
Attorney Docket No. RD-26062-3 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 7, 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 April 8, 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 July 9, 2004.

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. See37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

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

This matter is being referred to Technology Center AU 2133.

Wan Laymon

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

cc: PROSKAUER ROSE
1585 BROADWAY
NEW YORK, NY 10036

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.
10/356,876	02/03/2003	Akihiro Saito	132014-1	4080

43247 7590 03/30/2005
OPPEDAHL & LARSON LLP - LEXAN
PO BOX 5068
DILLON, CO 80435

EXAMINER
SZEKELY, PETER A

ART UNIT	PAPER NUMBER
1714	

DATE MAILED: 07/07/2006

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mailed :
In re Application of Akihiro Saito

Serial No. 10/356,876
Filed : 02/03/03
For: Thermoplastic Resin Composition
and Method of Improving Appearance

DECISION ON PETITION

This is a decision on the petition filed May 18, 2005, to correct inventorship under 37 CFR 1.48 (b).
It is noted that the applicant has met the requirements of (i) a petition including a statement identifying each named inventor who is being deleted and acknowledging that the inventor's invention is no longer being claimed in the application; and (ii) the fee set forth in 37 CFR. 1.17(I):

The petition is **GRANTED**

Peter Szekely
Primary Examiner
Art Unit 1714
Technology Center 1700

Mail to:

UNITED STATES PATENT AND TRADEMARK OFFICE

(Correction)

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

Mailed :
In re Application of

Serial No. 10/356,876
Filed : 02/03/2003
For:

DECISION ON PETITION

This is a decision on the petition filed 5/18/05, to correct inventorship under 37 CFR 1.48 (a). It is noted that the applicant has met the requirements of (i) a petition including a statement identifying each named inventor who is being added and acknowledging that the inventor's invention is no longer being claimed in the application; and (ii) the fee set forth in 37 CFR. 1.17(I):

The petition is **GRANTED**

Peter Szekely
Primary Examiner
Art Unit 1714
Technology Center 1700

Mail to:

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

LEO PETERS
LSI LOGIC CORPORATION
M/S D-106
1551 MCCARTHY BLVD.
MILPITAS CA 95035

COPY MAILED

MAR 26 2008

In re Application of	:	
Daniel Isaacs et al.	:	
Application No. 10/356,917	:	ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. 02-4373	:	

This is a decision on the petition under 37 CFR 1.137(b)[1], filed February 12, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Final Office Action mailed August 1, 2007. A response was filed November 5, 2007 (November 1, 2007 certificate of mail date), but by Advisory Action of November 26, 2007, petitioner was advised that the response did not place the application in condition for allowance. The instant petition and this decision precede the mailing of the Notice of Abandonment.

Petitioner has submitted a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

Also, the address shown on the petition differs from the address of record. The mere inclusion, in a paper filed in the application for another purpose, of an address differing from the previously provided correspondence address, without mentioning the fact that

---

[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)).

an address change was made, does not constitute a proper change of address notification." See MPEP sections 601.03 and 711.02(c). A courtesy copy of this decision is being mailed to the address found on the petition but in the future, dual correspondences will not be mailed.

This matter is being referred to Technology Center 2123 for processing of the RCE.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

cc:

LSI CORPORATION
1621 BARBER LANE
MS: D-106
MILPITAS, CA 95035

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

Paper No. 6

Chris Rourk
P.O. Box 701355
Dallas, TX 75370

MAILED

JUL 15 2003

OFFICE OF DIRECTOR
GROUP

In re Application of:
Christopher J. Rourk
Application No. 10/356,956
Filed: February 03, 2003
For: SYSTEM AND METHOD FOR DETECTING RADIOACTIVE CONTAMINATION

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition under 37 C.F.R. § 1.102(c), filed February 03, 2003, to make the above-identified application special under the accelerated examination procedure set forth in the Manual of Patent Examining Procedure (M.P.E.P.), § 708.02, Item V: Environmental Quality and Item XI: Countering Terrorism.

The petition is **GRANTED.**

A grantable petition under 37 C.F.R. § 1.102(c), and in accordance with M.P.E.P. § 708.02, Item V, for inventions which materially enhance the quality of the environment of mankind by contributing to the restoration or maintenance of the basic life-sustaining natural elements, i.e., air, water, and soil, must be accompanied by statements under 37 C.F.R. § 1.102 by the applicant, assignee, or an attorney/agent registered to practice before the Office explaining how the invention contributes to the restoration or maintenance of one of these life-sustaining elements. No fee is required for this petition.

Petitioner asserts that the present invention helps to maintain the soil and water by preventing radioactive contaminants from being able to enter the soil and water, by allowing the contaminants to be contained. Thus, soil and water contamination by radioactive contaminants can be detected and prevented. This enhances the quality of the environment of mankind by contributing to the maintenance of the basic life sustaining natural elements of soil and water.

The petition satisfies the requirements pursuant to M.P.E.P. § 708.02, Item V. Accordingly, the petition is **granted.**

The petition pursuant to M.P.E.P. 708.02, Item XI, is rendered **moot** in light of the above. It is noted that the required fee for a petition under this section is absent.

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

If the examiner can make this application special without prejudice to any possible interfering applications, and s/he should make a rigid search for such, s/he 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, s/he should consider such application simultaneously with this application and should state in the official letter of such application that s/he is taking it out of its turn because of possible interference.
Should an appeal be taken in this application or should this application become involved in an interference, consideration of the appeal and the interference will be expedited by all Patent and Trademark Office officials concerned, contingent likewise upon diligent prosecution by the applicant.

After allowance, this application will be given priority for printing. See M.P.E.P. § 1309.

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

Clayton E. LaBalle

Clayton E. LaBalle, 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. 021904

MAR 18 2004

Chris Rourk
P.O. Box 701355
Dallas TX 75370

In re Application of:	:	
Christopher John Rourk	:	
Serial No.: 10/356,956	:	DECISION ON PETITION
Filed: February 03, 2003	:	TO EXPUNGE
For: SYSTEM AND METHOD FOR DETECTING	:	
RADIOACTIVE CONTAMINATION	:	

This is a decision on the petition filed December 30, 2003, to expunge information submitted unintentionally in an application (other than information forming part of the original disclosure) under to 37 C.F.R. § 1.59(b), and M.P.E.P. § 724.05, paragraph II.

The petition is GRANTED.

Petitioner asserts that the materials submitted on October 15, 2003, were clearly marked as being draft, and submitted for discussion purposes only, and were only submitted in advance of the interview at the request of the Examiner to allow the Examiner to be prepared to discuss issues that the Applicant reasonably believed might have been discussed during that interview. It is further asserted that the only subject matter discussed during the interview was accurately described in the subsequent response to the Office action, mailed July 30, 2003 (paper no. 7). Petitioner asserts that the information is not material to the examination of this application, and that leaving this subject matter in the application file will create uncertainty as to whether it was relied on by the Examiner, as well as the scope of the claims. The petition is accompanied by the petition fee set forth in 37 C.F.R.§ 1.17(h).

The petition meets with the requirements for expunging material submitted unintentionally in an application (other than information forming part of the original disclosure) pursuant to M.P.E.P. § 724.05, paragraph II.

Accordingly, the petition is granted. The material will be expunged from the record.

The application file is being forwarded to Publishing Division, Issue Branch, for issuance of a patent.

Inquiries related to this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

Janice A. Falcone

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

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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No. 021904

MAR 18 2004

Chris Rourk
P.O. Box 701355
Dallas TX 75370

In re Application of:
Christopher John Rourk
Serial No.: 10/356,956
Filed: February 03, 2003
For: SYSTEM AND METHOD FOR DETECTING RADIOACTIVE CONTAMINATION

DECISION ON PETITION TO EXPUNGE

This is a decision on the petition filed December 30, 2003, to expunge information submitted unintentionally in an application (other than information forming part of the original disclosure) under to 37 C.F.R. § 1.59(b), and M.P.E.P. § 724.05, paragraph II.

The petition is GRANTED.

Petitioner asserts that the materials submitted on October 15, 2003, were clearly marked as being draft, and submitted for discussion purposes only, and were only submitted in advance of the interview at the request of the Examiner to allow the Examiner to be prepared to discuss issues that the Applicant reasonably believed might have been discussed during that interview. It is further asserted that the only subject matter discussed during the interview was accurately described in the subsequent response to the Office action, mailed July 30, 2003 (paper no. 7). Petitioner asserts that the information is not material to the examination of this application, and that leaving this subject matter in the application file will create uncertainty as to whether it was relied on by the Examiner, as well as the scope of the claims. The petition is accompanied by the petition fee set forth in 37 C.F.R.§ 1.17(h).

The petition meets with the requirements for expunging material submitted unintentionally in an application (other than information forming part of the original disclosure) pursuant to M.P.E.P. § 724.05, paragraph II.

Accordingly, the petition is granted. The material will be expunged from the record.

The application file is being forwarded to Publishing Division, Issue Branch, for issuance of a patent.

Inquiries related to this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

Janice A. Falcone

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED

JUN 8 - 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

DANIELS DANIELS & VERDONIK, P.A.
SUITE 200 GENERATION PLAZA
1822 N.C. HIGHWAY 54 EAST
DURHAM, N.C. 27713

In re application of:
Basil et al.
Application No. 10/357,012
Filed: February 3, 2003
For: METHOD FOR TRANSMITTING FRAMES WITH BOTH DATA AND A POLLING REQUEST

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as attorney/agent and change of correspondence address filed on May 2, 2005.

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

Petitioner has satisfied the requirements for successfully requesting withdrawal. Accordingly, the request is **GRANTED.**

All attorneys/agents listed in the withdrawal have been withdrawn.

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

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

cc: JOHN L. DOUGHTY
ARRIS INTERNATIONAL, INC.
3871 LAKEFIELD DRIVE
SUWANEE, GA 30024

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. 5

Jeffrey J. Chapp
Artz & Artz, P.C.
Suite 250
28333 Telegraph Road
Southfield, MI 48034

COPY MAILED
AUG 2 4 2004
OFFICE OF PETITIONS

In re Application of :
Hamilton, et al. : DECISION ON PETITION
Application No. 10/357,022 :
Filed: February 3, 2003 :
Dkt. No.: 02-1244 (BOE 0387 PA) :

This decision is in response to the petition under 37 CFR 1.137(a), filed July 29, 2004.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

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

This application became abandoned June 16, 2003 for failure to timely file a proper response to the Notice to File Corrected Application Papers mailed April 15, 2003. The Notice set a two (2) month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136(a) were timely requested. Notice of Abandonment was mailed June 2, 2004.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The present petition lacks requirement (3) above. Petitioner has failed to present a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply

from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The Office may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable." See, 37 CFR 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

The petition alleges that upon receipt of the Notice, the drawings were reviewed and believed to be free of erasures, alterations, overwriting, interlineations, folds and copy marks. The petition further alleges that on April 25, 2003, petitioner spoke with Monica Young at the Office of Initial Patent Examination ("OIPE") who reviewed the drawings and found nothing wrong with them. Petitioner alleges Monica Young stated the Notice would be withdrawn. Petitioner further states that on April 30, 2003, Monica Young called petitioner and requested copies of Figures 1 and 3 be faxed to her attention.

Petitioner submitted with the instant petition copies of file notes related to the communications alleged to have been held with Monica Young. Petitioner also submitted a copy of a facsimile dated April 30, 2003. Petitioner has included a copy of Figures 1 and 3.

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 applicant's reliance upon oral advice from USPTO employees. See, In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985) and MPEP 711.03(c).

Thus, petitioner has failed to present a showing that the delay in timely submitting a proper response to the Notice was unavoidable. Furthermore, there is no indication in the file of receipt of the facsimile alleged submitted April 30, 2003 to OIPE. Moreover, if OIPE objects to the drawings and sends applicant a Notice requiring submission of corrected drawings within a set time period (usually two months), corrected drawings must be filed, **in paper**, to the mailing address set forth in the Notice, along with any other items required by OIPE, to avoid abandonment of the application. See, MPEP 507.

ALTERNATE VENUE

Petitioner is **strongly** urged to consider filing a petition stating that the delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

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

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

By mail:	**Mail Stop Petition** Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(703) 872-9306
By hand delivery or: courier service(FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office 2011 South Clark Place Customer Window, **Mail Stop Petition**

Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries on or before September 23, 2004 regarding this decision should be directed to the undersigned at (703) 305-0310.

Please be advised that effective on or about September 27, 2004, the Office of Petitions will be moving to the USPTO headquarters located in Alexandria, Virginia. At that time, the Office of Petitions can be reached at (571) 272-3282 and the undersigned will be available at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

Jeffrey J. Chapp
Artz & Artz, P.C.
Suite 250
28333 Telegraph Road
Southfield, MI 48034

COPY MAILED

NOV 10 2004

OFFICE OF PETITIONS

In re Application of
Hamilton, et al.
Application No. 10/357,022
Filed: February 3, 2003
Atty. Dkt. No.: 02-1244 (BOE 0387 PA)

DECISION ON PETITION

This is a decision on the petition renewed under 37 CFR 1.137(b), filed October 25, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned June 16, 2003 for failure to timely file a proper response to the Notice to File Corrected Application Papers ("Notice") mailed April 15, 2003. The Notice set a two (2) month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136 were timely requested. Notice of Abandonment was mailed June 2, 2004. A petition under 37 CFR 1.137(a) was filed July 29, 2004 and dismissed October 25, 2004.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 CFR 1.137(b). Accordingly, the failure to timely submit a proper reply to the Notice is accepted as having been unintentionally delayed.

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

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

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WEISS & MOY PC
4204 NORTH BROWN AVENUE
SCOTTSDALE, AZ 85251

FAX RECEIVED
MAY 26 2005
OFFICE OF PETITIONS

In re Application of :
Begis, Jacob L. :
Application No. 10/357,034 :
Filed: January 31, 2003 :
Attorney Docket No. 3946P2584 :

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 9, 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 October 18, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on January 19, 2005. A Notice of Abandonment was mailed May 9, 2005.

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 1700 for further examination on the merits.

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

Liana Chase
Petitions Examiner
Office of Petitions
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

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

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FEB 17 2006

OFFICE OF PETITIONS

ON PETITION

In re Application of :
James Dolan :
Application No. 10/357,046 :
Filed: February 3, 2003 :
Title: Torque Transfer Coupling with :
Magnetorheological Clutch Actuator

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed January 26, 2006.

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

This application became abandoned for failure to timely submit the issue fee and the publication fee, as required by the Notice of Allowance and Fee (s) Due which was mailed April 27, 2005. The Notice of Allowance and Fee (s) Due set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on July 28, 2005. A Notice of Abandonment was mailed on January 6, 2006.

In the present petition, petitioner contends the issue fee was deposited with the U.S. Patent and Trademark Office (USPTO) on June 23, 2005. In support of the petition, petitioner has provided a copy of the Notice of Allowance and Fees Due with a certificate of mailing of June 23, 2005, a USPTO stamped post card with a receipt date of June 23, 2005, and a statement from attorney of record Philip Rettig.

Petitioner's argument has been considered but deemed unpersuasive. A review of the record indicates the Office did receive the fee transmittal form on June 23, 2005 authorizing charging deposit account no. 14-0790 the $1400.00 issue fee and the $300 publication fee. However, there were insufficient funds in the designated deposit account which resulted in the issue fee and publication fee going unpaid. Consequently the application was abandoned.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(b).

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

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

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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

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

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APR 14 2006

OFFICE OF PETITIONS

In re Application of
James Dolan
Application No. 10/357,046
Filed: February 3, 2003
Attorney Docket Number: 6978-000255
Title of Invention: Torque Transfer Coupling with Magnetorheological Clutch Actuator

ON PETITION

This is a decision on the petition filed March 3, 2006, under 37 CFR 1.137(b) to revive the above-identified application.

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due which was mailed April 27, 2005. The Notice of Allowance and Fee (s) Due set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on July 28, 2005. A Notice of Abandonment was mailed on January 6, 2006. A petition filed under 37 CFR 1.181 was dismissed on February 17, 2006.

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

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

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

NOV 24 2003

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

#3

DAVID J. BOLDUC
3841 SURRY ROAD
VIRGINIA BEACH, VA 23455

In re Application of	:	
Joseph R. McKown	:	
Serial No.: 10/357,050	:	DECISION ON PETITION
Filed: February 3, 2003	:	
For: Nasal Cannula	:	

This is in response to applicants' petition filed February 3, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the age of the applicant.

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

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

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, 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

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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DAVID J. BOLDUC
4805 PLEASURE HOUSE CT #102
VIRGINIA BEACH, VA 23455

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Joseph R. McKown	:	
Application No. 10/357,050	:	
Filed: February 3, 2003	:	
Attorney Docket No. MCK-001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 8, 2005, to revive the above-identified application.

The petition is **GRANTED**.

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

This matter is being referred to Technology Center AU 3731 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE

BINGHAM MCHALE LLP
2700 MARKET TOWER
10 WEST MARKET STREET
INDIANAPOLIS, IN 46204-4900

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Director's Office
Office of Patent Publication

In re Application of
Hart, Steven L.et al
Application No. 10/357,058
Filed: February 3, 2003
Attorney Docket 3161-293

DECISION ON PETITION

This is a decision on the Petition To Withdraw Holding Of Abandonment, received in the United States Patent and Trademark Office (USPTO) on March 28, 2005.

The petition is **DISMISSED.**

The application was held abandoned for applicant's failure to timely pay the issue fee as required in the Notice of Allowance and Fee(s) Due mailed September 20, 2004, which set a three (3) month statutory period for reply. The Notice of Abandonment was mailed on March 8, 2005.

The USPTO acknowledges receipt of Part B - Fee(s) Transmittal on June 7, 2004, which was mailed by the USPTO, with the Notice of Allowance and Fee(s) Due on March 4, 2004. As authorized, the Issue Fee of $665.00, and $300.00 for Publication Fee were charged to Deposit Account No. 23-3030 on June 9, 2004.

However, a new Notice of Allowance and Fee(s) Due, with Part B – Fee(s) Transmittal was mailed on September 20, 2004.

The new Notice of Allowance clearly indicates in bold text:

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THE APPLICATION. THE PTOL-85B (0R AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

Although no fee was due, as indicated on the form PTOL-85B, Part B – Fee(s) Transmittal mailed on September 20, 2004, the Applicant was required to return the form. Since the form was not returned the application was regarded as abandoned.

Applicant may seek relief by filing a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). (Forms are available at USPTO website http://www.uspto.gov)

- Under 37 CFR § 1.137(a), a petition for the revival of an ***unavoidable*** abandoned application
- Under 37 CFR § 1.137(b), a petition for the revival of an ***unintentionally*** abandoned application

Further correspondence with respect to the petition for revival under 37 CFR § 1.137 should be directed to the Office Of Petitions at 571-272-3282 or addressed as follows:

By mail: Mail Stop Petitions
Commissioner For Patents
Office of Petitions
P. O. Box 1450
Alexandria, VA 22313-1450

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Patent Publications at 703-308-9250 Ext 153.

Cheryl Mcleod
Quality Operations Assistant
Office of the Director
Office of Patent Publications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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BINGHAM McHALE LLP
2700 MARKET TOWER
10 WEST MARKET STREET
INDIANAPOLIS, IN 46204-4900

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OFFICE OF PETITIONS

In re Application of	:
Steven L. Hart et al	:
Application No. 10/357,058	: DECISION GRANTING PETITION
Filed: February 3, 2003	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 17303-52823	:

This is a decision on the petition under 37 CFR 1.137(b), filed October 20, 2006, to revive the above-identified application. This is also a decision on the petition, filed April 6, 2005, which is being treated as a petition under 37 CFR 1.313(c)(2) requesting withdrawal of this application from issue.

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

The petition under 37 CFR 1.313(c)(2) is **GRANTED**.

DISCUSSION OF PETITION UNDER 37 CFR 1.137(b)

This application became abandoned for failure to timely submit the issue fee on or before December 20, 2004, as required by the Notice of Allowance and Fee(s) Due mailed September 20, 2004. A Notice of Abandonment was mailed on March 8, 2005. A petition to withdraw the holding of abandonment was filed on March 28, 2005 and dismissed in a decision mailed September 20, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the $700 issue fee, which was paid on March 28, 2005,[1] (2) the $750 petition fee, and (3) the required statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

---

[1] In view of the $700 issue fee paid on March 28, 2005, the previously paid fee of $665 is unnecessary. Petitioner may request a refund of this fee by writing to the Office of Finance at: Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450.

The petition to revive is accompanied by a terminal disclaimer. However, the filing of a terminal disclaimer is unnecessary as a condition for revival under the provisions of 37 CFR 1.137(d). Accordingly, the $65 fee assessed to the terminal disclaimer will be credited to petitioner's deposit account in due course.

DISCUSSION OF PETITION UNDER 37 CFR 1.313(c)

The petition filed April 6, 2005 requests withdrawal of this application from issue for consideration of a submission under 37 CFR 1.114 (an Information Disclosure Statement). The petition is accompanied by an Information Disclosure Statement and a request for continued examination (RCE) under 37 CFR 1.114.

The petition complies with the requirements of 37 CFR 1.313(c)(2). Accordingly, this application is withdrawn from issue for consideration of a submission under 37 CFR 1.114.

Petitioner is advised that the issue fee paid on March 28, 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.[2]

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

This matter is being referred to Technology Center AU 3651 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 06-17-08

TO SPE OF : ART UNIT 3651

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/357058** Patent No.: **7328785**

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: _____

GENE CRAWFORD
SUPERVISORY PATENT EXAMINER

3657
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/8/08

TO SPE OF : ART UNIT 1796

SUBJECT : Request for Certificate of Correction for Appl. No.: 10357069 Patent No.: 6887919

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**.

Valerie Jackson
Certificates of Correction Branch
703-308-9390 ext. 114

Thank You For Your Assistance

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

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

Comments: _____

M. Eashoo
MARK EASHOO, PH.D.
SUPERVISORY PATENT EXAMINER 8/7/09
SPE

1796
Art Unit

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Richard A. Fagin
P. O. Box 1247
Richmond, TX 77406-1247

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OFFICE OF PETITIONS

In re Application of	:	
Norris Hayes	:	
Application No. 10/357,076	:	ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. HIL-04-06	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 5, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply to a non-final Office action.

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 $685; and (3) an adequate statement of unintentional delay.

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

The application file is being referred to Technology Center 3600.

Marianne E. Jenkins
Petitions Examiner
Office of Petitions

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PFIZER INC
10555 SCIENCE CENTER DRIVE
SAN DIEGO CA 92121

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OFFICE OF PETITIONS

In re Application of :
Eric R. Larson et al. :
Application No. 10/357,093 : ON PETITION
Filed: March 3, 2003 :
Attorney Docket No. PC9901C :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 8, 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 July 28, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A three (3) month(s) extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is January 30, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $790, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,500; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 1626 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.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: **Pfizer Inc.**
150 East 42nd Street, 150-5-49
New York, NY 10017

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

RICHARD A. FAGIN
P.O. BOX 1247
RICHMOND, TX 77406-1247

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OFFICE OF PETITIONS

In re Application of :
Norris Hayes :
Application No. 10/357,128 : ON PETITION
Filed: February 3, 2003 :
Attorney Docket No. None :

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

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 2, 2004, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extension of time under the provisions of 37 CFR 1.136(a) was obtained.

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 3636 for consideration of the response filed October 22, 2004.

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

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P.O. Box 1450
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THOMAS, KAYDEN, HOSTEMEYER & RISLEY LLP
100 GALLERIA PARKWAY
SUITE 1750
ATLANTA GA 30339

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OFFICE OF PETITIONS

In re Application of	:	
Yu, Ta-Lee	:	
Application No. 10/357,136	:	ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. 252013-2560	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 5, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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 2800 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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P.O. Box 1450
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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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OFFICE OF PETITIONS

In re Application of
Robert Alan Knee et al
Application No. 10/357,154
Filed: January 31, 2003
Attorney Docket No. UV-144 Cont3

DECISION ON PETITION

This is a decision on the petition, filed June 16, 2009, under 37 CFR 1.181(a) to Withdraw Holding of Abandonment.

The petition under 37 CFR 1.181(a) is **GRANTED**.

The application was held abandoned for failure to timely reply to the Notice mailed January 16, 2009

The notice of abandonment mailed May 21, 2009, appears to have been premature. As stated in the petition received June 16, 2009, the notice of abandonment was mailed during the period within which an appeal brief could be timely filed on or before July 16, 2009, since the time period for filing the appeal brief was extendible under 37 CFR 1.136.

An appeal brief to include an extension of time for four months was received on June 16, 2009.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

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

This matter is being referred to Technology Center AU 2426 for consideration of the reply received June 16, 2009.

/KOC/
Karen Creasy
Petitions Examiner
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. 10/357,155
Filed: January 31, 2003
Attorney Docket No. INTE.34USU1 (ITC37)

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 14, 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, "application is being transferred to another attorney", 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 the undersigned at 571-272- 7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **NIXON PEABODY LLP**
401 9TH STREET NW, SUITE 900
WASHINGTON, DC 20004

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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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, Steven O.
Application No. 10/357,155
Filed: January 31, 2003
Attorney Docket No. **INTE.34USU1 (ITC37)**

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 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 Adam Keser on behalf of all attorneys of record. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **STEVEN O MARKEL**
3031 E. WYECLIFF WAY
HIGHLANDS RANCH, CO 80126

cc: **MARC KAUFMAN, ESQ.**
NIXON PEABODY LLP
401 9TH STREET NW, SUITE 900
WASHINGTON, DC 20004

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NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

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OFFICE OF PETITIONS

In re Application of
Jeffrey M. Arnold et al
Application No. 10/357,156
Filed: February 3, 2003
Attorney Docket No. 101327-0175

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 12, 2003 and supplemented on October 27, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed October 27, 2004.

The petition is **GRANTED**.

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

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

The instant pending application was filed on February 3, 2003, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title as required by 37 CFR 1.78(a)(2)(iii).

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

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

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

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

This matter is being forwarded to Technology Center Art Unit 3739 for appropriate action on the amendment filed October 27, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Karen Creasy

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

Attachment: Corrected Filing Receipt

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IRVINE, CA 92614

FEB 18 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

In re Application of
Robert Donald Lucey, et al
Application No.10/357,167
Filed: January 31, 2003
For: SHEAR WALL CONSTRUCTION

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on December 29, 2003.

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

☐ Postcard receipt being dated_____.

☐ USPTO return facsimile receipt dated _____ which identifies the application by serial number and the type of Response that was filed on that date.

☒ Certificate of Mailing/Transmission signed on December 15, 2003. and supported by a statement under 37 C.F.R. 1.8(b)(3).

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

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

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

This application is being forwarded to the Supervisory Legal Instruments Examiner for entry of the response filed with the petition, then to the examiner for prompt action on the response.

cps/2/14/04

STEVEN N. MEYERS
SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 3600

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Ross Products Division of Abbott Laboratories
Department 108140-DS/1
625 Cleveland Avenue
Columbus, OH 43215-1724

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JAN 3 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Deborah L. O'Connor, et al.	:	
Application No. 10/357,182	:	ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. 6692.US.D1	:	

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

The petition is **DISMISSED**.

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

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

A final Office action was mailed to applicant on January 23, 2004, which set a three-month shortened statutory period within which to submit a reply. An amendment was filed via certificate of mailing under 37 CFR 1.8 on April 23, 2004 in response to the final Office action, but the amendment did not place the application in condition for allowance. An Advisory Action was mailed to applicant on July 22, 2004 to this effect. Accordingly, the application became abandoned on April 24, 2004.

Applicant states that a Request for Continued Examination (RCE) under 37 CFR 1.114 accompanied the response to the instant petition. However, there is no indication in USPTO records that an RCE was fled in the Office. Additionally, applicant has not submitted the petition fee with the petition.

In view of the above, the application cannot be revived until a proper reply is received and the petition fee is paid. Unless applicant can supply evidence to show that the petition fee was filed with the present petition, i.e., a canceled check or credit card statement showing payment of the fee(s), petitioner must submit the current petition fee of $1500 and the current RCE fee of $790.

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

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

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the Customer Window located at:

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

The centralized facsimile number is **(703) 872-9306.**

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

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

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Ross Products Division of Abbott Laboratories
Department 108140-DS/1
625 Cleveland Avenue
Columbus, OH 43215-1724

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APR 25 2005

OFFICE OF PETITIONS

In re Application of	:	
Deborah L. O'Connor, et al	:	
Application No. 10/357,182	:	ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. 6692.US.D1	:	

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

The petition is **GRANTED**.

Since the petition originally filed November 15, 2004 was dismissed on January 31, 2005, applicant filed the instant petition and a proposed reply, namely, a Request for Continued Examination (RCE) under 37 CFR 1.114. Receipt of the RCE is acknowledged.

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

The application file is being referred to Technology Center 1600 for processing the RCE filed with the instant petition.

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

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Paper No. 7

Richard J. Adler
4421 McLeod, NE, Suite A
Albuquerque, NM 87109

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MAY 0 6 2004
OFFICE OF PETITIONS

In re Application of :
Richard J. Adler, et. al. :
Application No. 10/357,200 : ON PETITION
Filed: February 4, 2003 :
Attorney Docket No. N/A :

This is a decision on the petition under 37 CFR 1.137(b), filed March 4, 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 April 17, 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 after midnight June 17, 2003.

In response to the Notice to File Corrected Application Papers, petitioner submitted with the instant petition $665 for the petition to revive, and a Preliminary Amendment correcting the claims, in compliance with 37 CFR 1.75(h) and 1.121.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

Since there is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application, in accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

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 Unit 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

CC: Dennis F. Armijo
5300 Sequoia Road, NW
Suite 200
Albuquerque, NM 87120

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032006

OSHA & MAY L.L.P
1221 MCKINNEY STREET
SUITE 2800
HOUSTON, TX 77010

MAR 1 0 2006

In re Application of:
HAUGER ET AL.
Serial No.: 10/357,260
Filed: 03 February 2003
Title: STEREO-EXAMINATION SYSTEMS AND STEREO-IMAGE GENERATION APPARATUS AS WELL AS A METHOD FOR OPERATING THE SAME

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed on May 26, 2005, to withdraw the holding of abandonment of the above-identified application under 37 C.F.R. § 1.181. The petition has been treated as a request accept the amendment accompanying the petition as having been timely filed in view of the failure to received the Office communication of October 22, 2004.

The request is **GRANTED.**

An Office communication (a notice of non-compliant amendment) was mailed October 22, 2004, setting a one-month shortened statutory period for reply. In the absence of receipt of a response, the application became abandoned upon the expiration of the shortened statutory period on November 22, 2004. A Notice of Abandonment has not been mailed.

Requester asserts that counsel did not receive the Office action. In support of the assertion, petitioner submitted the following papers as evidence of lack of receipt of the Office communication: 1) a statement from the practitioner stating that the Office communication was not received by the practitioner and that the communication was mailed to an incomplete correspondence address, 2) a copy of the non-received Office action, obtained from the USPTO PAIR database after the period for reply had expired,

and 3) a copy of the electronic file jacket associated with the application. An amendment in response to the Office communication was also submitted.

A review of the file record indicates that the Office communication of October 22, 2004, was mailed to the address on record, however, the address was incomplete for because it did not include the petitioner's suite number. In view of petitioner's statement and evidence, petitioner's contention that no Office communication was received is accepted. Accordingly, the petition is granted.

The amendments to the claims submitted with the petition will be entered in the record considered with respect to the notice of non-compliant amendment. An Office action will be issued in due course.

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.

Hien H. Phan, Special Program Examiner
Technology Center 2800 - Semiconductors,
Electrical & Optical Systems & Components

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JASON D. KELLY
SHUMAKER & SIEFFERT, P.A.
1625 RADIO DRIVE, SUITE 300
ST. PAUL MN 55125

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In re Application of	:	
Sullivan et al.	:	
Application No. 10/357,267	:	DECISION ON PETITION
Filed: January 31, 2003	:	
Attorney Docket No. PB9999.00	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 16, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 20, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on May 21, 2008. A Notice of Abandonment was mailed September 15, 2008.

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 $1,620.00, and (3) an adequate statement of unintentional delay.

The address given on the petition differs slightly from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 3662 for appropriate action by the Examiner in the normal course of business on the reply received.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: Jason D. Kelly
Shumaker & Sieffert, P.A.
1625 Radio Drive, Suite 300
Woodbury, Minnesota 55125

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IRVINE CA 92614

In re Patent No. 7,524,327	: DECISION ON REQUEST FOR
SCHWARZ et al.	: RECONSIDERATION OF
Issue Date: April 28, 2009	: PATENT TERM ADJUSTMENT
Application No. 10/357,271	: AND
Filed: January 31, 2003	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. UNIRO.003A	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on June 26, 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 four hundred forty-three (443) 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 four hundred forty-three (443) days is **GRANTED**.

The Office acknowledges the 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 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 **four hundred forty-three (443) 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 : 7,524,327 B2

DATED : Apr. 28, 2009 **DRAFT**

INVENTOR(S) : Schwarz 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 222 days

Delete the phrase "by 222 days" and insert – by 443 days--

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OFFICE OF PETITIONS

In re Application of
James O. Davis et al
Application No. 10/357,274
Filed: January 31, 2003
Attorney Docket No. ID2.003A

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed April 9, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

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

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

The instant pending nonprovisional application was filed on January 31, 2003, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/354,602, which was filed on January 31, 2002, and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

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

matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

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

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

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

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

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

By hand: Customer Window located at:
2011 South Clark Place
Crystal Plaza Two Lobby
Room 1B03
Arlington, VA 22202

Central Fax: (703) 872-9306
ATTN: Office of Petitions

---

[1] *Note* 37 CFR 1.121

Any questions concerning this matter may be directed to Wan Laymon at (703) 306-5685.

Frances Hicks

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

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IRVINE, CA 92614

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DEC 08 2004

OFFICE OF PETITIONS

In re Application of	:
James O. Davis et al	:
Application No. 10/357,274	: DECISION ON PETITION
Filed: January 31, 2003	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. ID2.003A	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed September 27, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional Application No. 60/354,602, filed January 31, 2002, as set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

The instant nonprovisional application was filed on January 21, 2003 and was pending at the time of filing of the instant petition. A reference to the prior-filed provisional application has been included in the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. *See* 35 U.S.C. §119(e). Accordingly,

having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/354,602 is granted.

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

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

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

The application is being forwarded to Technology Center AU 1641 for appropriate action on the amendment submitted September 27, 2004, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/354,602.

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.: 02507

DATE : April 20, 2007

TO SPE OF : ART UNIT 2877

SUBJECT : Request for Certificate of Correction for Appl. No. 10/357275 patent no.7133134

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: OK

Gregory J. Toatley, Jr.
Supervisory Patent Examiner

SPE

2877
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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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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JAN 14 2004
OFFICE OF PETITIONS

In re Application of :
Bing Chiang, et al. :
Application No. 10/357,276 : ON PETITION
Filed: January 31, 2003 :
Attorney Docket No. 2479.2101-001 (TAN01-28) :

This is in response to the petition under 37 CFR 1.47(a), filed September 29, 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 37 CFR 1.47(a), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to Technology Center 2800.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 306-3475.

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

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James A. Proctor, Jr.
258 Sea View Street
Melbourne Beach, FL 32951

In re Application of
Bing Chiang; Griffin K. Gothard; Christopher A. Snyder; William R. Palmer; Michael J. Lynch; Thomas E. Gorsuch; Kenneth M. Gainey; and James A. Proctor, Jr.
Application No. 10/357,276
Filed: January 31, 2003
For: APERIODIC ARRAY ANTENNA

Dear Mr. Proctor:

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 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 Marianne Morgan at (703) 306-3475. 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, DC area).

Marianne E. Morgan

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

cc: Hamilton, Brook, Smith & Reynolds, P.C.
530 Virginia Road
P. O. Box 9133
Concord, MA 01742-9133

UNITED STATES PATENT AND TRADEMARK OFFICE

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Kenneth M. Gainey
441 Thrush Drive
Satellite Beach, FL 32937

In re Application of
Bing Chiang; Griffin K. Gothard; Christopher A. Snyder; William R. Palmer; Michael J. Lynch; Thomas E. Gorsuch; Kenneth M. Gainey; and James A. Proctor, Jr.
Application No. 10/357,276
Filed: January 31, 2003
For: APERIODIC ARRAY ANTENNA

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 the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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William R. Palmer
2612 S. Riverview Drive
Melbourne, FL 32901

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JAN 1 4 2004

OFFICE OF PETITIONS

In re Application of
Bing Chiang; Griffin K. Gothard; Christopher A. Snyder; William R. Palmer; Michael J. Lynch; Thomas E. Gorsuch; Kenneth M. Gainey; and James A. Proctor, Jr.
Application No. 10/357,276
Filed: January 31, 2003
For: APERIODIC ARRAY ANTENNA

Dear Mr. Palmer:

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 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 Marianne Morgan at (703) 306-3475. 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, DC area).

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

cc: Hamilton, Brook, Smith & Reynolds, P.C.
530 Virginia Road
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Concord, MA 01742-9133

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UNITED STATES PATENT AND TRADEMARK OFFICE
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JAN 1 4 2004

OFFICE OF PETITIONS

Christopher A. Snyder
2539 Canary Isles Drive
Melbourne, FL 32901-6820

In re Application of
Bing Chiang; Griffin K. Gothard; Christopher A. Snyder; William R. Palmer; Michael J. Lynch; Thomas E. Gorsuch; Kenneth M. Gainey; and James A. Proctor, Jr.
Application No. 10/357,276
Filed: January 31, 2003
For: APERIODIC ARRAY ANTENNA

Dear Mr. Snyder:

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 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 Marianne Morgan at (703) 306-3475. 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, DC area).

Marianne E. Morgan

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

cc: Hamilton, Brook, Smith & Reynolds, P.C.
530 Virginia Road
P. O. Box 9133
Concord, MA 01742-9133

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 6

CARY R. REEVES
P.O. BOX 1268
ALEDO TX 76008

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OCT 27 2003

OFFICE OF PETITIONS

In re Application of
Coon, Goble, Tria, Gareiss, Hodorek, Farling,
Justin, Smucker & Van Zile
Application No.: 10/357,282
Filed: February 3, 2003
Attorney Docket No.: ZM9342
For: APPARATUS FOR KNEE SURGERY
AND METHOD OF USE

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed September 19, 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. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on February 3, 2003 without an executed declaration. On March 19, 2003, the Office mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath/declaration, filing fees, and a surcharge for their late filing. In response, on September 19, 2003, petitioners filed a request for a four month extension of time, a declaration executed by 6 of 9 joint inventors, a Rule 47 petition, and authorization to charge required fees.[1] The petition is accompanied by a declaration by Attorney Todd A. Dawson that states that a declaration for the present application was mailed to Inventors Coon and Tria, but Inventors Coon and Tria have not returned the signed document. Attorney Dawson states that his law firm has been unable to locate Inventor Van Zile after diligent effort.

A grantable petition under 37 CFR 1.47(a) requires

(1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
(2) a proper oath or Declaration executed by the available joint inventor(s),
(3) the fee of $130 as specified in 37 CFR § 1.17(h), and
(4) the last known address of the omitted inventor(s).

---

[1] Pursuant to petitioners' authorization, deposit account no. 26-0262 has been charged $3,372 in claim fees, a $130 late filing fee/declaration surcharge, a $40 recording fee, and a $1450 extension of time fee. As specified in the petition, deposit account no. 50-2779 will be charged a $130 Rule 47 petition fee.

This petition lacks item (1) above.

As to item (1), Applicants have failed to establish that Inventors Coon and Tria have refused to sign the declaration and Inventor Van Zile cannot be located.

With respect to proving refusal on the part of Inventors Coon and Tria, the Office requires that the non-signing inventors be provided with a complete copy of the application as filed. This includes the specification with claims, drawings, if any, and a declaration. See MPEP 409.03(d). Attorney Dawson's declaration and the exhibits to the declaration do not establish that Inventors Coon and Tria were mailed a copy of the complete application.

Inventors Coon and Tria must have the complete application in their possession in order to make an informed decision as to whether they join in its filing. They cannot make the necessary statements found in the declaration-- i.e. "I have reviewed and understand..." -- without having examined the patent application. When petitioners can show that Inventors Coon and Tria were mailed and received the complete application and that they either refused to sign the declaration or would not respond to the request that they sign the declaration within a reasonable amount of time, petitioners will have satisfied this requirement. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

With respect to proving that Inventor Van Zile could not be located, a showing of **diligence** is critical. The only evidence regarding the inability to locate Inventor Van Zile is an e-mail from Deeanna Muraski, an employee of the Zimmer firm, to Cary Reeves, an individual with an unknown relationship to this application dated September 9, 2003. The e-mail states that no one, including Van Zile's former employer, knows where Van Zile is and that a search of anywho.com was fruitless.

Petitioners should engage in further efforts to locate Van Zile and document these efforts. The following is a list of evidentiary sources that are commonly relied upon to prove inability to locate an inventor: searches of Internet databases; inquiries of local telephone directories; telegrams; and documented inquiries of last known employers. Every listed type of search need not be done. However, a diligent effort to find the inventor must be made.

Documentary evidence that supports a finding that the non-signing inventor could not be found or reached should be made part of any affidavits or declarations that fully describe the exact facts which are relied on to establish that a diligent effort was made to locate the non-signing inventor. Printed computer records would suffice.

The affidavit or declaration of facts must be signed, where at all possible, by a person having ***firsthand knowledge*** of the facts recited therein. Statements based on hearsay will not normally be accepted. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

It is noted that petitioners included Inventor Smucker among the non-signing inventors. A review of the declaration submitted with the instant petition reveals the portion containing Inventor Smucker's signature is a photocopy of the original signed declaration. Under MPEP 502.02, the photocopy is acceptable. Thus, Inventor Smucker is a signing inventor.

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.

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 facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

cc: TODD A. DAWSON
ZIMMER, INC.
P.O. BOX 0708
WARSAW IN 46581-0708

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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Paper No. 9

CARY R. REEVES
P.O. BOX 1268
ALEDO TX 76008

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DEC 3 0 2003

OFFICE OF PETITIONS

In re Application of
Coon, Goble, Tria, Gareiss, Hodorek, Farling, Justin, Smucker & Van Zile
Application No.: 10/357,282
Filed: February 3, 2003
Attorney Docket No.: ZM9342
For: APPARATUS FOR KNEE SURGERY AND METHOD OF USE

DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 CFR 1.47(A) DISMISSED AS MOOT

Papers filed on December 18, 2003 (certificate of mailing date December 12, 2003) in reply to "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on October 27, 2003, included a Declaration signed by the previously nonsigning inventors, Thomas Coon, Alfred J. Tria, and Richard R.Van Zile, in compliance with 37 CFR 1.63.

In view of the joinder of the inventors, further consideration under 37 CFR 1.47(a) is moot; this application does not have any rule 1.47(a) status and no such status should appear on the file wrapper. This application need not be returned to this office for any further consideration under 37 CFR 1.47(a).

After the mailing of this decision, the application file will be forwarded to Technology Center 3700 for examination in due course.

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

E Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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MAY 12 2006
OFFICE OF PETITIONS

In re Application of :
John Fairweather :
Application No. 10/357,288 :
Filed: February 3, 2003 : ON PETITION
Title of Invention: :
SYSTEM AND METHOD FOR :
MANAGING MEMORY :

This is a decision on the petition under 37 CFR 1.137(a), filed April 3, 2006, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under 37 CFR 1.137". 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 Notice of Allowance and Issue Fee Due ("Notice"), mailed December 13, 2005. The Notice set a non-extendabe three (3) month period for reply from the mail date of the Office Communication. No reply having been received, the application became abandoned March 14, 2006. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

The instant petition

Applicant files the instant petition and states that the abandonment of the application was unavoidable because he did

not receive the Notice. Applicant provides that the correspondence address of record was correct at the mailing of the Notice.

Applicable Law, Rules and MPEP

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (**1**)the required reply (unless previously filed), which may met by the filing of a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (**2**) the petition fee as set forth in 37 CFR 1.17(l); (**3**) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (**4**) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). The instant petition lacks item (3).

Petitioner must establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.

The general standard applied by the Office requires petitioner to establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.[1]35 U.S.C. 41(c)(1) states, "The Commissioner may accept the payment of any maintenance fee ... at any time ... if the delay is shown *to the satisfaction of the Commissioner* to have been unavoidable." (emphasis added).

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

[1] The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

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

"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."[2] Nonawareness of the content of, or a misunderstanding of, PTO statutes, PTO rules, the MPEP, or Official Gazette notices, does not constitute unavoidable delay.[3] The statute requires a "showing"

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[2] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

[3] 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

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). 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 U.S.C. 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).

Finally, a "delay (in responding) resulting from the lack of knowledge or improper application of the patent statute, rules of practice, or MPEP, [] does not constitute unavoidable delay." MPEP 711.03(c).

An Allegation of Non-receipt

Applicant is further advised that an allegation that an Office action was not received may form the basis for revival of an application based upon unavoidable abandonment. If the

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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).

allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the Applicant stating that the Office communication was not received by the Applicant and attesting to the fact that a search of the file jacket and docket records indicate that the Office communication was not received.

2. A copy of the file jacket or docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in Applicant's statement.

Applicant's Assertion

Applicant asserts that abandonment of the application was unavoidable because Applicant did not receive the Notice. Applicant provides that the correspondence address of record was correct at the mailing of the Notice.

Analysis

As to item (3), Applicant has not provided an adequate showing of unavoidable delay. Initially it is noted that the Notice was properly mailed to the correspondence address of record. In absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. However, the showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of Office records reveals that the correspondence address in the petition differs from the correspondence address of record. It is also noted that Applicant filed a change of correspondence address to correspond with the address in the petition on April 17, 2006, two (2) weeks after filing the instant petition. As such, circumstances 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.

As noted above, petitioner has the burden of proof. The decision is based solely on the written, administrative record in existence. The record discloses that Applicant's correspondence address may have changed prior to the mailing of the Office Communication; however, Applicant failed to timely notify this Office of said change. As such, Applicant has failed to prove that the delay was unavoidable.

The petition is dismissed without prejudice. If Applicant contends that his correspondence address at the mailing of the Notice was the same as the correspondence address that the Notice was mailed, Applicant should file a request for reconsideration and include the necessary statements and copies of his docket record(s). Otherwise, Applicant may seek an alternatevenue.

Alternate venue

Applicant may file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently $750.00.

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

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

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

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

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

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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OFFICE OF PETITIONS

In re Application of :
John Fairweather :
Application No. 10/357,288 :
Filed: February 3, 2003 : ON PETITION
Title of Invention: :
SYSTEM AND METHOD FOR :
MANAGING MEMORY :

This is a decision on the Request for Reconsideration of Petition under 37 CFR 1.137(a), filed June 7, 2006, to revive the above-identified application.

The Petition is hereby **granted**.

Background

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed December 13, 2005. The Notice set a non-extendabe three (3) month period for reply from the mail date of the Office Communication. No reply having been received, the application became abandoned March 14, 2006. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

The April 3, 2006 petition

Applicant filed a petition on April 3, 2006 wherein Applicant stated that the abandonment of the application was unavoidable because he did not receive the Notice. The petition was dismissed in a Decision mailed May 12, 2006, for failing to meet the requirements of a grantable petition under 37 CFR 1.181.

The instant Request for Reconsideration

With the instant petition, Petitioner has provided the necessary statements and copies of the docket record where the non-

received Notice would have been entered had it been received and docketed. Petitioner has demonstrated by a preponderance of the evidence that the Notice was not received.

In view of the above, the petition under 37 CFR 1.137(a) is granted.

The issue and publication fees were submitted April 3, 2006.

The application file 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
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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DIW 09-03

Paper No. 9

FLEIT KAIN GIBBONS GUTMAN & BONGINI
COURVOISIER CENTRE II, SUITE 404
601 BRICKELL KEY DRIVE
MIAMI FL 33131

COPY MAILED
SEP 22 2003
OFFICE OF PETITIONS

In re Application of	:
Kevin J. Russell	:
Application No. 10/357,300	: DECISION ACCORDING STATUS
Filed: 3 February, 2003	: UNDER 37 CFR 1.47(b)
Attorney Docket No. 706-A02-059	:

This is in response to the renewed petition filed on 4 September, 2003, under 37 CFR 1.47(b).

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 statement of process server Henry Wardwell establishes that the inventor refused to join in the filing of the present application after having been presented with a copy of the application papers. In addition, petitioners have shown, via the copy of the employment agreement between the inventor and CII Mastek, Inc., that Capintec, Inc. (parent company of CII Mastek, Inc.) has a proprietary interest in the above-identified application. Lastly, petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and has demonstrated that such action is necessary to prevent irreparable damage.

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.

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at 703.308.6918.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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DW 07-03

Paper No. 7

FLEIT KAIN GIBBONS GUTMAN & BONGINI
COURVOISIER CENTRE II, SUITE 404
601 BRICKELL KEY DRIVE
MIAMI FL 33131

COPY MAILED

JUL 2 4 2003

OFFICE OF PETITIONS

In re Application of	:
Kevin J. Russell	:
Application No. 10/357,300	: DECISION REFUSING STATUS
Filed: 3 February, 2003	: UNDER 37 CFR 1.47(b)
Attorney Docket No. 706-A02-059	:

This is in response to the petition filed on 10 July, 2003, under 37 CFR 1.47(b).

The petition is **DISMISSED**.

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

The above-identified application was filed on 3 February, 2003, without an executed oath or declaration. Accordingly, on 14 April, 2003, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application requiring an executed oath or declaration, the statutory basic filing fee, a surcharge for their late filing, and replacement drawings in compliance with 37 CFR 1.84 and 1.121.

In response, on 10 July, 2003, petitioners filed a one (1) month extension of time, accompanied by the basic filing fee and surcharge, a declaration naming Kevin J. Russell as the sole inventor and signed by Jessica Bede, CEO of CAPINTEC, Inc. on behalf of and as agent for the non-signing inventor, replacement drawings, a copy of an employee agreement between CII Mastek, Inc., and sole inventor Russell, and the present petition.

Petitioner asserts that a copy of the application was presented to Russell, but that he refused to sign the declaration.

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a statement of the last known address of the non-signing inventor;

(5) proof of proprietary interest, and

(6) proof of irreparable damage.

The petition lacks items (5), and (6).

With regard to item (5), it is noted that the employee agreement is between Russell and CII Mastek, Inc., while the declaration is signed on behalf of CAPINTEC, Inc. It is not clear from the petition that a relation exists between the two corporate entities, or that Russell ever had an employment agreement with CAPINTEC, Inc. Petitioners must explain this discrepancy. If there has been a change of name or assignment of the invention, petitioner must provide supporting documentation.

As to item (6), petitioners must provide a statement that the filing is necessary to prevent irreparable damage or to preserve the rights of the parties.[1]

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

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

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

[1] MPEP 409.03(g).

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at (703)308-6918.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

ALISA A. HARBIN, ESQ.
CHIRON CORPORATION
INTELLECTUAL PROPERTY - R440
P.O. BOX 8097
EMERYVILLE, CA 94662-8097

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MAR 0 5 2004

OFFICE OF PETITIONS

In re Application of
O'Hagen, Derek
Application No. 10/357,303
Filed: February 3, 2003
Attorney Docket No. PP01388.213

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 20, 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 11, 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 13, 2003. A Notice of Abandonment was mailed on February 4, 2004.

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

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $2010.00 extension of time fee submitted with the petition on February 20, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary. However, when the USPTO attempted to charge the other fees relating to the instant petition (i.e., petition fee, basic filing fee, etc.), the petitioner's deposit account did not have enough funds. Accordingly, the $2010.00 submitted for payment of the extension of time will be transferred to reflect payment of the petition fee and basic filing fee.

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

Telephone inquiries should be directed to the undersigned at (703) 306-0482.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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James A. Henricks
HENRICKS SLAVIN AND HOLMES LLP
SUITE 200
840 APOLLO STREET
EL SEGUNDO CA 90245

MAILED JUN 16 2006

In re Application of: HOWARD et al.	:
Appl. No.: 10/357,309	: DECISION ON PETITION
Filed: February 3, 2003	:
For: HEIGHT MECHANISM FOR EQUIPMENT,	:
INCLUDING CONCRETE SAWS	:

This is a decision on the petition filed on May 5, 2006 by which petitioners request 1) acceptance of the petition as timely and 2) suspension of the rules and 3) acceptance of the petitioner's Brief as conforming to the rules, or alternatively 4) to require express findings by the examiner and to restart the date for the filing of a new brief. The petition is currently considered pursuant to 37 CFR 1.181, and no fee is required. It is noted that petitioner appears to be simultaneously requesting consideration of the petition under 37 CFR 1.183. A fee of $400 as required for consideration under 37 CFR 1.183 has been submitted.

Pursuant to 37 CFR 1.4(c) petitioner is reminded different matters may be considered by different branches or sections of the USPTO. In order to avoid confusion and delay, each distinct subject, inquiry or order must be contained in a separate paper. In order to expedite matters the Technology Center has construed the petition as a request for supervisory review under 37 CFR 1.181 and if dismissed, will forward the paper on to the appropriate office for consideration of the petition under 37 CFR 1.183.

The petition is dismissed as being untimely filed.

Review of the record shows on September 19, 2005, petitioner filed an Appeal Brief in the above noted file. On October 31, 2005 the examiner promulgated a notice of non-compliant appeal brief setting a one-month (extendable) period for response. On December 12, 2005 petitioner filed a request for reconsideration which was addressed in the letter mailed by the Office on May 8, 2008. This letter appears to have crossed in the mail with the instant petition and declaration in support of petition which were received by the Office on May 5, 2006.

Petitioner purports in the petition and declaration that numerous conversations were held with the examiner on November 21, 2005 and December 1, 2006. Petitioner is reminded according to 37 CFR 1.2 all business with the Office should be transacted in writing. The action of the Office will be based exclusively on the written record in the Office. Accordingly what was or was not agreed to during conversations with the examiner has no bearing upon the decision herein.

Review of the record shows that the instant petition was filed six months after the mailing date of the notice of non-compliant amendment. Pursuant to 37 CFR 1.181(f), the petition is not timely filed since the petition was not filed within two months of the action complained of. As the petition was not timely filed, the relief requested will not be granted. Petitioner is entitled to request reconsideration of this decision provided that the request for reconsideration is filed within two months of the date of this decision.

The file is being forwarded to the office of Petitions for consideration of petitioner's position under 37 CFR 1.183.

PETITION DISMISSED

Frederick R. Schmidt, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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EL SEGUNDO CA 90245

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NOV 22 2006

OFFICE OF PETITIONS

In re Application of :
Howard et al. :
Application No. 10/357,309 : ON PETITION
Filed: February 3, 2003 :
Attorney Dck't. No. 020100-024 :

This is a decision on the petition filed May 5, 2006, requesting (1) acceptance of the petition as timely, (2) or, in the alternative, suspension of the rules such that the petition is considered timely, (3) a finding that the Brief on Appeal filed September 19, 2005, conforms to the applicable rules, (4) or, in the alternative, that the examiner be required to make express findings as to any deficiencies of the Appeal Brief, and then to restart the date for the filing of a new Appeal Brief, which is being treated by this office solely under the provisions of 37 CFR 1.183.

The petition considered only under 37 CFR 1.183 is dismissed. This is not a final agency action.

A review of the record reveals that applicants' Appeal Brief ("Brief") was filed on September 19, 2005. However, on October 31, 2005, the examiner mailed a Notice of Non Compliant Brief ("Notice"), which set an extendable period of one month for submission of a compliant Brief. The Brief was held non compliant with 37 CFR 41.37(c)(1)(v) which sets forth that "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." On December 20, 2005, applicant filed a request (and fee) for a 1 month extension of time, and a response in which petitioner asserted that the Brief was in fact compliant. Petitioner did not then file either a corrected Brief or a petition seeking review of the examiner's holding. On May 5, 2006, the instant petition was filed. On May 8, 2006, the examiner issued a communication that treated applicants' reply filed December 20, 2005, and pointed out that a proper reply to the Notice would have been either a corrected Brief or a petition seeking review of the examiner's holding. On June 16, 2006, the Group Director treated the instant petition solely under the provisions of 37 CFR 1.181(a), and then referred the file to this office for consideration of the petition requesting alternate relief under the provisions of 37 CFR 1.183.

The Group Director dismissed the instant petition as untimely filed within the meaning of 37 CFR 1.181(f) as it was submitted more than 2 (actually 6) months after the action complained of, which here was the Notice of October 31, 2005.

Petitioners seek waiver of the rules "if the present petition is not considered to be timely." Petitioners point to their attempts to resolve the matter telephonically with the examiner within the period for reply to the Notice.

In order for grant of any petition under 37 CFR 1.183, petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985). Petitioner has not shown that either condition exists in this case.

As the Group Director has correctly noted, 37 CFR 1.2 requires that all business be transacted in writing with the USPTO. While petitioners attempted to clarify the issues telephonically with the examiner, that could not take the place of a timely, written petition. Petitioners present an interesting but unfortunately incorrect interpretation of the import of 37 CFR 41.37 and MPEP 1205.03 upon any applicant's receipt of a Notice, in seeking to have the December 20, 2005, communication accepted in lieu of either an amended Brief or a petition for review of the holding in the Notice. There are but 2 possible types of a reply to a Notice: (1) a corrected Brief, or (2) a petition seeking review of the examiner's holding in the Notice. See MPEP 1205.03. The rules before the USPTO and the MPEP simply fail to provide any basis for the contention that some "reply" other than either a corrected Brief or a petition for review of the initial holding in a Notice may be filed upon the issuance of a Notice.

Petitioner is correct that if the petition route is pursued, the risk of an unsuccessful petition is dismissal of the appeal (and abandonment if no allowed claims are present, per MPEP § 1215.04 and § 711.02(b). This appears to be an attempt to justify the belated presentation of the petition herein. However, that risk is true of any petition; as the mere filing of a petition does not in of itself toll any period for reply nor act as a stay of any time period running against an application. See 37 CFR 1.181(f). However, the same risk of dismissal of the Appeal (and abandonment) is encountered if an amended Brief is filed in reply to a Notice when that amended Brief does not correct the noted deficiency(s). See MPEP 1205.03. In other words, petitioners assumed the same risk if they filed either a corrected brief or chose instead to file a petition in reply to the Notice. In either instance, whether petitioners timely–and correctly--replied to the Notice was a circumstance entirely within their control. See 37 CFR 1.135(b) (which requires an applicant to file the complete and proper reply as the nature of the case then requires so as to avoid abandonment).

The rule pertaining to the required content of a Brief, where as here, a means plus function claim(s) is present is clear and unambiguous. Thus, where an appellant chooses to petition the examiner's holding in a Notice, he must (1) necessarily be certain the Brief is clearly and unquestionably compliant with 37 CFR 41.37, and (2) present that petition within 2 months of the Notice. That 2 month period is not extendable. See MPEP 1002. However, that is the very 2 month period that petitioner now seeks, in essence, to have extended by way of a petition seeking waiver of that time period.

However, petitioners could have avoided the predicament in which they now find themselves if, in their opinion, the Notice was wrongfully issued, by promptly and diligently submitting a petition seeking review of the Notice, in lieu of the document that they did file. The Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and petitioner 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); Stevens v. Tamai, 70 USPQ2d 1765 (Fed. Cir. 2004)(court reversing priority award due to counsel's failure to follow the Rules of Practice of the USPTO). Further, it is well settled that a party's inadvertent failure to comply with the requirements of the rules or procedures before the USPTO is not deemed to be an extraordinary situation that would warrant waiver of the rules or procedures under 37 CFR 1.183. See Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995). Equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable, due care and diligence. U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983). The Office, where it has the power to do so, should not relax the requirements of established practice in order to save an applicant from the consequence of his delay. See, Ex Parte Sassin, 1906 Dec. Comm'r. Pat. 205, 206 (Comm'r Pat. 1906) and compare Ziegler v. Baxter v. Natta, 159 USPQ 378, 379 (Comm'r Pat. 1968) and Williams v. The Five Platters, Inc., 510 F.2d 963, 184 USPQ 744 (CCPA 1975). While it is unfortunate that petitioners did not file the petition seeking review of the examiner's holding in the Notice until long after the time period for seeking such review had expired, such does not warrant waiver of the rule's timing requirement. Whether the petition was timely filed *vel non* was a matter entirely within the control of petitioner. Circumstances resulting from petitioner's, or petitioner's counsel's, failure to exercise due care, or lack of knowledge of, or failure to properly apply, the patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the granting of relief. See In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990); In re Bird & Son, Inc., 195 USPQ 586, 588 (Comm'r Pats. 1977). Rather, as the situation recounted by the petition is an oversight that could have been avoided by the exercise of reasonable care and diligence, such is not a circumstance beyond the control of petitioner warranting waiver of the rules. See Nitto Chemical Industry. Co., Ltd. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (waiver of the rules not warranted where a party makes an avoidable mistake in filing (or not filing) papers before the USPTO that could have been prevented by the exercise of ordinary care or diligence); Gustafson v. Strange, 227 USPQ 174 (Comm'r Pats. 1985) (counsel's unawareness of 37 C.F.R. 1.8 not extraordinary situation warranting waiver of a rule).

This application is being brought to the attention of the Technology Center for treatment of the petition filed July 10, 2006, requesting reconsideration (as opposed to review, which would be decided by the Deputy Commissioner for Patent Examination Policy) of the decision of the Group Director mailed June 16, 2006, and, for treatment of the separate petition filed the same date requesting a finding that the Brief was proper or further findings by the examiner with a restart of the date for filing a corrected Brief.

Inquiries related to this decision should be directed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HOLMES LLP
SUITE 200
840 APOLLO STREET
EL SEGUNDO, CA 90245

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APR 30 2007

OFFICE OF PETITIONS

In re Application of

Howard, et al. :

Application No. 10/357,309

: DECISION ON PETITION

Filed: February 3, 2003

:

Attorney Docket No. 020100-024

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

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to Notice of Non-Compliant Appeal Brief, mailed October 31, 2005, which set a shortened period for reply of one month from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A response was filed on December 20, 2005, with a request for an extension of time within the first month. The response was deemed to be improper. The application became abandoned on January 1, 2006. A Notice of Abandonment was mailed on December 6, 2006.

The appeal brief, filed November 30, 2006, is noted.

The application is being forwarded to Technology Center 3700, GAU 3723 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:01232004

DATE : July 27, 2006

TO SPE OF : ART UNIT 2819

SUBJECT : Request for Certificate of Correction on Patent No.: 6,741,099

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:

Rexford Barnie
REXFORD BARNIE
SUPERVISORY PATENT EXAMINER
07/27/06

SPE: Rexford (Rex) Barnie **Art Unit** 2819

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON DC 20037-3213

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JAN 07 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Minoru Usui et al	:	
Application No. 10/357,377	:	
Filed: February 4, 2003	:	
Attorney Docket No. Q73484	:	

This is a decision on the petition, filed January 6, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 30, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2853 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. _____

Date : January 7, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of Application No. 10/357,377

Applicant(s) :Minoru Usui et al
Application No. :10/357,377
Filed :February 4, 2003

The above-identified application has been assigned Patent No. 6,843,544 and an issue date of January 18, 2005.

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

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of January 18, 2005:

"All reference to Patent No. 6,843,544 to Minoru Usui et al of Japan for LIQUID CONTAINER HAVING LIQUID CONSUMPTION DETECING DEVICE appearing in the Official Gazette of January 18, 2005 should be deleted since no patent was granted."

Karen Creasy

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

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

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WASHINGTON, DC 20037-3213

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SEP 2 3 2005

OFFICE OF PETITIONS

In re Application of :
Minoru Usui et al :
Application No. 10/357,377 : ON PETITION
Filed: February 4, 2003 :
Attorney Docket No. Q73484 :

This is a decision on the petition under 37 CFR 1.313(a) and (c)(2), filed September 22, 2005, which is being treated under 37 CFR 1.313(c)(2), to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 5, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2861 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Wan Laymon

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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AUG 15 2006

C. IRVIN MCCLELLAND
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of	:	
Wolfgang Lortz, et al.	:	**DECISION ON PETITION**
Appl. No. 10/357,391	:	**UNDER 37 CFR 1.181**
Filed: February 4, 2003	:	
For: PROCESS FOR PRODUCING DISPERSIONS	:	

This is in response to Applicant's Petition under 37 CFR 1.181 filed on September 29, 2005 to request Examiner to take corrective action regarding the IDS filed July 21, 2003.

The petition is dismissed.

The above application was filed on February 4, 2003 and two information disclosure statements (IDS) were filed on July 21, 2003 and August 13, 2003. Examiner acknowledged consideration of both IDS documents on October 6, 2004 and a notice of allowance was mailed on August 3, 2005.

Petitioner asserts that although Examiner acknowledged the consideration of both IDS documents, Examiner failed to consider references AW and AX on the IDS filed on July 21, 2003. Accordingly, Petitioner requests that Examiner take corrective action and acknowledge full consideration of said IDS document.

Review of the record shows that Examiner failed to consider references AW and AX from the IDS filed on July 21, 2003. However, Examiner later acknowledged consideration of all references, included references AW and AX, on January 18, 2006. In view thereof, petition is dismissed for being moot.

PETITION DISMISSED.

Any questions regarding this decision should be directed to Special Program Examiner Allan N. Shoap at 571-272-4514.

Frederick R. Schmidt
Director
Technology Center 3700

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

GC

Mailed: 4-5-07

In re application of	:	
Fukui et al.	:	
Serial No. 10/357,461	:	DECISION ON
Filed: February 4, 2003	:	PETITION
For: METHOD OF PRODUCING	:	
PLASTIC OPTICAL MEMBER	:	

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION, dated October 16, 2006.

On December 19, 2005 a Non-Final was mailed to Applicants. On May 19, 2006 Applicant submitted a response and amendment to the claims. On August 14, 2006, a Final Office Action was mailed to Applicants. On October 16, 2006, the instant petition was timely filed.

Petitioner has argued that the finality of the last Office Action on August 14, 2006 is improper. Petitioner argues that the new grounds of rejection were not necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement.

DECISION

Section 706.07(a) [R-5] Final Rejection, When Proper on Second Action of the MPEP states:

> ...
> 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).
> ...

Petitioner argues that the claim amendments filed on May 19, 2006 merely incorporate previously presented dependent claims 13 and 14 into independent claims 1 and 2, respectively.

Petitioner's arguments are persuasive. The claim amendments to claims 1 and 2 presented on May 19, 2006 merely incorporate the previously presented claim limitations from dependent claims 13 and

14, respectively. Examiner's argument in the Final Office Action mailed on August 16, 2006 that the claim amendments filed on May 19, 2006 present a new order of steps is factually incorrect.

Accordingly, the Examiner improperly made the August 14, 2006 Office Action Final. The Petition to withdraw the finality of the Office Action is **GRANTED**.

It is noted that while the finality of the office action has been withdrawn, the rejection still stands. Applicant's time for response to the August 14, 2006 office action continues to run. Extensions of time may be obtained to file any amendments. Such amendments will be treated as an amendment under 37 CFR 1.111 or 1.112 and will be entered.

JMStone

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

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20037-3213

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FITCH, EVEN, TABIN & FLANNERY
P. O. BOX 65973
WASHINGTON, DC 20035

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JUL 17 2006

OFFICE OF PETITIONS

In re Application of	:	
Nobuhiro Usui	:	DECISION
Application No. 10/357,466	:	ON PETITION
Filed : February 4, 2003	:	
Attorney Docket Number:	:	
7372/80210	:	

This is a decision in response to the petition under 37 CFR 1.137(b), filed February 13, 2006, to revive the above-identified application. The delay in treating this petition is regretted.

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action, mailed June 2, 2005. The Notice set a shortened statutory period for reply of three (3) months from the mail date of the Notice, and also provided for extensions of time under 37 CFR 1.136(a).

Applicant filed a response to the final office action on November 30, 2005; however, the response failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action mailed December 19, 2005.

No complete and proper reply having been received, the application became abandoned September 3, 2005. A Notice of Abandonment was mailed February 3, 2006.

With the instant petition, Applicant has filed a Request for Continued Examination ("RCE") and a submission in the form of the Amendment filed November 30, 2005.

This application is being returned to Technology Center 1771 for processing of the RCE and Amendment in due course.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

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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Joseph A. Pugh
TriQuint Semiconductor, Inc.
2300 NE Brookwood Parkway
Hillsboro, OR 97124

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JAN 27 2006

OFFICE OF PETITIONS

In re Application of	:	
Gustav E. Derkits, Jr., et. al.	:	
Application No. 10/357,486	:	ON PETITION
Filed: February 4, 2003	:	
Attorney Docket No. T8060.0012/P012-A	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 5, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely respond to the final Office action mailed May 24, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) under 37 CFR 1.114, with the $790 filing fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

The Office also acknowledges receipt of an amendment, and a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address with the Statement under 37 CFR 3.73(b), which were all filed on December 5, 2005.

The Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address has been accepted and made of record.

This application is being revived for consideration of the RCE.

The application file is being referred to Technology Center Art Unit 2811.

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

Andrea Smith
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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Paper No. 8

MAY 2 0 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

STEVENS, DAVIS, MILLER & MOSHER, L.L.P.
1615 L STREET, N.W., SUITE 850
WASHINGTON, D.C. 20036

In re Application of
Carsten Burmeister, et al.
Application No. 10/357,501
Filed: February 04, 2003
For: METHOD OF DYNAMICALLY TRANSMITTING DATA PACKETS USING RTP AND RTCP PROTOCOLS

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed May 03, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

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

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Elan Drug Delivery, Inc. c/o Foley & Lardner
3000 K Street, N.W.
Suite 500
Washington DC 20007-5109

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JUN 0 8 2009

OFFICE OF PETITIONS

In re Patent No. 7,459,283	:
Issued: December 2, 2008	:
Application No. 10/357,514	: PATENT TERM ADJUSTMENT
Filed: February 4, 2003	:
Dkt. No.: 029318-0911	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R §1.705", filed January 30, 2009. This matter is being properly treated as an application for patent term adjustment pursuant to 37 CFR 1.705(d).

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

The above-identified application matured into U.S. Pat. No. 7,459,283 on December 2, 2008. The patent issued with a PTA 780 days. The request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See, 37 CFR 1.705(d). Patentees request that the patent term adjustment be increased from 780 days to 1,331 days.

Patentees request reconsideration of the patent term adjustment based on the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees contend that pursuant to Wyeth, a PTO delay under 35 U.S.C. 154(b)(1)(A) overlaps with a delay under 35 U.S.C. 154(b)(1)(B) only if the delays occur on the same day.

Patentees maintain that the period of adjustment due to the three year delay by the Office, pursuant to 37 CFR 1.702(b), of 1,032 days and the period of adjustment due to examination delay, pursuant to 37 CFR 1.702(a)(1), of 551 days do not overlap as these periods do not occur on the same day. The 1,032-day period is calculated based on the application having been filed under 35 U.S.C. 111(a) on February 4, 2003, and the patent having been issued on December 2, 2008. Patentees assert that in addition to this 1,032-day period, they are entitled to a period of adjustment due to examination delay pursuant to 37 CFR 1.702(a)(1) of 551 days.

Under 37 CFR 1.703(f), patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR 1.702 reduced by the period of time equal to the period of time during which patentees failed to engage in reasonable efforts to

conclude prosecution pursuant to 37 CFR 1.704. In other words, patentees are entitled to the period of Office delay reduced by the period of applicant delay.

Patentees do not dispute that the total period of Office delay is the sum of the period of three years delay and the period of examination delay, to the extent that these periods of delay are not overlapping. However, in effect, patentees contend that no portion of the three year delay period overlaps with the period of examination delay. Accordingly, patentees submit that the total period of adjustment for Office delay is 1,583 days (the sum of the period of three year delay (1,032 days) and the period of examination delay (551 days), reduced by zero days of overlap. As such, patentees assert entitlement to a patent term adjustment of 1,331 days (1,032 days *plus* 551 days *less* zero days of overlap *less* 252 days of applicant delay).

The Office agrees that as of the issuance of the patent on December 2, 2008, the application was pending three years and 1,032 days after its filing date. The Office agrees that certain action was not taken within a specified time frame, and, thus, the entry of a period of adjustment of 551 days is correct. At issue is whether patentees should accrue an additional 1,032 days of patent term adjustment for the Office taking in excess of three years to issue the patent as well as 551 days for Office failure to take a certain action within a specified time frame (or examination delay).

The Office contends that 551 days overlap. Patentees' calculation of the period of overlap is inconsistent with the Office's interpretation of this provision. 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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

Likewise, 35 CFR 1.703(f) provides that:

> To the extent that periods of delay attributable to the grounds specified in § 1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed.

As explained in Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A), 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual

> filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule, 65 Fed. Reg. 56366 (Sept. 18, 2000). See, also, Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See, also, Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A), 69 Fed. Reg. 34283 (June 21, 2004).

The current wording of § 1.703(f) was revised in response to the misinterpretation of this provision by a number of Patentees. The rule was slightly revised to more closely track the corresponding language of 35 U.S.C. 154(b)(2)(A). The relevant portion differs only to the extent that the statute refers back to provisions of the statute whereas the rule refers back to sections of the rule. This was not a substantive change to the rule nor did it reflect a change of the Office's interpretation of 35 U.S.C. 154(b)(2)(A). As stated in the Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A), the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding § 1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed. The grounds specified in these sections cover the A) guarantee of prompt Patent and Trademark Office responses, B) guarantee of no more than 3-year application pendency, and C) guarantee or adjustments for delays due to interference, secrecy orders and appeals. A section by section analysis of 35 U.S.C. 154(b)(2)(A) specifically provides that:

> Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)-(C), total adjustments granted for restorations under [35 U.S.C. 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under [35 U.S.C.] 181 and administrative delay under [35 U.S.C.] 154(b)(1)(A)),

> the term should not be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed; See, 145 Cong. Rec. S14,718[1].

As such, the period for over three-year pendency does not overlap only to the extent that the actual dates in the period beginning three years after the date on which the application was filed overlap with the actual dates in the periods for failure of the Office to take action within specified time frames. In other words, consideration of the overlap does not begin three years after the filing date of the application.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the entire period during which the application was pending before the Office, February 4, 2003, to the date the patent issued on December 2, 2008. Prior to the issuance of the patent, 551 days of patent term adjustment were accorded for the Office failing to respond within a specified time frame during the pendency of the application.

The application actually issued three years and 1,032 days after its filing date. However, the Office did not delay 1,032 days and then delay an additional 551 days. Accordingly, 1,032 days of patent term adjustment (not 1,032 days and 551 days) was properly entered because a portion of the period of delay of 1,032 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 551 days attributable to grounds specified in § 1.702(a)(1). Entry of both periods is not warranted.

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

The Office acknowledges submission of the required application fee of $200.00. See, 37 CFR 1.18(e). The request for refund of the required application fee is hereby DISMISSED. Submission of the application fee is a prerequisite prior to treatment on the merits of any application for patent term adjustment.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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[1] The AIPA is title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948), which was incorporated and enacted as law as part of Pub. L. 106-113. The Conference Report for H.R. 3194, 106th Cong. 1st Sess. (1999), which resulted in Pub. L. 106-113, does not contain any discussion (other than the incorporated language) of S. 1948. A section-by-section analysis of S. 1948, however, was printed in the Congressional Record at the request of Senator Lott, See 145 Cong. Rec. S14,708-26 (1999)(daily ed. Nov. 17, 1999).

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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Patent No. : 7,459,283 B2
Ser. No. : 10/357,514
Inventor(s) : Wertz et al.
Issued : Dec. 2, 2008
Title : NANOPARTICULATE COMPOSITIONS HAVING LYSOZYME AS A SURFACE STABILIZER
Docket No. : 029318-0911

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

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

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

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

By fax: (571) 273-0025
ATTN: Office of Petitions

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

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) **756-1542** or (703) 756-1814

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OFFICE OF PETITIONS

Elan Drug Delivery, Inc. c/o Foley & Lardner
3000 K Street, N.W.
Suite 500
Washington DC 20007-5109

In re Patent No. 7,459,283
Issued: December 2, 2008
Application No. 10/357,514
Filed: February 4, 2003
Dkt. No.: 029318-0911

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the petition filed on July 29, 2009, which is being treated as a petition under 37 CFR 1.181 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 1,331 days. The instant petition was timely filed within two months of the mail date of the decision dismissing the petition under 37 CFR 1.705(d).

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**.

A review of the record establishes that the period of "A" delay is 551 days and the period of "B" delay is 1,032 days, as argued by patentees. The adjustment is reduced 252 days for applicant delay, as argued by patentees.

However, the Office neglected to assess a reduction of 79 days in accordance with 37 CFR 1.704(c)(7) in connection with the reply filed April 4, 2008. The reduction commenced January 17, 2008, the day after the reply containing an omission was filed, and ended April 4, 2008, the date that the reply correcting the previous omission was filed.

In view thereof, the net adjustment is 1,252 days ("A" delay of 551 + "B" delay of 1,032 – 331 days of applicant delay).

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. See, 37 CFR 1.323(a)(4).

The Office acknowledges the previous 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 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 1,252 days.

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

/ALESIA M. BROWN/

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,459,283 B2

DATED : **December 2, 2008** **DRAFT**

INVENTOR(S) : Wertz, 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 780 days

Delete the phrase "by 780 days" and insert – by 1,252 days--

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BARRY E. BERTSCHNEIDER
MORRISON & FOERSTER
SUITE 300
1650 TYSONS BOULEVARD
McLEAN, VA 22102

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JAN 1 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Arnold Keller et al	:	
Application No. 10/357,516	:	NOTICE
Filed: February 4, 2003	:	
Attorney Docket No. 246472003900	:	

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

SPE. G. Vidovich

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/357,545

Paper No.: _____

DATE : 6/17/05

TO SPE OF : ART UNIT 3711

SUBJECT : Request for Certificate of Correction on Patent No.: 6866596

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.

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

Comments:

MSC – 6/27/05

GREGORY VIDOVICH
SUPERVISORY PATENT EXAMINER
~~TECHNOLOGY CENTER 3700~~
SPE

3711
Art Unit

RICK DANYDEGGER
BRENT P. LORIMER
THOMAS R. VUKSINICK
LARRY R. LAYCOCK
JONATHAN W. RICHARDS
DAVID R. WRIGHT
JOHN C. STRINGHAM
JOHN M. GUYNN
CHARLES L. ROBERTS
DANA L. TANGREN
ERIC L. MASCHOFF
CHARLES J. VEVERKA
ROBYN L. PHILLIPS
RICHARD C. GILMORE *
STERLING A. BRENNAN
R. BURNS ISRAELSEN
DAVID R. TODD
DAVID B. DELLENBACH
L. DAVID GRIFFIN
ADRIAN J. LEE
FRASER D. ROY
CARL T. REED

R. PARRISH FREEMAN, JR.
PETER F. MALEN, JR.
L. REX SEARS, PH.D.
WILLIAM R. RICHTER
ERIC M. KAMERATH
ROBERT E. AYCOCK
JENS C. JENKINS
KEVIN W. STINGER
WILLIAM J. ATHAY
MICHAEL B. DODD
RYAN D. BENSON
SARA D. JONES
TIGE KELLER
JANNA L. JENSEN
MATTHEW D. TODD
J. LAVAR OLDHAM
MICHAEL J. FRODSHAM
JOSEPH L. KRUPA
BRETT A. HANSEN
BRETT I. JOHNSON
MATTHEW A. BARLOW
WESLEY C. ROSANDER
ANDREW S. HANSEN
CHAD E. NYDEGGER
JOSEPH G. PIA
CLINTON E. DUKE
RYAN N. FARR *
JAMES B. BELSHE
KIRK R. HARRIS
KEELY SCHNEITER
MICHAEL M. BALLARD
DAVID A. JONES
SHANE K. JENSEN
JONATHAN M. BENNS, PH.D.

VERNON R. RICE §
OF COUNSEL

* Admitted only in California
§ Admitted only in Virginia

WORKMAN | NYDEGGER
INTELLECTUAL PROPERTY ATTORNEYS

1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UTAH 84111
TELEPHONE: (801) 533-9800
FAX: (801) 328-1707
WEBSITE: HTTP://WWW.WNLAW.COM

C of C $

OIPE
MAY 2 3 2005
PATENT & TRADEMARK OFFICE

PATENT
Docket No. 15499.180.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

	Steed et al.	
Serial No.:	10/357,545	Art Unit 3711
Filed:	February 4, 2003	
For:	PORTABLE BASKETBALL SYSTEM	
Examiner:	M. Chambers	
Patent No.:	6,866,596 B2	
Issue Date:	March 15, 2005	

REQUEST FOR A CERTIFICATE OF CORRECTION
UNDER 37 C.F.R. § 1.323

Attn: Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate
MAY 2 6 2005
of Correction

Sir:

In accordance with the provisions of 37 C.F.R. § 1.323 which implement 35 U.S.C. § 255, the Commissioner is respectfully requested to issue a Certificate of Correction to correct mistakes in the above-identified patent. The enclosed Patent Office Form 1050 reflects the desired corrections. Also enclosed please find a check in the amount of $100.00 to cover the costs for issuance of this certificate.

05/24/2005 EFLORES 00000103 6866596
01 FC:1811 100.00 OP

JUN 1 2005

OIPE
MAY 2 3 2005
PATENT & TRADEMARK OFFICE

The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment to Deposit Account No. 23-3178. Duplicate copies of this letter are enclosed.

Dated this 19 day of May, 2005.

Respectfully submitted,

Richard C. Gilmore
Attorney for Patentee
Registration No. 37,335
Customer No. 022913

RCG:jrb
Docket: 15499.180.1
PR0000000763V001

CERTIFICATE OF DEPOSIT UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 19 day of MAY, 2005.

Transmitted: REQUEST FOR A CERTIFICATE OF CORRECTION UNDER 37 C.F.R. § 1.323, PTO Form 1050 and Check No. 142269 for $100.00

JUN 1 2005

RICK D. NYDEGGER
BRENT P. LORIMER
THOMAS R. VUKSINICK
LARRY R. LAYCOCK
JONATHAN W. RICHARDS
DAVID R. WRIGHT
JOHN C. STRINGHAM
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VERNON R. RICE §
OF COUNSEL

WORKMAN | NYDEGGER

INTELLECTUAL PROPERTY ATTORNEYS

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TELEPHONE: (801) 533-9800
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OIPE
MAY 2 3 2005
PATENT & TRADEMARK OFFICE

PATENT
Docket No. 15499.180.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

	Steed et al.	
Serial No.:	10/357,545	Art Unit 3711
Filed:	February 4, 2003	
For:	PORTABLE BASKETBALL SYSTEM	
Examiner:	M. Chambers	
Patent No.:	6,866,596 B2	
Issue Date:	March 15, 2005	

REQUEST FOR A CERTIFICATE OF CORRECTION UNDER 37 C.F.R. § 1.323

Attn: Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

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JUN 1 2005

* Admitted only in California
§ Admitted only in Virginia

OIPE
MAY 2 3 2005
PATENT & TRADEMARK OFFICE

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Respectfully submitted,

Richard C. Gilmore
Attorney for Patentee
Registration No. 37,335
Customer No. 022913

RCG:jrb
Docket: 15499.180.1
PR0000000763V001

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Transmitted: REQUEST FOR A CERTIFICATE OF CORRECTION UNDER 37 C.F.R. § 1.323, PTO Form 1050 and Check No. 142269 for $100.00

(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO : **6,866,596 B2**

DATED : **March 15, 2005**

INVENTOR(S) : **Steed et al.**

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

Column 3,
Line 14, before "axle" change "a" to --an--

Column 4,
Line 33, after "intended to" change "limits" to --limit--
Line 60, after "basketball" change "system." to --systems.--

Column 7,
Line 59, change "may be size" to --may be sized--

Column 11,
Line 23, after "receiving portion" change "form" to --formed--

Column 12,
Line 5, before "integrally formed" change "are" to --is--

MAILING ADDRESS OF SENDER: **Richard C. Gilmore, Esq.**
WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

PATENT NO. **6,866,596 B2**

No. of additional copies

→ **0**

JUN 1 2005

P15/REV02

(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO : **6,866,596 B2**

DATED : **March 15, 2005**

INVENTOR(S) : **Steed et al.**

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

Column 3,
Line 14, before "axle" change "a" to --an--

Column 4,
Line 33, after "intended to" change "limits" to --limit--
Line 60, after "basketball" change "system." to --systems.--

Column 7,
Line 59, change "may be size" to --may be sized--

Column 11,
Line 23, after "receiving portion" change "form" to --formed--

Column 12,
Line 5, before "integrally formed" change "are" to --is--

MAILING ADDRESS OF SENDER: **Richard C. Gilmore, Esq.**
WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

PATENT NO. **6,866,596 B2**

No. of additional copies

→ **0**

JUN 1 2005

P15/REV02

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

MENDELSOHN, DRUCKER, & ASSOCIATES, P.C.
1500 JOHN F. KENNEDY BLVD., SUITE 405
PHILADELPHIA, PA 19102

Mail Date: 06/16/2010

Applicant	: Muralidharan S. Kodialam	: DECISION ON REQUEST FOR
Patent Number	: 7633867	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/357,557	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/04/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2076** 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.

Re Submission

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE 1/26/09

TO SPE OF : ART UNIT 2416

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/357558 Patent No.: 7397761 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Virginia Tolbert
Certificates of Correction Branch
703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: _____

WILLIAM TROST
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600
SPE

2416
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

BERENBAUM, WEINSHIENK & EASON, P.C
370 17TH STREET
SUITE 4800
DENVER CO 80202

COPY MAILED

JUL 3 1 2007

OFFICE OF PETITIONS

In re Patent No. 7,059,853	:	
Issue Date: June 13, 2006	:	
Application No. 10/357,564	:	DECISION ON PETITION
Filed: February 5, 2003	:	
Attorney Docket No. 14502.852	:	

This is a decision on the petition under 37 CFR 1.182, filed August 29, 2006, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Publishing Division is directed to issue a duplicate Letters Patent.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries regarding the issuance of a duplicate Letters Patent may be directed Krystal Paige in the Publishing Division at (703) 308-9250, Ext. 139.

A copy of this decision is being faxed to Publishing Division for issuance of a duplicate Letters Patent.

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Krystal Paige, South Tower, 8th Floor (Fax No. (571) 270-9937

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 - 4 2005

MAILED

JAN - 4 2005

OFFICE OF THE DIRECTOR
TC 3600

Donald J. Ersler
725 Garvens Avenue
Brookfield, WI 53005

In re application of :
Matthew D. Stehling :
Application No. 10/357,581 :
Filed: February 4, 2003 :
For: INTERACTIVE DISPLAY ADVERTISING PROVIDING GAME PLAY THROUGH INSTANT MESSAGING TECHNOLOGY

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the petition under 37 C.F.R § 1.102(d) filed October 12, 2004 to make the above-identified application special. The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(h); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market or method in use; (B) that a rigid comparison of the alleged infringing device, product or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed October 12, 2004 lacks requirements 2(A), and 2(C) above. Regarding requirement 2(A), it is not clear from petitioner's statement if he is stating that "there is an infringing device or product actually on the market or method in use". Regarding requirement 2(C), the applicant, assignee or attorney, in addition to stating that a careful search of the prior art has been made, or having good knowledge of the prior art, **must** submit the **most closely** related prior art. Since "most closely related" is the **best** of the art found, a submission of art is always required, even if the applicant feels that it is not specifically related to the invention.

In view of these deficiencies, 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 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.

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

SNM/rwg: 12/20/04

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

Donald J. Ersler
725 Garvens Avenue
Brookfield, WI 53005

In re application of	:	**DECISION ON PETITION**
Matthew D. Stehling	:	**TO MAKE SPECIAL**
Application No. 10/357,581	:	**(INFRINGEMENT)**
Filed: February 4, 2003	:	
For: INTERACTIVE DISPLAY ADVERTISING PROVIDING GAME PLAY THROUGH INSTANT MESSAGING TECHNOLOGY		

This is a decision on the renewed petition under 37 C.F.R. § 1.102(d) filed January 21, 2005 to make the above-identified application special.

The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market or method in use; (B) that a rigid comparison of the alleged infringing device, product or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed January 21, 2005, meets all of the requirements above and is **GRANTED**.

Note for examination purposes the prior art cited by applicant should be provided in an IDS.

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

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference and appeal, if any,

only if petitioner makes a prompt *bona fide* effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/jwk: 1/31/05

RECEIVED
CENTRAL FAX CENTER
JAN 2 1 2004
OFFICIAL

ACUSHNET COMPANY

FAX COVER SHEET

DATE: January 21, 2004

TO: Commissioner for Patents
Facsimile No.: 703-872-9306

FROM: William B. Lacy
Acushnet Company
333 Bridge Street
Fairhaven, MA 02719
Phone No.: 508-979-3540

RE: Application Serial No.: 10/357,582
Petition for Correction of Inventorship

Pages including cover sheet: 12

CONFIDENTIALITY NOTICE: This facsimile transmission (and/or the document accompanying it) may contain confidential information belonging to the sender. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents. THANK YOU.

BEST AVAILABLE COPY

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence (twelve pages), including this facsimile cover sheet, a Petition under 37 CFR 1.48(a) (one page), a Fee Transmittal (one page), a Statement on Inventorship (one page), a substitute Declaration (one page), a Consent of the Assignee (one page), a copy of Recordation Cover Sheet (one page), a copy of executed Assignment (four pages), and a copy of Notice of Recordation of Assignment (one page), is being facsimile transmitted to the U.S. Patent and Trademark Office

on January 21, 2004
Date

WBL
Signature

William B. Lacy (Reg. No. 48,619)
Name of person signing Certificate

Titleist cobra FOOTJOY

333 Bridge Street, Fairhaven, MA 02719
Phone (508) 979-3534 Fax (508)979-3092

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JAN 2 1 2004
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No.: 10/357,582

Art Unit: 3711

Applicant: Michael J. Sullivan, *et al.*

Examiner: To Be Assigned

Filed: February 4, 2003

Confirmation No.: 7111

For: GOLF BALL COMPRISING HIGHLY-NEUTRALIZED ACID POLYMERS

Attorney Docket No.: B02-24

PETITION UNDER 37 C.F.R. § 1.48(a)

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

Sir:

Pursuant to 37 C.F.R. § 1.48(a), Applicants respectfully request that the inventive entity of the above-identified U.S. Patent Application be amended to delete inventors Murali Rajagopalan, Jeffrey L. Dalton, Kevin M. Harris, and Christopher Cavallaro. These inventors, while being named in a prior application, are not co-inventors of the subject matter being claimed in the present Application. This error arose without any deceptive intention on the part of the persons named as co-inventors in error.

Pursuant to 37 C.F.R. §§ 1.48(a)(4) and 1.17(i), a fee of $130.00 is due for this submission. Please charge this and any other required fees to Acushnet Company Deposit Account No. 502309.

Respectfully submitted,

Date: 1-21-04

William B. Lacy (Reg. No. 48,619)

Acushnet Company
P.O. Box 965
Fairhaven, MA 02719-0965
(508) 979-3540

PAGE 2/12 * RCVD AT 1/21/2004 3:24:58 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/4 * DNIS:8729306 * CSID: * DURATI N (mm-ss):04-14

FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT	($) 130.00

Complete If Known	
Application Number	10/357,582
Filing Date	February 4, 2003
First Named Inventor	Michael J. Sullivan
Examiner Name	To Be Assigned
Art Unit	3711
Attorney Docket No.	B02-24

METHOD OF PAYMENT

☑ Deposit Account:

Deposit Account Number: 502309

Deposit Account Name: Acushnet Company

The Director is authorized to: *(check all that apply)*

☑ Charge fee(s) indicated below ☑ Credit any overpayments

☑ Charge any additional fee(s) during the pendency of this application

☐ Charge fee(s) indicated below, **except for the filing fee** to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code	Fee ($)	Fee Description	Fee Paid
1001	770	Utility filing fee	
1002	340	Design filing fee	
1004	770	Reissue filing fee	
1005	160	Provisional filing fee	

SUBTOTAL (1) ($) 0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

			Extra Claims		Fee From Below		Fee Paid
Total Claims		- 20** =	0	×	18	=	0
Independent Claims		- 3** =	0	×	86	=	0

Large Entity Fee Code	Fee ($)	Fee Description
1202	18	Claims in excess of 20
1201	86	Independent claims in excess of 3
1204	86	**Reissue independent claims over original patent
1205	18	**Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) ($) 0

**or number previously paid, if greater; For Reissues, see above*

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code	Fee ($)	Fee Description	Fee Paid
1051	130	Surcharge – late filing fee or oath	
1052	50	Surcharge – late provisional filing fee or cover sheet	
1812	2,520	For filing a request for *ex parte* reexamination	
1251	110	Extension for reply within first month	
1252	420	Extension for reply within second month	
1253	950	Extension for reply within third month	
1254	1,480	Extension for reply within fourth month	
1255	2,010	Extension for reply within fifth month	
1401	330	Notice of Appeal	
1402	330	Filing a brief in support of an appeal	
1403	290	Request for oral hearing	
1451	1,510	Petition to institute a public use proceeding	
1452	110	Petition to revive – unavoidable	
1453	1,350	Petition to revive – unintentional	
1501	1,330	Utility issue fee (or reissue)	
1502	480	Design issue fee	
1460	130	Petitions to the Commissioner	130
1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	Submission of Information Disclosure Stmt	
8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	Request for Continued Examination (RCE)	
1802	900	Request for expedited examination of a design application	
1814	110	Statutory Disclaimer	
Other fee	(specify)		

Reduced by Basic Filing Fee Paid SUBTOTAL (3) ($) 130

SUBMITTED BY

Name	William B. Lacy	*Registration No. (Attorney/Agent)*	48,619
Address	Acushnet Company, PO Box 965, Fairhaven, MA 02719-0965	*Telephone*	(508) 979-3540
Signature		*Date*	1-21-04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No.: 10/357,582

Applicant: Michael J. Sullivan, *et al.*

Filed: February 4, 2003

For: GOLF BALL COMPRISING HIGHLY-NEUTRALIZED ACID POLYMERS

Art Unit: 3711

Examiner: To Be Assigned

Confirmation No.: 7111

Attorney Docket No.: B02-24

STATEMENT ON INVENTORSHIP

I, Murali Rajagopalan, was included by mistake as an inventor of the above-identified Application. This error in inventorship occurred without deceptive intention on my part.

Date: 1/14/2004 M Rajagopalan

Murali Rajagopalan

I, Jeffrey L. Dalton, was included by mistake as an inventor of the above-identified Application. This error in inventorship occurred without deceptive intention on my part.

Date: 1/20/04 Jeffrey L. Dalton

Jeffrey L. Dalton

I, Kevin M. Harris, was included by mistake as an inventor of the above-identified Application. This error in inventorship occurred without deceptive intention on my part.

Date: 1-15-04 Kevin M. Harris

Kevin M. Harris

I, Christopher Cavallaro, was included by mistake as an inventor of the above-identified Application. This error in inventorship occurred without deceptive intention on my part.

Date: 1/14/04 Christopher Cavallaro

Christopher Cavallaro

PAGE 4/12 * RCVD AT 1/21/2004 3:24:58 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/4 * DNIS:8729306 * CSID: * DURATION (mm-ss):04-14

ACUSHNET COMPANY DOCKET NO. B02-24

DECLARATION FOR NON-PROVISIONAL PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, mailing address and citizenship are as stated below at 201 et seq. beneath my name.

I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

GOLF BALL COMPRISING HIGHLY-NEUTRALIZED ACID POLYMERS

and for which a patent application:

☐ is attached hereto

☑ was filed on 02/04/2003 as United States Application No. 10/357,582 and was amended on (MM/DD/YYYY).

I hereby state that I have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information known to me to be material to patentability as defined in 37 C.F.R. 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate, or any PCT international application having a filing date before that of the application on which priority is claimed:

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Not Claimed	Certified Copy Attached

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 18 U.S.C. § 1001 and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

201				
NAME OF FIRST INVENTOR:			☐ A petition has been filed for this unsigned inventor	
Given Name (first & middle [if any]) Michael J.			Family Name or Surname Sullivan	
Signature of Inventor 201, Michael J. Sullivan				Date 1-14-2004
Residence: City Barrington	State RI	Country USA		Citizenship USA
Mailing Address 3 River Oak Road				
City Barrington	State RI	Zip Code 02806		Country USA

202				
NAME OF SECOND INVENTOR:			☐ A petition has been filed for this unsigned inventor	
Given Name (first & middle [if any]) Herbert C.			Family Name or Surname Boehm	
Signature of Inventor 201, Herbert C. Boehm				Date 1/15/04
Residence: City Norwell	State MA	Country USA		Citizenship USA
Mailing Address 34 Judge's Hill Drive				
City Norwell	State MA	Zip Code 02061		Country USA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No.: 10/357,582

Applicant: Michael J. Sullivan, *et al.*

Filed: February 4, 2003

For: GOLF BALL COMPRISING HIGHLY-NEUTRALIZED ACID POLYMERS

Art Unit: 3711

Examiner: To Be Assigned

Confirmation No.: 7111

Attorney Docket No.: B02-24

CONSENT OF THE ASSIGNEE

Pursuant to 37 C.F.R. §§ 1.48(a)(5), as the Assignee of the above-identified U.S. Patent Application, I hereby consent to the deletion of Murali Rajagopalan, Jeffrey L. Dalton, Kevin M. Harris, and Christopher Cavallaro as inventors of the Application.

Pursuant to 37 C.F.R. § 3.73(b)(1)(i), enclosed herewith are copies of the executed Assignment and the Notice of Recordation of Assignment.

Date: 1-20-04

Troy R. Lester (Reg. No. 36,200)
Assistant Secretary

Acushnet Company
333 Bridge Street
Fairhaven, MA 02719

(508) 979-3534

PAGE 6/12 * RCVD AT 1/21/2004 3:24:58 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/4 * DNIS:8729306 * CSID: * DURATION (mm-ss):04-14

02-11-2003

102361109

2-4-03

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Michael J. Sullivan and Herbert C. Boehm

Additional name(s) of conveying party(ies) attached? ☐ Yes ☑ No

2. Name and address of receiving party:

Name: ACUSHNET COMPANY

Address: 333 Bridge Street
Fairhaven, MA 02719

Additional name(s) & address(es) attached? ☐ Yes ☑ No

JC912 U.S. PTO 10357582 02/04/03

3. Nature of conveyance:

☑ Assignment ☐ Merger

☐ Security Agreement ☐ Change of Name

☐ Other _____

Execution Date: April 5, 2002

4. Application number(s) or patent number(s): Attorney Docket No.: B02-24

If this document is being filed together with a new application, the execution date of the application is: February 4, 2003

A. Patent Application No.(s)_____ B. Patent No.(s) 10357582

Additional numbers attached? ☐ Yes ☑ No

5. Name and address of party to whom correspondence concerning document should be mailed:

ACUSHNET COMPANY
333 Bridge Street
Fairhaven, MA 02719

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....$ 40.00

☑ Authorized to be charged to deposit account

8. Deposit account number:

502309

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

William B. Lacy (Reg. No. 48,619)	_____	February 4, 2003
Name of Person Signing	Signature	Date

Total number of pages including cover sheet, attachments, and document: 3

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

02/11/2003 ECOOPER 00000052 502309 10357582
01 FC:8021 40.00 CH

JOINT

ASSIGNMENT

WHEREAS, WE, Murali Rajagopalan, Michael J. Sullivan, Jeffrey L. Dalton, Kevin M. Harris, Christopher Cavallaro and Herbert C. Boehm ASSIGNORS, citizens of the United States, residing at 11 Flagship Drive, South Dartmouth MA 02748, 3 River Oak Road, Barrington, RI 02806, 14 Sleepy Hollow Road, North Dartmouth MA 02747, 65 Ryan Street, New Bedford MA 02740,17 Bachand Street, Lakeville MA 02347, and 34 Judge's Hill Drive, Norwell MA 02061 respectively, are the inventors of the invention in GOLF BALLS COMPRISING HIGHLY-NEUTRALIZED ACID POLYMERS for which we have executed an application for a Patent of the United States

☒ which is executed on, even date herewith; and

☒ which is identified by Acushnet Company Docket No.: B01-18

and WHEREAS, Acushnet Company, a Delaware Corporation having a place of business at 333 Bridge Street, Fairhaven, MA 02719-4900, ASSIGNEE is desirous of obtaining our entire right, title and interest in, to and under the said invention and the said application:

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) to us in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, we, the said ASSIGNORS, have sold, assigned, transferred and set over, and by these presents do hereby sell, assign, transfer and set over, unto the said ASSIGNEE, its successors, legal representatives and assigns, our entire right, title and interest in, to and under the said invention, and the said United States application and all divisions, renewals and continuations thereof, and all Patents of the United States which may be granted thereon and all reissues and extensions thereof; and all applications for industrial property protection, including, without limitation, all applications for patents, utility models, and designs which may hereafter be filed for said invention in any country or countries foreign to the United States, together with the right to file such applications and the right to claim for the same the priority rights derived from said United States application under the Patent Laws of the United States, the International Convention for the Protection of Industrial Property, or any other international agreement or the domestic laws of the country in which any such application is filed, as may be applicable; and all forms of industrial property protection, including, without limitation, patents, utility models, inventors' certificates and designs which may be granted for said invention in any country or countries foreign to the United States and all extensions, renewals and reissues thereof;

AND WE HEREBY authorize and request the Commissioner of Patents and Trademarks of the United States, and any Official of any country or countries foreign to the United States, whose duty it is to issue patents or other evidence or forms of industrial property protection on applications as aforesaid, to issue the same to the said ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND WE HEREBY covenant and agree that we have full right to convey the entire interest herein assigned, and that we have not executed, and will not execute, any agreement in conflict herewith.

AND WE HEREBY further covenant and agree that we will communicate to the said ASSIGNEE, its successors, legal representatives and assigns, any facts known to us respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, reissue and foreign applications, make all rightful oaths, and generally do everything possible to aid the said ASSIGNEE, its successors, legal representatives and assigns, to obtain and enforce proper protection for said invention in all countries.

IN TESTIMONY WHEREOF, We hereunto set our hands and seals the day and year set opposite our respective signatures.

1. Date: 4/5/, 2002 M Rajagopalan L.S.
Murali Rajagopalan

2. Date: 4/5/, 2002 Michael J. Sullivan L.S.
Michael J. Sullivan

JOINT

3. Date: April 9, 2002 Jeffrey L. Dalton L.S.

4. Date: 9 April, 2002 Kevin M. Harris L.S.

5. Date: April 5, 2002 Christopher Cavallaro L.S.

6. Date: April 5, 2002 Herbert C. Boehm L.S.

In the Commonwealth of Massachusetts, county of Bristol, on April 5, 2002, before me, JoAnn L. Fernandes, Notary Public, personally appeared Murali Rajagopalan, personally known to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

JoAnn L. Fernandes

In the Commonwealth of Massachusetts, county of Bristol, on April 5, 2002, before me, JoAnn L. Fernandes, Notary Public, personally appeared Michael J. Sullivan, personally known to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

JoAnn L. Fernandes

JOINT

In the Commonwealth of Massachusetts, county of Bristol, on April 9, 2002, before me, JeAnn L. Fernandes, Notary Public, personally appeared Jeffrey L. Dalton, personally known to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

JeAnn L. Fernandes

In the Commonwealth of Massachusetts, county of Bristol, on April 9, 2002, before me, JeAnn L. Fernandes, Notary Public, personally appeared Kevin M. Harris, personally known to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

JeAnn L. Fernandes

In the Commonwealth of Massachusetts, county of Bristol, on April 5, 2002, before me, JeAnn L. Fernandes, Notary Public, personally appeared Christopher Cavallaro, personally known to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

JeAnn L. Fernandes

JOINT

In the Commonwealth of Massachusetts , county of Bristol, on April 5, 2002, before me. JoAnn L. Fernandes Notary Public, personally appeared Herbert C. Boehm, personally known to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s). or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

JoAnn L. Fernandes

UNITED STATES PATENT AND TRADEMARK OFFICE

JUNE 16, 2003

PTAS

Under Secretary of Commerce For Intellectual Property and
Director of the United States Patent and Trademark Office
Washington, DC 20231
www.uspto.gov

ACUSHNET COMPANY
333 BRIDGE STREET
FAIRHAVEN, MA 02719

102361109A

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 02/09/2003

REEL/FRAME: 013734/0234
NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
SULLIVAN, MICHAEL J.

DOC DATE: 04/05/2002

ASSIGNOR:
BOEHM, HERBERT C.

DOC DATE: 04/05/2002

ASSIGNEE:
ACUSHNET COMPANY
333 BRIDGE STREET
FAIRHAVEN, MASSACHUSETTS 02719

SERIAL NUMBER: 10357582
PATENT NUMBER:

FILING DATE: 02/04/2003
ISSUE DATE:

VIOLET MCCOY, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

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

MAIL

MAR 2 9 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SCHULTZ & ASSOCIATES
One Lincoln Centre
Suite 525
5400 LBJ Freeway
Dallas TX 75240

In re Application of :

Cox, et al. :
Application No. 10/357,606 :
Filed: February 4, 2003 :
For: **APPARATUS AND METHOD FOR TRANSMITTING 10 GIGABIT ETHERNET LAN SIGNALS OVER A TRANSPORT SYSTEM** :

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition filed May 12, 2003 under 37 CFR §1.102(d) to make the application special and treated as pursuant to MPEP §708.02, section II (Infringement),.

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

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

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

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

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

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4778

UNITED STATES PA
TENT AND TRADEMARK OFFICE

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

Date Mailed : May 1, 2007
Patent No. :6,977,084 B2
Ser. No. :10/357607
Inventor(s) : Linh M. Bui, et al.
Issued : December 20, 2005
Title: APPARATUS FOR THE CONTROLLED OPTIMIZED ADDITION OF REACTANTS IN CONTINUOUS FLOW REACTION SYSTEMS

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

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

Magdalene Talley
For Cecelia Newman, Supervisor
Decisions & Certificates
of Correction Branch
(703) 308-9390 ext. 116 or 125

Melissa W. Acosta
Fulbright & Jaworski LLP
2200 Ross Ave., Ste. 2800
Dallas, TX 75201

CBN/mt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FULBRIGHT & JAWORSKI, LLP
1301 MCKINNEY
SUITE 5100
HOUSTON TX 77010-3095

RECEIVED
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OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,977,084 :
Issue Date: December 20, 2005 :
Application No. 10/357,607 :
Filed: February 4, 2003 :
Attorney Docket No. HO-P01785US1 :

This is a decision on the petition filed November 12, 2008, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **DISMISSED**.

Petitioner requests issuance of a certificate of correction in the name of "Mars, Incorporated, McLean, VA."

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 **before issuance of the patent**, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter [emphasis added]. *See also* MPEP 1481.01.

U.S. Patent and Trademark Office assignment records disclose that a merger document from Kal Kan Foods, Inc. to Mars, Inc. was recorded on July 12, 2007, **after the date of issuance of this patent**. Accordingly, since the document was not submitted for recordation until after issuance of this patent, issuance of a certificate of correction would not be proper.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

---

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WILSON SONSINI GOODRICH &
ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304-1050

COPY MAILED

SEP 28 2009

OFFICE OF PETITIONS

In re Patent No. 7,473,432	:	
Cevc et al.	:	DECISION ON
Application No. 10/357,617	:	REQUEST FOR
Issue Date: January 6, 2009	:	RECONSIDERATION OF
Filed: February 4, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	UNDER 37 CFR 1.705
35946-704.201	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(d), filed on January 27, 2009. Patentee requests that the determination of patent term adjustment be corrected from five hundred fifty-three (553) days to eight hundred sixty-one (861) days.

The request for reconsideration of patent term adjustment is **GRANTED TO THE EXTENT INDICATED.**

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 five hundred twenty-six (526) days.

Patentees are given THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer, from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

BACKGROUND

This application was filed on February 4, 2003. On September 18, 2008, the Office mailed a notice that the initial determination of patent term adjustment under 35 U.S.C. 154(b)

to date is 553 days[1]. On January 6, 2009, the application matured into U.S. Patent No. 7,473,432, with a revised patent term adjustment of 553 days. The Office determined that the 529 days of Office delay pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b)[2,3] overlaps with the 786 days of Office delay pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1)[4,5] accorded prior to the filing of the request for continued

---

[1] 853 days of Office delay was reduced by 300 days of applicant delay for a patent term adjustment of 553 days. No request for reconsideration of this initial determination was filed.

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

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

[3] As of the filing of the RCE on July 18, 2007, the application was pending three years and 529 days.

[4] 37 CFR § 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

> (a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:
>
> (1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;
>
> (2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

[5] A first Office action was not mailed until May 30, 2006, fourteen months and 786 days after the application filing date, February 4, 2003. Subsequent to the filing of the RCE, a notice of allowance was not mailed until September 18, 2008, four months and 67 days after the filing of a reply on March 13, 2008 to a non-final office action.

examination. An additional period of 67 days of Office delay pursuant to 37 CFR 1.702(a)(2) was entered for the failure of the Office to issue a notice of allowance within four (4) months of the filing of a reply to a non-final Office action. As such, the Office allowed only entry of the adjustment of 853 (786+67) days. No additional days of patent term adjustment were entered at issuance under the three-year pendency provision. Given the applicant delay of 300 days,[6] the patent issued with a revised patent term adjustment of 553 (853 - 300) days.

On January 27, 2009, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 861 days, based in part, under the courts 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). Patentee asserts that pursuant to Wyeth, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." Patentee maintains that the total non-overlapping PTO delay under §154(b)(1)(A) & (B) is 1200 (786+529) days as these periods do not occur on the same day.

Patentee further asserts that the applicant delay calculation is incorrect. Specifically, patentee asserts that the period of delay of 76 days of applicant delay for filing of a supplemental paper (IDS) after the filing of a reply pursuant to 37 CFR 1.704(c)(8) is incorrect, as the latest supplemental reply was filed on June 24, 2008, 103 days after the filing of the reply filed on March 13, 2008. As such, given the applicant delay of 327 days, patentee asserts entitlement to 526 (1200 - 327) days of patent term adjustment.

At the outset, it is noted that patentee has calculated the period of delay under 37 CFR 1.704(c)(8) as 115 days. However,

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[6] The applicant delay was calculated as follows: 51 days, in accordance with 37 CFR 1.704(b), for filing a response on October 20, 2006, three months and 51 days after the mailing of an Office action on May 30, 2006; 90 days, in accordance with 37 CFR 1.704(b), for filing an RCE on July 18, 2007, three (3) months and 90 days after the mailing of a final Office action on January 19, 2009; 83 days, in accordance with 37 CFR 1.704(b), for filing a response on March 13, 2008, three (3) months and 83 days after the mailing of a non-final Office action on September 21, 2007; and 76 days, under 37 CFR 1.704(c)(8), for the filing of an IDS on May 28, 2008, 76 days after the filing of a response on March 13, 2008.

the period from March 13, 2008, the date an initial reply was filed, until June 24, 2008, is 103 days. Patentee's argument will be articulated accordingly.

OPINION

With regard to the delay under 37 CFR 1.704(c)(8), patentee is correct. On March 13, 2008, a reply to a non-final Office action was filed. Information disclosure statements were subsequently filed on April 18, 2008, May 19, 2008, May 28, 2008, and June 24, 2008, respectively.

37 CFR 1.704(c) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

None of the IDSs referenced above contained a statement in accordance with 37 CFR 1.704(d).

Accordingly, the non-overlapping delay is that period from March 13, 2008, the date that the initial reply was filed until June 24, 2008, the date that the latest IDS was filed, or 103 days. Accordingly, the period of reduction of 76 days will be removed and a period of 103 days will be entered. The applicant delay at the time of issuance is corrected to 327 (300-76+103) days.

With regard to the argument under 37 CFR 1.702(b), patentee's interpretation of the period of overlap has been considered, but found inconsistent with the Office's interpretation of the overlap provision, 35 U.S.C. 154(b)(2)(A). 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

> to the extent that the periods of delay attributable to grounds specified in paragraph (1) overlap, the period of

> any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

As explained in *Explanation of 37 CFR 1.703(f)*[7] *and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 54366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

---

[7] 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.

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 (or, in an international application, the date that the national stage commenced under 35 U.S.C. 371(b) or (f)), is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

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

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the period during which the application was pending before the Office beginning on the application filing date, February 4, 2003, and ending on the date of filing of a request for continued examination (RCE), July 18, 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).

Pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1), 786 days of patent term adjustment were accorded during the pendency of the application for Office delay prior to the filing of the request for continued examination. Pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(2), 67 days of patent term adjustment were according during the pendency of the application subsequent to the filing of the request for continued examination. Pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b), 529 days of patent term adjustment accrued for Office

issuance of the patent more than 3 years after the filing date of the application.

The 529 days of patent term adjustment under 37 CFR 1.702(b) overlap with the 786 days of patent term adjustment under 37 CFR 1.702(a)(1), accorded prior to the filing of the request for continued examination. Entry of both the 786 days and the 529 days is neither permitted nor warranted. 853 days (786 + 67) is the actual number of days issuance of the patent was delayed by the Office. Considering the applicant delay of 327 days, the patent term adjustment at issuance is 526 (853 - 327) days.

Accordingly, at issuance, the Office did not enter any additional days of patent term adjustment pursuant to 37 CFR 1.702(b).

CONCLUSION

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. Given patentees' disclosure of an additional basis for entry of a period of reduction, the Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by five hundred twenty-six **(526)** days.

The Office thanks Patentees for their good faith and candor in bringing this matter to the attention of the Office.

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 Senior Petitions Attorney Douglas I. Wood, at (571) 272-3231.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,473,432 B2

DATED : January 6, 2009

INVENTOR(S) : Cevc et al.

DRAFT

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (553) days

Delete the phrase "by 553 days" and insert – by 526 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

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MAR 24 2010

OFFICE OF PETITIONS

WILSON, SONSINI, GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304-1050

In re Patent No. 7,473,432	:	DECISION ON REQUEST
Cevc et al.	:	FOR
Issue Date: January 6, 2009	:	RECONSIDERATION OF
Application No. 10/357,617	:	PATENT TERM ADJUSTMENT
Filed: February 4, 2003	:	and
Atty Docket No.	:	NOTICE OF INTENT TO ISSUE
35946-704.201	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 9, 2009, which is being treated as a request for reconsideration 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 eight hundred seventy-three (873) 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 eight hundred seventy-two (872) days is **GRANTED to the extent indicated herein.**

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on February 5, 2006 and ends on July 17, 2007, the day before the RCE was filed, and not July 18, 2007 the day of filing of the RCE as calculated by patentees. See 35 U.S.C. 154(b)(1)(B)(i). Thus, the over 3 year period is 528 not 529 days, and the B delay considering the 115 days of overlap, is 413, not 414 days. As such, the correct patent term adjustment is 872, not 873 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of 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 **eight hundred seventy-two (872)** days.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,473,432 B2

DATED : **January 6, 2009** **DRAFT**

INVENTOR(S) : Cevc 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 553 days.

Delete the phrase "by 553 days" and insert – by 872 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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MICHAEL J. MORAN, ESQ.
CHIRON CORPORATION
INTELLECTUAL PROPERTY- R440
P.O. BOX 8097
EMERYVILLE CA 94662-8097

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MAR 2 0 2006

OFFICE OF PETITIONS

In re Application of	:	
Palliard, et al.	:	
Application No. 10/357,619	:	DECISION ON PETITION
Filed: February 3, 2003	:	UNDER 37 CFR 1.181
Attorney Docket No. PP01612.008 (2300-1612.01)	:	
For: ACTIVATION OF HCV-SPECIFIC T CELLS		

This is a decision on the petition under 37 CFR 1.181, filed January 19, 2006 (certificate of mailing date January 17, 2006), to withdraw the holding of abandonment of the above-identified application.

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

This application was held abandoned due to applicants' alleged failure to reply within three months to the non-final Office action, mailed March 22, 2005. The Office contended that this application became abandoned on June 23, 2005. A Notice of Abandonment was mailed on December 13, 2005.

Petitioners assert that a reply was timely received in the Office on June 22, 2005. In support of this assertion, petitioners have provided a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination date stamp, citing June 22, 2005 as the date of receipt, affixed thereto. The postcard lists, *inter alia*, that the filing included a five page amendment.

The return postcard constitutes *prima facie* evidence that the items listed thereon, including a five page amendment, were received in the Office on June 22, 2005. MPEP 503. Petitioners have provided a copy of the June 22, 2005 (certificate of mailing date June 20, 2005) correspondence. Accordingly, the petition to withdraw the holding of abandonment is granted.

After the mailing of this decision, the application file will be returned to Technology Center A.U. 1648 for consideration of the amendment filed on June 22, 2005(certificate of mailing date June

20, 2005) and resubmitted with the instant petition on January 19, 2006 (certificate of mailing date January 17, 2006).

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

E. Shirene Willis

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

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

5/5/09

Patent No. :7323463
Inventor(s) :Chang, Chin-Ming et al.
Issued : 1/29/2008
Title : COMBINATION OF BRIMONDINE AND TIMOLOL FOR TOPICAL OPTHTHALMIC USE
Atty.doc./File No.

Request for Certificates of Correction

Consideration has been given to your request for the issuance of a Certificate of Correction, for the above – identified patent under the provisions of CFR 1.322.

Inspection of the application for the patent reveals col. 9, claim 1, line 11, &12, also claim 4 col. 10 line 3 & 4 is printed in accordance with the record and please show evidence of an amendment or document to make these changes. Therefore being no fault on the Patent and Trademark Office, It has no authority to issue a certificate of correction under the provision of 1.322.

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

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

Henry Randall
Mary Diggs
Decisions & Certificates
of Correction Branch
(703) 308-9390 Ext. 108

ALLERGAN, INC.
JOHN WRUST
Intellectual Property Dept.
2525 Dupont Drive
Irvine, CA 92612

HR/MD

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE May 1, 2009

TO SPE OF: ART UNIT 1614 Ardin H. Marschel

SUBJECT: Request for Certificate of Correction for Appl. No.: 10/357,622 Patent No.: 7323463 B2

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

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

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

Antonio Johnson

Thank You For Your Assistance

Certificates of Correction Branch
703-756-1584 _____

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:

Ardin H. Marschel
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER

SPE

1614
Art Unit

PTO/SB/44 (07-03)
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.: 7,323,463 B2:

DATED: January 29, 2008

INVENTOR(S): Chang, Chin-Ming et al.

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

In Column 9, line 11 delete "timolol" and insert in its place –brimonidine–.

In Column 9, line 12 delete "brimonidine" and insert in its place –timolol–.

In Column 10, line 3 delete "timolol" and insert in its place –brimonidine–.

In Column 10, line 4 delete "brimonidine" and insert in its place –timolol–.

MAILING ADDRESS OF SENDER

Allergan, Inc.
JOHN WURST (T2-7H)
Intellectual Property Dept.
2525 Dupont Drive
Irvine, CA 92612

PATENT NO. 7,323,463

No. of additional copies

This collection of information is required by 37 CFR 1.322, 1.323 and 1.324. The information 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 a nd 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 this form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

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ANTONY C. EDWARDS
SUITE 200 - 270 HIGHWAY 33 WEST
KELOWNA BC V1X 1X7 CA CANADA

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NOV 03 2005

OFFICE OF PETITIONS

In re Application of
Rendina
Application No. 10/357,628
Filed: February 4, 2003
Attorney Docket No. n/a

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

This is a decision on the petition under 37 CFR 1.137(b) filed September 27, 2005, to revive the above-identified application for continuity with a continuing application.

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed February 17, 2005, which set a shortened statutory period for reply of three (3) months. While an amendment under 37 CFR 1.116 was filed July 25, 2005, that amendment did not *prima facie* place this application in condition for allowance as indicated by the Advisory Action of August 10, 2005. As a three month extension of time under the provisions of 37 CFR 1.136(a) was obtained, the above-identified application became abandoned on August 17 , 2005.

Since this application is being revived for continuity purposes only with continuing application No. 11/235,152 filed September 27, 2005, and since continuity has been established by this decision reviving this application, this application is again abandoned in favor of the continuing application.

Telephone inquiries concerning 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

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United States Patent and Trademark Office
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SAWYER LAW GROUP LLP
2465 E. BAYSHORE ROAD,
SUITE NO. 406
PALO ALTO CA 94303

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JAN 20 2009

In re Application of	:	
Tibet Mimar	:	
Application No. 10/357,644	:	DECISION ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. 4359P	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 2, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal rejection mailed January 5, 2007, is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 2621 for appropriate action by the Examiner in the normal course of business on the reply received December 2, 2008.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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DEMONT & BREYER, LLC
100 COMMONS WAY, STE. 250
HOLMDEL NJ 07733

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In re Application of	:	
David Stevenson Spain	:	
Application No. 10/357,645	:	DECISION ON PETITION
Filed: February 4, 2003	:	
Attorney Docket No. 465-004US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 7, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue and publication fees and corrected drawings; (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 March 26, 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 a review of the drawings submitted on August 7, 2008.

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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FEB 2 6 2007

OFFICE OF PETITIONS

In re Application of	:	
John D. Hilgren, et al.	:	
Application No. 10/357,666	:	DECISION GRANTING PETITION
Filed: February 3, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 163.1397USC1	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 22, 2007, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 26, 2006 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to April Wise at (571) 272-1642.

This application is being referred to Technology Center AU 3644 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Frances M. Hicks
Petitions Examiner
Office of Petitions

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

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P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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FEB 2 6 2007

OFFICE OF PETITIONS

In re Application of
John D. Hilgren, et al.
Application No. 10/357,666
Filed: February 3, 2003
Attorney Docket No. 163.1397USC1

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 22, 2007.

The request is **APPROVED**.

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

The request was signed by Sarah M. Monfeldt on behalf of herself.

Sarah M. Monfeldt has been withdrawn as attorney or agents of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

There are no pending office actions at the present time.

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

April M. Wise
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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SYCAMORE BUILDING - 4TH FLOOR
299 EAST SIXTH STREET
CINCINNATI OH 45202

MAILED

MAY 19 2010

OFFICE OF PETITIONS

In re Application of	:	
Nunes et al.	:	
Application Number: 10/357684	:	ON PETITION
Filing Date: 02/04/2003	:	
Attorney Docket Number: 8912	:	
	:	

This is a decision in response to the petition under 37 CFR 1.137(b)[1] filed on February 23, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on November 5, 2009, for failure to file a timely reply to the final Office action mailed on August 4, 2009, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on February 19, 2010.

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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 Director may required additional information where there is a question whether the delay was unintentional; and

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

Receipt of the Request for Continued Examination and submission under 37 CFR 1.114 is acknowledged.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.[2] The three (3)-month extension request filed on February 23, 2010, was submitted more than three (3) months after the end of the period for reply to the final Office action mailed on August 4, 2009, and therefore is unnecessary. The extension of time fee paid on February 23, 2010, will be refunded to counsel.

The application is forwarded to Technology Center Art Unit 1794 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

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[2] See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

UNITED STATES PATENT AND TRADEMARK OFFICE

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FROM DIRECTORS OFFICE

SEP 13 2005

TECHNOLOGY CENTER 3600

Burkhart & Burkhart
Patent Attorneys
940 Dakota Avenue
Whitefish, MT 59937

In re Application of
Ronald E. McQueen
Application No. 10/357,718
Filed: February 3, 2003
For: RECOVERY OF PRODUCTS FROM OIL SHALE

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the Petition to Withdraw the Holding of Abandonment filed in the United States Patent and Trademark Office on May 13, 2005.

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

☐ Postcard receipt being dated_____.

☐ USPTO return facsimile receipt dated _____.

☒ Certificate of Mailing/Transmission signed on September 21, 2004, and supported by a statement under 37 C.F.R. 1.8(b)(3).

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

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

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

☐ Originally sent response, filed_____.

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

KJD/js: 8/2/05

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

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JENKINS, WILSON & TAYLOR, P. A.
3100 TOWER BLVD
SUITE 1400
DURHAM NC 27707

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OCT 0 7 2005

OFFICE OF PETITIONS

In re Patent No. 6,808,786 :
Issued: October 26, 2004 :
Application No. 10/357,727 : ON PETITION
Filed: February 4, 2003 :
Attorney Docket Number: 301/17 :

This is a decision on the petition, filed April 27, 2005, under 37 CFR 3.81(b)[1] to correct the assignee's name on the front of the Patent.

The petition is **GRANTED**.

Petitioner states that the correct assignee's name is Freudenberg Spunweb Company, and that the failure to include the correct assignee name on the PTOL-85(b) was inadvertent. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct name of the assignee on the front page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b), and while the request indicates that a copy of the recorded assignment was included, a review of the file does not reveal that a copy was included. Nonetheless,

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

U.S. Patent and Trademark Office assignment records disclose that the issue fee was paid September 1, 2004, that the Issue Fee Transmittal (PTOL-85B) identified the assignee as Freudenberg Nonwovens, that the patent grant was issued October 26, 2004 and that the assignment was recorded February 10, 2005, which is clearly subsequent to the date that the patent issued. Accordingly, since there is no evidence that the assignment was submitted for recordation until after issuance of this patent, issuance of a certificate of correction would not be proper.[2]

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

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

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

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

[2]See also MPEP 307.

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

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NOV 12 2004

OFFICE OF PETITIONS

In re Application of	:	
Anderson, et al.	:	
Application No. 10/357,732	:	DECISION GRANTING PETITION
Filed: February 4, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. S276.12.3	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 16, 2004, to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on December 2, 2003. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

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

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

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

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

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

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of August 12, 2004 was mailed on May 3, 2004.

This application is being forwarded to Technology Center 3600 for further examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (571)272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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

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SEP 08 2006

OFFICE OF PETITIONS

In re Application of	:	
Kanter et al.	:	DECISION ON PETITION
Application No. 10/357,736	:	TO WITHDRAW HOLDING OF
Filed: 4 February, 2003	:	ABANDONMENT
Atty Docket No. P25679-A USA	:	

This is a decision on the petition, filed on 17 November, 2005, to withdraw the holding of abandonment in the above-identified application.

The petition is **granted**.

This application was held abandoned for failure to timely and effectively respond to the final Office action mailed on 20 April, 2005, which set a three (3) month shortened statutory period for reply. In the apparent absence of a timely filed response, the application was held abandoned and a Notice of Abandonment was mailed on 19 October, 2005.

Petitioner asserts that a timely response was filed. In support, petitioners have supplied a copy of the reply, consisting of a Notice of Appeal and a three (3) month extension of time. The response includes an itemized postcard bearing an "Office date" stamp of 24 October, 2005.

A review of the official file reveals that on 24 October, 2005, a Notice of Appeal and a three (3) month extension of time, each bearing a Certificate of Transmission dated 20 October, 2005, were received. As such, the showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

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

The application file is being forwarded to Technology Center Art Unit 3727 for further processing.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/357,751	02/03/2003	1614	880	PU3404US3		1	1

CONFIRMATION NO. 7040

UPDATED FILING RECEIPT

OC000000011166806

23347
DAVID J LEVY, CORPORATE INTELLECTUAL PROPERTY
GLAXOSMITHKLINE
FIVE MOORE DR., PO BOX 13398
RESEARCH TRIANGLE PARK, NC 27709-3398

Date Mailed: 11/03/2003

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)

Susan Mary Daluge, Chapel Hill, NC;
Cynthia Holder Jurgensen, Raleigh, NC;
Michael Tolar Martin, Durham, NC;
Martin Howard Osterhout, Raleigh, NC;

Domestic Priority data as claimed by applicant

This application is a CON of 10/106,772 03/26/2002
which is a DIV of 09/762,559 02/09/2001 PAT 6,608,069
which is a 371 of PCT/EP99/05814 08/11/1999

Foreign Applications

UNITED KINGDOM 9817623.3 08/13/1998

If Required, Foreign Filing License Granted: 04/23/2003

Projected Publication Date: 02/12/2004

Non-Publication Request: No

Early Publication Request: No

Title

Methods of treating periodontal disease

Preliminary Class

424

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).

DO NOT SCAN! **Please forward case and paper to address shown below.**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 5-7-08

Paper No.: _____

TO SPE OF : ART UNIT 3618

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/357765 Patent No.: 6698769

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

Should CofC be Approved

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

Carrie Young

Certificates of Correction Branch

703-308-9390 ext. 117

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

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TIBET MIMAR
1905 60TH PLACE M2028
BRADENTON, FL 34203-5076

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MAY 03 2006

OFFICE OF PETITIONS

ON PETITION

In re Application of
Tibet Mimar
Application No. 10/357,804
Filed: February 3, 2003
Title of Invention: **METHOD FOR PROGRAMMABLE MOTION ESTIMATION IN A SIMD PROCESSOR**

This is a decision on the petition under 37 CFR 1.137(a), filed April 24, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

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

This application became abandoned on March 20, 2006 for failure to timely pay the issue fee in response to the Notice of Allowance mailed December 19, 2005. The instant petition and this decision precede the mailing of the Notice of Abandonment.

Petitioner asserts unavoidable delay in paying the Issue Fee.

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 lacks item (3), above.

SHOWING OF UNAVOIDABLE DELAY

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[1]

With regard to item (3), decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

Petitioner has indicated that at the time the Notice was mailed that he had taken a job outside of the United States of America, that he had set up postal forwarding first to Florida and then to Istanbul, Turkey, and that the mail was forwarded in January to an incorrect address in Istanbul and thus wasn't delivered until April.

Instead of an unavoidable delay, the facts presented demonstrate a lack of diligence.

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[1] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Petitioner has not acted with diligence to ensure that the USPTO had an updated address where he could be located and where office correspondence could be sent and thus as a result, the cause of delay in paying the issue fee can only be seen as an action that could have been avoided.

The showing presented is insufficient to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure or mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[2]

ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b)[3], which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

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

---

[2] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

[3] 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)).

It should be noted that if petitioner chooses to file a petition under 37 CFR 1.137(b), the fee for a small entity is set at $750.00 and the $250.00 paid for the unavoidable petition under 37 CFR 1.137(a) will not be credited towards that payment. Petitioner has already received consideration under that standard and the fees are not transferable.

Finally, the mere inclusion of the address in Florida or the address in Istanbul in the petition, which differs from the previously provided correspondence address, does not constitute a proper change of address notification." See MPEP sections 601.03 and 711.02(c). Since the file does not indicate a change of address has been submitted, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

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

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

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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P.O. BOX 51418
PALO ALTO CA 94303

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OFFICE OF PETITIONS

In re Application of
Tibet Mimar
Application No. 10/357,804
Filed: February 3, 2003
Title of Invention: **METHOD FOR PROGRAMMABLE MOTION ESTIMATION IN A SIMD PROCESSOR**

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)[1], filed July 5, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on March 20, 2006 for failure to timely pay the issue fee in response to the Notice of Allowance mailed December 19, 2005. The issue fee was paid April 24, 2006 and subsequent to the filing of the instant petition, the Notice of Abandonment was mailed July 11, 2006.

The issue fee and petition fee have 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

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[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

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

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

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

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Paper No. 4

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

COPY MAILED

DEC 17 2003

OFFICE OF PETITIONS

In re Application of Alvarez, Edinger, Gangolli, Gerlach, Gorman, Guo, Ji, Kukuda, Li, Miller, Padigaru, Patturajan, Rastelli, Reiger, Shenoy, Shimkets, Spytek, and Zhong Application No. 10/357,819 Filed: 3 February, 2003 Atty Dkt No. 21402-538A (CURA-838A)	DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition filed under 37 CFR 1.47(a) on 14 November, 2003.

The petition is **DISMISSED**.

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

The above-identified application was filed on 3 February, 2003, without an executed oath or declaration. Accordingly, on 14 April, 2003, Initial Patent Examination Division mailed a "Notice to File Missing Parts of Nonprovisional Application" requiring, *inter alia*, an executed oath or declaration, and a surcharge for

its late filing, and compliance with the requirements of 37 CFR 1.821-1.825.

In response, on 14 November, 2003, petitioners filed a declaration signed by all inventors except joint inventors Ji and Rastelli on behalf of themselves and joint inventors Ji and Rastelli, a five (5) month extension of time, the petition fee, surcharge, and a Computer Readable Format (CRF) of the Sequence Listing.

Petitioners assert that a copy of the application was sent to the non-signing inventors, but delivery of the application papers was refused by each inventor, despite several attempts.

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 (2).

In regards to item (2), the declaration contains is defective in that it contains non initialed and/or non-dated alterations.[1] Specifically, there is an uninitiated and/or undated alteration in the signature block for joint inventor Linda Gorman. A new oath or declaration in compliance with 37 CFR 1.63, 1.67, and 1.175 signed by the inventor to whom the error or deficiency relates is required.[2]

It is noted that the petition fee has been charged twice. The duplicate payment of $130.00 will be credited to counsel's deposit account, No. 50-0311, as authorized in the petition for extension of time filed on 14 November, 2003.

---

[1] See 37 CFR 1.52(c).

[2] 37 CFR 1.67(a)(2).

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

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

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

By hand: U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW 07-04

Paper No. 8

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

COPY MAILED
JUL 1 2 2004
OFFICE OF PETITIONS

In re Application of Alvarez, Edinger, Gangolli, Gerlach, Gorman, Guo, Ji, Kukuda, Li, Miller, Padigaru, Patturajan, Rastelli, Reiger, Shenoy, Shimkets, Spytek, and Zhong Application No. 10/357,819 Filed: 3 February, 2003 Atty Dkt No. 21402-538A (CURA-838A)	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 28 June, 2004.

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventors, Weizhen Ji and Luca Rastelli, have refused to join in the filing of the above-identified application after having been sent a copy of the application papers. Specifically, declaration of Nicole Carlucci establishes that the non-signing inventors were each sent a copy of the application papers at their respective last known addresses by Certified Mail, but despite multiple attempts, delivery of the applications could not be made. As such, petitioners have shown diligent efforts in attempting to contact the non-signing inventors. The inventors refuse to sign the declaration naming them as joint inventors along with the signing inventors.

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

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

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

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW 07-04

Weizhan Ji
375 Old Rock Road
Branford CT 06437

In re Application of
Alvarez et al.
Application No. 10/357,819
Filed: 3 February, 2003
For: THERAPEUTIC POLYPEPTIDES, NUCLEIC ACIDS ENCODING SAME, AND METHODS AND USE

Dear Mr. Ji:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at 703/308-6918. Requests for information regarding your application should be directed to the File Information Unit at 703/308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 703/308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 11

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

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NOV 1 0 2003

OFFICE OF PETITIONS

In re Application of
Anderson, et al.
Application No. 10/357,820
Filed: July 16, 2003
Attorney Docket No. 21402-538B (Cura-838B)
For: THERAPEUTIC POLYPEPTIDES, NUCLEIC ACIDS ENCODING SAME, AND METHODS OF USE

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(a) & DECISION
: ON PETITION

This is in response to the petition under 37 CFR 1.47(a), filed July 16, 2003. The petition will also be treated *sua sponte* as a petition under 37 CFR 1.181 to correct the filing date of the application.

The petition under 37 CFR 1.47(a) is granted.

The petition under 37 CFR 1.181 to correct the filing date is granted.

Petitioners have shown that the non-signing inventor Weizhen Ji has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of Administrative Assistant Nicole Carlucci, an employee of CuraGen Corporation, the former employer of the non-signing inventor, and the accompanying exhibits to the declaration establish that the inventor was successfully mailed the application papers, including the specification, claims and drawings, but the inventor failed to respond to the request that she sign the declaration. Petitioners have submitted a declaration in compliance with 37 CFR 1.63 and 1.64.

This 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.

It is noted that PALM database records list the filing date for the above-identified application as July 16, 2003, but petitioners list February 3, 2003 as the filing date on the instant petition. The undersigned is treating this discrepancy as a feeless petition under 37 CFR 1.181 to correct the filing date.

The April 17, 2003 Notice to File Missing Parts of Nonprovisional Application stated that a filing date of February 3, 2003 had been accorded to the above-identified application and required petitioners to submit a number of not filing date related items. Responding to the Notice should

not have changed the filing date of the application. Unfortunately, due to Office error, the application was accorded an incorrect filing date of July 16, 2003.

The application is entitled to a February 3, 2003 filing date. The petition under 37 CFR 1.181 to correct the filing date is granted.

After this decision is mailed, the above-identified application will be returned to the Office of Initial Patent Examination for correction of the filing date to **February 3, 2003** and the mailing of a corrected filing receipt. Thereafter, the application will be forwarded to Technology Center 1600 for examination in due course.

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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WEIZHEN JI
375 OLD ROCK ROAD
BRANFORD CT 06405

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NOV 1 0 2003

OFFICE OF PETITIONS

In re Application of
Anderson, et al.
Application No. 10/357,820
Filed: February 3, 2003
Attorney Docket No. 21402-538B (Cura-838B)
For: THERAPEUTIC POLYPEPTIDES, NUCLEIC ACIDS ENCODING SAME, AND METHODS OF USE

LETTER

Dear Ms. Ji:

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 the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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

9-9-04 EV45[illegible]

PTO/SB/83 (09-03)
Approved for use through 11/30/2005. OMB 0651-0035
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1742

SEP 0 8 2004 PATENT & TRADEMARK OFFICE

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	10/357,848
Filing Date	February 4, 2003
First Named Inventor	Daniel M. Sabarese
Art Unit	1742
Examiner Name	Sikyn Ip
Attorney Docket Number	11138-003-999

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

Please withdraw me as attorney or agent for the above identified patent application, and

[X] all the attorneys/agents of record.

[ ] the attorneys/agents (with registration numbers) listed on the attached paper(s), or

[ ] the attorneys/agents associated with Customer Number

Approved
JMStone
Jacqueline M. Stone, Director
Technology Center 1700
11/24/04

NOTE: This box can only be checked when the power of attorney of record in the application is to all the practitioners associated with a customer number.

The reasons for this request are:

CORRESPONDENCE ADDRESS

1. [ ] The correspondence address is NOT affected by this withdrawal.
2. [X] Change the correspondence address and direct all future correspondence to:

[ ] Customer Number:

OR

[X] Firm *or* Individual Name	Daniel M. Sabarese				
Address	CMT c/o Precision Alloys				
Address	4760 West Dewey Drive				
City	Las Vegas	State	Nevada	Zip	89118
Country	United States				
Telephone	800-345-2660	Fax			
Name	Francis D. Cerrito				
Signature	[signature]	Registration No.	38,100		
Date	9/7/04	Telephone No.	212-326-3939		

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

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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BURGESS & BEREZNAK LLP
800 WEST EL CAMINO REAL, SUITE 180
MOUNTAIN VIEW, CA 94040

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AUG 2 3 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Michael C. Mountz :
Application No. 10/357,853 :
Filed: February 3, 2003 :
Attorney Docket No. 05921.P002X

This is a decision on the petition, filed August 16, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

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

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

Telephone inquiries should be directed to Irvin Dingle at (703) 306-5684.

The file will be forwarded to Technology Center AU 3651 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

cc: Barton E. Showalter
Baker Botts LLP
2001 Ross Avenue, Suite 600
Dallas, TX 75201-6580

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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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ALEXANDRIA, VA 22313-1450
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NOV 25 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Paper No. 6

ROBERT D. FISH
RUTAN & TUCKER, LLP
P.O. BOX 1950
611 ANTON BLVD., 14TH FLOOR
COSTA MESA, CA 92628-1950

In re Application of:	)	
John ADDINK, et al	)	DECISION ON PETITION TO MAKE
Application No.: 10/357,861	)	SPECIAL UNDER 37 C.F.R. §1.102(c)
Filed: November 10, 2003	)	AND MPEP § 708.02 (IV):
For: FLOW METER AS AN IRRIGATION MANAGEMENT TOOL	)	APPLICANT'S AGE

This is a decision on the petition, filed November 10, 2003, under 37 C.F.R. §1.102(c) and M.P.E.P. §708.02(IV): Applicant's Age, to make the above-identified application special.

A grantable petition to make special under 37 C.F.R. § 1.102 and in accordance with M.P.E.P. § 708.02, Section IV must include a showing, as by a birth certificate or the applicant's statement, that the applicant is sixty five (65) years of age or more. No fee is required for this petition.

The petition includes declaration by John Addink, one of the applicants, asserting that declarant/applicant is sixty five (65) years of age or more.

Accordingly, the petition is **GRANTED.**

The application is being forwarded to the examiner for expedited prosecution and to consider the change of inventorship.

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

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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PATTERSON THUENTE SKAAR & CHRISTENSEN
4800 IDS CENTER, 80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

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MAR 21 2005

OFFICE OF PETITIONS

In re Patent No. 6,810,911 :
Issue Date: November 2, 2004 :
Application No. 10/357,891 :
Filed: February 4, 2003 :
Attorney Docket No. W1038.31-US-01 :

ON PETITION

This is a decision on the petition filed February 22, 2005, which is being treated as a petition under 37 CFR 3.81(b)[1] to accept the correction of the assignee on the front page of the above-identified patent.

The petition is granted.

Telephone 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.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No.

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

COPY MAILED
JUN 24 2004
OFFICE OF PETITIONS

In re Application of
John D. Porter, et al. :
Application No. 10/357,895 :
Filed: February 3, 2003 :
Attorney Docket No. 303.613US3 :

ON PETITION

This is a decision in response to a petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee filed June 24, 2004.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid May 21, 2004, using a Certificate of Mailing under 37 CFR 1.8 dated May 18, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220.

After the application is received in the Office of Petitions, the file will be forwarded to Technology Center AU 2182 for further processing of the request for continued examination under 37 CFR 1.114.

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

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

PORTFOLIO I.P.
JUN 29 2004
RECEIVED

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FEB 10 2005

In re Application of	:	
Debra Giampapa Kirwan	:	
Serial No. 10/357,896	:	DECISION ON PETITION
Filed: February 3, 2003	:	TO MAKE SPECIAL
For: INTERACTIVE PICTURE BOOK WITH	:	
VOICE RECORDING FEATURES AND	:	
METHOD OF USE	:	

Applicant's petition, filed October 25, 2004, 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. R. Kazenske, Director
Technology Center 3700

Gene Scott
Patent Law & Venture Group
3140 Red Hill Avenue, Suite 150
Costa Mesa, CA 92626-3440

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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ATTN: BRIAN M. BERLINER, ESQ.
O'MELVENY & MYERS LLP
400 SOUTH HOPE STREET
LOS ANGELES, CA 90071-2899

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DEC 15 2004

OFFICE OF PETITIONS

In re Application of	:	
Baun, et al.	:	
Application No. 10/357,912	:	ON PETITION
Filed: February 4, 2003	:	
Attorney Docket No. MDE1.PAU.46	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 11, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-final Office action mailed April 7, 2004. Accordingly, this application became abandoned on July 8, 2004.

Please note, 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 $980.00 extension of time submitted with the petition on November 11, 2004 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account no. 50-0639.

The file is being forwarded to Technology Center 2800 for review of the amendment, submitted November 11, 2004.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 030105

MAR 0 9 2005

O'MELVENY & MYERS LLP
400 SO. HOPE STREET
LOS ANGELES, CA 90071-2899

In re Application of:	:	
BAUN et al.	:	
Application No. 10/357,912	:	DECISION ON PETITION
Filed: February 04, 2003	:	TO MAKE SPECIAL
Attorney Docket No. 569967-27	:	

This is a decision on the petition under 37 C.F.R. § 1.102, filed February 17, 2004, 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 II. INFRINGEMENT

Subject to a requirement for a further showing as may be necessitated by the facts of a particular case, an application may be made special because of actual infringement (but not for prospective infringement) upon payment of the fee under 37 CFR 1.17(h) and the filing of a petition accompanied by a statement by the applicant, assignee, or an attorney/agent registered to practice before the Office alleging:

(A) That there is an infringing device or product actually on the market or method in use;

(B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

(D) Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petition contains the petition fee and a statement in accordance with M.P.E.P., Section 708.02, Item II.

For the above stated reasons, the petition is GRANTED.

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

If the examiner can make this application special without prejudice to any possible interfering applications, and he/she should make a rigid search for such, he/she is authorized to do so for the next action. Should the application be rejected, the application will not be considered special for the subsequent action unless the applicant promptly makes a bona fide effort to place the application in condition for allowance, even if it is necessary to have an interview with the examiner to accomplish this purpose.

If the examiner finds any interfering application for the same subject matter, he/she should consider such application simultaneously with this application and should state in the official letter of such application that 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.

Inquiries regarding 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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BARNES & THORNBURG
11 S. MERIDIAN STREET
INDIANAPOLIS, IN 46204

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SEP 17 2004

OFFICE OF PETITIONS

In re Application of	:
Neel et al.	:
Application No. 10/357,934	: DECISION ON PETITION
Filed: February 4, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 6395-72191	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed August 23, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

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

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

The instant petition does not comply with item (1) above.

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 August 23, 2004 fails to state the relationships of Application No. 08/114,915, Application No. 08/114,914, Application No. 08/114,896, Application No. 08/114,579, and Application No. 08/114,897, all of which were filed on August 31, 1993, to the instant application.

A reference to add the above-noted, prior-filed applications on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. Petitioner's attention is

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

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

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

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] stating the relationship of the prior-filed applications to the instant application and deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

Petitioner submitted $1300.00 towards payment of the petition fee required by 37 CFR 1.78(a)(3)(ii). However, since the fee is in fact $1330.00, an additional $30.00 was charged to petitioner's deposit account as authorized.

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

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

By hand: Customer Window located at:

U.S. Patent and Trademark Office
220 20th Street S
Customer Window, Mail Stop Petitions
Crystal Plaza Two Lobby, Room 1B03
Arlington, VA 22202

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

Any questions concerning this matter may be directed to Paralegal Liana Chase at (703) 306-0482. Any questions after September 28, 2004 should be directed to (571) 272-3206.

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

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[1] *Note* 37 CFR 1.121

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INDIANAPOLIS, IN 46204

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OFFICE OF PETITIONS

In re Application of
Neel et al.
Application No. 10/357,934
Filed: February 4, 2003
Attorney Docket No. 6395-72191

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 August 23, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

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

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

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The instant petition does not comply with item (1) above.

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 August 23, 2004 fails to state the relationships of Application No. 08/114,915, Application No. 08/114,914, Application No. 08/114,896, Application No. 08/114,579, and Application No. 08/114,897, all of which were filed on August 31, 1993, to the instant application.

A reference to add the above-noted, prior-filed applications on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. Petitioner's attention is

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

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

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

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] stating the relationship of the prior-filed applications to the instant application and deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

Petitioner submitted $1300.00 towards payment of the petition fee required by 37 CFR 1.78(a)(3)(ii). However, since the fee is in fact $1330.00, an additional $30.00 was charged to petitioner's deposit account as authorized.

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

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By hand: Customer Window located at:

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Crystal Plaza Two Lobby, Room 1B03
Arlington, VA 22202

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

Any questions concerning this matter may be directed to Paralegal Liana Chase at (703) 306-0482. Any questions after September 28, 2004 should be directed to (571) 272-3206.

Frances Hicks

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

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[1] *Note* 37 CFR 1.121

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OFFICE OF PETITIONS

In re Application of
Neel et al.
Application No. 10/357,934
Filed: February 24, 2003
Attorney Docket No. 6395-72191

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

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed September 28, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

The instant pending application was filed on February 24, 2003, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

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

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

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

Any inquiries concerning this decision may be directed to Paralegal Liana Chase at (571) 272-3282.

This application is being forwarded to Technology Center Art Unit 3736 for appropriate action on the amendment filed September 28, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

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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Alexandria, VA 22313-1450
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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI OH 45202

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OFFICE OF PETITIONS

In re Application of Cook :
Application No. 10/357,961 : Decision on Petition
Filing Date: February 4, 2003 :
Attorney Docket No. 8914 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 10, 2010, to revive the application.

The petition is **granted**.

The application became abandoned for failure to reply in a timely manner to the final Office action issued August 18, 2009, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the application became abandoned on November 19, 2009. A Notice of Abandonment was issued March 2, 2010.

The instant petition requests revival of the application.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed,
(2) The petition fee,
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Petitioner has submitted a reply to the final Office action in the form of a terminal disclaimer and request for continued examination. Petitioner has submitted the required petition fee of $1620. Petitioner has stated 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 Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

The petition was accompanied by a payment of $1110 for a three (3) month extension of time. Payment for extension of time is not required when reviving an application and has been credited back to deposit account 16-2480.

Technology Center Art Unit 1654 will be informed of the instant decision and the application will be further examined in due course.

Telephone inquiries regarding this communication should be directed to Steven Brantley at (571) 272-3203 or in his absence to Amy Gandhi at (571) 272-6699.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

OIPE IAP17
SEP 05 2006
PATENT & TRADEMARK OFFICE

TFW 1636

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

REQUEST TO WITHDRAW AS AGENT

Applicant: Paul V. Hart

Serial No.: 10/357,997 Date: August 31, 2006

Filed: February 4, 2003 Group Art Unit: 1636

Exam: Laura L. McGillem

For: METHOD FOR TRANSFORMING KIDNEY CELLS FOR USE IN A RENAL ASSIST DEVICE

- -

Kansas City, Missouri

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

Sir:

An Office action was mailed in the above captioned application on July 28, 2006 and a response is due on October 28, 2006 with the possibility of an additional three months extension of time for response.

The undersigned currently has Power of Attorney in the above captioned application. The undersigned has not received payment for work previously undertaken with respect to this application and has had substantial difficulty in contacting and communicating with the applicant. The undersigned reported the most recent action to applicant on August 4, 2006 and indicated

Approved Jean F Vollano Oct 17 06

JEAN F. VOLLANO
SPECIAL PROGRAM EXAMINER

that he would withdraw if applicant did not meet certain conditions by August 28, 2006. Applicant telephoned the undersigned on August 15, 2006 and told the undersigned that he would try to resolve the issues by August 28, 2006, but the undersigned has received no further communication from applicant.

Consequently, the undersigned hereby requests to withdraw as attorney in the above captioned matter. It is noted that Applicant has approximately two months to respond to the Office action and longer, if extensions of time are used.

A copy of the Request is being sent to applicant at the last address which this office has for him and which was effective on August 4, 2006 at:

Dr. Paul V. Hart
2418 N. 115th Terrace
Basehor, KS, 66077.

This Request is being sent to the Patent Office by both mail and fax.

Respectfully Submitted,

John C. McMahon
Reg. No. 29,415
Attorney

JCM:mcm
PO Box 30069
Kansas City, Missouri
64112
Phone: (816) 531-3470

Paul V. Hart

Serial No 10/357,997

OIPE IAP17
SEP 05 2006
PATENT & TRADEMARK OFFICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Mail Stop Amendment
Commissioner For Patents,
P.O. Box 1450,
Alexandria, VA 22313-1450 on
August 31, 2006.

Paul V. Hart
(Applicant)

By

August 31, 2006

(Date of Signature)

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 H. SHADDUCK
1490 VISTAZO WEST
TIBURON, CA 94920

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JAN 0 4 2007

OFFICE OF PETITIONS

In re Application of	:	
Shadduck, John H.	:	
Application No. 10/358,038	:	ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. S-CAZ-005	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 28, 2006, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to Technology Center 3700 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 3

JOHN J. TIMAR
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
P.O. BOX 725388
ATLANTA, GA 31139-9388

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APR 2 3 2003

OFFICE OF PETITIONS

In re Application of :
Esteller, et al. :
Application No. 10/358,039 : ON PETITION
Filed: February 4, 2003 :
Attorney Docket No. I080 1020.2 :

This is a decision on the petition under 37 CFR 1.182, filed March 10, 2003, to change the order of the names of the inventors.

The petition is granted.

The order of the names of the inventors will be changed as follows:

1. ROSANA ESTELLER
2. JAVIER RAMÓN ECHAUZ
3. BRIAN LITT
4. GEORGE JOHN VACHTSEVANOS

This application is being forwarded to the Office of Initial Patent Examination, to change the order of inventorship, and for further processing.

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

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OFFICE OF PETITIONS

SIMONA A. LEVI-MINZI
4400 BISCAYNE BOULEVARD
MIAMI, FL 33137

In re Application of :
Istvan Kurucz et al :
Application No. 10/358,061 : DECISION ON PETITION
Filed: February 4, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. IDR0102-USA :

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

The petition is **DISMISSED**.

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

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). The instant petition lacks item(s) (1).

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 20, 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 (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(II)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance (as indicated in the attached courtesy copy of an Advisory Action by the

examiner), the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

The power of attorney submitted with the petition is unacceptable and will not be entered since it fails to comply with the provisions of 37 CFR 3.73(b). A certificate under 37 CFR 3.73(b) form may be found on the USPTO.gov website under forms. In view of the nonacceptance of the power of attorney, a courtesy copy of this decision is being mailed to petitioner. However, until an acceptable power of attorney is submitted, all future correspondence will continue to be held with the above address of record.

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

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

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.

Frances Hicks
Petitions Examiner
Office of Petitions

ENCLOSURE: Courtesy Copy of Advisory Action

cc:

Lerner, David, Littenberg,
Krumholz & Mentlik, LLP
600 South Avenue West
Westfield, NJ 07060

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/358,061	Applicant(s) KURUCZ ET AL.	
	Examiner Phyllis G. Spivack	Art Unit 1614	

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

THE REPLY FILED 10 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

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

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

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

NOTICE OF APPEAL

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

AMENDMENTS

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

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: 1-3, 6, 7.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

Phyllis G. Spivack
Primary Examiner
Art Unit: 1614

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LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD NJ 07090

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NOV 20 2007

OFFICE OF PETITIONS

In re Application of	:	
Istvan Kurucz et al	:	
Application No. 10/358,061	:	DECISION ON PETITION
Filed: February 4, 2003	:	
Attorney Docket No.	:	
TEVIDR 3.0-102		

This is a renewed decision on the petition under 37 CFR 1.137(b), filed April 17, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed April 20, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on July 21, 2005. A Notice of Abandonment was mailed on October 31, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of a request for continued examination, $790 filing fee, and submission as required by 37 CFR 1.114, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the final Office action of April 20, 2005 is accepted as being unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has

not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

This application is being referred to Technology Center AU 1614 for processing the request for continued examination and for appropriate action in the normal course of business on the submission under 37 CFR 1.114 received April 17, 2007.

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

Frances Hicks
Petitions Examiner
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/358,061	02/04/2003	Istvan Kurucz	IDR0102-USA

CONFIRMATION NO. 5561

POWER OF ATTORNEY NOTICE

Simona A. Levi-Minzi, Ph.D.
4400 Biscayne Boulevard
Miami, FL 33137

OC000000026821091

Date Mailed: 11/20/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/17/2007.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/fmhicks/

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

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/358,061	02/04/2003	Istvan Kurucz	TEVIDR 3.0-102

CONFIRMATION NO. 5561

POA ACCEPTANCE LETTER

530
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

OC000000026821149

Date Mailed: 11/20/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/17/2007.

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

/fmhicks/

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8/2/05

TO SPE OF : ART UNIT 3762

SUBJECT : Request for Certificate of Correction on Patent No.: 6,824,266

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.

Monyna

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:

ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

3762
Art Unit

SPE

PTOL-306 (REV. 7/03)

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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

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

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DEC 14 2006
OFFICE OF PETITIONS

In re Application of	:	
Anthony Baratta	:	
Application No. 10/358,072	:	
Filed: February 3, 2003	:	DECISION ON PETITION
Attorney Docket No. 020100-025	:	UNDER 37 C.F.R. §1.181(A)
Title: COMPOSITE TRACK, COLUMN	:	
AND OTHER SUPPORTS, INCLUDING	:	
FOR MACHINERY	:	

This is a decision on the petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment, filed on September 13, 2006.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed October 5, 2005, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on January 6, 2006. A notice of abandonment was mailed on September 25, 2006.

With the present petition, Petitioner has included a response to the non-final Office action and a three-month extension of time, each of which contains a certificate of mailing dated April 5, 2006.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that petitioner has met his burden of establishing that a response was timely submitted, pursuant to 37 C.F.R. §1.8.

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

Receipt of the three-month extension of time with the present petition is acknowledged.

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 and the drawings that were received with the present petition can be processed.

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

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

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

In re Application of	:	
Gina McLaren et al	:	
Application No. 10/358,114	:	ON PETITION
Filed: February 3, 2003	:	
Attorney Docket No. 10225-006002	:	

This is a decision on the petition, filed August 24, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 12, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2624 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

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AUG 25 2006 Paper No. _____

OFFICE OF PETITIONS

Date : August 25, 2006

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Gina McLaren et al
Application No. :10/358,114
Filed :February 3, 2003

The above-identified application has been assigned Patent No. 7,099,500 and an issue date of August 29, 2006.

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

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of August 29, 2006:

"All reference to Patent No. 7,099,500 to Gina McLaren et al of California for AUTOMATED DETECTION OF OBJECTS IN A BIOLOGICAL SAMPLE appearing in the Official Gazette of August 29, 2006 should be deleted since no patent was granted."

Karen Creasy

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

cc: Paul Harrison, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89

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HOLLAND & KNIGHT LLP
2099 PENNSYLVANIA AVE, N.W.
WASHINGTON DC 20006

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MAY 18 2006
OFFICE OF PETITIONS

In re Application of	:	
Buckley, Michael E.	:	DECISION ON PETITION
Application No. 10/358,117	:	TO WITHDRAW
Filed: February 4, 2003	:	FROM RECORD
Attorney Docket No. 088717.00001	:	

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 15, 2005.

The request is **APPROVED**.

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

The request was signed by Kevin A. Buford.

Kevin A. Buford has been withdrawn as attorney of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

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

David Bucci
Petitions Examiner
Office of Petitions

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HELLER EHRMAN WHITE & MCAULIFFE LLP
1717 RHODE ISLAND AVE, NW
WASHINGTON DC 20036-3001

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OCT 2 4 2006

OFFICE OF PETITIONS

In re Application of	:	
PYNTIKOV, et al.	:	
Application No. 10/358,136	:	DECISION ON PETITION
Filed: February 05, 2003	:	TO WITHDRAW
Attorney Docket No. 40473-0010	:	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 16, 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 Patricia D. Granados on behalf of all attorneys of record who are associated with Customer Number 26633. All attorneys/agents associated with Customer Number 26633 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 no outstanding Office action that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Patricia Volpe at 571-272-6825.

David Bucci
Petitions Examiner
Office of Petitions

cc: Alexander V. Pyntikov
21184 Sundial Court
Ashburn, VA 20148

cc: Ronald J. Kamis
Baker & Daniels LLP
805 15th Street, NW
Suite 700
Washington, DC 20005

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Robert E. Bushnell
Suite 300
1522 K Street, NW
Washington, D.C. 2005

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DEC 14 2005

Technology Center 2100

In re Application of: Park et al.)
Application No. 10/358,225)
Attorney Docket No. P56821) **DECISION ON PETITION UNDER 37**
Filed: February 5, 2003) **CFR §1.181**
For: DUAL PROCESSOR APPARATUS)
CAPABLE OF BURST CONCURRENT)
WRITING OF DATA)

This is a decision on the petition filed November 22, 2005 under 37 CFR § 1.181 requesting the time period for response be reset and restarted with the re-mailing of a Supplemental Notice of References Cited (PTO-892) with citation of U.S. Patent (USP 6,088,743) Takeda.

Applicable Prosecution History

Sep 22, 2005	Non-final rejection mailed rejecting Claims 1-20 citing USP Takeda.
Nov 22, 2005	Petition filed.

Issues

Petitioners argue the failure of the examiner to cite USP 6,088,743 on the PTO-892, Notices of References cited which accompanied the Office action mailed September 22, 2005 means the Office action is incomplete under 37 C.F.R. § 1.104. Petitioners acknowledge the current Office practice of not providing copies of U.S. patents with Office communications. Petitioners state they have brought this omission to the attention of the Office in accordance with MPEP § 710.06.

Decision

The Office regrets those occurrences when forms are not completed properly or procedures are not followed as outlined in the Manual for Patent Examining Procedure (MPEP). When such events occur, applicants are encouraged to contact the appropriate Office personnel as soon as problems are noted so that applicants' time and resources are not needlessly expended and the appropriate steps may be taken to promptly resolve a noted defect. At the same time, however, applicants should not be under the mistaken assumption that all procedural errors will, or even should, lead to a remedy as significant as resetting a period for reply merely because applicants request such relief.

A review of this application's contents shows that examiner failed to list USP Takeda on the PTO-892. However, the examiner, in the body of the Office action mailed September 22, 2005, on pages 4 and 12, clearly lists "Takeda, US 6,088,743."

Petitioners' state "the error was brought to the attention of the Office, in accordance with MPEP § 710.06...." However, MPEP Rev. 3, dated August 2005 states in pertinent part:

> Where the citation of a reference is incorrect or an Office action contains some other error ***that affects applicant's ability to reply to the Office action*** and this error is called to the attention of the Office within 1 month of the mail date of the action, the Office will restart the previously set period for reply to run from the date the error is corrected, if requested to do so by applicant. If the error is brought to the attention of the Office within the period for reply set in the Office action but more than 1 month after the date of the Office action, the Office will set a new period for reply, if requested to do so by the applicant, to substantially equal the time remaining in the reply period. For example, if the error is brought to the attention of the Office 5 weeks after mailing the action, then the Office would set a new 2-month period for reply. The new period for reply must be at least 1 month and would run from the date the error is corrected. See MPEP §707.05(g) for the manner of correcting the record where there has been an erroneous citation.
> (Emphasis added.)

Petitioners have not stated the examiner's omission has affected their ability to reply to the Office action and no such conclusions can be drawn from a review of the record. The examiner was quite clear in two places in the Office action (on page 4 and again on page 12) in putting applicants on notice as to which U.S. patent was being relied to make a rejection of Claims 1-20 under 35 U.S.C. 103(a).

Petitioners maintain the action is incomplete under 37 C.F.R. § 1.104 (presumably under subsection (d) "Citation of references"). 37 C.F.R. § 1.104 (d) (1) states in part, "[i]f domestic patents are cited by the examiner, their numbers and dates, and the names of the patentees will be stated." The rule does not require the use of a PTO-892 for such citations, but clearly the normal Office practice is to do so, in great measure to facilitate the printing of such information on the face of any patent that might issue.

The examiner will be instructed to include a PTO-892 with any future Office communications to ensure the cited reference would be reflected on the face of any patent that might issue.

The petition is **DISMISSED**.

The period for reply continues to run from the mail date of the last Office action of September 22, 2005.

Telephone inquiries regarding this decision may be directed to the undersigned.

Pinchus M. Laufer

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

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1522 K Street, N.W.
Washington DC 20005

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JAN 30 2007

Technology Center 2100

In re Application of: Park et al
Application No. 10/358,225
Filed: February 5, 2003
Attorney Docket No. P56821
For: DUAL PROCESSOR APPARATUS CAPABLE OF BURST CONCURRENT WRITING OF DATA

DECISION ON RENEWED PETITION UNDER 37 CFR §1.181

This is a decision on the renewed petition filed on January 11, 2006, under 37 CFR 1.181 of the repeated requirement of the Examiner to label Applicants' figured 1 and 2 as "prior art".

The Petition is **GRANTED.**

RECENT PROSECUTION HISTORY

January 31, 2005	Non-Final Rejection (FAOM) mailed, including requirement to label figures 1 and 2 as Prior Art.
February 15, 2005	Petition requesting withdrawal of Requirement to label figures 1 and 2 as Prior Art filed. This petition treated as a Request for Reconsideration in the action mailed September 22, 2005.
February 15, 2005	Corrected Drawings filed, with request to defer entry of corrected drawings till final disposition of Petition requesting withdrawal of Requirement to label figures 1 and 2 as Prior Art filed.
March 15, 2006	Supplemental FAOM (requirement to label figures 1 and 2 as Prior Art.
June 15, 2006	Amendment under 37 CFR 1.111 filed.

September 22, 2005	Second Non-Final Rejection mailed; Petition filed February 15, 2005, considered as a Request for Reconsideration, and accepting the Corrected drawings filed February 15, 2005.
January 11, 2006	Instant Petition filed (Renewing the petition of 2/15/05).
March 20, 2006	Third Non-Final Rejection mailed.
June 20, 2006	Amendment filed.
September 12, 2006	Final Rejection mailed.

REQUIREMENTS

A petition under 3 7 CFR § 1.181 must include: (1) a statement of facts involved and (2) the point or points to be reviewed and the action requested. Note, 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. In addition § 1.181 (f) sets forth: 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. Further, when a petition is taken from an action or requirement of an examiner in the ex parte prosecution of an application, ... it may be required that there have been a proper request for reconsideration (37 CFR § 1.111) and a repeated action by the Examiner.

The petition filed on January 11, 2006, includes elements (1) and (2) above, as well as a request for reconsideration. The actions mailed on March 15, 2005, and September 22, 2005, constitute repeated action by the Examiner.

RELIEF REQUESTED

The instant petition filed under 37 CFR 1.181 requests that the requirement that Figures 1 and 2 be labeled as "Prior Art" be withdrawn.

OPINION

Petitioner presents the following arguments in support of the position that the requirement that Figures 1 and 2 be labeled as "Prior Art" be withdrawn as improper:

1. MPEP section 608.02(g) does not state that the figure must be labeled.
2. Figs. 1 and 2 are abstract representations of the art prepared by applicant to illustrate applicants discovery of deficiencies in the art, and constitutes part of applicants' discovery in accordance with 37 CFR 1.83(b).
3. Present application is based on, and is a translation of, Korean Application Serial No. 2002-23404, filed on April 29, 2002, and also claims priority to the Korean Application.
4. Applicant is unaware of any evidence that Figs. 1 and 2 exist in any printed form other than in the present application and its priority document.

ANALYSIS

The relevant sections of the M.P.E.P. are set forth below:

37 CFR 1.83
(b) When the invention consists of an improvement on an old machine the drawing must when possible exhibit, in one or more views, the improved portion itself, disconnected from the old structure, and also in another view, so much only of the old structure as will suffice to show the connection of the invention therewith.

The undersigned accepts the assertions by Applicant, namely that Applicant is unaware of any evidence that Figs. 1 and 2 exist in any printed form other than in the present application and its priority document. A careful review of the application papers indicates that the subject matter of figures one and two is considered by Applicants to be "conventional". However, there is no indication in the disclosure that the subject matter of the figures is expressly considered by the Applicants to be "prior art".

There is no requirement that a particular figure or figures be labeled as "prior art". The MPEP at section 608.02(g) indicates that if prior art figures are to be retained in the file, they should be designated with the legend of "prior art". No such requirement is made for an applicant to label figure(s) as "prior art" where there is no such indication in the disclosure.

Consequently, the requirement that the figures 1 and 2 be designated by the legend of "prior art" is withdrawn.

Accordingly, the Petition is **GRANTED**.

The "Corrected Drawings" filed by applicants, in response to the Requirement by examiner to label figures 1 and 2 as prior art, will not be entered in the application.

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-4210.

Mano Padmanabhan
Quality Assurance Specialist
Technology Center 2100, WG 2180

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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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PAPER NO. 3

In re Application of	:	
Albert Venosa	:	
Serial Number: 10/358,260	:	PETITION UNDER
Filed: February 05, 2003	:	M.P.E.P.708.02,V
For: BIOMASS CONCENTRATOR REACTOR	:	

This is in response to the petition filed, February 05, 2003 requesting that the above-identified application be granted Special Status under section 708.02 (V) of the MPEP and 37 CFR 1.102(c) (no fee required).

The request for Special Status considered under Section 708.02 (V) is granted because criteria under 37 CFR 1.102(c) has been met.

Accordingly the petition is **GRANTED.**

JMStone

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

Brody and Neimark, P.L.L.C.
624 Ninth Street, NW, Suite 300
Washington, DC 20001-5303

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McGUIREWOODS
SUITE 1800
1750 TYSONS BOULEVARD
McLEAN, VA 22102

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AUG 1 6 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Dong-Gyu Kim :
Application No. 10/358,266 :
Filed: February 5, 2003 :
Attorney Docket No. 6192.0267.BA :

This is a decision on the petition under 37 CFR § 1.78(a)(3), filed April 22, 2004, requesting acceptance of an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior-filed nonprovisional Application No. 10/142,977, filed May 13, 2002, as set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR § 1. 78(a)(3) is only applicable to those applications filed on or after November 29, 2000.

Along with the instant petition under 37 CFR § 1.78(a)(3), petitioner has submitted an amendment to the first sentence of the specification following the title to include a reference to the prior-filed applications.

The instant pending nonprovisional application was filed on February 5, 2003, and was pending at the time of filing of the instant petition. Reference to the prior-filed application was made in the transmittal letter filed with the instant application.

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

§1.78(a)(3).[1] In the instant case, the Office noted the claim for priority of the above-noted, prior-filed application in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt.

In view of the above, the $1,330.00 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Wan Laymon at (703) 306-5685.

This matter is being referred to the Examiner of Technology Center AU 2822 for appropriate action on the amendment filed April 28, 2004, including consideration of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) for benefit of the above-noted, prior-filed application.

Frances Hicks

Frances Hicks
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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Paper No. 4

ROSENBERG KLEIN & LEE
3458 ELLICOTT CENTER DRIVE
SUITE 101
ELLICOTT CITY, MD 21043

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APR 1 8 2003

OFFICE OF PETITIONS

In re Application of
Shih-Chang Ku
Application No. 10/358,290
Filed: February 5, 2003
Attorney Docket No. MR1957-723

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center AU 2835.

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

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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/358,320	02/05/2003	Se-Woong Moon	P56785	6298

7590 02/28/2008
Robert E. Bushnell
Suite 300
1522 K Street, N.W.
Washington, DC 20005

EXAMINER
NGUYEN, THU HA T

ART UNIT	PAPER NUMBER
2153	

MAIL DATE	DELIVERY MODE
02/28/2008	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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FEB 29 2008

TECHNOLOGY CENTER 2100

Robert E. Bushnell
SUITE 300
1522 K STREET, N.W.
WASHINGTON DC 20005-1202

In re Application of:
See-Woong MOON, et al.
Application No. 10/358,320
Filed: February 05, 2003
For: SECURITY SYSTEM FOR ACCESSING VIRTUAL PRIVATE NETWORK SERVICE IN COMMUNICATION NETWORK AND METHOD THEREOF

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed October 03, 2006 under 37 CFR § 1.181 to invoke Supervisory Authority of the Commissioner and require the Examiner to acknowledge the claim for foreign priority under 35 USC 119(a)-(d).

A review of file history indicates that an Oath/Declaration of the instant application claiming the benefit of Korean application No. 2002-0009785 along with a certified copy of the foreign priority of the Korean application were filed with the office on February 23, 2002. The Korean application No. 2002-0009785 has a filing date of April 22, 2002. The applicant had satisfied the requirements of 35 USC 119(a)-(d), thus the claim to foreign priority benefit of the Korean application No. 2002-0009785 is hereby **ACKNOWLEDGED**.

The examiner has not formally acknowledged the claim for benefit of the foreign application in the office actions mailed 9/25/06, 3/22/07, 8/24/07 or 2/13/08. The Office will direct the examiner **to formally acknowledge** the benefit for the foreign priority claim of the Korean application No. 2002-0009785 **in the next communication**.

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-4147.

Kim Huynh
Quality Assurance Specialist
Technology 2100
Computer Architecture, Software, and
Information Security

UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 03 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of :
SAKAGUCHI, NORIHIRO, et al. :
Application No. 10/358,322 : DECISION ON PETITION
Filed: June 6, 2005 : TO MAKE SPECIAL
For: **IMAGE DEVICE HAVING A SELECTIVELY ADAPTED WHITE BALANCE CONTROL** :

This is a decision on the petition filed September 19, 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.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : January 9, 2007

TO SPE OF : ART UNIT 1615

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/358324 patent No.: 6,844,008

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: _____

MICHAEL P. WOODWARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

MP Woodward

SPE

1615

Art Unit

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Paper No. 4

SHLESINGER ARKWRIGHT & GARVEY LLP
3000 SOUTH EADS STREET
ARLINGTON, VA 22202

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SEP 0 9 2003

OFFICE OF PETITIONS

In re Application of :
Rainer Gerding et al :
Application No. 10/358,326 :
Filed: February 5, 2003 :
Attorney Docket No. 7266

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 3600.

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

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PILLSBURY WINTHROP,LLP
P.O. BOX 10500
MCLEAN VA 22102

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OFFICE OF PETITIONS

In re Patent No. 6,783,044
Issued: August 31, 2004
Application No. 10/358,374
Filed: February 5, 2003
Attorney Docket No. P 301065

ON PETITION

This is a decision on the petition filed August 19, 2004, and supplemented on September 1, 2004, requesting withdrawal of the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED as moot.**

Unfortunately, the petition was not acted on prior to issuance.

The Office sincerely apologize for any inconvenience caused petitioner regarding this matter.

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

The patented file 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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GREENLEE WINNER AND SULLIVAN, P.C.
4875 PEARL EAST CIRCLE, SUITE 200
BOULDER, CO 80301

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JUL 06 2005

OFFICE OF PETITIONS

In re Application of :
Frank Corbin et al :
Application No. 10/358,381 :
Filed: February 3, 2003 :
Attorney Docket No. 1-03

ON PETITION

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 May 11, 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 1723 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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 03/28/06

TO SPE OF : ART UNIT 1723

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/358381** Patent No.: **6994790**

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: _____

STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700
3/29/06

SPE 1731 **Art Unit**

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Bennett Jones LLP
4500 Bankers Hall East
855 – 2nd Street SW
Calgary, AB
T2P 4K7
Canada

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FROM DIRECTORS OFFICE

MAR 0 4 2005

TECHNOLOGY CENTER 3600

In re Application of
Troy S. Walker
Application No. 10/358,382
Filed: February 5, 2003
For: PERFORATING GUN LOADING BAY AND METHOD

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the Petition to Withdraw the Holding of Abandonment filed in the United States Patent and Trademark Office on December 17, 2004.

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

☐ Postcard receipt dated_____.

☐ USPTO return facsimile receipt dated _____.

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

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

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

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

☒ Originally sent response, filed April 14, 2004 has been located and placed in the application file.

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

SNM/rwg: 2/10/05

STEVEN N. MEYERS
SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 3600

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BARRY E. BRETSCHNEIDER
MORRISON & FOERSTER
1650 TYSONS BOULEVARD
SUITE 300
McLEAN, VA 22102

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JAN 28 2004
OFFICE OF PETITIONS

In re Application of	:	
Helmut D. Link et al	:	
Application No. 10/358,387	:	NOTICE
Filed: February 5, 2003	:	
Attorney Docket No. 246472004200	:	

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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BARRY E. BRETSCHNEIDER
MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

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MAR 23 2004

OFFICE OF PETITIONS

In re Application of :
Arnold Keller :
Application No. 10/358,392 :
Filed: February 5, 2003 :
Attorney Docket No. 246472004100

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center AU 3731.

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

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PILLSBURY WINTHROP SHAW PITTMAN, LLP
P.O. BOX 10500
MCLEAN VA 22102

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JUN 20 2008

In re Application of	:	
Brigitte Bathe, et al.	:	
Application No. 10/358,393	:	ON PETITION
Filed: February 5, 2003	:	
Attorney Docket No. 021123-0301474	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 15, 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 January 29, 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 extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is April 30, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,540; and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,050 extension of time fee submitted with the petition on October 15, 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.

This application is being referred to Technology Center AU 1652 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

Chris Bottorff
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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Sadler, Breen, Morasch & Colby, ps
422 W. Riverside Ave, Suite 424
Spokane, WA 99201

Mail Date: 04/27/2010

Applicant	: Robert Komar	: DECISION ON REQUEST FOR
Patent Number	: 7667699	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/358,394	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **66** 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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Paper No. 7

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
1300 I STREET, NW
WASHINGTON DC 20005

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JUL 01 2003

OFFICE OF PETITIONS

In re Application of	:	
Trinchieri et al.	:	
Application No. 10/358,395	:	DECISION GRANTING PETITION
Filed: 5 February, 2003	:	
Attorney Dcket No. 08702.0114-14000	:	

This is a decision on the petition styled under 37 CFR 1.181, requesting that the above-identified application be accorded a filing date of 5 February, 2003, with seven (7) sheets of drawings and Pages 44-66 of the specification as a part of the original disclosure of the application.

The petition is **granted** to the extent indicated.

The application was filed on 5 February, 2003. However, on 9 April, 2003, Initial Patent Examination Division mailed a "Notice Of Incomplete Nonprovisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings and also that, *inter alia*, Pages 44-66 of the specification appeared to have been omitted. In response, on 6 June, 2003, the present petition was filed, accompanied by seven (7) sheets of drawings and a copy of Pages 44-66 of the specification.

Petitioners assert that the present application is a continuation of Application No. 09/924,703 which is incorporated by reference and which containing the drawings. Petitioner also included a copy of pages 44-66 of the specification.

At the outset, 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 apparently did not include an itemized postcard receipt.

Nevertheless, petitioners may include, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit petitioner to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition.[1]

As petitioners note, that the transmittal letter deposited on 5 February, 2003, requests the amendment of the first paragraph of the specification by replacing it with a sentence stating that "This is a continuation of application Serial No. 09/924,703, filed August 9, 2001...which [is] incorporated herein by reference." As such, the transmittal letter contains an incorporation by reference of the parent application.

Based on petitioners' representation in the "Letter to Draftsperson" that the drawings supplied with the present petition are a copy of the disclosure from Application No. 09/924,703, and the statement in the transmittal letter filed on 5 February, 2003, that the entire disclosure of application No. 09/352,016 was specifically incorporated by reference in the present application on 5 February, 2003, it appears that the drawings were present in the Office on 5 February, 2003, albeit in the file of another application, *i.e.*, application No. 09/924,703. Therefore, on petition, the application may be accorded the requested filing date.

Of course, the primary examiner is expected to compare the drawings supplied on 6 June, 2003, to the disclosure of prior application No. 09/924,703 in order to verify that the specification is, in fact, part of the disclosure of the prior application.

With regard to Pages 44-66 of the specification, it is also noted

---

[1] MPEP 201.06(c).

that a review of the papers originally filed reveals that no Pages 44-66 of the specification were filed on 5 February, 2003, since no such pages are present among the application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioner believes the page was among the papers he included in the application is not more persuasive than the actual papers shown to have been received by the official file. As petitioner has no evidence, *i.e.*, an itemized postcard, that Pages 44-66 were filed on 5 February, 2003, the application, including Pages 44-66, cannot be accorded a filing date of 5 February, 2003.

As stated previously, the application transmittal sheet contains a statement incorporating by reference the parent application. Furthermore, the petition states that they filed a substitute as well as the original specification from the prior application, and that Pages 44-66 were part of the parent application.

Section 201.06(c) of the Manual of Patent Examining Procedure states that:

> . . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), <u>without the need for a petition</u>. (emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, Pages 44-66 described in the specification are not new matter if they were a part of the disclosure of the prior application.

Pages 44-66 submitted with the present petition on 6 June, 2003, will <u>not</u> be entered or used during the prosecution of this application, but will be retained in the application file. However, applicant may resubmit Pages 44-66 as an amendment for consideration by the examiner under Sections 608.02(p) and 608.04 of the Manual of Patent Examining Procedure.

Since the petition was required to accord the application the requested filing date, the petition fee of $130.00 is required and has been paid.

The application will be processed and examined using the application papers filed on 5 February, 2003, and the copy of the seven (7) sheets of drawings supplied on 6 June, 2003. The copy of Pages 44-66 of the specification filed on 6 June, 2003, will not be used for processing or examination, but will be retained in the application file.

Receipt of the preliminary amendment, sequence listing, and request under 37 CFR 1.821(e) is acknowledged.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 5 February, 2003, using the application papers filed on that date, the drawings supplied on 6 June, 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

OIPE JC41
JUL 1 0 2003
PATENT & TRADEMARK OFFICE

RECEIVED 1646 0380 #11
JUL 1 4 2003
TECH CENTER 1600/2900

PATENT
Customer No. 22,852
Attorney Docket No. 08702.0114-14000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)
Trinchieri et al.	)
Serial No.: 10/358,395	)
Filed: February 5, 2003	) Prior Application: Group Art Unit: 1646 Examiner: P.M. Mertz
For: ANTIBODIES TO NATURAL KILLER STIMULATORY FACTOR	)

Attn: Office of Petitions
Douglas I. Wood, Esq.
Senior Petitions Attorney

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

Sir:

REQUEST FOR CLARIFICATION OF DECISION GRANTING PETITION

Applicants file this request for clarification of the Decision Granting Petition issued by the Office on July 1, 2003. On July 10, 2003, the undersigned attorney spoke with Mr. Wood of the Office of Petitions regarding this decision and Mr. Wood asked her to file this request for clarification.

DRAWINGS

Applicants thank the Office for granting the petition for the award of a filing date of February 5, 2003 for the drawings, based on an incorporation by reference statement.

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ALLEGED MISSING PAGES FROM SPECIFICATION

The decision indicates that it could not award a February 5, 2003, filing date for pages 44-66 of the specification, which were allegedly presented with the June 6, 2003, petition. The decision also indicates that allegedly presented pages 44-66 would not be entered or used during prosecution of this application. Applicants file this request for clarification since the June 6, 2003, petition did not include the allegedly missing pages 44-66 of the specification.

History of the Request for the Alleged Missing Pages: 44-66

The Office indicated in a Notice of Incomplete Provisional Application that it believed that pages 44-66 are missing from this application. When this application was filed, Applicants provided the original specification from the parent case (containing pages 1-74, with the claims beginning on page 67). Applicants also filed a copy of a substitute specification from the parent case as the Examiner in the parent case had requested that certain typographical errors in the specification be corrected with a substitute specification. This substitute specification used a smaller font size and contained pages 1-43 (corresponding to pages 1-66 of the original application). Thus, there are no pages 44-66 of the substitute specification due to the smaller font size used. Applicants did not include a marked up copy of the substitute specification, as that was provided in the parent application.

Applicants' representative discussed this question with Ms. Monica Young of the Office of Initial Patent Examination prior to filing the petition. Ms. Young indicated that she now understood that the substitute specification was not missing any pages, due to

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the difference in font size. However, she requested that Applicants submit renumbered claim pages so that the Office has a set that can be used for publication with the substitute specification.

Therefore, Applicants enclosed a copy of renumbered claim pages 44-46 with the petition, as the Office had requested, so that the claim numbering would correspond to the numbering in the substitute specification.

Discussion of the Alleged Missing Pages in the Decision on Petition and Telephone Interview with Mr. Wood

The decision on petition states that "Pages 44-66 submitted with the present petition on 6 June, 2003, will not be entered or used during the prosecution of this application" (page 3, bottom) and "a review of the papers originally filed reveals that no Pages 44-66 of the specification were filed on 5 February, 2003, since no such pages are present among the application papers received on that date" (page 3, top).

The undersigned telephoned Mr. Wood to explain that pages 44-66 of the substitute specification do not exist and that claim pages consecutively numbered with the substitute specification as pages 44-46 were submitted with the June 6, 2003, petition as Ms. Young had requested. The undersigned clarified that these are the exact same claims as were present in the originally filed application (see pages 67-73, with a larger font size). Applicants do not have a preference whether the Office uses the claims as presented in original application pages 67-73, or substitute specification pages 44-46 as these pages are identical except for the size of the font.

Applicants request that the Office clarify the Decision on Petition to remove the discussion of the allegedly missing and submitted pages 44-66 and to remove any

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potential question as to whether the application is fully entitled to the February 5, 2003, filing date. Applicants also request clarification from the Office as to whether or not it would like to use the consecutively numbered claim pages 44-46 for the substitute specification, as Ms. Young had requested. Mr. Wood indicated that such clarification would be provided in writing in response to this request.

Should Mr. Wood have any remaining questions regarding the claims in this application or the formatting of the substitute specification, Applicants ask that he please call the undersigned at 202-408-4086.

Please grant any extensions of time necessary and charge any fees due to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 10, 2003

By: Rebecca McNeill
Rebecca M. McNeill
Reg. No. 43,796

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HOWREY LLP – EAST
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DR, SUITE 200
FALLS CHURCH, VA 22042-2924

MAILED

MAY 28 2010

OFFICE OF PETITIONS

In re Application of	:	
Jeffrey C. Zimmerman	:	
Application No. 10/358,396	:	DECISION ON PETITION
Filed: February 5, 2003	:	TO WITHDRAW
Attorney Docket No. 07916.0003.NPUS01	:	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 2, 2010 and supplemented on May 12, 2010.

The request is **APPROVED**.

The April 2, 2010 request was signed by Brian K. Andrea and the May 12, 2010 request was signed by Michael J. Bell on behalf of the practitioners of record associated with Customer Number 22930.

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

All future correspondence will be directed to inventor Jeffrey C. Zimmerman at the first address indicated below.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Jeffrey C. Zimmerman
22 Half Mile Common
Westport, CT 06880

cc: Brian K. Andrea
1299 Pennsylvania Ave. N.W.
Washington, DC 20004

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
10/358,396	02/05/2003	Jeffrey C. Zimmerman	07916.0003.NPUS01

CONFIRMATION NO. 6441

POWER OF ATTORNEY NOTICE

22930
HOWREY LLP - East
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DR, SUITE 200
FALLS CHURCH, VA 22042-2924

OC000000041831394

Date Mailed: 05/28/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/02/2010.

- 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.

/idingle/

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

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/358,396	02/05/2003	Jeffrey C. Zimmerman	07916.0003.NPUS01

CONFIRMATION NO. 6441

Jeffrey C. Zimmerman
22 Half Mile Common
Westport, CT 06880

POA ACCEPTANCE LETTER

OC000000041831395

Date Mailed: 05/28/2010

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/02/2010.

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

/idingle/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 4

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BLVD.
SEVENTH FLOOR
LOS ANGELES, CA 90025

COPY MAILED

JUN 1 3 2003

OFFICE OF PETITIONS

In re Application of	:	
David K. Kiser et al	:	
Application No. 10/358,415	:	NOTICE
Filed: February 4, 2003	:	
Attorney Docket No. 5224P014	:	

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 2673.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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AUG 04 2004

VLADIMIR GRISHIN
APT 845
250 CHATHAM WAY
MAYFIELD HTS OH 44124

In re Application of	:	
Sula Anatoly et al	:	
Serial No.: 10/358,419	:	DECISION ON PETITION
Filed: February 4, 2003	:	
For: METHOD AND DEVICE OF	:	
VISUALIZATION OF ECG-SIGNALS OF	:	
STANDARD LEADS WITH ANATOMIC	:	
PORTRAIT OF HEART	:	

This is in response to applicants' petition filed April 6, 2004, to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the merits as it relates to Biotechnology filed by applicants who are small entities.

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

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

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

John E. Kittle

John E. Kittle
Director
Technology Center 3700/2900

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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JEFFREY E. DALY
INTELLISERV, INC.
400 N. SAM HOUSTON PARKWAY EAST
SUITE 900
HOUSTON TX 77060

COPY MAILED

JUL 07 2008

OFFICE OF PETITIONS

In re Application of	:	
David R. HALL, et al	:	
Application No. 10/358,421	:	DECISION ON PETITION
Filed: February 4, 2003	:	
Attorney Docket No. 66.0010	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 22, 2008, and the petition filed August 7, 2006, under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

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

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

This application became abandoned for failure to timely respond to the Office action of February 7, 2006, which set a three (3) month shortened statutory period for reply. A reply was due on or before May 7, 2006. Petitioner states that a reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on May 8, 2006 of, *inter alia,* corrected formal drawings.

The corrected formal drawings acknowledged as having been received in the USPTO on May 8, 2006, are of record in the application file. MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the corrected formal drawings were timely received in the USPTO.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status. The petition fee of $1540 will be credited to Deposit Account 18-0584.

This application is being referred to the Office of Data Management for processing.

Thurman Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

Paper No. 3

KERRY D. TWEET
BLAKELY SOKOLOFF TAYLOR & ZAFMAN L.L.P.
12400 WILSHIRE BLVD.
SEVENTH FLOOR
LOS ANGELES, CA 90025

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APR 1 1 2003

OFFICE OF PETITIONS

In re Application of	:	
David K. Kiser et al	:	
Application No. 10/358,423	:	NOTICE
Filed: February 4, 2003	:	
Attorney Docket No. 5224P015	:	

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to the Initial Patent Examination Unit.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 5

WARE FRESSOLA VAN DER SLUYS &
ADOLPHSON, LLP
BRADFORD GREEN BUILDING 5
755 MAIN STREET, P O BOX 224
MONROE, CT 06468

COPY MAILED

MAY 0 8 2003

OFFICE OF PETITIONS

In re Application of :
Jari Suutarinen :
Application No. 10/358,444 : DECISION GRANTING PETITION
Filed: February 4, 2003 :
Attorney Docket No. 915-005.040 :

This is a decision on the petition filed April 3, 2003, requesting that the above-identified application be accorded a filing date of February 4, 2003, with Figures 1-3 as part of the original disclosure.

The petition is **granted**.

The application was filed on February 4, 2003. On March 27, 2003, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application" stating that the application has not been accorded a filing date because it was deposited without drawings, specifically Figures 1-3 described in the specification appeared to have been omitted from the application.

In response, on April 3, 2003, the present petition was filed, accompanied by a preliminary amendment requesting entry of Figures 1, 2, and 3 which were also a part of priority document Finnish application 200202176 which was filed concurrently with the above-cited application and which was incorporated by reference in the declaration of the present application.

A review of the priority document submitted on February 4, 2003, reveals that it does include three sheets of drawings containing Figures 1, 2, and 3 identical to the three sheets of drawings containing Figures 1, 2, and 3 which were intended to be filed on February 4, 2003 and which appear to correspond to the figures described in the specification. Accordingly, on petition, the drawings of Figures 1, 2, and 3 in the Finnish priority document will be construed as the drawings of Figures 1, 2, and 3 described in the specification for filing date purposes.

Although the three sheets of drawings were located in the Finnish priority document filed with the original application papers, no sheets of drawings were present among the papers designated as the original application papers designated as the original application papers. The Office correctly assumed, therefore, that no sheets of drawings were present on filing. Accordingly, the fee for the instant petition will not be refunded.

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

with a filing date of February 4, 2003, using the application papers filed on February 4, 2003, and the copy of the drawings filed with the instant petition.

Any inquiries related to this decision should be directed to Kenya A. McLaughlin, Petitions Attorney, at (703)305-0010.

Kenya A. McLaughlin
Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Beverly M. Flanagan
Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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10018805-1

Paper No. 6

HEWLETT PACKARD COMPANY
PO BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

COPY MAILED
AUG 07 2003
OFFICE OF PETITIONS

In re Application of :
Pearl; Schilz; and Hansen :
Application No. 10/358,479 : DECISION GRANTING STATUS
Filed: February 5, 2003 : UNDER 37 CFR 1.47(A)
For: PRINTER MEDIA COMPRISING A BAR CODE :

This is in response to the petition under 37 CFR 1.47(a), filed June 23, 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 Technology Center AU 2854 for examination in due course.

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

LAW OFFICES

WARN, HOFFMANN, MILLER & LALONE, P.C.

Intellectual Property Matters
PATENTS, TRADEMARKS AND COPYRIGHTS

Richard W. Hoffmann
Douglas P. LaLone
John A. Miller
Gregory L. Ozga
Scott P. Ryan
Philip R. Warn

691 North Squirrel Road – Suite 140
Auburn Hills, Michigan 48326

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Telephone: (248) 364-4300
Facsimile: (248) 364-4285

FAX MESSAGE

Number of Pages: 2 (Including Cover Page)
(Please let us know by phone or fax if you do not receive any of these pages)

Date: April 27, 2006

* * * * * * * * * * *

To: DREW HIRSHFELD

Company: USPTO

Fax Number: 571-273-2168

From: Richard W. Hoffmann

Original ☐ will ☒ will not follow

* * * * * * * * * * *

Comments:

RE: USSN 10/358,479 [Hewlett Packard Attorney Docket No. 10018805-1]

Per your request, attached please find a copy of the August 7, 2003 Decision Granting Status Under 37 CFR 1.47(A)

Please contact me if you require any additional information. Richard W. Hoffmann

NOTICE:

This facsimile transmission and all contents contain information from Warn, Hoffmann, Miller & LaLone, P.C., which is privileged, confidential or otherwise protected from disclosure. The information is intended for the addressee(s) only. If you are not the addressee, any disclosure, copy, distribution or use of the contents of this message is prohibited. If you have received this facsimile transmission in error, please notify us immediately and destroy the original message and all copies.

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Paper No. 7

FEB 0 4 2004

Technology Center 2100

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD, SEVENTH FLOOR
LOS ANGELES CA 90025

In re Application of SITHAMPARA BABU NIRANJAN, ET AL.
Application No.: 10/358,494
Filed: February 04, 2003
For: **SYSTEM AND METHOD TO TRANSCODE AND PLAYBACK DIGITAL VERSATILE DISC (DVD) CONTENT AND OTHER RELATED APPLICATIONS**

DECISION ON PETITION FOR ACCELERATED EXAMINATION UNDER M.P.E.P. §708.02(VIII)

This is a decision on the petition, filed July 07, 2003 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. 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.

Petitioner submits one copy of each of the references most closely related to the subject matter encompassed by the claims, and a statement that a search has been made, and provides a list of the field of search by class and subclass. Petitioner states that all the claims are directed to a single invention, and will make an election without traverse if the Office determines that all the claims presented are not obviously directed to a single invention. Petitioner also provides a detailed discussion pointing out, with the particularity required by 37 CFR 1.111(b) and (c), how the claimed subject matter is patentable over the references.

Since Petitioner's submission filed July 07, 2003 meets all of the requirements set forth in M.P.E.P. §708.02(VIII), the Petition is **GRANTED**.

The application file is being forwarded to the Examiner of Record for promptly examining this application out of turn according to the procedures set forth in M.P.E.P. §708.02.

Bot LeDynh, J.D., Ph.D.
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 305-0651

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

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4845 PEARL EAST CIRCLE
SUITE 300
BOULDER CO 80301

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OFFICE OF PETITIONS

In re Application of	:	
Vock et al.	:	
Application No.11/358,508	:	LETTER REGARDING
Filed: February 21, 2006	:	FEE DEFICIENCY PAYMENT
Atty Docket No. 445743	:	

This is a notice regarding your letter entitled NOTIFICATION OF LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS filed January 8, 2007, notifying the Office of loss of entitlement to small entity status.

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 states that the patent status changed to large entity status effective October 26, 2006. A review of the record reveals that the fees paid since that time have already been collected in the amount for a large entity. (Petitioner is reminded of the requirement in 37 CFR 1.28(c)(2)(ii) for itemization of fee deficiencies).

Your notification of a loss of entitlement to small entity status is made of record and you fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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CAPITAL CENTER, SUITE 1100
201 NORTH ILLINOIS STREET
INDIANAPOLIS, IN 46204-4220

Mail Date: 04/21/2010

Applicant	: Louis B. Goode	: DECISION ON REQUEST FOR
Patent Number	: 7651504	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/358,512	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **970** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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Alexandria, VA 22313-1450
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DANIEL P. MCCARTHY
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201 SOUTH MAIN STREET, SUITE 1800
P.O. BOX 45898
SALT LAKE CITY, UT 84145-0898

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OFFICE OF PETITIONS

In re Application of
Calvin D. Ostler et al
Application No. 10/358,540
Filed: February 5, 2003
Attorney Docket No. 5110.1

: 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 under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed June 14, 2004, 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.

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 June 14, 2004 do not state the relationship of Application No. 10/189,223, filed July 3, 2002, to the instant application. Additionally, Application No. 10/076,128 is referenced as 10/76,128, in the amendment and the petition.

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) correcting the above matter is required.

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

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

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

By hand: 2011 South Clark Place
Crystal Plaza Two Lobby
Room 1B03
Arlington, VA 22202

Any questions concerning this matter may be directed to the undersigned at (703) 305-8859.

Karen Creasy

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

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OFFICE OF PETITIONS

In re Application of	:	
Oh et al.	:	
Application No. 10/358,553	:	LETTER REGARDING
Filed: February 5, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 2011	:	

This letter is in response to the "REQUEST TO CORRECT THE PATENT TERM ADJUSTMENT" filed May 10, 2007. Pursuant to their duty of good faith and candor to the Office, applicants disclose that the correct patent term adjustment at the time of the mailing of the notice of allowance is 734 days, not 777 days.

The request for review of the initial determination of patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is SEVEN HUNDRED THIRTY-FOUR (734) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 16, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 777 days. Applicants state that they filed a response on November 27, 2006 (certificate of mailing date), not October 1, 2006. Accordingly, a period of adjustment of 43 days should not have been entered because the Office mailed a response within 4 months, a Notice of Allowance mailed on March 16, 2007.

Applicants are correct. A review of the record reveals that a period of adjustment of 43 days for Office delay was entered in error. Applicants' response was entered as filed October 1, 2006, rather than the correct date of December 1, 2006. Use of this incorrect date led to entry of a period of Office delay for taking until March 16, 2007 to mail a Notice of Allowance. The period of adjustment of 43 days has been removed.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is SEVEN HUNDRED THIRTY-FOUR (734) 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 Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded to the Office of Patent Publication for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

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MICHAEL S GREENFIELD
MCDONNELL BOEHNEN HULBERT & BERGHOFF
300 S WACKER DR
32ND FLOOR
CHICAGO IL 60606

In re Patent No. 6,897,220	:	
Delorme, et al.	:	DECISION ON REQUEST FOR
Issue Date: May 24, 2005	:	RECONSIDERATION OF
Application No. 10/358,556	:	PATENT TERM ADJUSTMENT
Filed: February 4, 2003	:	UNDER 37 C.F.R. 1.705
Attorney Docket No. 02-423-D	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)", filed May 31, 2005. Patentees request that the patent term adjustment indicated on the patent be corrected from eight (8) to one hundred twenty-eight (128) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **DISMISSED**. Patentee is given **two (2) months** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

On November 12, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date was one hundred eleven (111) days. On May 24, 2005, the above-identified application matured into U.S. Patent No. 6,897,220. The patent issued with a Patent Term Adjustment of eight (8) days. The instant request for reconsideration filed May 31, 2005, was timely filed within two months of the date the patent issued. See § 1.705(d).

Patentees fail to state whether the patent is subject to a terminal disclaimer.

The Office determined a patent term adjustment of eight (8) days based on an adjustment for PTO delay of one hundred fifteen (115) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1) and seventeen (17) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. 1.703(a)(6), reduced by applicants' delays of four days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. 1.704(b) and one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(c)(10). The adjustment of 120 days is at issue.

The adjustment of 120 days has been found to be correct. In this application, a Notice of Allowance was mailed on November 12, 2004. Applicants filed drawings on January 6, 2005. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing of drawings after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001).

However, patentees argue that they should not be assessed applicant delay for the drawings filed January 6, 2005 because the Office acknowledged the drawings in PAIR on that same date. Patentees' argument is not persuasive. 37 C.F.R. §1.704(c)(10)(i) expressly states that the ending date of the period of applicant delay shall be "the mailing date of the Office action or notice in response to the amendment under 1.312 or such other paper [filed after a Notice of Allowance]; or four months".

In view thereof, the correct determination of PTA at the time of issuance is eight (8) days (132 (17+115) days of PTO delay reduced by 124 (120+4) days of applicant delay).

Receipt of the $200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter for

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

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JUN 21 2006

OFFICE OF PETITIONS

In re Patent No. 6,897,220	:	
Delorme, et al.	:	DECISION ON REQUEST FOR
Issue Date: May 24, 2005	:	RECONSIDERATION OF
Application No. 10/358,556	:	PATENT TERM ADJUSTMENT
Filed: February 4, 2003	:	UNDER 37 C.F.R. 1.705
Attorney Docket No. 02-423-D	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF "DECISION ON REQUEST FOR RECONSIDERATION OF APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.704" MAILED OCTOBER 3, 2005", filed December 2, 2005. Patentees request that the patent term adjustment indicated on the patent be corrected from eight (8) to one hundred twenty-eight (128) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **DISMISSED**. Patentee is given **two (2) months** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

On November 12, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date was one hundred eleven (111) days. On May 24, 2005, the above-identified application matured into U.S. Patent No. 6,897,220. The patent issued with a Patent Term Adjustment of eight (8) days. Patentees filed an application for patent term adjustment on May 31, 2005, which was timely filed within two months of the date the patent issued. See § 1.705(d). However, the request for reconsideration was dismissed in a decision mailed on October 3, 2005.

Patentees state that the patent is subject to a terminal disclaimer.

The Office determined a patent term adjustment of eight (8) days based on an adjustment for PTO delay of one hundred fifteen (115) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1) and seventeen (17) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. 1.703(a)(6), reduced by applicants' delays of four days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. 1.704(b) and one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(c)(10). The adjustment of 120 days is at issue.

A Notice of Allowance was mailed on November 12, 2004. Applicants filed drawings on January 6, 2005, for which they were assessed 120 days of applicant delay. No written notice was given to Applicants requiring substitute drawings. Rather, Patentees state that the "only notification or request from the PTO for substitute drawings was the telephone call received by the undersigned during the time period of the later half of December 2004 and first week on January 2005." In the application for patent term adjustment filed May 31, 2005, Patentees argued that they should not have been assessed applicant delay for the drawings filed January 6, 2005 because the Office acknowledged the drawings in PAIR on that same date.

In the decision mailed October 3, 2005, Patentees were directed to the Official Gazette Notice dated June 26, 2001, in which the Director advised applicants and patentees that the filing of drawings after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). In addition, Patentees were cited 37 C.F.R. §1.704(c)(10)(i), which expressly states that the ending date of the period of applicant delay shall be "the mailing date of the Office action or notice in response to the amendment under 1.312 or such other paper [filed after a Notice of Allowance]; or four months".

In the instant request for reconsideration, Patentees argue that the filing of drawings was in response to a notice (telephone call) from the PTO, and is therefore not a "failure to engage". However, 37 C.F.R. § 1.2 states that "[t]he action of the Patent and Trademark Office will be based exclusively on the written record in the Office."

Patentees further state, correctly, that the Office did not mail a supplemental Office action or Notice of Allowance in response to the drawings filed January 6, 2005. Accordingly, Patentees assert there is no basis under 37 C.F.R. § 1.704(c)(10) to state that four months is the lesser period of time. Patentees' argument has been considered, but is not persuasive. As no Office action was mailed in response to the drawings, 37 C.F.R. § 1.704(c)(10)(i) does not apply, leaving four months under 37 C.F.R. § 1.704(c)(10)(ii) as the proper period of adjustment.

Lastly, Patentees assert that the 120 days of applicant delay is arbitrary, because there is no evidence to suggest that the filing of drawings actually delayed the issuance of the patent. Patentees' argument has been considered, but is not persuasive. All applicants have been put on notice by the Director that the filing of certain papers after the Notice of Allowance, such as drawings, is automatically considered to be a "failure to engage".

In view thereof, the correct determination of PTA at the time of issuance is eight (8) days (132 (17+115) days of PTO delay reduced by 124 (120+4) days of applicant delay).

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

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

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OFFICE OF PETITIONS

In re Patent No. 6,897,220	:	
Delorme, et al.	:	DECISION ON REQUEST FOR
Issue Date: May 24, 2005	:	RECONSIDERATION OF
Application No. 10/358,556	:	PATENT TERM ADJUSTMENT
Filed: February 4, 2003	:	UNDER 37 C.F.R. 1.705
Attorney Docket No. 02-423-D	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF "DECISION ON REQUEST FOR RECONSIDERATION OF APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.704" MAILED JUNE 21, 2006", filed August 18, 2006. Patentees request that the patent term adjustment indicated on the patent be corrected from eight (8) to one hundred twenty-eight (128) days.

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

On November 12, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date was one hundred eleven (111) days. On May 24, 2005, the above-identified application matured into U.S. Patent No. 6,897,220. The patent issued with a Patent Term Adjustment of eight (8) days. Patentees filed an application for patent term adjustment on May 31, 2005, which was timely filed within two months of the date the patent issued. See § 1.705(d). However, the request for reconsideration was dismissed in a decision mailed on October 3, 2005. Patentees filed a request for reconsideration on December 2, 2005, which was again dismissed in a decision mailed on June 21, 2006.

Patentees state that the patent is subject to a terminal disclaimer.

The Office determined a patent term adjustment of eight (8) days based on an adjustment for PTO delay of one hundred fifteen (115) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1) and seventeen (17) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. 1.703(a)(6), reduced by applicants' delays of four days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. 1.704(b) and one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(c)(10). The adjustment of 120 days is at issue.

A Notice of Allowance was mailed on November 12, 2004. Applicants filed drawings on January 6, 2005, for which they were assessed 120 days of applicant delay. No written notice was given to Applicants requiring substitute drawings. Rather, Patentees state that the "only notification or request from the PTO for substitute drawings was the telephone call received by the undersigned during the time period of the later half of December 2004 and first week on January 2005." In the application for patent term adjustment filed May 31, 2005, Patentees argued that they should not have been assessed applicant delay for the drawings filed January 6, 2005 because the Office acknowledged the drawings in PAIR on that same date.

In the decision mailed October 3, 2005, Patentees were directed to the Official Gazette Notice dated June 26, 2001, in which the Director advised applicants and patentees that the filing of drawings after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). In addition, Patentees were cited 37 C.F.R. §1.704(c)(10)(i), which expressly states that the ending date of the period of applicant delay shall be "the mailing date of the Office action or notice in response to the amendment under 1.312 or such other paper [filed after a Notice of Allowance]; or four months".

In the request for reconsideration filed December 2, 2005 , Patentees argued that the filing of drawings was in response to a notice (telephone call) from the PTO, and is therefore not a "failure to engage". However, the June 21, 2006 decision pointed out that 37 C.F.R. § 1.2 states that "[t]he action of the Patent and Trademark Office will be based exclusively on the written record in the Office."

Patentees further stated, correctly, that the Office did not mail a supplemental Office action or Notice of Allowance in response to the drawings filed January 6, 2005. Accordingly, Patentees asserted that there was no basis under 37 C.F.R. § 1.704(c)(10) to state that four months is the lesser period of time. In the decision mailed June 21, 2006, the Office found Patentees' to not be persuasive. The decision explained that as no Office action was mailed in response to the drawings, 37 C.F.R. § 1.704(c)(10)(i) does not apply, leaving four months under 37 C.F.R. § 1.704(c)(10)(ii) as the proper period of adjustment.

Lastly, Patentees asserted that the 120 days of applicant delay was arbitrary, because there was no evidence to suggest that the filing of drawings actually delayed the issuance of the patent. The decision explained that all applicants were put on notice by the Director that the filing of certain papers after the Notice of Allowance, such as drawings, was automatically considered to be a "failure to engage".

With the instant request for reconsideration, Patentees argue that the Patent Office does conduct business orally, and that it is a recognized practice of the Office. For example, Patentees state that the instant case is analogous to an Examiner's Interview. After the interview, Patentees state that the substance of the interview is memorialized in the written record. Patentees compare the practice to the instant case by pointing out that the Patent Office's oral request for substitute drawings was memorialized in the written record when applicants filed their application for patent term adjustment.

First, the instant situation is different from an Examiner's Interview, insofar as in an Examiner's Interview, the oral interview is memorialized by the Office by the mailing of a written Interview Summary. There was no memorialization here on the part of the Office.

Secondly, 37 C.F.R. § 1.704(c)(10) does not recognize a distinction between papers filed after the mailing of a Notice of Allowance that were requested by the Office and those that were not. Rather, 37 C.F.R. 1.704(c)(10) states that any amendment or paper filed after the mailing of a Notice of Allowance will be considered a failure to engage.[1] Contrast this section with 37 C.F.R. § 1.704(c)(8), which states that the filing of a supplemental reply or other paper will not be considered a failure to engage if it was expressly requested by the examiner.

In view thereof, the correct determination of PTA at the time of issuance is eight (8) days (132 (17+115) days of PTO delay reduced by 124 (120+4) days of applicant delay).

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Kery A. Fries

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

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[1] The Office has, however, clarified that the filing of certain papers not material to examination would not constitute a failure to engage. See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed, 1247 Off. Gaz. 111 (June 26, 2001).

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. 02-423-D)

In the Application of:	)	
	)	
Delorme et al.	)	
	)	**Examiner: V. Balasubramanian**
Serial No.: 10/358,556	)	
	)	**Group Art Unit: 1624**
Patent No.: 6,897,220	)	
	)	**Confirmation No.: 9995**
Filing Date: February 4, 2003	)	
	)	
For: Inhibitors of Histone Deacetylase	)	

REQUEST FOR RECONSIDERATION OF "DECISION ON REQUEST FOR RECONSIDRATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.704" MAILED JUNE 21, 2006

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

Dear Sir:

In response to the Decision mailed June 21, 2006, the applicants request reconsideration of their request for an adjustment to the Patent Term Adjustment as calculated by the PTO.

Background from Applicant's Request and the Patent Office's Decision

The PTO Decision indicated that the applicants were charged 120 days for filing of Drawings after mailing of the Notice of Allowance. The applicants respectfully submit that this reduction is improper as the applicants did not fail to engage in reasonable efforts to conclude prosecution under 35 U.S.C. § 154(b)(2)(C)(ii), which the Decision indicated was the basis for the 120-day reduction.

Before issuance of the Notice of Allowance, the PTO had not notified the applicants that the drawings originally filed were in any way unacceptable or that another set of drawings was desired. To the best of the undersigned's recollection, the first time the applicants became aware

CERTIFICATE OF TRANSMISSION (37 C.F.R. 1.8)
I hereby certify that this correspondence is being submitted electronically via the USPTO Electronic Filing System on August 18, 2006.

Date: August 18, 2006

/Michael S. Greenfield/
Michael S. Greenfield

that the PTO wanted another set of drawings was sometime in the time period of the second half of December 2004 and first week of January 2005 when the undersigned received a telephone call from a PTO employee requesting a substitute set of drawings. Within a week or two after receiving the oral request, the applicant submitted substitute drawings, which submission formed the basis for the 120 day reduction in patent term.

Arguments in reply to the Decision mailed June 21, 2006

In response to the applicant's argument that they were responding to an oral Patent Office request for the drawings, the Patent Office stated that the regulations state that all action of the Patent Office "will be based exclusively on the written record in the Office." The applicant understands this to mean that the telephone call the undersigned received from the Patent Office requesting substitute drawings does not constitute part of the written record and, therefore, the transaction does not fall under the statutory language that provides a 3-month period to respond to Patent Office notices under 35 U.S.C. § 154(b)(2)(C)(ii). For the following reasons, the applicant respectfully disagrees and requests reconsideration.

The Patent Office does much business orally (*e.g.*, issuing restriction requirements, requesting amendments to claims to bring them into condition for allowance, Examiner's Interviews, etc.). Maintaining the position that oral requests from the Patent Office do not constitute a "notice" under 35 U.S.C. § 154(b)(2)(C)(ii) would eliminate such practices and lead to longer application pendency times, again in contradiction to statutory intent and Patent Office policy.

Furthermore, there is no distinction between the aforementioned practice of doing business orally and the present situation. In each instance the Patent Office initiates and makes an oral request (*e.g.*, for restriction) to which the applicant responds or otherwise conducts business orally (as in an Examiner's Interview). In each instance the substance of the oral communications is memorialized in the written record. For example, after an Examiner's Interview the Examiner and the applicant each submit a summary of the interview. In the present situation, the Patent Office's request for substitute drawings has been memorialized in the written record by the applicant's Request for Reconsideration of the Patent Term Adjustment.

Charging the applicant 120 days for replying to the telephonic request is inconsistent with statutory intent and Patent Office policy aimed at reducing application pendency. The actions the applicant took (*i.e.*, promptly responding to the Patent Office request for substituted

drawings) in fact reduced the pendency time of the application; it would have take longer if the applicant had insisted that the Patent Office issue a written requirement for replacement figures.

If the Patent Office maintains its current position it would imply that by making the oral request for substitute drawings the Patent Office violated of its own rule. And the applicant, by complying with the request, would suffer the penalty for the Patent Office's violation.

In view of the foregoing, the applicants submit that the 120 day period should be added to the Patent Term Adjustment resulting in a proper adjustment term of 128 days.

The applicant believes no fee is due with this submission. If this is incorrect, the Patent Office is authorized to charge any deficiencies to deposit account no. 13-2490.

Respectfully submitted,

Date: August 18, 2006

/Michael S. Greenfield/
Michael S. Greenfield
Registration No. 37,142

McDonnell Boehnen Hulbert & Berghoff LLP
300 South Wacker Drive
Chicago, IL 60606

Telephone: 312-913-0001
Facsimile: 312-913-0002

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. None

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IRVINE CA 92614

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OFFICE OF PETITIONS

In re Application of
Cyprian E. Uzoh et al.
Application No. 10/358,565
Filed: February 4, 2003
Attorney Docket No.: NT-246-U-US
Title: METHOD AND STRUCTURE TO REDUCE DEFECTS IN INTEGRATED CIRCUITS AND SUBSTRATES

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b)[1], filed August 24, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed March 25, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time are permitted for transmitting issue or publication fees[2]. Accordingly, the above-identified application became abandoned on June 26, 2004. A Notice of Abandonment was mailed on July 14, 2004.

With the instant petition, Petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of the filing of the petition, issue, and publication fees, and has made the proper statement of unintentional delay.

The petition is **GRANTED**.

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

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

2 See MPEP §710.02(e).

The Revocation of Power of Attorney and the Change of Correspondence Address have been entered and made of record.

After this decision is mailed, the application will be forwarded to the Office of Patent Publications for further processing into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-272-3282, and the telephone number for the undersigned will change to 571-272-3225.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SPRINT
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OVERLAND PARK KS 66251-2100

In re Application of	:	
NGAN, JOHN CHEONG-WAI	:	MAR 24 2009
Application No.: 10/358,591	:	DECISION ON
Filing or 371(c) Date: 02/04/03	:	PETITION
Attorney Docket Number: 2134	:	

This is a decision in response to the "Petition to Withdraw Holding of Abandonment," filed March 18, 2009.

This petition is **DISMISSED**.

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

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowability, mailed November 14, 2008. The Notice set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on March 12, 2009.

The Notice of Allowability

A review of the Notice of Allowability reveals that the Notice clearly required drawings. The Notice states: "CORRECTED DRAWINGS must be submitted." The no drawings were submitted.

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 matter should be directed to the undersigned at (703) 308-9250 ext. 175.

Kay D. Pinkney
Application Assistance Unit
Office of Data Management

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

Orum & Roth LLC
53 W Jackson Boulevard
Chicago IL 60604-3606

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OFFICE OF PETITIONS

In re Application of	:	
ZAAR	:	
Application No. 10/358,598	:	DECISION ON PETITION
Filed: February 05, 2003	:	TO WITHDRAW
Attorney Docket No. 13388	:	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 July 16, 2006.

The request is **APPROVED**.

A review of the file record indicates that Catherine L. Gemrich: (1) does not have power of attorney in this patent application; and (2) has been employed or otherwise engaged in the proceedings in this patent application. In view of the present decision, Catherine L. Gemrich has been withdrawn from the present application and may not prepare or submit papers under 37 C.F.R. § 1.34, or correspond in any manner in this application unless appointed in an acceptable power of attorney under 37 C.F.R. § 1.32(b).

A Review of the file discloses that a non-final Office action was mailed on July 16, 2006, which set forth a three month shortened statutory period for reply. Extensions of time under 37 CFR 1.136(a) were available. To date, there is no indication that a reply to the Office action of July 16, 2006 has been received.

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

The correspondence address remains unchanged.

Telephone inquires concerning this decision should be directed to Patricia Volpe at 571-272-6825.

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
www.uspto.gov

DLA PIPER RUDNICK GRAY CARY US LLP
2000 UNIVERSITY AVENUE
E PALO ALTO, CA 94303-2248

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OFFICE OF PETITIONS

In re Application of	:
Sohrab Kianian	:
Application No. 10/358,601	: DECISION GRANTING PETITION
Filed: February 4, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2102397-992241	:

This is a decision on the petition, filed February 18, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

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

This matter is being referred to Technology Center AU 2815 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks

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

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

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

DLA PIPER RUDNICK GRAY CARY US, LLP
2000 UNIVERSITY AVENUE
E PALO ALTO, CA 94303-2248

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OFFICE OF PETITIONS

In re Application of	:
Sohrab Kianian	:
Application No. 10/358,601	: DECISION GRANTING PETITION
Filed: February 4, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2102397-992241	:

This is a decision on the petition, filed May 25, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 12, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2815 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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021105

HARRINGTON & SMITH, LLP
4 RESEARCH DRIVE
SHELTON CT 06484-6212

MAR 0 3 2005

In re Application of:
Nabil Lawandy
Serial No.: 10/358,606
Filed: February 5, 2003
Attorney Docket No.: **910A.8005.U2(US)**

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed January 27, 2004, with a certificate of mailing of December 30, 2003. The petition has been treated as a petition under 37 C.F.R. § 1.181 to withdraw the holding of abandonment in the above-identified application. No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely pay the issue fee in response to the Notice of Allowance and Fee(s) Due (Notice of Allowance) mailed on June 26, 2003. A Notice of Abandonment was mailed on November 6, 2003.

Petitioner asserts that the Notice of Allowance mailed on June 26, 2003, was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Notice of Allowance was not received. A copy of the file docket where the Notice of Allowance would have been entered was also included.

The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition is accompanied by a showing that establishes non-receipt of the Notice of Allowance mailed June 26, 2003. As such, the petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

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

The application file is being forwarded to the Technology Center 2800 support staff for re-mailing the Notice of Allowability and a Notice of Allowance and Issue Fee Due. The statutory periods for response set therein will be reset to run from the date the Notices are re-mailed. Extensions of time for these periods are not available.

Inquiries regarding this decision should be directed to Jose G. Dees, Special Program Examiner, at (571) 272-1569.

Janice A. Falcone

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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2 INDEPENDENCE WAY
P. O. BOX 5312
PRINCETON NJ 08543-5312

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OFFICE OF PETITIONS

In re Application of	:	
Eric DIEHL	:	
Application No. 10/358,613	:	DECISION ON PETITION
Filed: February 05, 2003	:	
Attorney Docket No. **PU020008**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 13, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 03, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 04, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1540, and (3) a proper statement of unintentional delay. Accordingly, the response to the non-final Office action of July 03, 2007 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.

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

This application is being referred to Technology Center AU 2623 for appropriate action on the concurrently filed amendment.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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JOHN A. ARTZ
ARTZ & ARTZ, P.C.
SUITE 250
28333 TELEGRAPH ROAD
SOUTHFIELD, MI 48034

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OFFICE OF PETITIONS

In re Application of :
William Schmidt :
Application No. 10/358,614 : ON PETITION
Filed: February 5, 2003 :
Attorney Docket Number: :
ML 0176 :

This is a decision on the Petition for Revival of Abandoned Application under 37 CFR 1.137(b), filed November 10, 2004.

This 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, mailed February 2, 2004. The Notices set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on May 3, 2004. A Notice of Abandonment was mailed on June 30, 2004.

With the instant petition, Applicant has satisfied the requirements of a grantable petition under 37 CFR 1.137(a). The issue fee is filed with the instant petition. Accordingly, the petition is granted.

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

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

Derek L. Woods
Attorney
Office of Petitions

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Paper No. 4

Brian J. Walsh
Patent Department
ZymoGenetics, Inc.
1201 Eastlake Avenue East
Seattle WA 98102

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JUN 25 2003

OFFICE OF PETITIONS

In re Application of
Presnell, et al.
Application No. 10/358,619
Filed: February 4, 2003
Attorney Docket No. 99-11D2
For: MURINE INTERFERON-ALPHA

DECISION GRANTING PETITION

This is a decision on the petition, filed June 16, 2003 (certificate of mailing date June 12, 2003), requesting that the above-identified application be accorded a filing date of February 4, 2003, rather than the presently accorded filing date of February 5, 2003. The petition is being treated as a petition under 37 CFR 1.10(c)

Petitioners contend that the above-identified application was deposited in the United States Postal Service (USPS) Express Mail service on February 4, 2003. In support of this contention, petitioners have supplied with the present petition a copy of Express Mail Receipt No. EV072550957US bearing a "date-in" of February 4, 2003. The original Application and Fee Transmittal found in the application file references Express Mail Receipt Number: EV072550957US.

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

No fee has been or will be charged in connection with this matter.

This application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of **February 4, 2003.** Thereafter, this application file will be forwarded to Technology Center 1600 for examination in due course.

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

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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CRAIG N. KILLEN
NELSON MULLINS RILEY & SCARBOROUGH
P.O. BOX 11070
COLUMBIA SC 29211

In re Application of :
Thomas A. Garber, et al. :
Application No. 10/358,624 : DECISION GRANTING PETITION
Filed: February 5, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 15911-09051 :

This is a decision on the petition, filed December 12, 2003, under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on October 13, 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)/(f). However, while the statement of unintentional delay does not comply with the rule, the statement presented will be construed as meaning that the entire delay in filing the required reply [notification of foreign filing under 35 U.S.C. § 122(b)2(B)(iii)] until the filing of a grantable petition was unintentional." 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 accompanies this decision on petition.

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

This application is being forwarded to Technology Center Art Unit 2875 for further prosecution.

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LOUIS J. WILLE
BRISTOL-MYERS SQUIBB COMPANY
PATENT DEPARTMENT
P O BOX 4000
PRINCETON NJ 08543-4000

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OFFICE OF PETITIONS

In re Application of :
Paul J. Gilligan et al. :
Application No. 10/358,652 :
Filed: February 5, 2003 :
Attorney Docket No. BMS-1824 :

ON PETITION

This is a decision on the petition, filed October 31, 2005, to reinstate the patent application or in the alternative, to revive the application.

The petition under 37 CFR 1.181 is **GRANTED**.
The petition under 37 CFR 1.137(b) is **DISMISSED** as involving moot issues.

The application was held abandoned on May 12, 2005, for failure to file a response to the Final Office Action mailed February 11, 2005. No extensions of time having been filed prior to the expiration of the maximum period obtainable under 37 CFR 1.136, this application became abandoned. Accordingly, a Notice of Abandonment was mailed August 16, 2005.

Petitioner asserts that a Notice of Appeal was filed on August 10, 2005 with a three month extension of time request. Submitted as proof is a copy of the Notice of Appeal, and extension of time request, bearing a certificate of mail dated August 10, 2005, and a copy of a USPTO post card receipt dated-stamped on August 12, 2005.

A search of the application file and the USPTO records reveals that in fact, the Notice of Appeal and three month extension of time, all with the proper fees, were timely filed on August 12, 2005, bearing a certificate of mail date of August 10, 2005.

Accordingly, the response was timely and the Notice of Abandonment mailed August 16, 2005 was mailed in error and is hereby withdrawn. No petition fee is due and none has been charged. In view thereof, there is no need to treat the petition under the unintentional standard. The fee for the petition under 37 CFR 1.137(b) will be credited back to deposit account no. 08-2461.

The Notice of Appeal filed August 12, 2005 has been entered and made of record. Accordingly, the two (2)-month period for filing the Appeal Brief, accompanied by

the fee required by law, runs from the date of this decision.

This matter is being referred to Technology Center 1624 for processing the Notice of Appeal.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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Clark & Elbing LLP
101 Federal Street
Boston, MA 02110

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OFFICE OF PETITIONS

In re Patent of Faustman	:	DECISION ON REQUEST
Patent No. 7,628,988	:	FOR RECONSIDERATION OF
Issue Date: December 8, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/358,664	:	AND NOTICE OF INTENT TO
Filing Date: February 5, 2003	:	ISSUE CERTIFICATE OF
Attorney Docket No. 00786/405002	:	CORRECTION

This is a decision on the petition filed January 22, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by seven hundred twenty-two (722) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by seven hundred twenty-two (722) days is **GRANTED to the extent indicated herein**.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 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 37 C.F.R. § 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 periods of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 35 U.S.C. § 154(b)(2)(C) ("Applicant Delay") are not in dispute. The period of A Delay is 659 days and the period of Applicant Delay is 548 days.

Petitioner asserts the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is 611 days. The application was filed February 5, 2003, and a request for continued examination ("RCE") was filed October 9, 2007. B Delay does not include the date on which the RCE is filed. Therefore, B Delay is the 610-day period from February 5, 2006, until October 8, 2007.

In view of the prior discussion, the patent term adjustment is 721 days, which is the sum of 659 days of A Delay and 610 days of B Delay reduced by 548 days of Applicant Delay.

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **seven hundred twenty-one (721)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,628,988 B2
APPLICATION NO.	:	10/358,664
DATED	:	December 8, 2009
INVENTOR(S)	:	Denise L. Faustman

DRAFT

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

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 111 days.

Delete the phrase "by 111 days" and insert -- by 721 days--

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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

MORGAN & FINNEGAN, L.L.P.
3 World financial Center
New York, NY 10281-2101

In re Application of Masato Kosuimizu et al Application No. 10/358669 Filed: February 5, 2003 Attorney Docket No. 1232-4962	:	DECISION ON REQUEST TO PARTICIPATE IN PATENT PROSECUTION HIGHWAY PILOT PROGRAM AND PETITION TO MAKE SPECIAL UNDER 37 CFR 1.102(d)

This is a decision on the request to participate in the Patent Prosecution Highway (PPH) pilot program and the petition under 37 CFR 1.102(d), filed November 17, 2006, to make the above-identified application special.

The request and petition are **GRANTED**.

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

(1) The U.S. application must validly claim priority under 35 U.S.C. 119(a) to one or more applications filed in the JPO;
(2) Applicant must submit a copy of the allowable/patentable claim(s) from the JPO application(s) along with an English translation thereof and a statement that the English translation is accurate;
(3) All the claims in the U.S. application must sufficiently correspond or be amended to sufficiently correspond to the allowable/patentable claim(s) in the JPO application(s);
(4) Examination of the U.S. application has not begun;
(5) Applicant must submit a copy of all the office actions from each of the JPO application(s) containing the allowable/patentable claim(s) along with an English translation thereof and a statement that the English translation is accurate;
(6) Applicant must submit an IDS listing the documents cited by the JPO examiner in the JPO office action along with copies of documents except U.S. patents or U.S. patent application publications; and
(7) The required petition fee under 37 CFR 1.17(h).

The request to participate in the PPH pilot program and petition comply with the above requirements. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to John Peng at 571-272-7272.

All other inquiries concerning the examination or status of the application should be directed to Patent Application Information Retrieval (PAIR) system.

The application is being forwarded to the examiner for action on the merits commensurate with this decision.

John Peng
TC 2600
Quality Assurance Specialist

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LAURA F. SHUNK
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2020 FRONT STREET, SUITE 307
CUYAHOGA FALLS, OH 44221

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OFFICE OF PETITIONS

In re Application of
ALTARAC, et al.
Application No. 10/358,684
Filed: February 5, 2003
Attorney Docket No. CROSS-AI

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 29, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 24, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 25, 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 and statement of substance of interview; (2) the petition fee of $1500; and (3) an adequate statement of unintentional delay.

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

The application file is being referred to Technology Center Art Unit 3733 for consideration of the amendment and statement filed March 29, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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MAY 27 2004

Stephan A. Pendorf
Pendorf & Cutliff
P.O. Box 20445
Tampa FL 33622-0445

In re Application of	:	
Gerard A. Perrett Jr.	:	
Serial No.: 10/358,725	:	DECISION ON PETITION
Filed: February 5, 2003	:	
For: Gingival Tissue Retractor	:	

This is in response to applicants' Petition filed April 23, 2004, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on prospective manufacture.

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

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

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

John E. Kittle
Director
Technology Center 3700/2900

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HOLLAND & HART LLP
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SUITE 2000
SALT LAKE CITY UT 84111

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OFFICE OF PETITIONS

In re Application of
Mark Chapman et al.
Application No. 10/358,753
Filed: February 4, 2003
Attorney Docket No. 4465P

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)[1], filed March 22, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office Action mailed August 30, 2005. A response was filed February 27, 2006 with a three month extension of time request, but by Advisory Action of March 13, 2006, petitioner was advised that the response did not place the application in condition for allowance. This application became abandoned on December 1, 2005. The instant petition and this decision precede the mailing of the Notice of Abandonment.

Petitioner has submitted a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

This matter is being referred to Technology Center 3652 for processing of the RCE.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

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

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

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

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DANIEL D. BLESTERVELD
3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL MN 55133-3427

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In re Application of	:	
Ahmet Celikkaya et al.	:	
Application No. 10/358,772	:	DECISION ON PETITION
Filed: February 5, 2003	:	
Attorney Docket No. 58257US002	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 2, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an Appeal Brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the Final Office action of November 21, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A one month extension of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is March 22, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of $1540.00; 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 Technology Center AU 1791 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Irvin Dingle
Petitions Examiner
Office of Petitions

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Laura F. Shunk
Hudak, Shunk & Farine Co. LPA
Suite 307
2020 Front Street
Cuyahoga Falls, OH 44221

In re Application of J. Abbott Byrd III et al Serial No. : 10/358,785 Filed : February 5, 2003 For : Vertebral Innerbody Cage with Translatable Locking Screw	DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on petitioner's request filed March 14, 2005 requesting revival of the application pursuant to 37 CFR 1.17(M) that is being treated as a request to withdraw the holding of abandonment under 37 CFR 1.181. The application was held abandoned for failure to respond to the Office action mailed July 23, 2004. A Notice of Abandonment was mailed March 10, 2005. The basis for the request is that applicant did not receive the communications mailed July 23, 2004 and March 10, 2005. Petitioner learned of the abandoned status of the application upon receipt of a response on January 24, 2005 to a status inquiry filed October 22, 2004. There is no fee required for this petition. The petition fee of $1500.00 will be refunded under separate cover.

A review of the file reveals, as correctly pointed out by petitioner, that the Office actions of July 23, 2004 and March 10, 2005 were mailed to an incorrect address as the Office appears to have inadvertently changed the correspondence address to petitioner's old address. The actions in question were returned undelivered. Any inconvenience is respectfully regretted. Accordingly, in view of the above, the holding of abandonment is withdrawn. Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner to have the correspondence address corrected and to have the Office action of July 23, 2004 remailed, which Office action will set forth a new period for response.

Summary: Holding of Abandonment Withdrawn.

Richard A. Bertsch, Director
Technology Center 3700
Phone: (571) 272-3750

ak/04/05/05

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Laura F. Shunk
2020 Front Street
Suite 307
Cuyahoga Falls, OH 44221

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OFFICE OF PETITIONS

In re Application of	:
Byrd, et al.	: DECISION ON APPLICATION
Application No. 10/358,785	: FOR PATENT TERM ADJUSTMENT
Filed: February 5, 2003	:
Atty. Dkt. No.: CROSS-AG	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.702(b)," filed February 3, 2006. This matter is being properly treated under 37 CFR 1.705(b) as a timely filed application for patent term adjustment.

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

The correct Patent Term Adjustment ("PTA") at the time of the allowance remains zero days. A copy of the updated PAIR screen showing the correct determination is enclosed.

At the time of allowance, there were no Office delays under 37 CFR 1.702. Any potential adjustment, however, would be reduced 36 days for applicants' failure to engage in reasonable efforts to conclude prosecution.

A reduction of 34 days under 37 CFR 1.704(b) can attributed to applicants in connection with the response submitted April 8, 2004.

Applicants argue that the 383 day reduction accorded in connection with the response submitted October 17, 2005 is in error. A review of the application history reveals that the non-final Office action was re-mailed July 15, 2005. Accordingly, any potential adjustment would only be reduced two days, rather than 383 days, in connection with the response filed October 17, 2005. The reduction began October 16, 2005, the day after the date that is three months after the date that the non-final Office action was mailed, and ended October 17, 2005, the date the response was filed.

As to applicants' argument that the application is entitled to adjustment under 37 CFR 1.702(b), applicants are advised that a decision with regard to adjustment under 37 CFR 1.702(b) is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the

amount, if any, of additional patent term for Office failure to issue the patent within three years. *See*, 37 CFR 1.703(b).

Applicants are reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 USC 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 USC 154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

Thus, any days of delay for Office issuance of the patent more than three years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. *See*, 35 USC 154(b)(1)(B), 35 USC 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).

Receipt is hereby acknowledged of the required application fee of $200.00. Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

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

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Nancy Johnson

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

Enclosure: Copy of Adjustment PAIR Calculation

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FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER LLP
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WASHINGTON DC 20005-4413

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OFFICE OF PETITIONS

In re Application of	:	
Loeffler, et al.	:	
Application No. 10/358,804	:	DECISION ON PETITION
Filed: February 5, 2003	:	
Attorney Docket No. 02734.0564-00000	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 18, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to nonprovisional application 10/236,724.

The petition is **GRANTED**.

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

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

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

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

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the above-noted, nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed PCT application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

Receipt of the $1,370 petition fee is acknowledged.

The application is being forwarded to Group Art Unit 3721 for examination.

Any inquiries concerning this decision may be directed to Petitions Attorney Cliff Congo at 571-272-3207.

Frances Hicks
Petitions Examiner
Office of Petitions

Enc: Corrected Filing Receipt (3 pages)

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25 MAY 2006

THE LAW OFFICES OF MIKIO ISHIMARU
333 W. EL CAMINO REAL
SUITE 330
SUNNYVALE CA 94087

In re Application of:
KING, FREDERICK GORDON, et al.
Application Serial No.: 10/358,813
Filed: February 4, 2003
For: **METHOD AND APPARATUS FOR TESTING NETWORK DATA SIGNALS IN A WAVELENGTH DIVISION MULTIPLEXED OPTICAL NETWORK**

DECISION ON PETITION

This is a decision on the petition relating to objections to the drawings made by the examiner pursuant to 37 C.F.R. §1.181, filed February 14, 2006. No fee is required.

Petitioner requests that the requirement made by the examiner to provide suitable legends for the drawings be withdrawn.

The examiner has made a requirement that the drawings (figures 1-5) be provided with suitable legends.

I accordance with 37 CFR 1.84(o)

> " Suitable descriptive legends may be used subject to approval by the Office, or <u>may be required by the examiner where necessary for understanding of the drawing.</u> They should contain as few words as possible." (Emphasis added.)

Petitioner refers to PCT Rule 11.11 for support that legends should not be required. Notwithstanding the fact that this application was not filed as a national stage application under 35 USC 371; the PCT rule allows for the requirement of legends. PCT Rule 11.11 states

> (a) The drawings shall not contain text matter, except a single word or words, when absolutely indispensable, such as "water," "steam," "open," "closed," "section on AB," and, <u>in the case of electric circuits and block schematic or flow sheet diagrams, a few short catchwords indispensable for understanding</u>. (Emphasis added.)

Here, as in Rule 84(o), legends are permitted and can be required for proper understanding of the drawing.

Petitioner further provides several drawing sheets from previously issued U.S. Patents where legends apparently were not required for understanding of the drawings. This decision will not speculate as to why legends were not required in these patents as the question is whether or not legends are required for the understanding of the instant drawings.

Figures 1-5 are schematic views of systems for monitoring, testing and analysis of optical wavelength division multiplexing networks as set forth in the Brief Description of the Drawings. The drawings comprise boxes and cloud like symbols and appear to be flow diagrams. The

boxes and symbols do not contain the necessary information required for understanding the drawings. Petitioner has not made proper showing to refute the examiner's contention that suitable legends are required for proper understanding.

The petition to withdraw the requirement of suitable legends is **DENIED**.

The requirement that the figures be corrected to include suitable legends as set forth by the examiner remains.

Petitioner may request reconsideration of this decision within **TWO MONTHS** of the mailing thereof. This period is not extendable.

Jin F. Ng, Director
Technology Center 2600
Communications

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OFFICE OF PETITIONS

In re Application of	:	
Frederick G. KING et al.	:	
Application No. 10/358,813	:	DECISION ON PETITION
Filed: February 4, 2003	:	
Attorney Docket No. 21-009	:	

This is a decision on the petition under 37 CFR 1.181 (a)(3), filed July 25, 2006, requesting that the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 2600 (Technology Center Director), dated May 25, 2006, which refused to withdraw the requirement by the examiner to provide suitable legends for the drawings.

The petition to overturn the decision of the Technology Center Director dated May 25, 2005, is **denied**.

Petitioner seeks reversal of the Technology Center Director's decision of May 25, 2006, on the grounds that the examiner failed to follow established PTO practice and procedures in making and improperly maintaining an unnecessary and inappropriate drawing requirement, and that the Director, Technology Center 2600, erred in denying the petition for relief from the examiner's drawing requirement. Petitioner relies, *inter alia*, on MPEP 707.07(f) and PCT Rule 11.11 in support of his contention that the examiner's position is inconsistent with the Rules of the USPTO and his contention that the requirement of the Examiner is virtually prohibited by modern international (PCT) practice. Petitioner further contends that the examiner continually refused to respond to the Applicants' arguments traversing the drawing requirement, such refusal being at odds with MPEP 707.07(f).

The Technology Center Director correctly noted that 37 CFR 1.84(o) permits the use of legends, which can be required by the examiner for proper understanding of the drawings. Although not germane to the present application filed under 35 USC 111(a), PCT Rule 11.11 also permits the use of legends to facilitate understanding of the drawings, especially when such legends are used in conjunction with diagrams of electric circuits and block schematic or flow sheet diagrams.

37 CFR 1.84(n) and (o) permit *use of symbols* which are not universally recognized, subject to approval by the Office, if they are not likely to be confused with existing conventional symbols, and *if they are readily identifiable*. In addition, *suitable descriptive legends* may be used subject

to approval by the Office, or *may be required by the examiner* where necessary for understanding of the drawing (emphasis added). Thus the examiner may require, on a case-by-case basis, the use of descriptive legends where it is believed that such will facilitate a clear understanding of the drawings without undue reliance on the specification for understanding of the subject matter depicted therein. "When possible, a drawing should be so complete that the purpose and operation of the invention may be readily understood by one skilled in the art by means of a mere inspection of said drawing. The necessity of reading the specification in connection with the drawing should be avoided, if possible." See Ex Parte Hartley, 1901 C.D. 247 (Comm'r Pat. 1901). It follows that the Technology Center Director did not clearly err in upholding the Examiner's objection to the drawings.

Petitioner's contention that MPEP 707.07(f) expressly requires that the examiner answer or rebut the Applicants' response(s) is unpersuasive. Petitioner relies upon MPEP 707.07(f), in part:

> "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it."
>
> and
>
> "The importance of answering applicant's arguments is illustrated by *In re Herrmann*, 261 F.2d 598, 120 USPQ 182 (CCPA 1958) where the applicant urged that the subject matter claimed produced new and useful results. The court noted that since applicant's statement of advantages was not questioned by the examiner or the Board of Appeals, it was constrained to accept the statement at face value and therefore found certain claims to be allowable. See also *In re Soni*, 54 F.3d 746, 751, 34 USPQ2d 1684, 1688 (Fed. Cir. 1995) (Office failed to rebut applicant's argument)."

The selections from MPEP 707.07(f) relied upon by petitioner speak to developing the prosecution history with respect to certain rejections and claimed features of the invention, rather than addressing certain objections made on the record.

Petitioner additionally relies upon the an unpublished decision by the Board of Patent Appeals and Interferences in *Ex parte Schricker*:

> "The examiner has left applicant and the board to guess at the basis of the rejection and after having us guess would have us figure out (i.e. further guess) what part of which [prior art] document supports the rejection. We are not good at guessing; hence, we decline to guess." *Ex parte Schricker*, 56 USPQ2d 1723 (B.P.A.I. 2000) (unpublished).

Petitioner seems to be unaware that a rejection, or the continuation of a rejection, cannot be reviewed on petition; rather, as explained in MPEP 1201, the mechanism for having the propriety of a given rejection reviewed is by way of appeal before the Board of Patent Appeals and Interferences under 35 U.S.C. §134 and 37 C.F.R. 41.31.

In the final Office action, mailed January 10, 2006, the examiner addresses petitioner's arguments, but maintains his position. To this end, petitioner provides copies of other patent

drawings seen in numerous U.S. patents issuing every week that have what petitioner deems to be "complex" drawings without textual legends, and in which, in petitioner's opinion, the drawings are virtually impossible to understand without reference to the accompanying specification. Petitioner speculates:

> "...it is considered and understood that these drawings can be understood without textual matter in the drawings and that such textual matter is not necessary for the understanding thereof. Representative examples from numerous arts are attached hereto in the Exhibit at the end of this Petition. The drawings of the present application are in complete accord therewith, being fully explained in the application specification as shown in the Responses quoted in the Appendix." (emphasis by petitioner).

Petitioner's speculation that the above-mentioned drawings are complex in nature is misplaced in view of 37 CFR 1.84 (n) and (o) which bestow upon *the examiner* the discretion to require symbols and descriptive legends where deemed necessary for understanding of the drawing (emphasis added). Petitioner's arguments are also contrary to the admonition against relying solely upon a reading of the specification in connection with the drawing to gain an understanding of the drawings. See Hartley, supra. Petitioner has not, at any point in the prosecution, demonstrated that the symbols used in the drawings of the *instant application* have a universally-recognized conventional meaning and are generally accepted in the art (emphasis added).

While petitioner is understandably unhappy with the need to provide amended drawings sheets in the instant application, petitioner has not demonstrated that either the examiner or the Technology Center have acted out of administrative arbitrariness in either making or sustaining, respectively, the objection to the drawing figures.

DECISION

For the reasons given above, petitioner has failed to adequately demonstrate reversible error in the decision of the Technology Center Director. The petition is granted to the extent that the decision of the Technology Center Director, dated May 25, 2006, has been reviewed but is **denied** as to the request that the aforementioned decision be overturned The objection to the drawings advanced in the Office letters of November 4, 2004, January 10, 2006, and July 19, 2006, will not be disturbed. This decision may be viewed as a final agency action within the meaning of 5 U.S.C. §704 for purposes of seeking judicial review of the petitionable questions only. See MPEP 1002.02.

This application is being returned to Technology Center 2600 for further processing.

Telephone inquiries related to this decision should be addressed to Petitions Examiner BethAnne Dayoan at (571) 272-3209.

John J. Love
Deputy Commissioner for
Patent Examination Policy

cp

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AUG 2 4 2004
OFFICE OF PETITIONS

In re Application of	:
Hirofumi Kawashima	:
Application No. 10/358,821	: DECISION GRANTING PETITION
Filed: February 5, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. S002-4950	:

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 18, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8680.

This matter is being referred to Technology Center AU 2817 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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MAILED
FROM DIRECTORS OFFICE

DEC 0 7 2004

TECHNOLOGY CENTER 3600

JOHN C. McMAHON
P.O. BOX 30069
KANSAS CITY, MO 64112

In re application of
Cameron P. Lewis
Application No. 10/ 358,828
Filed: February 05, 2003
For: CARD HOLDER PROTECTIVE OF INFORMATION BEARING SURFACE

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on May 27, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

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

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

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

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

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

The request to withdraw as attorney in the above-identified application is not approved as moot because the power of attorney has already been withdrawn as per the Notice to that effect of July 06, 2004.

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(703) 308-0866
Facsimile No.: (703) 605-0586

KJD/slb: 11/29/04

cc: Cameron P. Lewis
419 Sherbourne Street
Toronto, ON
M4X1K5
CANADA

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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SAN DIEGO, CA 92130-2081

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JAN 1 1 2005

OFFICE OF PETITIONS

In re Application of	:
Naoto Kusumoto et al	:
Application No. 10/358,842	: DECISION GRANTING PETITION
Filed: February 4, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 07977-205003	:

This is a decision on the petition, filed January 10, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 6, 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 2824 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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MINNEAPOLIS, MN 55440-1022

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OCT 04 2007

OFFICE OF PETITIONS

In re Application of	:
Naoto Kusumoto et al	:
Application No. 10/358,842	: DECISION GRANTING PETITION
Filed: February 4, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 07977-205003	:

This is a decision on the petition, filed October 2, 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 13, 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 2822 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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

OIPE JC125
FEB 19 2004
PATENT & TRADEMARK OFFICE

02-20-04

Docket No: AM100076
Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of:	Scott Mason Duncan, et al	
Application No.:	10/358,847	Group Art No.:
Filed:	February 5, 2003	Examiner:
For:	PROCESS FOR THE SYNTHESIS OF N-ACYL-2-AMINO-4-ALKOXY-5-NITROBENZOIC ACIDS	
Confirmation No.:	9398	
Customer Number:	25291	

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

FEB 27 2004

February 19, 2004

Sir:

TRANSMITTAL LETTER

1. Enclosed please find the following documents for the above-identified application:

- Request for Reconsideration of Abandonment under 37 CFR § 1.137 (e)
- Notice of Abandonment under 37 CFR 1.53 (f) or (g)
- Copies of Express Mail Certificate, postcard, Certificate of Express Mail, and Combined Declaration and Power of Attorney dated April 2, 2003.

CERTIFICATE OF MAILING 37 CFR §1.10

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EU673381522US addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

February 19, 2004
Date

Ann Peterson
Ann Peterson

BEST AVAILABLE COPY

2. Fee calculation

CLAIMS AS AMENDED					
(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT	(3) HIGHEST NUMBER PAID FOR	(4) NUMBER EXTRA x RATE		(5) ADDITIONAL FEE
TOTAL CLAIMS			0	x $ 18.00	0.00
INDEPENDENT CLAIMS			0	x $ 86.00	0.00
MULTIPLE DEPENDENCY FEE				$ 290.00	
			Total Amendment Fee:		$0.00

☒ Please charge Deposit Account No. 01-1425 for: $0.00

The Commissioner is hereby authorized to charge any additional fees required by this paper, including the enclosed documents, and during the entire pendency of this application and to credit any excess amounts paid to Deposit Account No. 01-1425. A copy of this letter is enclosed for use by the Deposit Account Branch.

Respectfully submitted,

Joy S. Goudie

Joy S. Goudie
Attorney for Applicants
Reg. No. 48,146

Wyeth
Patent Law Department
Five Giralda Farms
Madison, NJ 07940
Tel. No. (845) 602-2126

OIPE JC126
FEB 1 9 2004
PATENT & TRADEMARK OFFICE

Docket No: AM100076
Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of:	Scott Mason Duncan, et al		
Application No.:	10/358,847	Group Art No.:	
Filed:	February 5, 2003	Examiner:	
For:	PROCESS FOR THE SYNTHESIS OF N-ACYL-2-AMINO-4-ALKOXY-5-NITROBENZOIC ACIDS		
Confirmation No.:	9398		
Customer Number:	25291		

FEB 27 2004

Commissioner of Patents
PO Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF ABANDONMENT UNDER 37 CFR § 1.137 (e)

This is in response to the enclosed Notice of Abandonment under 37 CFR 1.53 (f) or (g) mailed February 5, 2004.

Enclosed is a copy of the Oath/Declaration/Power of Attorney stamped by the USPTO on April 2, 2003, a copy of the postcard stamped on April 2, 2003, an Express Mail receipt stamped April 2, 2003, and a Certificate of Express Mail signed on April 2, 2003.

A Notice to File Missing Parts of the Nonprovisional Application ("Notice") was mailed by the USPTO on April 1, 2003. It is clear that the USPTO was in possession of the Oath/Declaration/Power of Attorney before applicant received the April 1, 2003 Notice. The Notice to File Missing Parts crossed in the mail with the April 2, 2003, Oath/Declaration/Power of Attorney and should have been withdrawn.

There is no basis for abandonment in fact for the above-identified application and applicant hereby requests reconsideration of Abandonment under 37 CFR § 1.137 (e); and the Notice of Abandonment under 37 CFR 1.53 (f) or (g) must be withdrawn.

We believe no fee is due for filing this request. If a fee is due it should be charged to Deposit Account No. 01-1425.

01/09/2005 TSTOKES 00000001 011425
01 FC:1051 130.00 DA

Joy S. Goudie
Attorney for Applicants
Reg. No. 48,146

Wyeth
Patent Law Department
Five Giralda Farms
Madison, NJ 07940
Tel. No. (845) 602-2126

CERTIFICATE OF MAILING 37 CFR §1.10

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EU673381522US addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

February 19, 2004
Date

Ann Peterson
Ann Peterson

OIPE JC125
FEB 1 9 2004
PATENT & TRADEMARK OFFICE

JSG

CC: PEARL RIVER

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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
10/358,847	02/05/2003	Scott Mason Duncan	AM100076

CONFIRMATION NO. 9398

ABANDONMENT/TERMINATION LETTER

OC000000011832750

25291
WYETH
PATENT LAW GROUP
FIVE GIRALDA FARMS
MADISON, NJ 07940

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Date Mailed: 02/05/2004

NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 04/01/2003.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282.Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

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

Linan Retta

Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

OIPE JC125
FEB 19 2004
PATENT & TRADEMARK OFFICE

FEB 27 2004

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[illegible] 07940

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Washington, DC 20231

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04-05-03

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Docket No: AM100076
Patent

OIPE JC67
APR 02 2003
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of:	Scott M. DUNCAN et al.		
Application No.:	10/358,847	Group No.:	
Filed:	February 5, 2003	Examiner:	
For:	PROCESS FOR THE SYNTHESIS OF N-ACYL-2-AMINO-4-ALKOXY-5-NITROBENZOIC ACIDS		
Confirmation No.:			
Customer Number:	25291		

FEB 27 2004

CERTIFICATE OF EXPRESS MAIL

"Express Mail" Mailing Label No.: EU238171212US
Date of Deposit: April 2, 2003

I hereby certify that this and the below-identified document(s) are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR Section §1.10 on the Date of Deposit indicated above in an envelope addressed to the Commissioner for Patents, Washington, DC 20231:

Documents:

1. Assignment of Invention
2. Combined Declaration and Power of Attorney
3. Recordation Form Cover Sheet

Joy S. Goudie
Type or print name of person signing certification

Joy S. Goudie
Signature

April 2 2003
Date

PSN 8040 Rev. 2-02

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Joy S. Goudie
Patent Law Department
Pearl River, NY

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Case No. AM100076
Applicants: Scott M. Duncan et al.
Filed: Feb. 5, 2003

Attorney: Joy S. Goudie
Serial No.: 10/358,847
For: PROCESS FOR THE SYNTHESIS OF N-ACYL-2-AMINO-4-ALKOXY-5-NITROBENZOIC ACIDS

The following has been received in the U.S. Patent Office on the date stamped hereon:

- ☐ Patent Application (____ pages)
- ☐ Specification (____ pages)
- ☐ Claims (____ pages)
- ☐ Abstract (1 page)
- ☒ Oath/Declaration/Power of Attorney
- ☐ Transmittal Letter
- ☐ Drawings ____ Sheets
- ☐ Informal ☐ Formal
- ☐ Application Data Sheet
- ☐ Sequence Listing Disk
- ☐ Rule 821 (f) Statement
- ☒ Assignment
- ☒ Assignment Recordation Form
- ☐ Information Disclosure Statement
- ☐ Form PTO-1449
- ☐ With References
- ☐ Amendment/Response
- ☐ Affidavit/Declaration
- ☐ Extension of Time Request
- ☐ Notice of Appeal
- ☐ Brief on Appeal
- ☐ Reply Brief on Appeal
- ☐ Petition Under 37 C.F.R. _____
- ☐ Issue Fee Transmittal Form
- ☐ Terminal Disclaimer
- ☒ Express Mail Certificate
- ☐ Express Mail No. EU238171212US
- ☐ Other _____

Date Mailed: 4/2/03

OIPE JC87
APR 0 2 2003
PATENT & TRADEMARK OFFICE

CC PRL

03 27 2004

OIPE JC87
APR 0 2 2003
PATENT & TRADEMARK OFFICE

Docket No: AM100076
Patent

#5

COMBINED DECLARATION AND POWER OF ATTORNEY
(Original, Design, Supplemental, Divisional, Continuation,CIP)

As the below named inventor, I hereby declare that:
Scott Mason DUNCAN; Augustine Tobi OSUMA; Sylvain DAIGNEAULT; Michel BERNATCHEZ

INVENTORSHIP IDENTIFICATION

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

TITLE OF INVENTION

PROCESS FOR THE SYNTHESIS OF N-ACYL-2-AMINO-4-ALKOXY-5-NITROBENZOIC ACIDS

FEB 27 2004

SPECIFICATION IDENTIFICATION

the specification of which: (complete (a), (b), or (c))

(a) ☒ is attached hereto.
(b) ☒ was filed on 2/5/03 as
  ☒ Serial Number 10/358,847
  ☐ Express Mail No. , as Serial Number not yet known
(c) ☐ was described and claimed in PCT International Application No. filed on and as amended under PCT Article 19 on (if any).

ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37 CFR 1.56(a).

PRIORITY CLAIM

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventors certificate or of any PCT International application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate of any PCT International application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) on which priority is claimed.

(d) ☒ No such applications have been filed.
(e) ☐ Such applications have been filed as follows.

NOTE: Where item (c) is entered above and the International Application which designated the U.S. claimed priority, check item (e), enter the details below and make the priority claim.

Earliest Foreign Application(s), if any, filed within 12 months (6 months for Design) prior to this U.S. Application

Country	Application No.	Date of Filing (Day, Month, Year)	Priority Claimed 35 USC 119

All Foreign Application(s), if any, Filed More Than 12 Months (6 Months for Design) Prior to This U.S. Application)

E JC125
FEB 1 9 2004
PATENT & TRADEMARK OFFICE

CLAIM FOR BENEFIT OF PRIOR U.S. PROVISIONAL APPLICATION(S)
(35 U.S.C. § 119(E))

I hereby claim the benefit under Title 35, United States Code, § 119(e) of any United States provisional application(s) listed below:

PROVISIONAL APPLICATION NUMBER	FILING DATE
60/354,777	February 5, 2002

FEB 27 2004

CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S)
(UNDER 35 U.S.C. 120)

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) designating the United States of America that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56(a) which occurred between the filing date of the prior application(s) and the national or PCT International filing date of this application.

PRIOR U.S. APPLICATIONS OR PCT INTERNATIONAL APPLICATIONS DESIGNATING THE U.S. FOR BENEFIT UNDER 35 USC 120

U.S. Applications		Status (Check One)		
U.S. Applications	U.S. Filing Date	Patented	Pending	Abandoned
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐

PCT Applications Designating U.S.		
PCT APPLICATION NO.	PCT FILING DATE (Day, Month, Year)	U.S. SERIAL NO. ASSIGNED (if any)

POWER OF ATTORNEY

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

☒ Customer Number: 25291

Bar Code: 25291 PATENT TRADEMARK OFFICE

☐ Attached as part of this declaration and power of attorney is the authorization of the above-named attorney(s) to accept and follow instructions from my representative(s).

SEND CORRESPONDENCE TO:
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DIRECT ALL TELEPHONE CALLS TO:
Name: Joy S. Goudie
Tel. No. (845) 602-2126

OIPE JC125
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PATENT & TRADEMARK OFFICE

Docket No: AM100076
Patent

DECLARATION

I hereby declare that all statements 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 are 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.

SIGNATURE(S)

FEB 27 2004

Full name of SOLE OR FIRST INVENTOR: **Scott Mason DUNCAN**

Inventor's Signature _____ Date 3/10/03

Country of Citizenship: **United States of America**
Residence : **10 Stone Crest Circle, Madison, Wisconsin 53717**
Post Office Address: **Same as Residence**

Full name of SECOND JOINT INVENTOR: **Augustine Tobi OSUMA**

Inventor's Signature Augustine Tobi Osuma Date 03/25/2003

Country of Citizenship: **United States of America**
Residence : **4640 Shoreview Drive, Canton, Michigan 48188**
Post Office Address: **Same as Residence**

Full name of THIRD JOINT INVENTOR: **Sylvain DAIGNEAULT**

Inventor's Signature _____ Date 19-FEBRUARY-2003

Country of Citizenship: **Canada**
Residence : **201 Peupliers Laval-sur-le-Lac, Quebec H7R1G6, Canada**
Post Office Address: **Same as Residence**

Full name of FOURTH JOINT INVENTOR: **Michel BERNATCHEZ**

Inventor's Signature _____ Date 19-February-2003

Country of Citizenship: **Canada**
Residence : **3990 Gouin East, Montreal H1H1C6, Canada**
Post Office Address: **Same as Residence**

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OFFICE OF PETITIONS

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

In re Patent No. 7,008,295
Andreas Norbert Wiswesser et al.
Issue Date: March 7, 2006
Application No. 10/358,852
Filed: February 4, 2003
Attorney Docket No. 5696.47001

:DECISION ON REQUEST FOR
:RECONSIDERATION OF
:PATENT TERM ADJUSTMENT
:AND
:NOTICE OF INTENT TO ISSUE
:CERTIFICATE OF CORRECTION

This is a decision on the "Request to Correct Patent Term Adjustment under 37 CFR 1.705(d)" received in the Office May 8, 2006. Patentees request that the patent term adjustment indicated on the patent be corrected from nineteen (19) to twenty-three (23) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **GRANTED**.

Patentees argue that the reduction of 4 days for the submission of the issue fee, due December 1, 2005 and received December 5, 2005 with a certificate of mail dated December 1, 2005 was incorrect in that the filing of an amendment, November 30, 2005, after the Notice of Allowance, covered the same period of time.

Patentees are correct. While the issue fee was received on December 5, 2005, patentees did fail to engage in reasonable efforts to conclude prosecution of the application by four days. However, in this instance since the amendment filed November 30, 2005, after the mailing of the Notice of Allowance was subject to a ninety-eight day reduction and since the date the issue fee was received overlaps with the greater period of reduction, patentee will not be subject to a second period of reduction.

In view thereof, the patent term adjustment should be twenty-three days.

The $200.00 fee set forth in 37 CFR 1.18(e) has been applied. 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. See 35 U.S.C. § 254

and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by twenty-three **(23)** days.

Telephone inquiries specific to this matter should be directed to Patricia Faison-Ball, Senior Petitions Attorney, at (571) 272-3212.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,008,295 B2

DATED : March 7, 2006

INVENTOR(S) : Andreas Norbert Wiswesser

DRAFT

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (19) days

Delete the phrase "by 19 days" and insert – by 23 days--

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LIBERTYVILLE IL 60048-5343

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OFFICE OF PETITIONS

In re Application of :
Mark Pecen et al. :
Application No. 10/358,864 : DECISION ON PETITION
Filed: February 5, 2003 : UNDER 37 C.F.R. §1.181
Attorney Docket No.: CS22135RL :
Title: NETWORK ASSISTED CELL :
RESELECTION IN WIRELESS :
COMMUNICATIONS SYSTEMS AND :
METHODS :

This is a decision on the petition filed April 17, 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 November 3, 2004, which set a shortened statutory period for reply of three (3) months. An after-final amendment was received on January 19, 2005, and an advisory action was mailed on March 24, 2005. No extensions of time under the provisions of 37 CFR §1.136(a) were obtained, and no further responses were received. Accordingly, the above-identified application became abandoned one month and one day after the filing of the advisory action, April 25, 2005. A notice of abandonment was mailed on April 5, 2006.

With the present petition, Petitioner has asserted that a Request for Continued Examination (RCE) was submitted on February 21, 2005

Petitioner has submitted a copy of this submission, and it is noted that it contains a certificate of facsimile transmission

dated February 22, 2005, along with a petition for a one-month extension of time. Petitioner has indicated that this certificate of facsimile transmission contains the incorrect date.

The electronic file has been reviewed, and a copy of this response has been located in the same.

Petitioner has requested that the holding of abandonment in the above-identified application be withdrawn. It is clear that a response was timely submitted on February 21, 2005. 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. Although a one-month extension of time was required, it is noted that the submission contained an authorization to charge any fees to a Deposit Account.

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

The fee associated with the filing of a one-month extension of time has been charged to Petitioner's Deposit Account, as authorized in RCE.

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 RCE which was submitted on February 21, 2005 can be processed.

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

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

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Libertyville, IL 60048-5343

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OFFICE OF PETITIONS

In re Application of	:	
Mark Pecen et al.	:	
Application No. 10/358,864	:	ON PETITION
Filed: February 5, 2003	:	
Attorney Docket No. CS22135RL	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 3, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, March 7, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 10, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal, with the required fee of $540 and an Appeal Brief, with the required fee of $540, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay. Accordingly, the Notice of Appeal and Appeal Brief are accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2416 for processing of the response and any action that is required by the Examiner in the normal course of business.

Carl Friedman
Petitions Examiner
Office of Petitions

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Schwegman, Lundberg, Woessner & Kluth
1600 TCF Tower
121 South Eight Street
Minneapolis MN 55402

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OFFICE OF PETITIONS

In re Application of :
Munshi :
Application No. 10/358,877 : DECISION ON PETITION
Filed: February 4, 2003 :
Attorney Docket No. 1080.109US3 :

This is a decision on the petition under 37 CFR 1.181, filed on April 15, 2005, to withdraw the holding of abandonment. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience to petitioner.

On July 26, 2004, the Office mailed a final Office action, which set a three-month shortened statutory period to reply. On October 29, 2004 (certificate of mailing dated October 26, 2004), petitioner submitted an amendment in response to the Office action. On November 10, 2004, the Examiner mailed an Advisory Action, stating that the amendment did not prima facie place the application in condition for allowance. In the apparent absence of a timely and proper response, the Office mailed a Notice of Abandonment on March 22, 2005.

Petitioner asserts that a proper response was filed timely. In support of the petition, petitioner submits a copy of a returned, date-stamped postcard receipt, acknowledging receipt of a Request for Continued Examination (RCE) and an authorization to charge the Deposit Account for the RCE filing fee and a one-month extension of time fee in the USPTO on November 22, 2004. A copy of the RCE is included with this petition.

After reviewing the record, the Office has not located the original response in the form of a RCE and a request for an extension of time for response within the first month. Nevertheless, Section 503 of the MPEP states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the response was filed timely in the USPTO on November 22, 2004, but was not matched with the application.

For the reasons stated above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **granted.**

This matter is being referred to Technology Center Art Unit 3762 for processing of the RCE filed on November 22, 2004.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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JUN 6 2003

PAPER NO. 4

In re Application of	:	
Jerry W. Hatley	:	
Serial No:10/358,886	:	PETITION UNDER
Filed: February 05, 2003	:	M.P.E.P. 708.02, IV
For: WELL SCRUBBER	:	

This is in response to the petition filed May 05, 2003, requesting that the above-identified application be granted Special Status under Section 708.02 of the MPEP and 37 CFR 1.102(c) (fee under 37 CFR 1.17 paid).

The petition has been considered and found not to comply with the requirements set forth under the above-noted section. Accordingly, the petition is denied.

Under the provision of MPEP 708.02, section VIII , 37 CFR 1.102(c), and fee paid, however, 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. The election may be made by applicant at the time of filing the petition for special status. Should applicant fail to include an election with the original papers or petition and the Office determines that a requirement should be made, the established telephone restriction practice will be followed. If otherwise proper, examination on the merits will proceed on claims drawn to the elected invention. If applicant refuses to make an election without traverse, the application will not be further examined at that time. The petition will be denied on the ground that the claims are not directed to a single invention, and the application will await action in its regular turn. Divisional applications directed to the nonelected inventions will not automatically be given special status based on papers filed with the petition in the parent application. Each such application must meet on its own all requirements for the new special status;

(C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;

(D) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(E) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

In those instances where the request for this special status does not meet all the prerequisites set forth above, applicant will be notified and the defects in the request will be stated. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Technology Center (TC) Special Program Examiner. The petition will be reconsidered if the requirements A through are E are complied with.

The petition is **DENIED**

JMStone

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

Wendell Coffee
P.O. Box 3726
Lubbock, TX 79452-3726

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Law Department
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K-6-1, Mail Stop 1990
Kenilworth, New jersey 07033

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OFFICE OF PETITIONS

In re Application of Pissarnitski et al. Application No. 10/358,898 Filed: February 3, 2003 Attorney Docket No. CN01538K	: : : DECISION DISMISSING PTA REQUEST : :

This is a decision on the "REQUEST FOR RECONSIDERATION Of PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR 1.705(b)," timely[1] filed on September 21, 2005 advising the Office that applicants received too much PTA due to the submission of a 312-amendment on July 21, 2005. The Office will construe this letter as a good faith and candor letter advising the Office that they believe the Office provided too much PTA on the determination at the time of the mailing of the notice of allowance.

Applicants' request for reconsideration is **DISMISSED.** The Office maintains that 302-days is the proper calculation of patent term adjustment at the time of the notice of allowance of the patent.

Applicants assert that the PTA calculation failed to take into consideration the submission of an amendment pursuant to 37 CFR 1.312 and the effect such submission has on the PTA determination. Applicants assert that pursuant to 37 CFR 1.704(c)(10), the delay for the submission of the amendment should be up to four months of PTA delay.

Applicants arguments are unpersuasive. Specifically, the Office notes that any applicant delays pursuant to 37 CFR 1.704(c)(10) or any additional administrative delays pursuant to 37 CFR 1.702(a)(4) or 1.702(b) <u>are not</u> determined at the time of the mailing of the notice of allowance. However, these specific provisions will be calculated at the time of the issuance of the patent and

[1]Issue fee paid on September 21, 2005.

will be reflected in the determination provided to applicant in the ISSUE NOTIFICATION LETTER that is mailed to applicant approximately three weeks prior to issue date. Applicants may contest any revision to the patent term adjustment determination indicated in the notice of allowance. If the patent indicates or should have indicated a revised patent term adjustment, applicants have two months from the issuance of the patent to request reconsideration of the determination. See 37 CFR 1.705(d).

The Office acknowledges authorization to charge a fee of the $200.00 fee set forth in 37 CFR 1.18(e) to Deposit Account 19-0365 . The Office had assessed the $200.00 fee. However, the fee was in error because applicants were filing a letter of good faith and candor and not a request for reconsideration under 37 CFR 1.705(b). Accordingly, the Office will refund such fee.

The application file is being forwarded to the Office of Patent Publication for a prompt issuance of the patent.

Telephone inquiries specific to this matter should be directed to Kery Fries at 571-272-7757.

Kery A. Fries

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

cc: PAIR calculation

PALM INTRANET

Day : Saturday
Date: 9/2/2006
Time: 14:42:41

PTA Calculations for Application: 10/358898			
Application Filing Date:	02/05/2003	PTO Delay (PTO):	302
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	302
PTO Delay Adjustment:	0		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
25	06/21/2005	MAIL NOTICE OF ALLOWANCE			
24	06/17/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
23	06/17/2005	CASE DOCKETED TO EXAMINER IN GAU			
22	06/15/2005	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
21	06/08/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
20	06/08/2005	NOTICE OF ALLOWABILITY			
19	04/28/2005	DATE FORWARDED TO EXAMINER			
18	04/26/2005	RESPONSE AFTER NON-FINAL ACTION			
17	03/31/2005	MAIL NON-FINAL REJECTION			
16	03/21/2005	NON-FINAL REJECTION			
15	02/16/2005	DATE FORWARDED TO EXAMINER			
14	02/14/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
13	02/01/2005	MAIL RESTRICTION REQUIREMENT	302		-1
12	01/31/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
11	12/04/2004	CASE DOCKETED TO EXAMINER IN GAU			
10	09/23/2004	CASE DOCKETED TO EXAMINER IN GAU			
9	01/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	11/10/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
7	11/10/2003	REFERENCE CAPTURE ON IDS			
6	09/26/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	05/19/2003	CASE DOCKETED TO EXAMINER IN GAU			
4	04/04/2003	APPLICATION DISPATCHED FROM OIPE			

3	04/03/2003	APPLICATION IS NOW COMPLETE			
2	02/21/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/05/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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BOSTON MA 02111

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APR 06 2007

OFFICE OF PETITIONS

In re Application of	:	
Samuel Messinger	:	DECISION ON PETITION
Application No. 10/358,908	:	
Filed: February 5, 2003	:	
Attorney Docket No. 3999.003	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed January 12, 2007.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed January 31, 2006. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply considered timely filed and no extension of time considered obtained, the application became abandoned effective May 1, 2006. A courtesy Notice of Abandonment was mailed on September 6, 2006.

The petition includes the required reply in the form of an amendment, the statement of unintentional delay and payment of the petition fee. No terminal disclaimer is required.

Technology Center AU 3765 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply submitted on petition filed January 12, 2007.

Pursuant to the revocation by applicant and new power of attorney filed July 25, 2005, the power of attorney and the correspondence address have been changed. (This change is consistent with the change of address filed January 12, 2007, except the January 12, 2007 was not proper because attorney Beattie was not of record until entry of the July 25, 2005 revocation and new power of attorney).

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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OFFICE OF PETITIONS

In re Application of	:	
MESSINGER, Samuel et al.	:	
Application No. 10/358,908	:	DECISION ON PETITION
Filed: February 05, 2003	:	TO WITHDRAW
Attorney Docket No. **29474-003**	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 11, 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 Ingrid A. Beattie on behalf of all attorneys of record who are associated with customer No. 30623. 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 first named inventor Samuel Messinger at the address indicated below.

There are no outstanding office actions at this time.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

Terri Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **MR. SAMUEL MESSINGER**
P.O. BOX 402861
MIAMI BEACH, FL 33140

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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
10/358,908	02/05/2003	Samuel Messinger	3999.003

CONFIRMATION NO. 1250

OC000000025197979

30623
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.
ONE FINANCIAL CENTER
BOSTON, MA 02111

Date Mailed: 08/06/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/11/2007.

- 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.

Michelle R. Eason

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
FORMER ATTORNEY/AGENT COPY

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In re Application of
Johnson et al.
Application No. 10/358,911
Filed: February 5, 2003
Attorney Docket No. 2002-4

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 26, 2004, to revive the above-identified application.

The petition is **granted.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed March 25, 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 26, 2003. A Notice of Abandonment was mailed on February 5, 2004.

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

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

Telephone inquiries should be directed to the undersigned at (703) 306-0482.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/6/04

TO SPE OF : ART UNIT 1761

SUBJECT : Request for Certificate of Correction on Patent No.: 6849282

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

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

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 114

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

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

Comments:

SPE

1761
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

RICHARD A. FAGIN
P.O. BOX 1247
RICHMOND TX 77406-1247

COPY MAILED

JUN 11 2008

OFFICE OF PETITIONS

In re Patent No. 6,739,165	:	
Issue Date: May 25, 2004	:	
Application No. 10/358,934	:	NOTICE
Filed: February 5, 2003	:	
Attorney Docket No. KJT-02-03	:	

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

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

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

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

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ROPES AND GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON, MA 02110-2624

MAILED

MAR 06 2009

OFFICE OF PETITIONS

In re Application of	:	
David J. Foran, et. al.	:	
Application No. 10/358,935	:	DECISION ON PETITION
Filed: February 5, 2003	:	TO WITHDRAW
Attorney Docket No. UMNJ-P02-003	:	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 27, 2006.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney ROPES AND GRAY LLP has been revoked by the assignee of the patent application on June 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: Kenneth Watov
Watov& Kipnes
P.O. BOX 247
PRINCETON JUNCTION NJ 08550

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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LAWRENCE R. YOUST
DANAMRAJ & YOUST, P.C.
5910 NORTH CENTRAL EXPRESSWAY
SUITE 1450
DALLAS, TX 75206

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OCT 11 2005
OFFICE OF PETITIONS

In re Application of :
William D. Henderson :
Application No. 10/358,958 :
Filed: February 5, 2003 :
Attorney Docket No. 2001-IP-006112 U1 USA

ON PETITION

This is a decision on the petition, filed October 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 May 23, 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 3672 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 6702495
Issue Date: March 9,2004
Application No. 10358962
Filed: February 5,2003
Attorney Docket No.

:

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

:

This is a decision on the electronic petition, filed April 22,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of April 22,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6702495	2004-03-09	10358962	2003-02-05	

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

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

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

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

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

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

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

◉ A sole patentee

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

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

○ The assignee of record of the entire interest

Sole Patentee			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.			
Signature	/kurt lychwick/	Date (YYYY-MM-DD)	2008-04-22
Name	kurt lychwick		

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED

APR 19 2005

Technology Center 2100

In re Application of: Takeda, et al.
Application No. 10/358,975
Filed: February 4, 2003
For: DATA STORAGE SYSTEM

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER MPEP §708.02 (VIII)

This is a response to the petition filed 18 February 2005, under 37 CFR §1.102(d) and MPEP §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

MPEP §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.

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

The application file is being forwarded to the Examiner of Record for accelerated examination according to the procedures set forth in MPEP § 708.02, Section VIII.

Pinchus M. Laufer
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3599

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

KAGAN BINDER, PLLC
SUITE 200, MAPLE ISLAND BUILDING
221 MAIN STREET NORTH
STILLWATER, MN 55082

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FEB 1 1 2005

OFFICE OF PETITIONS

In re Patent No. 6,781,101	:	
Issue Date: August 24, 2004	:	
Application No. 10/358,988	:	ON PETITION
Filed: February 5, 2003	:	
Attorney Docket No. GMI0007/US	:	

This is a decision on the petition filed October 14, 2004, which is being treated as a petition under 37 CFR 3.81[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

Since $100 is required for the requested Certificate of Correction, that fee has been charged to petitioner's deposit account, as authorized in the instant petition.

The petition is **granted**.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226. Questions concerning the Certificate of Correction may be directed to the Certificates of Correction Branch at (703) 305-8309.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

MAIL

SEP 2 4 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW CA 94041

In re Application of	:	
HENDERSON et al.	:	
Application No. 10/358,992	:	DECISION ON REQUEST TO
Filed: February 4, 2003	:	WITHDRAW AS ATTORNEY
For: SERVICES PROCESSOR HAVING A	:	
QUEUE OPERATIONS PROCESSING UNIT	:	
AND OUTPUT SCHEDULER	:	

This is a decision on the Request to Withdraw as Attorney or Agent of record filed on July 15, 2003.

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

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

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

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

cc:
ALEXA LE
INTEL CORPORATION
SANTA CLARA FOUR BUILDING (SC4)
625 WALSH AVENUE
SANTA CLARA, CA 95052-8119

UNITED STATES PATENT AND TRADEMARK OFFICE

1-10-07

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

Patent No. : 6,939,493
Ser. No. : 10,359,002
Inventor(s) : Richard Blach Vizoso, et. al.
Issued : September 6, 2005
Title : METHOD FOR THE PRODUCTION OF COMPOSITE MATERIALS
Docket No. : Herr 20.231

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

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

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

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

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

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

Eva James
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) **308-9390** ext. **124** or 105

Hassan A. Shakir
Katten Muchin Rosenman, LLP
575 Madison Avenue, 15th Floor
New York, NY 10022-2585

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Heller Ehrman, LLP
4350 La Jolla Willage Drive #700
7th Floor
San Diego, CA 92122

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NOV 1 2 2008

OFFICE OF PETITIONS

In re Application of	:	
Gregory S. Lehr	:	
Application No. 10/359,018	:	DECISION ON PETITION
Filed: February 4, 2003	:	TO WITHDRAW
Attorney Docket No. 44351-0030	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 10, 2008.

The request is **NOT APPROVED**.

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

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

Telephone inquires concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Goodwin Procter, LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park, CA 94025-1105

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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Goodwin Procter LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park CA 94025-1105

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DEC 17 2008

In re Application of :
Lehr, et al. :
Application No. 10/359,018 : ON PETITION
Filed: February 4, 2003 :
Attorney Docket No. WAM-0030 :
For: LAMINATE INLAY PROCESS FOR SPORTS BOARDS

This is a decision on the petition under 37 CFR 1.59(b), filed July 9, 2008, requesting the Office expunge a portion of the application file.

The petition is **granted**.

Petitioners request the removal of the amendment and response filed on June 30, 2008 via the Office's electronic filing system.

37 CFR 1.59(b) covers the situation where an unintended heading has been placed on papers so that they are present in an incorrect application file. It is apparent from a review of the papers filed on June 30, 2008, that they were intended for another application.

A petition to expunge information unintentionally submitted in an application (other than information forming part of the original disclosure) may be filed under 37 CFR 1.59(b), provided that:

(A) the Office can effect such return prior to the issuance of any patent on the application in issue;
(B) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
(C) the information has not otherwise been made public;
(D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;
(E) it is established to the satisfaction of the Director that the information to be returned is not material information under 37 CFR 1.56; and
(F) the petition fee as set forth in 37 CFR 1.17(g) is included.

Petitioners have established to the satisfaction of the Office that removal of all papers related to the amendment and response filed on June 30, 2008 is appropriate. They have been closed in the electronic file.

After the mailing of this decision the application will be referred to Technology Center AU 1795 for consideration of the August 27, 2008 amendment, which was filed in response to the May 1, 2008 non-final Office action.

Telephone inquiries 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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Goodwin Procter LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park, CA 94025-1105

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OCT 23 2009

OFFICE OF PETITIONS

In re Application of	:	
Gregory S. Lehr	:	
Application No. 10/359,018	:	DECISION ON PETITION
Filed: February 4, 2003	:	TO WITHDRAW
Attorney Docket No. WAM-0030	:	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 22, 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 James Fox on behalf of all attorneys/agents associated with customer number 77845. All attorneys/agents associated with customer number 77845 have been withdrawn.

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

All future correspondence will be directed to inventor/assignee. The address is copied below.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Wham-O, Inc.
5903 Christie Avenue
Marketing Department
Emeryville, CA 94608

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

COOLEY LLP
ATTN: PATENT GROUP
SUITE 1100
777 - 6TH STREET, NW
WASHINGTON, DC 20001

MAILED

JUN 09 2010

OFFICE OF PETITIONS

In re Application of :
Azhar Alvi, et al. :
Application No. 10/359,028 : ON PETITION
Filed: February 4, 2003 :
Atty Docket No.:. NEXU-011/00US 312502-2019 :

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed April 20, 2010.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before December 18, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed September 18, 2009. Accordingly, the application became abandoned on December 19, 2009. A Notice of Abandonment was mailed on January 5, 2010. On April 20, 2010, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that the petitioner has supplied (1) reply in the form of payment of the $755 issue fee and $300 publication fee; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay[1].

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[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. While the statement is not made by an attorney of record at the time of abandonment, 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.

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KILPATRICK STOCKTON LLP
SUITE 2800
1100 PEACHTREE STREET
ATLANTA, GA 30309-4530

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JUL 24 2006

OFFICE OF PETITIONS

In re Application of
HUGHES
Application No. 10/359,032
Filed: February 5, 2003
Attorney Docket No. 38830/281778

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 23, 2005.

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

A review of the file record indicates that the power of attorney to Robert Richards and those practitioners associated with Customer Number 23370 has been revoked by the assignee of the patent application on October 17, 2005. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

There is an outstanding Office action mailed March 31, 3006 that requires a reply from the applicant.

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 571-272-4787.

Denise Pothier
Petitions Examiner
Office of Petitions

cc: SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, N.E.
ATLANTA GA 30309

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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MAIL Paper No. 5

AUG 2 9 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW CA 94041

In re Application of	:	
Henderson et al.	:	
Application No. 10/359,042	:	DECISION ON REQUEST TO
Filed: February 4, 2003	:	WITHDRAW AS ATTORNEY
For: **SERVICES PROCESSOR HAVING A PACKET EDITING UNIT**	:	

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on July 15, 2003.

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

Petitioner has met all of the above.

Accordingly, the request is **GRANTED**.

All attorneys/agents are granted the request for withdraw as attorney/agent.

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

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

cc: ALEXA LE
INTEL CORPORATION
SANTA CLARA FOUR BUILDING (SC4)
625 WALSH AVE.
SANTA CLARA, CA 95052-8119

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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MCHALE & SLAVIN, P.A.
2855 PGA BLVD
PALM BEACH GARDENS, FL 33410

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JUN 30 2005

OFFICE OF PETITIONS

In re Application of :
Michelle Davey et al :
Application No. 10/359,051 :
Filed: February 4, 2003 :
Attorney Docket No. 2132.137 :

ON PETITION

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

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed November 2, 2004, which set a shortened statutory period for reply of three (3) months. Three months extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on May 3, 2005.

The above-identified application is being revived solely for purposes of continuity with a Request For Continued Examination (RCE) filed on June 1, 2005.

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

This matters is being referred to Technology Center AU 1641 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 032004

POSZ & BETHARDS, PLC
11250 Roger Bacon Drive
Suite 10
Reston, VA 20190

APR - 2 2004

In re Application of:
Tadashi Adachi
Serial No.: 10/359,070
Filed: February 6, 2003
For: MOTOR HAVING CLUTCH

DECISION ON PETITION TO REMAIL OFFICE ACTION

This is a decision on the petition, filed March 19, 2004, via facsimile transmission, requesting that the Notice of Allowance be re-mailed and the period for paying the issue fee be reset to run from the date of the re-mail.

The petition is GRANTED.

A Request for Corrected Filing Receipt (Request) was received on September 25, 2003, requesting that the correspondence address be changed according to Customer Number 23400 submitted upon filing on the Utility Patent Transmittal letter submitted upon filing of the instant application. It was discovered during the processing of the Request that the Notice of Allowance and Fee(s) Due and the Notice of Allowability (hereinafter "Notices") have been mailed on November 7, 2003 to a different address than that currently shown for Customer Number 23400. The application was brought to the under-signed for review. Mr. David Posz, applicant's counsel, was contacted by the undersigned and informed about the status of the application.

Mr. Posz asserted that the Notices was not received and noted that the correspondence address associated with Customer Number 23400 was changed prior to November 7, 2003, the date the Notices were mailed to the previous address of record. Due to the failure to receive the Notices, it is now requested that the Notices be re-mailed.

To support the assertion the Notices were not mailed to a proper address of record causing the non-receipt thereof, petitioner has stated that the petitioner did not receive the Notices and attested to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would

have been entered had it been received and docketed was attached as Exhibit A (not legible). The evidence submitted satisfies the conditions for showing non-receipt of an Office action pursuant to the Official Notice "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

To support the assertion that the correspondence address was changed prior to the mailing of the Notices, petitioner also submits a copy of a Notice of Customer Number Record Change issued by the USPTO on May 8, 2003, in which it was acknowledged that the address associated with Customer Number 23400 has been changed to a Reston, Virginia address.

A review of the application file record also reveals that the Notices mailed September 7, 2003 were apparently returned undelivered by the US Postal Service but were not re-mailed pursuant to MPEP 707.13.

For the above-stated reasons, it is hereby determined that petitioner was not duly served notice that the application has been found allowable and that fees were due because the Notices were mailed to an incorrect address of record and were returned undelivered by the US Postal Service. The petition is granted.

The Notice of Allowance and Fee(s) Due and the Notice of Allowability will be re-mailed and the period for paying the fees will be reset to run three (3) months from the date these Notices are re-mailed. Extension of this time is not available under 37 CFR 1.136(a).

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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S.C. JOHNSON & SON, INC.
1525 HOWE STREET
RACINE, WI 53403-2236

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AUG 1 0 2004

OFFICE OF PETITIONS

In re Application of	:	
Andrea Pedrotti, et al.	:	
Application No. 10/359,097	:	DECISION ON PETITION
Filed: February 6, 2003	:	UNDER 37 CFR 1.55(c)
Attorney Docket No. J-3666	:	

This is a decision on the petition under 37 CFR 1.55(c), filed March 29, 2004, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign Application No. EPO01830528.4, filed August 7, 2001.

The petition is **DISMISSED**.

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

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

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

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

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

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

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

The instant petition fails to comply with item (2) above. In this regard, a review of the file record fails to disclose that the priority information was included in an oath or declaration or in an Application Data Sheet in accordance with 37 CFR 1.76(b)(6). Unless provided in an application data sheet, 37 CFR 1.63(c)(2) requires that the oath or declaration must identify the foreign application for patent or inventor's certificate for which priority is claimed under 37 CFR 1.55, and any foreign applications having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. *Note* MPEP 201.14, page 200-87 (Rev. 1, Feb. 2003), last paragraph, second column.

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

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

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

By hand: Customer Window located at:

U.S. Patent and Trademark Office
220 20th Street S
Customer Window, Mail Stop Petitions
Crystal Plaza Two Lobby, Room 1B03
Arlington, VA 22202

By fax: (703) 872-9306[1]
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Retta Williams at (703) 306-5594.

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

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[1] Effective approximately September 28, 2004, the facsimile number will be 571-273-0025, which is when the Office of Petitions expects to move to the new quarters in Alexandria, Virginia. However, this number is not to be used for submitting formal papers, but merely is to be used for receiving courtesy and informal papers and petitions to withdraw from issue only. Courtesy and informal papers will not be made a part of the file record.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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S.C. JOHNSON & SON, INC.
1525 HOWE STREET
RACINE, WI 53403-2236

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NOV 09 2004

OFFICE OF PETITIONS

In re Application of
Andrea Pedrotti, et al.
Application No. 10/359,097
Filed: February 6, 2003
Attorney Docket No. J-3666

DECISION ON PETITION
UNDER 37 CFR 1.55(c)

This is a decision on the renewed petition under 37 CFR 1.55(c), filed August 26, 2004, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign Application No. EPO01830528.4, filed August 7, 2001.

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 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).

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 filing receipt accompanies this decision on petition.

This matter is being referred to Technology Center AU 3742.

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

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

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DW 04-04

TONY REYES
1926 DELGADO ST.
CORPUS CHRISTI TX 78416

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APR 3 0 2004
OFFICE OF PETITIONS

In re Application of Arnold John Reyes Application No. 10/359,146 Deposited: 6 February, 2003 For: GOLF CLUB PUTTER, AND THE ALTERNATIVE	DECISION DISMISSING PETITION

This is a decision in reference to the petition filed on 23 June, 2003, which is treated as a petition under 1.53(e) requesting that the above identified application be accorded a filing date of 4 November, 2002.

The petition is **dismissed**.

The petition lacks the required fee. A request to change the filing date of, or accord a filing date to, an application must be made by way of a petition under 37 CFR 1.53 accompanied by the petition fee set forth in 37 CFR 1.17(h) (currently $130.00).[1] Patent and trademark fees and charges payable to the Patent and Trademark Office are required to be paid in advance, that is, at the time of requesting any action by the Office for which a fee or charge is payable.[2] As such, the petition fee is a prerequisite to the filing of the present petition, and the Office will not reach the merits of the petition unless and until the petition fee is submitted.

Additionally, it is noted that petitioner has not provided drawings as required by 35 U.S.C. § 113.

The format and wording of the papers filed are that of an inexperienced applicant. In further prosecution, the services of an attorney or agent registered to practice before the PTO are recommended.

---

[1] MPEP 506.02 and 37 CFR 1.53(e).

[2] 37 CFR 1.22(a).

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

By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DAVID W. HIGHET, VP & CHIEF IP COUNSEL
BECTON, DICKINSON AND COMPANY
(PATTON BOGGS)
1 BECTON DRIVE MC 110
FRANKLIN LAKES NJ 07417-1880

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SEP 11 2009

OFFICE OF PETITIONS

In re Application of	:	
Collis et al.	:	
Application No. 10/359,179	:	ON PETITION
Filed: February 6, 2003	:	
Attorney Docket No. 020187.0162	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 2, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Issue Fee Transmittal with payment of the issue and publication fees, (2) the petition fee, and (3) a proper statement of unintentional delay.

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

This matter is being referred to the Office of Data Management for processing into a patent.

Liana Walsh
Petitions Examiner
Office of Petitions

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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David W. Highet, VP & Chief IP Counsel
Becton, Dickinson and Company
(Patton Boggs)
1 Becton Drive MC 110
Franklin Lakes, NJ 07417-1880

Mail Date: 04/21/2010

Applicant	: Matthew P. Collis	: DECISION ON REQUEST FOR
Patent Number	: 7601491	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/359,179	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1683** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Patent Capital Group - Cisco
6119 McCommas
Dallas, TX 75214

Mail Date: 06/16/2010

Applicant	: Aseem Sethi	: DECISION ON REQUEST FOR
Patent Number	: 7633926	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/359,187	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1759** 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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MARK M. FRIEDMAN
C/O DISCOVEY DISPATCH
9003 FLIRIN WAY
UPPER MARLBORO, MD 20772

MAILED

FEB 18 2009

OFFICE OF PETITIONS

In re Application of	:	
Mordechai Teicher, et al.	:	
Application No. 10/359,195	:	DECISION ON PETITION
Filed: February 6, 2003	:	
Attorney Docket No. 246/190	:	

This is a decision on the petition under 37 CFR 1.8(b), filed September 10, 2008, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the Notice of Abandonment mailed August 21, 2008.

This application was held abandoned for failure to timely respond to the Office action of May 18, 2007, which set a three-month (3) month shortened statutory period for reply. Accordingly, a reply was due on or before August 18, 2007.

The petition is **GRANTED**.

Petitioner requests the Notice of Abandonment mailed August 21, 2008 for failure to respond to the final Office action mailed May 18, 2007 be withdrawn as petitioner timely filed a response. As evidenced by the itemized copy of EFS Acknowledgement receipt date stamped September 20, 2007 a Notice of Appeal and Pre-Appeal Brief Request for Review was received by the USPTO. Furthermore, a review of record indicates that the original copy of the response is now in the file.

The two month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

Telephone inquiries concerning this decision should be directed to April M. Wise at (571-272-1642. All other inquiries regarding this application should be directed to the Examiner of the Technology Center AU 2135.

This application is being referred to Technology Center AU 2135 for appropriate action on the Pre-Appeal Brief Request filed September 20, 2007.

/dab/
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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GERALD H. KIEL
REED SMITH LLP
599 LEXINGTON AVENUE
NEW YORK NY 10022

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JUN 30 2009

OFFICE OF PETITIONS

In re Patent No. 6,867,915	:	
Issue Date: March 15, 2005	:	
Application No. 10/359,230	:	ON PETITION
Filed: March 6, 2003	:	
Attorney Docket No: **500343.20185**	:	

This is a decision on the petition filed June 10, 2009 under 37 CFR 1.378(c)[1], to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition is **GRANTED.**

The patent issued on March 15, 2005. The first maintenance fee due could have been paid during the period from March 17, 2008 to September 15, 2008 or, with a surcharge during the period from September 16, 2008 to March 15, 2009. Accordingly, this patent expired on March 15, 2009 for failure to timely remit the first maintenance fee.

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision. Fees in the amount of $980.00 for the first maintenance fee and $1,640.00 for the surcharge have been charged to deposit account no. 50-1529.

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] 37 CFR 1.378(c) provides that a petition to accept an unintentionally delayed payment of a maintenance fee must be filed within twenty-four months of the six-month grace period provided in § 1.362(e) and must include:
(1) The required maintenance fee set forth in § 1.20(e) through (g);
(2) The surcharge set forth in § 1.20(l)(2); and
(3) A statement that the delay in payment of the maintenance fee was unintentional.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : 3/29/06

TO SPE OF : ART UNIT 1713

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/359239 Patent No.: 6998269B2

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

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

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

Virginia Tolbert
Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: Merely correcting clerical informalities.

SPE

1713
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

BERESKIN AND PARR
40 KING STREET WEST
BOX 401
TORONTO ON M5H 3Y2

COPY MAILED

MAR 1 4 2005

OFFICE OF PETITIONS

In re Application of	:
Giuseppe Pedulla et al	:
Application No. 10/359,246	: DECISION GRANTING PETITION
Filed: February 6, 2003	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 2223-179	:

This is a decision on the petition under 37 CFR 1.137(b), filed October 13, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action of January 14, 2004, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 3731.

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
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FACSIMILE TRANSMISSION

DATE: 9/14/05

TO: NADINE CLARK
(NAME)

(703) 308-5083
(FACSIMILE NUMBER)

(ORGANIZATION)

(TELEPHONE NUMBER)

SENDER: CHARLEMA. GRANT
(NAME)

TOTAL NUMBER OF PAGES 2 (INCLUDING THIS COVER PAGE)

NOTE: The facsimile number shown on this cover is for **informal/courtesy copies ONLY!!!!** If you have not received all pages or you have any questions about this transmission, please contact the **OFFICE OF PETITIONS** as follows:

DIRECT TELEPHONE NO.: 571-272-3282 **FACSIMILE NO. 571-273-0025**

BRIEF MESSAGE:

UNITED STATES PATENT AND TRADEMARK OFFICE

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HOGAN & HARTSON LLP
IP GROUP, COLUMBIA SQUARE
555 THIRTEENTH STREET, N.W.
WASHINGTON DC 20004

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SEP 14 2005

OFFICE OF PETITIONS

In re Application of
Mozayeni et al.
Application No. 10/359,274
Filed: February 6, 2003
Attorney Docket No. 86248-0013

ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed on December 16, 2004, to change the order of inventorship.

The petition is **GRANTED**.

The order of the names of the inventors will be changed as follows:

1. B. Robert Mozayeni
2. Kevin E. Crutchfield
3. John B. Davidson
4. Simon Fitall

Deposit account No. 50-1349 will be charged the $400.00 petition fee.

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

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HOGAN & HARTSON LLP
IP GROUP, COLUMBIA SQUARE
555 THIRTEENTH STREET, N.W.
WASHINGTON DC 20004

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SEP 14 2005

OFFICE OF PETITIONS

In re Application of :
Mozayeni et al. :
Application No. 10/359,274 : ON PETITION
Filed: February 6, 2003 :
Attorney Docket No. 86248-0013 :

This is a decision on the petition under 37 CFR 1.182, filed on December 16, 2004, to change the order of inventorship.

The petition is **GRANTED**.

The order of the names of the inventors will be changed as follows:

1. B. Robert Mozayeni
2. Kevin E. Crutchfield
3. John B. Davidson
4. Simon Fitall

Deposit account No. 50-1349 will be charged the $400.00 petition fee.

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

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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HOGAN & HARTSON LLP
IP GROUP, COLUMBIA SQUARE
555 THIRTENNTH STREET, N.W.
WASHINGTON DC 20004

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SEP 15 2009

OFFICE OF PETITIONS

In re Patent No. 6,955,648	:	
Issue Date: October 18, 2005	:	
Application No. 10/359,274	:	NOTICE
Filed: February 6, 2003	:	
Attorney Docket No. 86248	:	

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 Diane Goodwyn at (571) 272-6735.

Thurman K. Page
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
www.uspto.gov

MAR 18 2004

STEPHEN B. MAEBIUS
FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

In re Application of	:
Sergenulam V. Govindam	:
Serial No.: 10/359,276	: WITHDRAWAL OF ATTORNEY
Filed: February 6, 2003	:
Attorney Docket No.: 018733-11887	:

This is in response to applicants' attorneys' request, filed February 26, 2004, to withdraw from representation in the above identified application.

37 CFR 10.40 Withdrawal from employment.
(b) Mandatory withdrawal . A practitioner representing a client before the Office shall withdraw from employment if:
(1) The practitioner knows or it is obvious that the client is bringing a legal action, commencing a proceeding before the Office, conducting a defense, or asserting a position in litigation or any proceeding pending before the Office, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any person;
(2) The practitioner knows or it is obvious that the practitioner's continued employment will result in violation of a Disciplinary Rule;
(3) The practitioner's mental or physical condition renders it unreasonably difficult for the practitioner to carry out the employment effectively; or
(4) The practitioner is discharged by the client.
(c) Permissive withdrawal. If paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matters pending before the Office unless such request or such withdrawal is because:
(1) The petitioner's client:
(i) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
(ii) Personally seeks to pursue an illegal course of conduct;
(iii) Insists that the practitioner pursue a course of conduct that is illegal or that is prohibited under a Disciplinary Rule;
(iv) By other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively;
(v) Insists, in a matter not pending before a tribunal, that the practitioner engage in conduct that is contrary to the judgment and advice of the practitioner but not prohibited under the Disciplinary Rule; or
(vi) Has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of legal services.
(2) The practitioner's continued employment is likely to result in a violation of a Disciplinary Rule;
(3) The practitioner's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
(4) The practitioner's mental or physical condition renders it difficult for the practitioner to carry out the employment effectively;
(5) The practitioner's client knowingly and freely assents to termination of the employment; or

(6) The practitioner believes in good faith, in a proceeding pending before the Office, that the Office will find the existence of other good cause for withdrawal.

Applicants' attorney has provided no reason for withdrawal, as required.

The request to withdraw is **DISMISSED**.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at Office facsimile number.

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

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MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 300
MCLEAN VA 22102

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MAY 2 2 2006
OFFICE OF PETITIONS

In re Application of	:	
Boris A. Maslov et al	:	
Application No. 10/359,305	:	DECISION ON PETITION
Filed: February 6, 2003	:	TO WITHDRAW
Attorney Docket No. 544092000100	:	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 28, 2005.

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

A review of the file record indicates that the power of attorney to Alex Chartove, along with all of the other attorneys associated with Customer No. **25227** has been revoked by the assignee of the patent application on November 3, 2005. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant/assignee or the current attorneys of record.

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

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

Conferee:

cc:

HELLER EHRMAN WHITE & MCAULIFFE
1717 RHODE ISLAND AVE., NW
WASHINGTON DC 20036-3001

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 7

WILLIAM N. CARR
251 SOUTH MOUNTAIN AVE.
MONTCLAIR, NJ 07042

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MAR 1 9 2004

OFFICE OF PETITIONS

In re Application of :
Carr, et al. :
Application No. 10/359,312 : ON PETITION
Filed: February 7, 2003 :
Title: RADIATION SENSOR WITH :
SYNCHRONOUS RESET

This is a decision on the petition under 37 CFR 1.137(b), filed March 11, 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 15, 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 16, 2003. A Notice of Abandonment was mailed on February 3, 2004.

Please note, 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.

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.

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 $740.00 extension of time submitted with the petition on March 11, 2004 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be refunded by treasury check.

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

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

cc.
WAYNE S. BREYER
DeMONT & BREYER, LLC.
SUITE 250
100 COMMONS WAY
HOLMDEL, NJ 07733

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : October 6, 2006

TO SPE OF : ART UNIT 1762

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/359330 patent No.: 6,790,764

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**.

EXPedit

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: _____

TIMOTHY MEEKS
SUPERVISORY PATENT EXAMINER

SPE

1762
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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RONALD M ANDERSON
MICROSOFT CORPORATION
600 108TH AVENUE NE SUITE 507
BELLEVUE WA 98004

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AUG 1 8 2006
OFFICE OF PETITIONS

In re Application of	:	
Chen, et al.	:	
Application No. 10/359,340	:	ON PETITION
Filed: February 4, 2003	:	
Attorney Docket No. MICR0364	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 21, 2005, to revive the above-identified application.

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

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed December 6, 2004. This Office action set a shortened statutory period for reply of three (3) months. Applicants an Amendment on March 4, 2005. However, by Advisory Action mailed March 21, 2005, the Examiner informed Applicants that the Amendment would not be entered because it failed to place the application in condition for allowance. Applicants filed an additional Amendment on May 6, 2005. Again, the Amendment failed to place the application in condition for allowance, and an Advisory Action was mailed on December 12, 2005. No proper reply having been filed, the application became abandoned on May 7, 2005. The mailing of this decision precedes the mailing of a courtesy Notice of Abandonment.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and filed a proper reply to the final Office action in the form of a Notice of Appeal (and fee).

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $1020 extension of time fee submitted with the petition on December 21, 2005 was subsequent to the maximum period obtainable for reply (June 6, 2005), this fee has been refunded to petitioner's Deposit Account No. 01-1940.

Receipt of the Appeal Brief (and fee), filed February 21, 2006, is acknowledged

The application file is being forwarded to Group Art Unit 2173 for consideration of the Appeal Brief filed February 21, 2006.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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DEERE & COMPANY
ONE JOHN DEERE PLACE
MOLINE, IL 61265-8098

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MAY 25 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Richard Wubbels	:	
Application No. 10/359,353	:	
Filed: February 5, 2003	:	
Attorney Docket No. 09111-US	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed May 13, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 14, 2004.

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

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

The matter is being referred to Technology Center AU 3671 for further processing.

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

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ALAN C. GORDON
HELLER EHRMAN LLP
4350 LA JOLLA VILLAGE DRIVE #700
7TH FLOOR
SAN DIEGO, CA 92122

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MAY 06 2009

OFFICE OF PETITIONS

In re Application of	:	
Dhupelia et al.	:	DECISION ON PETITION
Application No. 10/359,359	:	TO WITHDRAW
Filed: February 4, 2003	:	FROM RECORD
Attorney Docket No. PA3655US	:	

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 9, 2006.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that on March 16, 2006 the power of attorney to Heller Ehrman LLP was revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to Petitions Examiner Joan Olszewski at 571-272- 7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

cc: Carr & Ferrell LLP
2200 Geng Road
Palo Alto CA 94303

UNITED STATES PATENT AND TRADEMARK OFFICE

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David E. Huizenga
Arnall Golden Gregory LLP
Suite 2100
171 17th Street, NW
Atlanta GA 30363

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JUL 18 2008

In re Application of

Skinner, et al.

Application No. 10/359,363

Filed: February 5, 2003

Attorney Docket No. 24342.1US4

: DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed March 20, 2008.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

A review of the application file history reveals that a non-final Office action was mailed on May 2, 2006, to which a response was filed on October 23, 2006. A second non-final Office action was mailed on February 20, 2007, twice rejecting specific claims. On August 22, 2007, a Notice of Appeal was filed with a request for an extension of time within the third month. On March 12, 2008, a Notice of Abandonment was mailed noting the Notice of Appeal filed August 22, 2007, but indicating that no subsequent paper was filed.

Petitioner states that the abandonment of the application was premature as the maximum extendable period for filing a subsequent paper after the filing of a Notice of Appeal is five additional months after the two month period allowed by the rules. Pursuant to 37 CFR 1.136(a)(1), the time period for filing a subsequent paper after the filing of a Notice of Appeal is extendable five additional months as the time period is not set by statute and does not fall under of the exceptions provided in 37 CFR 1.136(a)(1). Based on the aforementioned, it appears that the application was prematurely held abandoned as the maximum extendable period for filing a subsequent paper after filing the Notice of Appeal has not yet expired when the Notice of Abandonment was mailed. The holding of abandonment is withdrawn, accordingly.

It is noted that petitioner filed on March 20, 2008, an amendment as the response following the Notice of Appeal. Further to this point, it is noted that 37 CFR § 41.33 provides that:

> Amendments filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) and prior to the date a brief is filed pursuant to § 41.37 may be admitted as provided in § 1.116 of this title.
> b) Amendments filed on or after the date of filing a brief pursuant to § 41.37 may be admitted:
> (1) To cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, or
> (2) To rewrite dependent claims into independent form.

Accordingly, it is for the examiner assigned to the application to determine whether the amendment filed March 20, 2008, places the application in condition for allowance. Petitioner is cautioned that if the amendment filed March 20, 2008, does not place the application in condition for allowance, the application may become abandoned for failure to file a proper reply after the filing of the Notice of Appeal. See 37 CFR 1.116.

The application file is being forwarded Technology Center 1600, GAU 1654 for further processing.

Further inquires regarding this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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David E. Huizenga
Arnall Golden Gregory LLP
Suite 2100
171 17th Street, NW
Atlanta GA 30363

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SEP 19 2008

In re Application of

Skinner, et al.

Application No. 10/359,363

Filed: February 5, 2003

Attorney Docket No. 24342.1US4

: DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 19, 2008.

The petition is **granted**.

A review of the application file history reveals that a non-final Office action was mailed on May 2, 2006, to which a response was filed on October 23, 2006. A second non-final Office action was mailed on February 20, 2007, twice rejecting specific claims. On August 22, 2007, a Notice of Appeal was filed with a request for an extension of time within the third month. On March 12, 2008, a Notice of Abandonment was mailed noting the Notice of Appeal filed August 22, 2007, but indicating that no subsequent paper was filed. A petition to withdraw the holding of abandonment was filed on March 20, 2008, and granted by a decision mailed July 18, 2008. A Notice of Abandonment was mailed August 12, 2008, noting that the March 20, 2008, failed to place the application in condition for allowance and, therefore, a proper response after the filing of a Notice of Appeal had not been filed.

The Request for Continued Examination and amendment filed August 19, 2008, is noted.

The application file is being forwarded Technology Center 1600, GAU 1654 for further processing.

Further inquires regarding this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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LADAS & PARRY
5670 WILSHIRE BOULEVARD, SUITE 2100
LOS ANGELES, CA 90036-5679

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JAN 3 1 2005

OFFICE OF PETITIONS

In re Application of :
Fenqin Zhu :
Application No. 10/359,383 : ON PETITION
Filed: February 5, 2003 :
Attorney Docket No. B-4937 620569-0 :

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

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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PHILIP S. JOHNSON
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NEW BRUNSWICK, NJ 08933-7003

Mail Date: 04/20/2010

Applicant	: Fred H. Burbank	: DECISION ON REQUEST FOR
Patent Number	: 7651511	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/359,386	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1021** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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PHILIP S. JOHNSON
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ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

Mail Date: 05/17/2010

Applicant : Fred H. Burbank
Patent Number : 7651511
Issue Date : 01/26/2010
Application No : 10/359,386
Filed : 02/05/2003

: NOTICE CONCERNING IMPROPER
: CALCULATION OF PATENT TERM
: ADJUSTMENT BASED UPON USPTO
: IMPROPERLY MEASURING REDUCTION
: PERIOD UNDER 37 CFR 1.704(c)(10).

The United States Patent and Trademark Office (USPTO) discovered that in processing the recent recalculation decisions mailed in response to patentee's filed Request for Recalculation of Patent Term Adjustment in view of Wyeth, the USPTO improperly measured the reduction period for reductions under 37 CFR 1.704(c)(10). Pursuant to 37 CFR 1.704(c)(10), patentee's reduction begins on the date of filing the amendment under 37 CFR 1.312 ("1.312 amendment") or other related paper and ends on the date that the Office mails a response to the filing of the 1.312 amendment or other paper. It has been discovered that during the recalculation, the calculation failed to the limit the reduction to the mail date of the response to the 1.312 amendment or other paper. Accordingly, patentee's reductions were greater than warranted.

This notice **VACATES** the previous GRANTED request for recalculation and provides patentee with a revised GRANTED recalculation.

The patent term adjustment has been determined to be **1099** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (PTA) days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days** from the mail date of this notice, whichever is longer, to file a request for reconsideration of this PTA calculation. See 35 U.S.C. § 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4).

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this PTA calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2), and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this PTA calculation, including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right of review of the USPTO's PTA determination in the United States District Court for the District of Columbia, patentee must ensure that the steps required under 35 U.S.C. § 154 (b)(4) are taken in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. § 154(b)(4).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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BINGHAM, MCCUTCHEN LLP
THREE EMBARCADERO CENTER
18 FLOOR
SAN FRANCISCO CA 94111-4067

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SEP 13 2005

OFFICE OF PETITIONS

In re Application of
Weiner, et al.
Application No. 10/359,397
Filed: February 5, 2003
Attorney Docket No. 2013761-7030803001

: 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 3, 2005 (certificate of mailing date February 28, 2005), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The current procedure where a claim for priority under 37 CFR § 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(3).[1] In the instant case, the Office noted the claim for priority of two of the three prior-filed applications listed in the transmittal letter filed with the application – application nos. 09/715,535 and 08/654,737 –, as shown by their inclusion on the filing receipt.

A petition is required for application no. 10/098,035.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay.[2] 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.

---

[1] *Note* MPEP 201.11 (III)(D), pages 200-59 and 200-60 (Rev. 2. May 2004) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

[2] Regarding fees, deposit account no. 50-2518 was charged $130.00 on March 4, 2005. The surcharge fee due is $1,370.00. Accordingly, the $1,240.00 balance due will be charged to the same deposit account.

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 Petitions Attorney E. Shirene Willis at (571) 272-3230. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 1633 for appropriate action on the amendment filed March 3, 2005 (certificate of mailing date February 28, 2005), including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 6

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OFFICE OF PETITIONS

GLENN PATENT GROUP
3475 EDISON WAY
SUITE L
MENLO PARK, CA 94025

In re Application of:
Baharav et al.
Application No. 10/359,414
Filed: February 5, 2003
Title of Invention:
DISTRIBUTED SYSTEM AND METHOD FOR MANAGING COMMUNICATIONS AMONG HEALTHCARE PROVIDERS, PATIENT AND THIRD PARTIES

ON PETITION

This is in response to a petition under 37 CFR 1.47, filed September 8, 2003, which is properly treated as a petition under 37 CFR 1.47(a), to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on February 5, 2003, without, a fully executed oath or declaration. The Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice"), on May 6, 2003, requiring *inter alia*, a properly signed oath or declaration.

In response to the Notice, Applicant files the instant petition and supporting documents. The supporting documents include a Petition Based Upon Unavailability of Inventor for each of the nonsigning inventors. Each of the Petitions alleges that

diligent efforts have been used to reach the inventor. Each of the petitions include a letter to the last known address of the nonsigning inventor indicating that the application was mailed to the nonsigning inventor at his last known address. However, there is no indication that the nonsigning inventor resides at the last known address. This fact distinguishes whether the nonsigning inventor refuses to join the application, or cannot be found or reached after diligent effort.

For instance, regarding inventor Weinstein, a log is provided where a conversation with inventor Weinstein has been recorded, apparently on or before September 10, 2002. The letter to inventor Weinstein enclosing a copy of the application was mailed over 11 months later, on August 20, 2003. While this would ordinarily suffice as proof that inventor Weinstein refuses to join the application after having been presented with the application for signature, assuming inventor Weinstein stil resides at the residence where he received the telephone call, the Petition regarding inventor Weinstein (and the remaining nonsigning inventors), allege diligent efforts to reach the inventor. A diligent effort to reach the inventor infers that the inventor could not be found or reached after diligent effort. It is therefore unclear whether inventor Weinstein refuses to join the application after having been presented with the application for signature, or cannot be found or reached after diligent effort. These are two different situations requiring two different courses of action on the part of the applicant in order to be allowed to proceed with the application under 37 CFR 1.47(a). This section provides for two separate and distinct circumstances: one where the inventor refuses to join the application after having been presented with the application for signature, and the other where an inventor cannot be found or reached after diligent effort.

Further to this, if an inventor is unavailable (cannot be reached), while it is not required that the application be mailed, Petitioner must establish the exercise of diligent effort in trying to find or reach the nonsigning inventor. A statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. Emphasis supplied. See, MPEP § 409.03(d). At the very least, an Internet search, or a search of telephone directories should be undertaken of the regions where it is suspected the non-signing inventor may

reside. Copies of the results of such searches must be referred to in any renewed petition. It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

Here, Applicant has failed to provide any statements of fact in support of the petition. Applicant provides copies of telephone logs evincing communication between inventors and other persons, but has not provided any statements of fact (Declarations) by any of these other persons who have first-hand knowledge of the facts relied upon to support the granting of the petition. Applicant has also provided copies of email communications between inventors and other persons, but has again failed to provide statements of fact (Declarations) by any of these other persons who have first-hand knowledge of the facts relied upon to support the granting of the petition.

For instance, regarding inventor Assaf Morag, an email apparently locates the inventor, but his last known address is not verified. He also apparently provides a telephone number, but again there is no statement of fact (Declaration) by the person communicating with the inventor as to what has transpired. Does the email communication purport to evince that the whereabouts of inventor Morag are known? If so, the response from inventor Morag belies an assertion that the inventor cannot be found or reached after diligent effort.

Applicable Law

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) as set forth above.

Applicant lacks item (1) set forth above.

As to item (1), where it is alleged that an applicant refuses to join an application, the applicant must establish that the nonsigning inventor was presented with the application for

signature. The Manual of Patent Examining Procedure ("MPEP") states that

> A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

MPEP 409.03(d).

Applicant must establish whether the nonsigning inventors have refused to join the application or cannot be found or reached after diligent effort. Where a refusal to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings), is alleged, all that is required is that the application is mailed to the nonsigning inventor at his or her last known address. Where it is alleged that an inventor cannot be found or reached after diligent effort, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor.

Applicant also provides copies of employment agreements and statements of irreparable damage. It is noted that these items are not required in a petition under 37 CFR 1.47(a), where at least one inventor has joined the application and application is being made by the joining inventor on his or her own behalf and on behalf of the nonsigning inventor(s). The items are required in a petition filed under 37 CFR 1.47(b), where none of the inventors agree to, or are available to join the application, and a petition is filed to allow a person to whom the invention has been assigned, or who otherwise shows sufficient proprietary interest in an application, to proceed with the application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 8

GLENN PATENT GROUP
3475 EDISON WAY
SUITE L
MENLO PARK, CA 94025

COPY MAILED
MAY 1 0 2004
OFFICE OF PETITIONS

In re Application of: :
Baharav et al. : ON PETITION
Application No. 10/359,414 :
Filed: February 5, 2003 :
Title of Invention: DISTRIBUTED :
SYSTEM AND METHOD FOR MANAGING :
COMMUNICATIONS AMONG HEALTHCARE :
PROVIDERS, PATIENT AND THIRD PARTIES

This is in response to a Request for Reconsideration of a petition under 37 CFR 1.47(a), filed February 19, 2004, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **granted**.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

Petitioner has shown that the non-signing inventors, Ophir Baharav, David Weinstein, Assaf Morag and Gary Gannot, refuse to join in the application.

As provided in Rule 1.47(a), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being returned to the Office of Initial Patent Examination for continued processing.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Mr. Gary Gannot
241 Stanford Avenue
Kensington, CA 94708-1103

In re Application of:
Baharav et al.
Application No. 10/359,414
Filed: February 5, 2003
Title of Invention:
DISTRIBUTED SYSTEM AND METHOD FOR MANAGING COMMUNICATIONS AMONG HEALTHCARE PROVIDERS, PATIENT AND THIRD PARTIES

LETTER

COPY MAILED
MAY 1 0 2004
OFFICE OF PETITIONS

Dear Mr. Gannot:

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: GLENN PATENT GROUP
3475 EDISON WAY
SUITE L
MENLO PARK, CA 94025

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. Ophir Baharav
25010 La Loma Drive
Los Altos, CA 94022

In re Application of:
Baharav et al.
Application No. 10/359,414
Filed: February 5, 2003
Title of Invention:
DISTRIBUTED SYSTEM AND METHOD FOR MANAGING COMMUNICATIONS AMONG HEALTHCARE PROVIDERS, PATIENT AND THIRD PARTIES

LETTER

COPY MAILED
MAY 1 0 2004
OFFICE OF PETITIONS

Dear Mr. Baharav:

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.

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Derek L. Woods
Petitions Attorney
Office of Petitions

cc: GLENN PATENT GROUP
3475 EDISON WAY
SUITE L
MENLO PARK, CA 94025

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. David Weinstein
2 Scenic Court
Danville, CA 94506

In re Application of:	:	
Baharav et al.	:	LETTER
Application No. 10/359,414	:	
Filed: February 5, 2003	:	
Title of Invention:	:	
DISTRIBUTED SYSTEM AND METHOD FOR	:	
MANAGING COMMUNICATIONS AMONG	:	
HEALTHCARE PROVIDERS, PATIENT AND	:	
THIRD PARTIES	:	

COPY MAILED
MAY 1 0 2004
OFFICE OF PETITIONS

Dear Mr. Weinstein:

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: GLENN PATENT GROUP
3475 EDISON WAY
SUITE L
MENLO PARK, CA 94025

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. Assaf Morag
834 Sutter Avenue
Palo Alto, CA 94303

In re Application of:
Baharav et al.
Application No. 10/359,414
Filed: February 5, 2003
Title of Invention:
DISTRIBUTED SYSTEM AND METHOD FOR MANAGING COMMUNICATIONS AMONG HEALTHCARE PROVIDERS, PATIENT AND THIRD PARTIES

LETTER

COPY MAILED
MAY 1 0 2004
OFFICE OF PETITIONS

Dear Mr. Morag:

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: GLENN PATENT GROUP
3475 EDISON WAY
SUITE L
MENLO PARK, CA 94025

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Paper No. 5

Brian J. Hoffman
FENWICK & WEST L.L.P.
Silicon Valley Center
801 California Street
Mountain View, CA 94041

MAILED

JUN 18 2004

Technology Center 2100

In re Application of:
William E. Sobel
Application No. 10/359,416
Filed: February 05, 2003
For: STRUCTURED ROLLOUT OF UPDATES TO MALICIOUS COMPUTER CODE DETECTION DEFINITIONS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed June 03, 2004.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed June 03, 2004 meets all the requirements. Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

James R. Matthews

for Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
703-305-9750

cc: Edward J. Radlo
SONNENSCHEIN NATH & ROSENTHAL LLP
685 Market Street, 6th Floor
San Francisco, CA 94105

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COMMISSIONER FOR PATENTS
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Paper No. 9

Black & Decker
701 E. Joppa Road
Towson, MD 21286

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APR 0 9 2004
OFFICE OF PETITIONS

In re Application of :
Heinz-Werner Faatz :
Application No. 10/359,423 :
Filed: February 6, 2003 :
Attorney Docket No. P-US-PR1067 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 29, 2004, to revive the above-identified application.

The petition is Granted.

The above-identified application became abandoned for failure to reply in a timely manner in reply to the Notice to File Missing Parts of Application mailed March 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 have been obtained. Accordingly, the application became abandoned on May 22, 2003.

The application file is being forwarded to the Office of Initial Patent Examination Division for further processing.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

Latrice Bond

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 7

PATRICK J. HALLORAN
AVENTIS PASTEUR INC.
INTELLECTUAL PROPERTY – KNERR BUILDING
ONE DISCOVERY DRIVE
SWIFTWATER, PA 18370

COPY MAILED

APR 20 2005

OFFICE OF PETITIONS

In re Application of	:	
Huebner et al.	:	
Application No. 10/359,435	:	ON PETITION
Filed: February 6, 2003	:	
Attorney Docket No. API-98-200-USDIV	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 18, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed April 23, 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 24, 2003. A Notice of Abandonment was mailed on June 18, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

The file is now being forwarded to the Office of the Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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PITNEY, HARDIN, KIPP & SZUCH, LLP
685 THIRD AVENUE
NEW YORK, NY 10017-4024

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SEP 17 2004

OFFICE OF PETITIONS

In re Application of	:
Michael J. McMahon et al	:
Application No. 10/359,441	: DECISION ON PETITION
Filed: February 6, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 769-333 Cont.	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 29, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;[1]
> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

---

[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

The instant pending application was filed on February 6, 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 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.

This application is being referred to Technology Center Art Unit 3721 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to prior-filed nonprovisional Application No. 09/631,179, filed August 2, 2000.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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LOUIS J. WILLE
BRISTOL-MYERS SQUIBB COMPANY
PATENT DEPARTMENT
P O BOX 4000
PRINCETON NJ 08543-4000

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OFFICE OF PETITIONS

In re Patent No. 6,919,368	:	
KO et al.	:	DECISION ON REQUEST
Issue Date: July 19, 2005	:	FOR RECONSIDERATION OF
Application No. 10/359,443	:	PATENT TERM ADJUSTMENT
Filed: February 6, 2003	:	and
Atty Docket No. PH7152A DIV 1	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "Petition To Correct Patent Term Adjustment Period In Granted Patent Under 37 CFR 1.702 (a)(4)" filed September 18, 2005. Patentees request that the Patent Term Adjustment for the above-identified patent be set at 22 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 twenty-two (22) days.

On July 19, 2005, the above-identified application matured into U.S. Patent No. 6,919,368. The instant request for reconsideration filed September 18, 2005 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of zero (0) days. Patentees contend that the communication submitted after the mailing of the Notice of Allowance did not constitute a failure by the Patentees to engage in reasonable efforts to conclude processing or examination of the above-identified application as set forth in 37 CFR § 1.704. In essence, Patentees' dispute the reduction of record, one for 120 days associated with the filing of a "miscellaneous incoming letter" received in the Office on September 16, 2005. Patentees state that the paper filed was a Request for Clarification of the allowed claims in the notice of allowance. Thus, no reduction is warranted.

Patentees' contention is well taken. The OG Notice states that:

> … the Office is publishing this notice to provide guidance in interpreting the provisions of 37 CFR 1.704(c)(10) to clarify that submission of certain papers after a "Notice of Allowance," which do not cause substantial interference and delay in the patent issue process, are not considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application. The following are examples of such papers: (1) Issue Fee Transmittal (PTOL-85B), (2) Power of Attorney, (3) Power to Inspect, (4) Change of Address, (5) Change of Status (small/not small entity status), (6) a response to the examiner's reasons for allowance, and (7) letters related to government interests (e.g., those between NASA and the Office). Therefore, the submission of these papers after a Notice of Allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and would not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10).

In view thereof, the patent term adjustment indicated on the patent should be twenty-two (22) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by twenty-two (22) days.

Telephone inquiries specific to this matter should be directed to Charlema R. Grant, Petitions Attorney at (571) 272-3215.

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 : 6,919,368 B2

DATED : July 19, 2005

INVENTOR(S) : KO 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 22 days--

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PARTEA L. PABST
PABST PATENT GROUP, LLP
400 COLONY SQUARE, SUITE 1200
1201 PEACHTREE STREET
ATLANTA, GA 30361

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OFFICE OF PETITIONS

In re Application of	:	
DAVIS, Raymond E.	:	
Application No. 10/359,445	:	DECISION ON PETITION
Filed: February 5, 2003	:	TO WITHDRAW
Attorney Docket No. **22956-0816(MIT5082)**	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 30, 2007.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to **PABST PATENT GROUP, LLP** has been revoked by the assignee of the patent application on October 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 the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **NUTTER MCCLENNEN & FISH LLP**
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON MA 02210-2604

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:091707

DATE : September 17, 2007

TO SPE OF : ART UNIT 1645

SUBJECT : Request for Certificate of Correction on Patent No.: 7064195 / 10359459

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.

MT

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:

see attached Detailed Action

JEFFREY SIEW
SUPERVISORY PATENT EXAMINER

SPE: Jeffrey Siew **Art Unit** 1645

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:080910

DATE : September 15, 2008

TO SPE OF : ART UNIT 1645

SUBJECT : Request for Certificate of Correction on Patent No.: 6977069

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:

see attached Detailed Action

SPE: /Robert Mondesi/ **Art Unit** 1645

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WARE FRESSOLA VAN DER SLUYS &
ADOLPHSON, LLP
BRADFORD GREEN, BUILDING 5
755 MAIN STREET, P O BOX 224
MONROE CT 06468

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AUG 0 6 2007

OFFICE OF PETITIONS

In re Application of
Jorma Lilleberg et Al.
Application No. 10/359,472
Filed: February 5, 2003
Attorney Docket No. **944-005.013**

on Petition

This is a decision on the petition filed July 9, 2007 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition under 37 CFR 1.137 (b) Is **GRANTED**.

A Notice of Allowability, mailed February 12, 2007, required the submission of Corrected Drawings on or before May 14, 2007. This application became abandoned May 15, 2007. Accordingly, a Notice of Abandonment was mailed June 8, 2007.

All other requirements under 37 CFR 1.137(b) having been met, this matter is being referred to the Publishing Division.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

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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JUN - 3 2005

#13

TIGHE PATTON ARMSTRONG TEASDALE PLLC
PATENTS
BOX 27519
WASHINGTON, DC 20038-7519

In re application of David B. Dort Application No. 10/359,473 Filed: February 6, 2003 For: METHOD PROVIDING CONTINGENCY ACCESS TO VALUBALE ACCOUNTS OR INFORMATION	:	**DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION)**

This in response to the petition filed on February 21, 2004 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. Regarding item (B), the petition fails 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 of Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(571) 272-6611

SNM/dew: 6/2/05

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Paper No. 8

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

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JUN 07 2004
OFFICE OF PETITIONS

In re Application of	:
Lambrecht et al.	: DECISION ON PETITIONS
Application No. 10/359,516	: UNDER 37 CFR 1.78(a)(3) AND
Filed: 5 February, 2003	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. INTRIN.1CP/CP1	:

This is a decision on the petition filed on 11 August, 2003, which is 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 prior-filed Application Nos. 10/055,504, filed on 25 October, 2001; 10/325,320, filed on 19 December, 2002; 09/696,636, filed on 25 October, 2000; 09/608,797, filed on 30 June, 2000, and for priority to previously non-claimed provisional Application Nos. 60/149,490, filed on 18 August, 1999; 60/161,085, filed on 25 October, 1999, and 60/172,996, filed on 21 December, 1999.

The petitions are **GRANTED**

A petition for acceptance of a late claim for benefit under 37 CFR 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after 29 November, 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;[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 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application was filed on 5 February, 2003, and was pending at the time of filing of the instant petition. Additionally, the nonprovisional applications were filed within 12 months of the provisional applications to which priority under 35 U.S.C. § 119(e) is now being claimed. An amendment to insert a reference to the first sentence of the specification following the title, which is embodied in the present petition, has been submitted as required by 37 CFR 1.78(a)(2)(iii) and 1.78(a)(5)(iii).

The instant nonprovisional application was filed after 29 November, 2000, and the claim for priority herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii).[2] Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(3) and 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed nonprovisional and provisional applications 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) and 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the

---

[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 and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate. (see § 1.14).

[2] See 35 U.S.C. § 120 and 119(e).

PAGE 7/46 * RCVD AT 2/13/2007 7:02:15 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-3/12 * DNIS:2734856 * CSID: * DURATION (mm-ss):11-58

prior-filed applications. 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) and 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 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 applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at 703-308-6918.

The application is being forwarded to the Office of Initial Patent Examination for further processing. Afterwards, the application will be forwarded to Technology Center Art Unit 3738 for appropriate action on the amendment submitted on 11 August, 2003, including consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) for the benefit of the prior-filed nonprovisional applications, and for consideration of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(4) and (5) for the benefit of the prior-filed provisional applications.

Charles A. Pearson
Director, Office of Petitions

Encl: Corrected Filing Receipt

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IRVINE CA 92614

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OFFICE OF PETITIONS

In re Application of	:
Lambrecht et al.	: DECISION ON PETITIONS
Application No. 10/359,516	: UNDER 37 CFR 1.78(a)(3) AND
Filed: 5 February, 2003	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. INTRIN.1CP4CP1	:

This is a decision on the petition filed on 11 August, 2003, which is 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 prior-filed Application Nos. 10/055,504, filed on 25 October, 2001; 10/325,320, filed on 19 December, 2002; 09/696,636, filed on 25 October, 2000; 09/608,797, filed on 30 June, 2000, and for priority to previously non-claimed provisional Application Nos. 60/149,490, filed on 18 August, 1999; 60/161,085, filed on 25 October, 1999, and 60/172,996, filed on 21 December, 1999.

The petitions are **GRANTED**

A petition for acceptance of a late claim for benefit under 37 CFR 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after 29 November, 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;[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 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application was filed on 5 February, 2003, and was pending at the time of filing of the instant petition. Additionally, the nonprovisional applications were filed within 12 months of the provisional applications to which priority under 35 U.S.C. § 119(e) is now being claimed. An amendment to insert a reference to the first sentence of the specification following the title, which is embodied in the present petition, has been submitted as required by 37 CFR 1.78(a)(2)(iii) and 1.78(a)(5)(iii).

The instant nonprovisional application was filed after 29 November, 2000, and the claim for priority herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii).[2] Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(3) and 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed nonprovisional and provisional applications 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) and 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the

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[1]Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate. (*see* § 1.14).

[2]See 35 U.S.C. § 120 and 119(e).

prior-filed applications. 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) and 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 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 applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at 703-308-6918.

The application is being forwarded to the Office of Initial Patent Examination for further processing. Afterwards, the application will be forwarded to Technology Center Art Unit 3738 for appropriate action on the amendment submitted on 11 August, 2003, including consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) for the benefit of the prior-filed nonprovisional applications, and for consideration of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(4) and (5) for the benefit of the prior-filed provisional applications.

Charles A. Pearson
Director, Office of Petitions

Encl: Corrected Filing Receipt

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UNITED STATES PATENT AND TRADEMARK OFFICE
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EYE TICKET CORPORATION
SUITE 713
8201 GREENSBORO DRIVE
McLEAN, VA 22102

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OFFICE OF PETITIONS

In re Application of :
Evan Ronald Smith et al :
Application No. 10/359,538 : ON PETITION
Filed: February 7, 2003 :
Attorney Docket No. :

This is a decision on the petition under 37 CFR 1.137(b), filed February 13, 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)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed March 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 May 22, 2003.

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)).

All the requirements being met. However, the petition lacks the signature of the second inventor. 37 CFR 1.33 (b) states that amendments and other papers, except for written assertions pursuant to § 1.27 (c)(2)(ii) of this part, filed in the application must be signed by:

(1) A registered attorney or agent not of record who acts in a representative capacity under provisions of § 1.34(b);

(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);

(3) An assignee as provided for under § 3.71(b) of this chapter; or

(4) **All of the applicants** (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Crystal Plaza Two, Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202

By fax: (703) 872-9306
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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www.uspto.gov

McDERMOTT, WILL & EMERY
600 13th Street, N.W.
Washington DC 20005-3096

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FEB 0 2 2005

OFFICE OF PETITIONS

In re Application of :
Saito et al. :
Application No. 10/359,553 : ON PETITION
Filed: February 7, 2003 :
Attorney Dck't. No. 61352-036 :

This is a decision on the petition filed February 7, 2003, and resubmitted July 2, 2004, requesting (1) under 37 CFR 1.183 waiver of the provisions of 37 CFR 1.213(a) such that the above-identified application not be published, or, in the alternative, if the aforementioned relief not be granted, that (2) the concurrently filed Request for Non-Publication "be discarded,." and (3) the petition for revival under 37 CFR 1.137(b) for abandonment under 37 CFR 1.137(f).

The petitions are **dismissed**.

Petitioners assert that a counterpart Japanese application No. 2001-339,498 filed November 5, 2001, has been withdrawn prior to publication, and, as such, the "primary basis for allowing an application not to be published [having] been satisfied" petitioners request that the instant application not be published other than by way of issuance as a patent.

As to waiver under 37 CFR 1.183

37 CFR 1.183, by its terms, cannot be invoked to overcome any requiremnt of the reguations that is also a requirement of the patent statute. Comparison of 35 U.S.C. § 122 (b)(i) with its promulgating regulation 37 CFR 1.213(a), reveals that both statute and regulation condition pre grant publication in the United States upon the mere **filing** of a counterpart application in a foreign country or under a multilateral international agreement that requires that applications be published at 18 months. That is, pre grant publication is clearly not also conditioned on the ultimate publication–or even the continuing pendency–of the counterpart application in the foreign country or under the multilateral international agreement; only the **filing**. Since the invention filed in the U.S. was the subject of the filed Japanese counter part applications, then the statutory condition warranting publication of the instant application has been met. It is immaterial that the counterpart Japanese applications were withdrawn or will not now be published; that they were filed in a country that publishes applications in 18 months is the qualifying and triggering event for publication of the instant application. Accordingly,

since petitioner seeks waiver of a condition that is statutory as well as regulatory, the requested waiver simply cannot be granted. The USPTO simply lacks the authority or discretion to relax any requirement of law. See Baxter Int'l, Inc. v. McGaw, Inc., 149 F.3d 1321, 1334, 47 USPQ2d 1225, 1234-1235 (Fed. Cir. 1998)(the PTO cannot, by rule, or waiver of the rules, fashion a remedy that contravenes 35 U.S.C. §§ 112, 120); A. F. Stoddard v. Dann, 564 F.2d 556, 566, 195 USPQ 97, 105 (D.C. Cir 1977), (since the USPTO is an executive branch agency, it must follow the strict provisions of the applicable statute). Here, the USPTO lacks the authority and the discretion to waive the language of 37 CFR 1.213(a) as that language is also statutory. See 35 USC 122(b)(i). Petitioner's comment about the "primary objective" of the non publication provision of the rule, which also appears in the statute, is not persuasive. Whatever may be the primary objective of Congress when it legislates is immaterial if that objective does not appear in the statute.[1] Since the statute conditions U.S. publication on the mere filing of a counterpart application, and not also on the publication of the counterpart, the USPTO cannot waive the statutory requirement for publication of this application, notwithstanding the withdrawal and consequent non-publication of the counterpart Japanese application.

As to the requested "discard" of the Non Publication request

The meaning of petitioner's request is not clear. Petitioner is reminded that a given paper may, under appropriate circumstances, be expunged under 37 CFR 1.59(b), or, say, a non publication request may be "rescinded" if the requirements of the controlling rule are met. See 37 CFR 1.213(b)(1)-(b)(3). Since the request for "discard" is bundled within a paper styled as a petition for the Office of Petitions, this request lacks compliance with 37 CFR 1.4(c). Petitions under 37 CFR 1.59(b) are decided by the Technology Center, and requests for rescission under 37 CFR 1.213(b)(1)-(b)(3) are treated by Pre Grant Publication Division. As such, it would be improper speculation for the Office of Petitions to attempt to divine petitioner's meaning and then itself act on petitioner's request. Petitioner has apparently restated the request in a separate paper filed July 2, 2004, by filing a request for rescission of the prior non-publication request

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[1] As the Federal Circuit noted when construing § 254 in Southwest Software v. Harlequin, 226 F.3d 852, 56 USPQ2d 1161 (Fed. Cir. 2000):

> We begin the process of statutory interpretation with the language of the statute. See Van Wersch v. Department of Health &Human Servs., 179 F.3d 1144, 1148 (Fed. Cir. 1999) (citing VE Holding Corp. v. Johnson Gas Appliance Co., 917 F.2d 1574, 1579, 16 USPQ2d 1614, 1618(Fed. Cir. 1990)). If the language is clear, the plain meaning is conclusive. See id. at 1152 (holding that Congressional intent, as clearly expressed in legislative history, could not "trump the irrefutably plain [statutory] language that emerged when Congress actually took pen to paper").

As to revival under 37 CFR 1.137(b):

Petitioner also requests that if the instant application has been deemed abandoned based on Rule 1.213(c), then the application be revived under 37 CFR 1.137(b).

The record discloses that, on the date of filing of the instant application, a Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) was filed certifying that "the invention disclosed in the attached application has not and will not be the subject of an application filed and published in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing."[2]

Petitioner now requests under 35 U.S.C. § 122(b)(2)(B)(ii) that the Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) be rescinded and the application revived because this application became abandoned for failure to notify the Office of the filing of a corresponding international or foreign application. In this regard, 35 U.S.C. § 122((b)(2)(B)(iii) states:

> An applicant who has made a request under clause (i) but who subsequently files, in a foreign country or under a multilateral international agreement specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional [emphasis supplied.

The facts of this case are that the subject application was filed on February 7, 2003, and the only known (on the record) corresponding foreign application was filed on November 5, 2001. The statute does not provide for the situation where a certification under 35 U.S.C. § 122(b)(2)(B)(i) was made, despite the fact that an application was previously filed in another country or under the multilateral international agreement. In view of petitioner's statement that the corresponding foreign application was filed on November 5, 2001, long prior to the filing of the subject application, the filing of the corresponding foreign application cannot be considered to have been filed subsequent

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[2] It is noted that the original language in the USPTO form PTO/SB/35 was modified by applicants to include "and published." While use of USPTO-generated forms is not obligatory, the USPTO **must** request that its as-printed forms not be modified and be used as is. Any departures in content of USPTO forms made by applicants have not been given the usual government required vetting procedures and clearances. Leaving other information undisturbed (*e.g.*, OMB control number) on an applicant-modified form unfortunately gives the totally false impression that the applicant-modified form has been scrutinized and approved for use by various agencies within the U.S. government charged with such processing.

to the filing of the subject application in the United States. The statute at 35 U.S.C. § 122(b)(2)(B)(iii) only provides for revival in the situation where a certification was made under 35 U.S.C. § 122(b)(2)(B)(i) at the time of filing the application and an application was subsequently filed in a foreign country without notifying the Office within 45 days of the filing thereof.

Since the corresponding foreign or international application was filed prior to the filing date of the subject application, this application did not become abandoned pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii). Therefore, a petition to revive pursuant to the provisions of 37 CFR 1.137(b) is inappropriate and, consequently, must be dismissed.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. See 35 U.S.C. § 41(c)(7). Accordingly, as authorized, the required $1300 petition fee has been charged to Deposit Account No. 50-0417.

The rescission on July 2, 2004 of the request for non publication has been brought to the attention of Pre Grant Publication Division.

Telephone inquiries relative to this decision should be directed to the undersigned at (703) 305-1820.

Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

HOGAN & HARTSON LLP
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555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004

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JAN 14 2004

OFFICE OF PETITIONS

In re Application of Bert Bradford and Richard Lodwig Application No. 10/359,555 Filed: February 7, 2003 Title: SYSTEM AND METHOD FOR DOPPLER TRACK CORRELATION FOR DEBRIS TRACKING	DECISION REFUSING STATUS UNDER 37 CFR 1.47

This is in response to the "PETITION UNDER 37 C.F.R. § 1.47," filed November 14, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing legal representative. **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 February 7, 2003, without an executed oath or declaration, missing the statutory basic filing fee and with additional claim fees due. Bert Bradford and Richard Lodwig were named as joint inventors. Accordingly, on April 14, 2003, applicants were mailed a "Notice to File Missing Parts of Application," requiring *inter alia* an executed oath or declaration, and a surcharge for late filing. This Notice set a period for reply of two months, with extensions of time obtainable under § 1.136(a).

In response, applicants filed the instant petition[1] and late surcharge. Rule 47 applicant submits two declarations. One declaration identifies inventors Bradford and Lodwig and is executed by inventor Bradford on behalf of himself and on behalf of non-signing inventor Lodwig. The other declaration is executed and includes signature blocks for inventor Bradford and for the heirs of deceased inventor Lodwig. Rule 47 applicant

[1] This response was made timely by an accompanying petition (and fee) for extension for response within the fifth month.

maintains that status under 37 CFR 1.47(a) is proper because inventor Lodwig is deceased and his heirs refuse to sign the declaration.

A grantable petition under 37 C.F.R. 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition is not grantable because requirement (2) has not been met. The first declaration is not acceptable because 47 status is not applicable to deceased joint inventor Lodwig. 37 CFR 1.47 should not be considered an alternative to 37 CFR 1.42 or 35 U.S.C. 117 since the language "cannot be found or reached after diligent effort" has no reasonable application to a deceased inventor. *In re Application Papers Filed September 10*, 1954, 108 USPQ 340 (Comm'r Pat. 1955). See 37 CFR 1.42 and MPEP § 409.01. Accordingly, a declaration signed by one inventor on behalf of himself and on behalf of the deceased inventor is not acceptable.

37 CFR 1.47 does apply where a known legal representative of a deceased inventor cannot be found or reached after diligent effort, or refuses to make application. A declaration executed by the available joint inventor on behalf of himself and on behalf of the non-signing legal representative(s) of the deceased inventor could be present. However, such a declaration must still identify all inventors by name, residence/post office address, and citizenship, including the deceased inventor. The last known residence/post office address for Mr. Lodwig prior to his death should be used. The declaration(s) should continue to identify Sandra Lodwig and/or Richard Lodwig as the heirs of inventor Lodwig, and include their name, citizenship, residence, and mailing address. The second declaration is not acceptable because it was not executed by inventor Bradford and does not identify inventor Lodwig as the second inventor.

It is further noted that for inventor Bradford the declaration should include the post office address where he customarily receives mail.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By hand: CUSTOMER SERVICE WINDOW
2011 South Clark Place
Crystal Plaza Two Lobby
Arlington, VA 22202

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Req for Reconsideration Due 3-14-04

In re Application of
Bert Bradford and
Richard Lodwig
Application No. 10/359,555
Filed: February 7, 2003
Title: SYSTEM AND METHOD FOR DOPPLER TRACK CORRELATION FOR DEBRIS TRACKING

DECISION REFUSING STATUS UNDER 37 CFR 1.47

This is in response to the "PETITION UNDER 37 C.F.R. § 1.47," filed November 14, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing legal representative. **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 February 7, 2003, without an executed oath or declaration, missing the statutory basic filing fee and with additional claim fees due. Bert Bradford and Richard Lodwig were named as joint inventors. Accordingly, on April 14, 2003, applicants were mailed a "Notice to File Missing Parts of Application," requiring *inter alia* an executed oath or declaration, and a surcharge for late filing. This Notice set a period for reply of two months, with extensions of time obtainable under § 1.136(a).

In response, applicants filed the instant petition[1] and late surcharge. Rule 47 applicant submits two declarations. One declaration identifies inventors Bradford and Lodwig and is executed by inventor Bradford on behalf of himself and on behalf of non-signing inventor Lodwig. The other declaration is executed and includes signature blocks for inventor Bradford and for the heirs of deceased inventor Lodwig. Rule 47 applicant

[1] This response was made timely by an accompanying petition (and fee) for extension for response within the fifth month.

maintains that status under 37 CFR 1.47(a) is proper because inventor Lodwig is deceased and his heirs refuse to sign the declaration.

A grantable petition under 37 C.F.R. 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition is not grantable because requirement (2) has not been met. The first declaration is not acceptable because 47 status is not applicable to deceased joint inventor Lodwig. 37 CFR 1.47 should not be considered an alternative to 37 CFR 1.42 or 35 U.S.C. 117 since the language "cannot be found or reached after diligent effort" has no reasonable application to a deceased inventor. *In re Application Papers Filed September 10, 1954*, 108 USPQ 340 (Comm'r Pat. 1955). See 37 CFR 1.42 and MPEP § 409.01. Accordingly, a declaration signed by one inventor on behalf of himself and on behalf of the deceased inventor is not acceptable.

37 CFR 1.47 does apply where a known legal representative of a deceased inventor cannot be found or reached after diligent effort, or refuses to make application. A declaration executed by the available joint inventor on behalf of himself and on behalf of the non-signing legal representative(s) of the deceased inventor could be present. However, such a declaration must still identify all inventors by name, residence/post office address, and citizenship, including the deceased inventor. The last known residence/post office address for Mr. Lodwig prior to his death should be used. The declaration(s) should continue to identify Sandra Lodwig and/or Richard Lodwig as the heirs of inventor Lodwig, and include their name, citizenship, residence, and mailing address. The second declaration is not acceptable because it was not executed by inventor Bradford and does not identify inventor Lodwig as the second inventor.

It is further noted that for inventor Bradford the declaration should include the post office address where he customarily receives mail.

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By hand: CUSTOMER SERVICE WINDOW
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Arlington, VA 22202

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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WASHINGTON, DC 20004

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MAR 2 4 2004

OFFICE OF PETITIONS

In re Application of Bert Bradford and Richard Lodwig Application No. 10/359,555 Filed: February 7, 2003 Title: SYSTEM AND METHOD FOR DOPPLER TRACK CORRELATION FOR DEBRIS TRACKING	DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the "REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. § 1.47(a)," filed March 15, 2004.

The petition is **GRANTED**.

The above-identified application was filed on February 7, 2003, without an executed oath or declaration, missing the statutory basic filing fee and with additional claim fees due. Bert Bradford and Richard Lodwig were named as joint inventors. In response to the "Notice to File Missing Parts of Application," mailed April 14, 2003, applicants filed the initial petition under § 1.47.

Therein, applicant stated that inventor Lodwig is deceased and that his heirs refuse to sign the declaration. In support thereof, applicant submitted the required statement of facts by affidavit of patent attorney Ajit Vaidya. However, the petition was dismissed as the declarations presented were not accepted.

On instant renewed petition, rule 47 applicant submitted a declaration executed by Bert Bradford on behalf of himself and on behalf of the non-signing legal representatives of deceased inventor Lodwig. The declaration filed March 15, 2004 has been reviewed and found acceptable.

This application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the legal representatives of the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to Technology Center Art Unit 3662 for examination 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450,
ALEXANDRIA, VA 22313-1450
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Richard Lodwig
112 Elkridge Way-NE
Leesburg VA 20176-4827

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In re Application of :
Bert Bradford and :
Richard Lodwig : LETTER
Application No. 10/359,555 :
Filed: February 7, 2003 :
Title: SYSTEM AND METHOD FOR :
DOPPLER TRACK CORRELATION FOR :
DEBRIS TRACKING :

Dear Mr. Lodwig:

Your father, Richard Lodwig, is named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 117 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application he will be designated therein as a joint inventor.

You have been identified as his heir and if you are his heir, 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 Richard Lodwig 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

Thomas Edman
HOGAN & HARTSON LLP
IP GROUP, COLUMBIA SQUARE
555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004
(202) 637-5600

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Sandra Lodwig
6473 Saddlebrook Lane
Frederick MD 21701

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MAR 2 4 2004
OFFICE OF PETITIONS

In re Application of :
Bert Bradford and :
Richard Lodwig : LETTER
Application No. 10/359,555 :
Filed: February 7, 2003 :
Title: SYSTEM AND METHOD FOR :
DOPPLER TRACK CORRELATION FOR :
DEBRIS TRACKING :

Dear Ms. Sandra Lodwig:

Richard Lodwig is named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 117 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application he will be designated therein as a joint inventor.

You have been identified as his heir and if you are his heir, 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 Richard Lodwig 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

Thomas Edman
HOGAN & HARTSON LLP
IP GROUP, COLUMBIA SQUARE
555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004
(202) 637-5600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : **AUGUST 15, 2007**

TO SPE OF : ART UNIT **2629**

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/359,571 Patent No.: 7215304

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within 7 days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**.

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within 7 days, to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☑ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: [redacted] it is just typing error and Printing error. OK

BIPIN SHALWALA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

SPE — **Art Unit** 2629

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* cited by examiner

Staple Here Only!

PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

APPLICATION NO. : 10/359,571

PATENT NO. : 7215304

DATED : May 08, 2007

INVENTOR(S): Hiroshi TSUCHIYA, et al.

It is certified that an error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Page 2 of Title page, item "(56) References Cited", under "FOREIGN PATENT DOCUMENTS", delete "JP WO 01/064874 A1 1/2001"; OK

Change "JP 2001-55867 2/2001" to --JP 2001-56667 2/2001--; OK

Change "JP 2001-080076 A 3/2001" to --JP 2001-060076 A 3/2001-- OK

JUL 17 2007

WDC99 1423575-1.065933.0018

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PILLSBURY WINTHROP LLP
P.O. BOX 10500
MCLEAN, VA 22102

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OFFICE OF PETITIONS

In re Application of :
Tadahiro Ohmi et al :
Application No. 10/359,592 :
Filed: February 7, 2003 :
Attorney Docket No. P 301704
EL01006CDC-DIV1

ON PETITION

This is a decision on the petition, filed May 28, 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.

The file will be forwarded to Technology Center AU 2818 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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Paper No. 9

MOETTELI & ASSOCIES SARL
CASE POSTALE 486
AVE DE FRONTENEX 6
GENEVA 12 CH-12-11 CH SWITZERLAND

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Patrick M. White et al.
Application No. 10/359,605
Filed: February 7, 2003
Attorney Docket No.: P-319NP (FMBR)

This is a decision on the renewed petition filed March 15, 2004, under 37 CFR 1.137(b) to revive the above-identified application.[1]

The petition is **GRANTED**.

The application was held abandoned on June 16, 2003, for failure to timely file a response to the Notice to File Corrected Application Papers mailed April 15, 2003 requiring replacement drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121. The Notice mailed April 15, 2003 also indicated that Figures 22, 23, 24 and 25 described in the specification appeared to have been omitted. A two (2) month period for reply was set. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed February 3, 2004.

Petitioner files the instant petition under 37 CFR 1.137(b). [2]

All requirements of 37 CFR 1.137(b) having now been met, this application is in an active status and will be examined in due course. The petition fee in the amount of $665.00 has been charged to deposit account no. 50-2621.

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

---

[1]A petition under 37 CFR 1.137(b) was filed January 22, 2004 and dismissed in a decision mailed February 27, 2004. The balance of the deposit account used to charge the petition fees was insufficient.

[2]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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Paper No. 11

MOETTELI & ASSOCIES SARL
CASE POSTALE 486
AVE DE FRONTENEX 6
GENEVA 12 CH-12-11 CH SWITZERLAND

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MAR 1 9 2004

OFFICE OF PETITIONS

In re Application of
Patrick M. White et al.
Application No. 10/359,605
Filed: February 7, 2003
Attorney Docket No.: P-319NP (FMBR)

ON PETITION

This is a decision on the Response to Notice to File Corrected Application Papers filed January 22, 2004, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of February 7, 2003, with Figures 22, 23, 24 and 25 described in the specification as a part of the original disclosure.

The petition is **DISMISSED**.

On February 7, 2003, the application was filed.

On April 15, 2003, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Corrected Application Papers stating that the application had been accorded a filing date of February 7, 2003, but that 1) replacement drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121 were required and 2) that Figures 22, 23, 24 and 25 described in the specification appeared to have been omitted from the application. A two (2) month period for reply was set.

In response, on January 22, 2004, with a petition to revive, electronically reproducible drawings (replacement drawings in compliance with 37 CFR 1.184 and 37 CFR 1.121) including Figures 22, 23, 24 and 25 were filed.

Petitioner indicates that while Figures 22, 23, 24 and 25 were inadvertently omitted from the application as filed, they were "presented in a patent application which has published as US 6,475, 221 B1". Petitioner requests therefore that the application, including Figures 22, 23, 24 and 25, be accorded a filing date of February 7, 2003.

Petitioner's argument has been considered, but is not persuasive. As petitioners concede that the omitted drawing figures were not in fact filed on February 7, 2003, the application cannot be accorded a filing date of February 7, 2003, with Figures 22, 23, 24 and 25 as part of the original disclosure.

Petitioner's assertion that Figures 22, 23, 24 and 25, which were omitted on filing but was a part of a prior filed application and thus should be a part of the original disclosure of the instant application, also is not persuasive. Whether Figures 22, 23, 24 and 25 were a part of a prior filed application is not an issue here since the prior filed application was not specifically incorporated by reference into the disclosure of this application.[1] The mere reference to another application is not an incorporation of anything therein into the application containing the reference.[2] To allow one to

---

[1] See MPEP 608.01(p). It is noted that the transmittal sheet contained an incorporation by reference paragraph with a box next to it to be checked if the paragraph is applicable. As the box next to the incorporation by reference paragraph is not checked, it is apparent that no incorporation by reference was intended.

[2] See In re de Seversky, 177 USPQ 144, 146 (C.C.P.A. 1973); Dart Industries v. Banner, 207 USPQ 273, 276 (D.C. Cir. 1980).

retroactively incorporate by reference a second application into a first application would allow the addition of matter into an application that was not present on filing which would be contrary to our statutes and rules.

The application will be processed and examined using only the application papers present on February 7, 2003. The two (2) sheets of drawings containing Figures 22, 23, 24 and 25 filed on January 22, 2004, will be examined by the examiner for a determination that it contains no new matter.

As the present petition was not necessitated by an Office error, a petition fee of $130.00 will be assessed to counsel's deposit account, No. 50-2621, as authorized in the present petition.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of February 7, 2003, using the application papers filed on that date. Thereafter, the application will be forwarded to Technology Center 3732 for a determination that the two (2) sheets of drawings containing Figures 22, 23, 24 and 25 filed on January 22, 2004, does not contain new matter.

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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ALEXANDRIA, VA 22314

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OFFICE OF PETITIONS

In re Application of
Qin-Yi Tong et al
Application No. 10/359,608
Filed: February 7, 2003
Attorney Docket No. 216629US20

ON PETITION

This is a decision on the petition, filed May 2, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 20, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2823 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).

SPE: D. Lee

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/19/07

TO SPE OF : ART UNIT 2851

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/359,608 Patent No.: 6962835

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: Approved

SPE

2823
Art Unit

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K2G 5X3
CANADA

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OFFICE OF PETITIONS

In re Application of :
Roger Guevremont et al :
Application No. 10/359,642 :
Filed: February 7, 2003 :
Attorney Docket No. 151-09 US :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This application file is being referred to Publishing Division.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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PILLSBURY WINTHROP, LLP
P.O. BOX 10500
MCLEAN VA 22102

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:
Tadahiro Ohmi et al	:
Application No. 10/359,701	:
Filed: February 7, 2003	:
Attorney Docket No. 040258-0301708	:

This is a decision on the petition, filed February 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 November 5, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2818 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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MAIL Paper No. 8

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

APR 26 2004
DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Belaiche :
Application No. 10/359,705 :
Filed: February 07, 2003 :
For: METHOD FOR BALANCING THE RATIO EB/I IN A SERVICE MULTIPLEXING CDMA SYSTEM AND TELECOMMUNICATION SYSTEM USING THIS METHOD :

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed March 16, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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PILLSBURY WINTHROP, LLP
P.O. BOX 10500
MCLEAN, VA 22102

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JUN 2 4 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Tadahiro Ohmi et al :
Application No. 10/359,714 :
Filed: February 7, 2003 :
Attorney Docket No. EL01006CDC-DIV3 :

This is a decision on the petition, filed May 19, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 25, 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 N tice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

The examiner of Technology Center AU 2818 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SOFER & HAROUN LLP.
317 MADISON AVENUE,
SUITE 910
NEW YORK, NY 10017

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FEB 2 2 2007

OFFICE OF PETITIONS

In re Application of

Salzinger, et al. :

Application No. 10/359,770

: DECISION ON PETITION

Filed: February 7, 2003

:

Attorney Docket No. 034399.0004

This is a decision on the petition under 37 CFR 1.137(b), filed, October 12, 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 February 27, 2006, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on May 28, 2006. A Notice of Abandonment was mailed October 11, 2006.

The amendment filed October 12, 2006, is noted.

The application is being forwarded to Technology Center 3600, GAU 3625 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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MUSERLIAN, LUCAS AND MERCHANTI, LLP
475 PARK AVENUE SOUTH
15TH FLOOR
NEW YORK NY 10016

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OFFICE OF PETITIONS

In re Application of	:	
Takahiro Mori	:	
Application No. 10/359,776	:	ON PETITION
Filed: February 6, 2003	:	
Attorney Docket No. KON-1775	:	

This is a decision on the petition, filed November 1, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 6, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2854 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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Herman H. Hogues, Jr.
8430 Curran Blvd.
New Orleans LA 70127

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MAR 2 8 2007

OFFICE OF PETITIONS

In re Application of	:	
Herman H. Hogues, Jr.	:	
Application No. 10/359784	:	
Filing or 371(c) Date: 02/07/2003	:	
For: CORDLESS PEDAL FLUSH SYSTEM	:	DECISION
FOR A TANK-TYPE TOILET	:	ON PETITION

This is a decision on the "Petition for Withdrawal of the Holding of Abandonment, filed December 19, 2006.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Office communication, mailed October 18, 2005. The Office communication set a one (1) month period for reply. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the applicatiojn became abandoned November 19, 2005. A Notice of Abandonment was mailed September 12, 2006.

Applicant files the instant petition and avers non-receipt of the Notice. Applicant states that due to hurricane Katrina his home and office were totally destroyed. Applicant has demonstrated non-receipt of the Notice by a preponderance of the evidence. See,1298 OG 140, September 27, 2005, and www.usps.gov.

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn. No petition fee has been charged and none is due.

The application is being referred to Technology Center Art Unit 3751 for re-mailing of the Office communication.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

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UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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JAN 21 2004
OFFICE OF PETITIONS

In re Application of	:	
Perrier, et al.	:	
Application No. 10/359,788	:	ON PETITION
Filed: February 2, 2003	:	
Attorney Docket No. 11123.60US01	:	

This is a decision on the petition under 37 CFR 1.182(a), filed November 10, 2003 to change the order of inventors.

The petition is **GRANTED.**

The joint inventors will be listed on the application as follows:

Eric Perrier
Isabelle Bonnet
Delphine Rival

A corrected filing receipt is enclosed.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.

Kenya A. McLaughlin
Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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BASF CATALYSTS LLC
100 CAMPUS DRIVE
FLORHAM PARK, NJ 07932

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OFFICE OF PETITIONS

In re Application of	:	
Eric Perrier, et. al.	:	
Application No. 10/359,788	:	DECISION ON PETITION
Filed: February 7, 2003	:	
Attorney Docket No. 5249 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 37CFR 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 October 19, 2007, and no extension 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 1.1997(b). As no claim was allowed, the application became abandoned on December 20, 2007. See MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination and $810; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

This application is being referred to Technology Center AU 1651 for appropriate action by the Examiner in the normal course of business.

Andrea Smith
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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ANN M. CAVIANI PEASE
DECHERT LLP
P. O. BOX 10004
PALO ALTO, CALIFORNIA 94303

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NOV 07 2005

OFFICE OF PETITIONS

In re Application of	:
Linda G. Lee	:
Application No. 10/359,826	: DECISION ON PETITION
Filed: February 7, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 375461-003D2C1	:
(355340)	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 28, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional Application No. 09/385,352, as set forth in the supplemental Application Data Sheet (ADS) filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition satisfies the above requirements. Accordingly, the claim for priority under 35 U.S.C. § 120 is accepted as having been unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37

CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 1637 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

Best Available Copy

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 02/06/08

TO SPE OF : ART UNIT 1637

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/359826** Patent No.: **7157572**

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: _____

GARY BENZION
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE

1637
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Date : October 22, 2009

Patent No. :7536181
Inventor(s) :Solve, et al.
Issued :May 19, 2009
Title :PLATFORM SYSTEM FOR MOBILE TERMINALS

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule 1.322 and 1.323.

An error on a patent can be corrected by a certificate of correction, if appropriate. Accordingly, a petition under C.F.R. 1.182 is required to correct the alleged error concerning the inventor's address. Since this information is printed solely in accordance with the typewritten information provided on the Declaration, Oath or ADS, and since the error was the result of applicant's failure to comply with the requirement that the complete and correct information be provided accordingly; correction is not warranted consideration under the provisions of Rules 37 CFR 1.322. Consideration under 37 CFR 1.323 in this case should be filed with a petition under 37 CFR. 1.182.

However, a petition under 37 CFR 1.182 should be directed to the attention of the Assistant Commissioner for Patents using the following mailing address or FAX number.

By Mail: Commissioner of Patents and Trademarks
Box PETITIONS
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

EFS web uspto.gov/ebc/index.html
(must be registered as an e-filer to submit responses)
Technical Support 1-866-217-9197

If the petition under 37 CFR 1.182 is filed and granted the patentee would be entitled to a certificate of correction under 37 CFR 1.323 (required fee currently $100).

Any telephone inquiry concerning this communication should be directed to Ms. A. Green at (703) 756-1541.

Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 756-1580 or (703) 756- 1541

Sidney L . Weatherford
6300 Legacy, MS Evr 1-C-11
Plano, TX 75024

/arg

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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DRINKER BIDDLE & REATH
ATTN: INTELLECTUAL PROPERTY GROUP
ONE LOGAN SQUARE
18TH AND CHERRY STREETS
PHILADELPHIA PA 19103-6996

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AUG 19 2008

In re Application of	:	
WYSCHOGROD et al.	:	
Application No. 10/359,839	:	DECISION ON PETITION
Filed: 02/07/2003	:	
Attorney Docket No. 18138-00001	:	

This is a decision on the petition under 37 CFR 1.181, filed March 27, 2008, to withdraw the holding of abandonment for the above-identified application.

On December 19, 2006, the Office mailed a final Office action, which set three-month shortened statutory period for reply. Accordingly, the last day for filing a reply with an extension of time for response within the third month was June 19, 2007. On March 6, 2008, the Office mailed a Notice of Abandonment.

In the present petition, applicants asserted that they filed a timely reply to the final Office action of December 19, 2006. Petitioners provided copies of the reply, a request for an extension of time within the first month with an authorization to charge the fee to the Deposit Account, a power of attorney, a Statement under 37 CFR 3.73(b), and Notices of Recordation of Assignments.

Upon reviewing the record, the Office has located the reply, the request for an extension of time within the first month with an authorization to charge the fee to the Deposit Account, the power of attorney, the Statement under 37 CFR 3.73(b) and Notices of Recordation of Assignments in the Image File Wrapper filed on April 19, 2007. Accordingly, the reply is considered timely filed on April 19, 2007. Furthermore, the Examiner has determined that the amendment places the application in condition for allowance. Accordingly, the petition under 37 CFR 1.181 is **granted**. The holding of abandonment is hereby withdrawn. The application is restored to pending status, as the reply was timely filed.

The matter is being referred to Technology Center AU 2192 for action on the reply filed on April 19, 2007.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

Christina Tartera Donnell
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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MOTOROLA, INC.
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG, IL 60196

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MAR 2 6 2007

OFFICE OF PETITIONS

In re Application of :
Charbel Khawand :
Application No. 10/359,862 : DECISION ON PETITION
Filed: February 6, 2003 :
Attorney Docket No. CM03779J :

This is a decision on the petition under 37 CFR 1.137(b), filed January 8, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before December 20, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed September 20, 2006. Accordingly, the date of abandonment of this application is December 21, 2006. A Notice of Abandonment was mailed on February 22, 2007, subsequent to the filing of the present petition to revive.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,400 and the publication fee of $300, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This application is being referred to Publishing Division for appropriate processing in accordance with this decision on petition.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Woodcock Washburn LLP
One Liberty Place, 46th Floor
1650 Market Street
Philadelphia, PA 19103

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DEC 0 6 2004

Technology Center 2100

In re Application of:
Michael S. KUPKA, et al.
Application No. 10/359,864
Filed: February 7, 2003
For: SYSTEM FOR KEYING PROTECTED ELECTRONIC DATA TO PARTICULAR MEDIA TO PREVENT UNAUTHORIZED COPYING USING A COMPOUND KEY

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed August 13, 2004.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

For Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

cc: Iomega Corporation
Patent Department
10955 Vista Sorrento Parkway
San Diego, CA 92130

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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OCT 26 2004

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OCT 26 2004
OFFICE OF THE DIRECTOR
TC 3600

Michael S. Neustel
Suite No. 4
2534 South University Drive
Fargo, ND 58103

In re application of:
Kenneth C.Wagner
Application No. 10/359,871
Filed: February 6, 2003
For: SCAFFOLD BRACKET ATTACHMENT SYSTEM

: **DECISION ON REQUEST**
: **FOR WITHDRAWAL OF**
: **ATTORNEY**

This is a decision on the request filed on May 3, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney in the above-identified application is not approved because the request does not comply with item A) above.

As to condition A), the person making the request appears to be the inventor, Kenneth C. Wagner, and not the attorney of record in this application.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868

SNM/vdb: 10/21/04

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Paper No. 5

REBECCA SHORTLE
MORRISON & FOERSTER LLP
755 PAGE MILL ROAD
PALO ALTO, CA 94304-1018

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FEB 26 2004

OFFICE OF PETITIONS

In re Application of
Joshua W. Kriesel et al
Application No. 10/359,894
Filed: February 7, 2003
Attorney Docket No. 529212000100

ON PETITION

This is in response to the petition under 37 CFR 1.47(a), filed November 12, 2003.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) set forth above.

As to item (1), rule 47 applicants must demonstrate with documented evidence that the inventors refuse to join in the application after having been presented with the application papers (specification, claims, drawings and oath or declaration). There is no indication in the present case whether joint inventors Timothy B. Karpishin and Donald B. Bivin were ever presented with a copy of the complete application papers for the instant nonprovisional application. The fact that an application may contain proprietary information does not relieve the 37 CFR 1.47 applicant of the responsibility to present the application papers to the inventors if the inventors are willing to receive the papers. If the non-signing inventors were not presented with a copy of the application papers for the instant nonprovisional application, then they could not attest that they have "reviewed and understand the application papers" and could not execute the declaration which was requested for them to sign. Did joint inventors Timothy B. Karpishin and Donald B. Bivin receive a copy of the application papers? 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 to the non-signing inventors for signature. Unless petitioner can show that a copy of the application papers was presented to the non-signing inventors or that the non-signing inventors refused to accept delivery of the papers or expressly stated that the application papers should not be sent, then petitioner will have to mail a copy of the complete application papers (specification, claims drawings and oath or declaration) to the non-signing inventors' last known address, return receipt requested. A cover letter of instructions should accompany the mailing of the application papers setting a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. **The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as certified mail return receipt, cover letter of instructions, telegram, etc.** See MPEP 409.03(d).

The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. If the inventors orally refuses to join in the application, that fact along

with the time and place of the refusal must be stated in the affidavit or declaration. If, on the other hand, petitioner receives 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 rule 47 petitioner that the omitted inventors' conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

Whenever the omitted inventors gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the Customer Window located at:

2011 South Clark Place
Crystal Plaza Two, Lobby
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306.**

Telephone inquiries related to this decision should be directed to Irvin Dingle at (703) 306-5684.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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Paper No. 8

REBECCA SHORTLE
MORRISON & FOERSTER LLP
755 PAGE MILL ROAD
PALO ALTO, CA 94304-1018

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MAY 1 9 2004

OFFICE OF PETITIONS

In re Application of	:	
Joshua W. Kriesel et al.	:	
Application No. 10/359,894	:	DECISION GRANTING
Filed: February 7, 2003	:	STATUS UNDER 37 CFR 1.47(a)
Attorney Docket No. 529212000100	:	

This is in response to the petition filed April 29, 2004, requesting reconsideration of a decision mailed February 26, 2004, which refused to accord 37 CFR 1.47(a) status to the above-identified application.

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 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 related to this decision should be directed to Irvin Dingle at (703) 306-5684.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

TIMOTHY KARPISHIN
3805 FERNWOOD STREET
SAN MATEO, CA 94405

In re Application of
Joshua W. Kriesel; Timothy B. Karpishin; Donald B. Bivin; Grant Merrill; Martin S. Edelstein; Thomas H. Smith; Jeffery A. Whiteford; Robert T. Jonas; Mark Micklatcher; Serena Joshi
Application No. 10/359,894
Filed: February 7, 2003
For: NANOFILM AND MEMBRANE COMPOSITIONS

Dear Mr. Karpishin:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the Irvin Dingle at (703) 306-5684. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:

Rebecca Shortle
Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, CA 94304

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS		
	Application Number	10/359,894
	Filing Date	February 7, 2003
	First Named Inventor	Joshua W. KRIESEL
	Art Unit	1713
	Examiner Name	H. Hu
	Attorney Docket Number	529212000100

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Approved 9-22-06
Jacqueline M. Stone
Jacqueline M. Stone, Director
Technology Center 1700/2900

Please withdraw me as attorney or agent for the above identified patent application, and

[x] all the attorneys/agents of record.
[ ] the attorneys/agents (with registration numbers) listed on the attached paper(s), or
[ ] the attorneys/agents associated with Customer Number [ ]

NOTE: This box can only be checked when the power of attorney of record in the application is to all the practitioners associated with a customer number.

The reasons for this request are:

Failure to pay bill after repeated attempts to negotiate same.

CORRESPONDENCE ADDRESS

1. [ ] The correspondence address is NOT affected by this withdrawal.
2. [x] Change the correspondence address and direct all future correspondence to:

[ ] The address associated with Customer Number: [ ]

OR

[X] Firm or Individual Name	E. Thomas Wheelock, Esq.				
Address	P.O. Box 62268				
City	Palo Alto	State	CA	Zip	94306
Country	U.S.A.				
Telephone	(650) 362-6286	Email			
Signature					
Name	Charles D. Holland	Registration No.	35,196		
Date	January 27, 2006	Telephone No.	(650) 813-5832		

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: January 27, 2006 Signature: (Lindsay Scydel)

UNITED STATES PATENT AND TRADEMARK OFFICE

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755 Page Mill Rd
Palo Alto, CA 94304

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OCT 30 2006

OFFICE OF PETITIONS

In re Application of	:	
Joshua W. Kriesel et al.	:	
Application No. 10/359,894	:	DECISION ON PETITION
Filed: February 7, 2003	:	TO WITHDRAW
Attorney Docket No. 529212000100	:	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 ~~2~~ 27, 2006.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to Charles D. Holland and those practitioners associated with application have been revoked by the assignee of the patent application on February 9, 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 properly notified by applicant.

Telephone inquires concerning this decision should be directed to Charles Smoot at 571-272- 3299.

for David Bucci
Petitions Examiner
Office of Petitions

Cc: E. Thomas Wheelock
P. O. Box 61168
Palo Alto CA 94306

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MARSHALL, GERSTEIN & BORUN LLP
233 SOUTH WACKER DRIVE
6300 WILLIS TOWER
CHICAGO IL 60606-6357

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OFFICE OF PETITIONS

In re Application of	:	
Karschnia et al.	:	
Application No. 10/359,902	:	DECISION ON PETITION
Filed: February 6, 2003	:	
Attorney Docket No. 30203/38288	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 13, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to reply in a proper and timely manner to the final Office action mailed June 8, 2009. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. 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 a Request for Continued Examination (RCE) and fee of $810.00 and the submission required by 37 CFR 1.114 (previously filed on August 10, 2009 and March 22, 2010); (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This matter is being referred to Technology Center 3689 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed on August 10, 2009 and March 22, 2010.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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David G. Beck
Bingham McCutchen, LLP
18th Floor
Three Embarcadero Center
San Francisco CA 94111

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OFFICE OF PETITIONS

In re Application of	:	
MORTENSEN	:	
Application No. 10/359,915	:	DECISION ON PETITIONS
Filed: February 7, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2-24429-7030858001	:	AND 37 CFR 1.55(c)

This is a decision on the petition under 37 CFR 1.78(a)(2)(ii), which is being construed as a petition under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c), filed August 19, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of a prior-filed PCT application, and under 35 U.S.C. § 119(a)-(d) for the benefit of a prior-filed foreign application, as set forth in the concurrently filed amendment and declaration, respectively.

As to the benefit claim under 37 CFR 1.78(a)(3):

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

All requirements being met, the petition to accept an unintentionally delayed claim for priority under 37 CFR 1.78(a)(3) is **GRANTED.**

As to the benefit claim under 37 CFR 1.55(c):

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, **and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6);**
(3) the surcharge as set forth in 37 CFR 1.17(t);
(4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. (The 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.

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**.

37 CFR § 1.78(a)(3) and 1.55(c) require a statement that the entire delay between the date the claim was due under 37 CFR § 11.78(a)(2)(ii) and 1.55(a)(1) and the date the claim was filed was unintentional. Since the statement contained in the petition varies from the language required by 37 CFR 1.78(a)(3) and 1.55(c)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.78(a)(3) and 1.55(c)(3). If this is not a correct interpretation, petitioner should promptly notify the Office.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) and 35 § U.S.C. 119(a)-(d) and 37 CFR 1.55(a)(1) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Denise Pothier at (571) 272-4787. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being referenced to Technology Center Art Unit 2646 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120, 365(c) and 35 U.S.C. § 119(a)-(d) of the prior-filed applications.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
530 B STREET
SUITE 2100 SAN DIEGO, CA 92101

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OFFICE OF PETITIONS

In re Application of	:	
Keller	:	
Application No. 10/359,916	:	DECISION ON PETITION
Filed: February 7, 2003	:	TO MAKE SPECIAL UNDER
Attorney Docket No.	:	37 CFR 1.102(c)(2)
	:	

This is a decision on the petition under 37 CFR 1.102(c)(2)(i) & (ii), filed August 18, 2006, to make the above-identified application special based on the invention (a) materially enhancing the quality of the environment as set forth in M.P.E.P. § 708.02, Section V and (b) materially contributing to certain categories related to energy resource as set forth in M.P.E.P. § 708.02, Section VI.

The petitions are **DISMISSED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(2)(i) and MPEP § 708.02, Section V: Environmental Quality, must state that special status is sought because the invention materially enhances the quality of the environment by contributing to the restoration or maintenance of basic life-sustaining natural elements. If the disclosure is not clear on its face that the claimed invention materially enhances the quality of the environment by contributing to the restoration or maintenance of one of the basic life-sustaining natural elements, the petition must be accompanied by a statement by the applicant, assignee, or an attorney/agent registered to practice before the Office explaining how the materiality standard is met. No fee is required.

The instant petition fails to show the invention meets the materiality standard. The instant invention is directed to a hybrid-electric drive system. The hybrid-electric drive system claimed in the invention could be used in buses and other heavy-duty vehicles, thereby reducing the consumption of fuel with the resulting decrease in emission of pollutants does not in itself satisfy the materiality standard. The materiality standard does not permit the applicant to speculate as to how a hypothetical end-user might specially apply the invention in a manner that could materially enhance the quality of the environment by contributing to the restoration or maintenance of basic life-sustaining natural elements.

A grantable petition to make an application special under 37 CFR 1.102(c)(2)(ii) and MPEP § 708.02, Section VI: Energy, must state that special status is sought because the invention materially contributes to (A) the discovery or development of energy resources, or (B) the more efficient utilization and conservation of energy resources. Examples of inventions in category (A) would be developments in fossil fuels (natural gas, coal, and petroleum), hydrogen fuel technologies, nuclear energy, solar energy,

etc. Category (B) would include inventions relating to the reduction of energy consumption in combustion systems, industrial equipment, household appliances, etc. If the application disclosure is not clear on its face that the claimed invention materially contributes to category (A) or (B), the petition must be accompanied by a statement under 37 CFR 1.102 by the applicant, assignee, or an attorney/agent registered to practice before the Office explaining how the materiality standard is met. No fee is required.

The instant petition, fails to meet the materiality standard of 37 CFR 102(c)(2)(ii). Although the disclosure may be generally directed to a hybrid-electric drive system that could serve as a power source when used in buses or other heavy-duty vehicles, the materiality standard of the rule has not been met, i.e., petitioner has failed to state how the claimed invention contributes in a significant, substantial, or noticeable manner to inventions relating to the reduction of energy consumption. The materiality standard does not permit the applicant to speculate as to how a hypothetical end-user might specially apply the invention in a manner that could materially contribute to category (A) or (B) as set forth above. Accordingly, it is unclear as to how the claimed invention would contribute in a significant manner to category (A) or (B).

This lack of meeting the materiality standards of 37 CFR 102(c)(2) (i) and (ii) does not permit the applicant to enjoy the benefit of advanced examination.

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 FAX: (571) 273-8300

Telephone inquiries concerning this decision should be directed to Jefferey Harold at 571-272-7519, or to the undersigned at 571-272-7099.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 2173 for action in its regular turn.

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. 6

Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

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Technology Center 2100

In re Application of:
William E. SOBEL, et al.
Application No. 10/359,922
Filed: February 6, 2003
For: INTEGRITY CHECKING FOR SOFTWARE DOWNLOADED FROM UNTRUSTED SOURCES

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed June 3, 2004.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED.**

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
703-305-9750

cc: Edward J. Radlo
Sonnenschein Nath & Rosenthal LLP
685 Market Street
6th Floor
San Francisco, CA 94105

UNITED STATES PATENT AND TRADEMARK OFFICE

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DECHERT LLP
P.O. BOX 10004
PALO ALTO CA 94303

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OFFICE OF PETITIONS

In re Application of :
Linda G. Lee :
Application No. 10/359,931 :
Filed: February 7, 2003 :
Attorney Docket No. 375461-003D1C1 :

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision in response to a communication filed September 8, 2005, transmitting a copy of a petition under 37 CFR 1.78(a)(3), filed on May 27, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in a concurrently filed amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is applicable to those applications filed on or after November 29, 2000 and the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;[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).

It is noted that the petition, as originally filed on May 27, 2005, did not comply with the requirements of 37 CFR 1.78(a)(3), inasmuch as the surcharge noted in item (2) above was not paid since counsel's deposit account contained insufficient funds. The requisite surcharge is being charged to counsel's deposit account in association with the copy of the petition provided on September 9, 2005.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) under 37 CFR 1.78(a)(3) should not be construed as meaning that the application is entitled to the benefit of the prior-filed application(s). In order for the application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Technology Center Art Unit 1637 for consideration by the Examiner of the copy of the amendment filed September 9, 2005, including applicant's claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (2) for the benefit of priority to the prior-filed nonprovisional application.

Telephone inquiries related to this decision should be directed to Sherry D. Brinkley at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Frances M. Hicks
Lead, Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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David B. Cochran, Esq.
JONES DAY
North Point
901 Lakeside Ave
Cleveland OH 44114

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AUG 10 2009

OFFICE OF PETITIONS

In re Patent No. 7,478,057	:
NICHOLAS P. ALFANO	:
Issue Date: January 13, 2009	: DECISION ON REQUEST FOR
Application No. 10/359,958	: RECONSIDERATION OF
Filed: February 6, 2003	: PATENT TERM ADJUSTMENT
Atty Docket No. 555255012412	:

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b), filed January 12, 2009, which is properly treated under 37 CFR 1.705(d). Patentees request that the determination of patent term adjustment for the above-identified patent be corrected from four hundred nine (409) days to seven hundred twenty-four (724) 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 409 days.

The above-identified application was filed on February 6, 2003. On December 18, 2006, a request for continued examination (RCE) was filed. On January 13, 2009, the above-identified application matured into U.S. Patent No. 7,478,057 with a revised patent term adjustment of 409 days. The Office determined that the 315 days of Office delay, pursuant to 35 U.S.C. 154(b)(1)(B)[1] and 37

[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 patent was delayed due to the failure of the Office to issue a patent

CFR 1.702(b),[2] overlap with the 562 days of Office delay,[3] pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1),[4] accorded prior to the filing of the request for continued examination. As such, the Office allowed entry of only the period of adjustment of 562 days. No additional days of patent term adjustment were entered at issuance under the three-year pendency provision. Given the 153 days of applicant delay, the patent issued with a revised patent term adjustment of 409 days.

On January 12, 2009, patentees timely submitted this request for reconsideration of patent term adjustment within two months of the issue date of the patent. See 37 CFR 1.705(d). Patentees aver that the correct number of days of patent term adjustment is 724 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. Patentees state that the total period of Office delay is the sum of the period under 37 CFR 1.703(b) (315 days) and the period under 37 CFR 1.703(a) (562

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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 February 4, 2008, the application was pending three years and 315 days.

[3] A nonfinal Office action was mailed on October 20, 2005, 14 months and 562 days after the application was filed on February 6, 2003.

[4] 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;

days) to the extent that these periods of delay are not overlapping. Patentees contend that no periods of delay attributable to grounds specified under 35 U.S.C. 154(b)(1)(A) and 35 U.S.C. 154(b)(1)(B) overlap. Patentees assert that "the correct patent term determination is 562 days (§ 1.703(a)) plus 315 days (§ 1.703(b)) minus 0 days (overlap between A and B periods) minus 153 days (Applicant delay), which is 724 days." *Petition filed 01/12/09, p. 2.*

The Office has considered patentees' interpretation of the period of overlap, but finds it 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)*[5] *and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C.

---

[5] 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.

> 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 54366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

Further, as stated in the *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding § 1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the period during which the application was pending before the Office beginning on the date of filing of the application under 35 U.S.C. 111(a) on February 6, 2003, and ending on the date of filing of a request for continued examination on December 18, 2006 (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).

Pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1), 562 days of patent term adjustment were accorded during the pendency of the application for Office delay prior to the filing of the request for continued examination. There were no Office delays subsequent to the filing of the request for continued examination. Pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b), 315 days of patent term adjustment accrued for Office issuance of the patent more than three years after the filing date of the application.

All of the 315 days of patent term adjustment under 37 CFR 1.702(b) overlap with the 562 days of patent term adjustment under 37 CFR 1.702(a)(1). Entry of both the 315 days and the 562 days is neither permitted nor warranted. The Office accorded the greater period of 562 days for Office delay. Accordingly, at issuance, the Office properly entered no additional days of patent term adjustment.

In view thereof, the Office affirms that the revised determination of patent term adjustment at the time of the issuance of the patent is 409 days.

The Office acknowledges the submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 8

Beck & Tysver, P.L.L.C.
Suite 100
2900 Thomas Avenue S.
Minneapolis, MN 55416

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OFFICE OF PETITIONS

In re Application of	:
Evans, et al.	:
Application No. 10/359,969	: DECISION NOTING JOINDER
Filed: February 6, 2003	: OF INVENTOR AND PETITION
Atty. Dkt. No. 2509	: UNDER 37 CFR 1.47(a) MOOT
Title: CONSTRUCTION OF	:
MIDDLEWARE ADAPTERS	:

This is in response to the petition under 37 CFR 1.47(a), filed September 22, 2003.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is not necessary and the petition is considered to be moot. This application does not have any Rule 1.47(a) status and no such status should appear on the file wrapper. This application need not be returned to this Office for further consideration under 37 CFR 1.47(a).

This application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : February 2, 2006

TO SPE OF : ART UNIT 3634

SUBJECT : Request for Certificate of Correction on Patent No.: 6,981,572 /10/359,971

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Magdalene Talley

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9309 ext. 116

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

All changes are approved.

RICHARD E. CHILCOT, JR.
SUPERVISORY PATENT EXAMINER
SPE

3634
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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Cesari and McKenna, LLP
88 Black Falcon Avenue
Boston, MA 02210

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In re Application of	:	
Mak Kwok et al.	:	
Application No. 10/359,985	:	DECISION ON PETITION
Filed: February 06, 2003	:	
Attorney Docket No. 112025-0518	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 25, 2008, 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 September 06, 2007, which set a period for reply of three (3) months. Accordingly, this application became abandoned on December 07, 2007.

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 $ 1540; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Shelley Clement at (571)272-6052 or in her absence to the undersigned at (571)272-7099.

This application is being referred to Publishing Division for processing into a patent.

David Bucci
Petitions Examiner
Office of Petitions

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PATENT COUNSEL
APPLIED MATERIALS, INC.
Legal Department
P.O. Box 450-A
Santa Clara, CA 95035

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AUG 0 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Daniel J. Hoffman, et. al.	:	
Application No. 10/359,989	:	ON PETITION
Filed: February 6, 2003	:	
Attorney Docket No. 4097 C02	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 21, 2005, to revive the above-identified application.

In response to the Notice of Allowance and Fee(s) Due mailed August 25, 2003, petitioner hereby submits an authorization to charge $1,500 for the petition to revive fee, $1,400 for payment of the issue fee, $300 for the publication fee, $6 for two (2) advance soft copies, and the statement of unintentional delay.

As authorized, the above fees have been charged to petitioner's deposit account.

Since petitioner has met the requirements to revive this application, pursuant to 37 CFR 1.137(b), the petition is **GRANTED**.

This application is being referred to the Office of Publications for further processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE CA 94086

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MAR 26 2007

OFFICE OF PETITIONS

In re Patent No. 7,069,245	:	
Issued: 27 June, 2006	:	
Application No. 10/359,992	:	ON PETITION
Filed: 6 February, 2003	:	
Attorney Docket No. BUSW-00100	:	

This is a decision on the petition filed on 18 August, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **granted**.

Telephone inquires concerning this matter may be directed to the undersigned at 571.272.3231. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at 703.305.8309.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[1] See Official Gazette of 22 June, 2004.

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SUITE 2700
INDIANAPOLIS IN 46204

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OFFICE OF PETITIONS

In re Application of	:	
Karim N. Jallad, et al.	:	
Application No. 10/360,001	:	DECISION ON PETITION
Filed: February 6, 2003	:	TO WITHDRAW
Attorney Docket No. 14070-0002	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed November 20, 2006.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request cannot be approved because the attorney wishes to withdraw by customer number, but were not appointed by customer number.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: OPTICAL THERAPUETIC TECHNOLOGIES, INC.
PO BOX 3794
WEST LAFAYETTE, IN 47996-3794

UNITED STATES PATENT AND TRADEMARK OFFICE

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FEB 14 2006

OFFICE OF PETITIONS

In re Application of
Oreste Lantero
Application No. 10/360,010
Filed: February 6, 2003
Attorney Docket No.: GC708

ON PETITION

This is a decision on the petition, filed February 13, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 1621 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1]The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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6300 LEGACY DRIVE
M/S EVR C11
PLANO, TX 75024

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MAR 22 2006

OFFICE OF PETITIONS

In re Application of :
Bernd Moller et al. :
Application No. 10/360,011 : ON PETITION
Filed: February 7, 2003 :
Attorney Docket No. P17013US1 :

This is a decision on the petition, filed January 10, 2006 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office Action mailed January 25, 2005. Accordingly, a Notice of Abandonment was mailed August 10, 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 be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

(2) the petition fee required by 37 CFR 1.17(l);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a

question whether the delay was unintentional; and

(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

The petition does not satisfy requirement (1) above.

The application became abandoned for failure to file a response within the meaning of 37 CFR 1.113 to the final rejection of January 25, 2005, within the time period for response. The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application. Since the amendment submitted with the petition has been referred to the examiner, who has indicated that the amendment does not prima facie place the application in condition for allowance, the response required for a renewed petition must be a Notice of Appeal and requisite fee, or the filing of a continuing application under the terms set forth in 1031 O.G. 11. A courtesy copy of an Advisory Action drafted by the Examiner of Record is included with this decision.

Petitioner must submit a proper reply to the final Office action mailed on January 25, 2005, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay.**

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of :
Bernd Moller et al. :
Application No. 10/360,011 : ON PETITION
Filed: February 7, 2003 :
Attorney Docket No. P17013US1 :

This is a decision on the renewed petition, filed April 5, 2006 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office Action mailed January 25, 2005. No response having been filed, a Notice of Abandonment was mailed August 10, 2005.

In response thereof, an amendment was filed January 10, 2006 with a petition to revive. The amendment was considered and the applicant was advised in an advisory action mailed March 22, 2006 with the decision dismissing the petition, that the amendment did not place the application in condition for allowance.

Comes now petitioner with this renewed petition, a Request for Continued Examination and an amendment.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

(1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

(2) the petition fee required by 37 CFR 1.17(l);
(3) a statement that the entire delay in filing the required reply from the due date

for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

A Request for Continued Examination (RCE) and an amendment are submitted with the petition in response to the Final Office action and in compliance with 37 CFR 1.114. The RCE fee has been applied.

This matter is being forwarded to Technology Center 2876 for processing of the RCE and amendment.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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VAN OPHEM & VANOPHEM, PC
REMY J VANOPHEM, PC
51543 VAN DYKE
SHELBY TOWNSHIP MI 48316-4447

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OFFICE OF PETITIONS

In re Application of :
Earl J. Braxton : DECISION ON PETITION
Application No. 10/360,013 :
Filed: 6 February, 2003 :
Atty Docket No. TBG109D.US :

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on 11 August, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on 24 March, 2005, for failure to file a proper reply to the Notice of Non-Compliance With 37 CFR 1.192(c) mailed on 23 September, 2004, which set a one (1)

---

[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). Agrantable 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 requiredreply 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 CR 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)).

month shortened period for reply. On 28 March, 2005 (certificate of mailing date 23 March, 2005), petitioner filed a five (5) month extension of time and a corrected Appeal Brief. The corrected Appeal Brief was determined to be improper, however, and a Notice of Abandonment was mailed on 28 April, 2005.

The petition lacks the required reply. The corrected Appeal Brief submitted with the petition has been determined by the examiner not to be a proper reply because the brief is non-compliant. Specifically, the issue raised in the non-compliant letter mailed on 29 April, 2005, concerned claim groupings (Rule 192). It does not appear any of the claim groups listed on Pages 6-7 of the new brief correspond to the grounds of rejection listed in the Issues section. Furthermore, there is no discussion at all concerning the substance of the new brief and how it may overcome the reasons for non-compliance previously advanced.

Petitioner should file a renewed petition accompanied by a proper Appeal Brief in compliance with 37 CFR 1.192.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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REMY J VANOPHEM, PC
51543 VAN DYKE
SHELBY TOWNSHIP MI 48316-4447

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OFFICE OF PETITIONS

In re Application of	:	
Earl J. Braxton	:	DECISION ON PETITION
Application No. 10/360,013	:	
Filed: 6 February, 2003	:	
Atty Docket No. TBG109D.US	:	

This is a decision on the request for reconsideration filed on 3 November, 2005, which is treated as a renewed petition under 37 CFR 1.137(b)[1] to revive the above-identified application.

The petition is again **DISMISSED**.

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[1] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on 24 March, 2005, for failure to file a proper reply to the Notice of Non-Compliance With 37 CFR 1.192(c) mailed on 23 September, 2004, which set a one (1) month shortened period for reply. On 28 March, 2005 (certificate of mailing date 23 March, 2005), petitioner filed a five (5) month extension of time and a corrected Appeal Brief. The corrected Appeal Brief was determined to be improper, however, and a Notice of Abandonment was mailed on 28 April, 2005. On 11 August, 2005, a petition to revive was filed. On 1 September, 2005, the petition was dismissed for failure to file a proper corrected Appeal Brief.

The petition lacks the required reply. The corrected Appeal Brief submitted with the petition has been determined by the examiner not to be a proper reply because the brief is non-compliant. Specifically, the issue raised in the non-compliant letter mailed on 29 April, 2005, concerned claim groupings (Rule 192). A quick review of Pages 4-7 of the 65 page brief indicate 12 issues with only three (3) claim groups addressed.

Petitioner should file a renewed petition accompanied by a proper Appeal Brief in compliance with 37 CFR 1.192.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

VAN OPHEM & VANOPHEM, PC
REMY J VANOPHEM, PC
51543 VAN DYKE
SHELBY TOWNSHIP MI 48316-4447

COPY MAILED

FEB 22 2006

OFFICE OF PETITIONS

In re Application of	:	
Earl J. Braxton	:	DECISION ON PETITION
Application No. 10/360,013	:	
Filed: 6 February, 2003	:	
Atty Docket No. TBG109D.US	:	

This is a decision on the twice renewed petition filed on 3 February, 2006, (certificate of mailing 1 February, 2006) under 37 CFR 1.137(b)[1] to revive the above-identified application.

The petition is again **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 on 24 March, 2005, for failure to file a proper reply to the Notice of Non-Compliance With 37 CFR 1.192(c) mailed on 23 September, 2004, which set a one (1) month shortened period for reply. On 28 March, 2005 (certificate of mailing date 23 March, 2005), petitioner filed a five (5)

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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)).

month extension of time and a corrected Appeal Brief. The corrected Appeal Brief was determined to be improper, however, and a Notice of Abandonment was mailed on 28 April, 2005. On 11 August, 2005, a petition to revive was filed. On 1 September, 2005, the petition was dismissed for failure to file a proper corrected Appeal Brief. The petition filed on 3 November, 2005, was dismissed on 1 December, 2005, for failure to file a proper corrected Appeal Brief.

The petition lacks the required reply. The corrected Appeal Brief submitted with the petition has been determined by the examiner not to be a proper reply because the brief is non-compliant. A review by the examiner reveals that the brief filed on 3 February, 2006, does not include a grouping of claims section. **Petitioner should note that submission of any renewed petition without the required reply (*i.e.*, a proper Appeal Brief in compliance with 37 CFR 1.192(c)) will be construed as intentional delay.**

Petitioner should file a renewed petition accompanied by a proper Appeal Brief in compliance with 37 CFR 1.192.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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VAN OPHEM & VANOPHEM, PC
REMY J VANOPHEM, PC
51543 VAN DYKE
SHELBY TOWNSHIP MI 48316-4447

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JUN 14 2006
OFFICE OF PETITIONS

In re Application of	:	
Earl J. Braxton	:	DECISION ON PETITION
Application No. 10/360,013	:	
Filed: 6 February, 2003	:	
Atty Docket No. TBG109D.US	:	

This is a decision on the thrice renewed petition filed on 10 April, 2006, (certificate of mailing 1 February, 2006) under 37 CFR 1.137(b)[1] to revive the above-identified application.

The petition is again **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.

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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)).

This application became abandoned on 24 March, 2005, for failure to file a proper reply to the Notice of Non-Compliance With 37 CFR 1.192(c) mailed on 23 September, 2004, which set a one (1) month shortened period for reply. On 28 March, 2005 (certificate of mailing date 23 March, 2005), petitioner filed a five (5) month extension of time and a corrected Appeal Brief. The corrected Appeal Brief was determined to be improper, however, and a Notice of Abandonment was mailed on 28 April, 2005. On 11 August, 2005, a petition to revive was filed. On 1 September, 2005, the petition was dismissed for failure to file a proper corrected Appeal Brief. The petition filed on 3 November, 2005, was dismissed on 1 December, 2005, for failure to file a proper corrected Appeal Brief. The petition filed on 3 February, 2006, was dismissed on 22 February, 2006, for failure to file a proper corrected Appeal Brief.

The petition lacks the required reply. The corrected Appeal Brief submitted with the petition has been determined by the examiner not to be a proper reply because the brief is non-compliant. A review by the examiner reveals that the brief filed on 10 April, 2006, could not be response as it is not even filed under the same rule as the previous briefs. **Petitioner should note that submission of any renewed petition without the required reply (*i.e.*, a proper Appeal Brief in compliance with 37 CFR 1.192(c)) will be construed as intentional delay.**

Petitioner should file a renewed petition accompanied by a proper Appeal Brief in compliance with 37 CFR 1.192.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

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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REMY J VANOPHEM, PC
51543 VAN DYKE
SHELBY TOWNSHIP MI 48316-4447

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AUG 1 4 2006

OFFICE OF PETITIONS

In re Application of	:	
Earl J. Braxton	:	DECISION ON PETITION
Application No. 10/360,013	:	
Filed: 6 February, 2003	:	
Atty Docket No. TBG109D.US	:	

This is a decision on the paper filed on 19 July, 2006, which is treated as a petition to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned on 24 March, 2005, for failure to file a proper reply to the Notice of Non-Compliance With 37 CFR 1.192(c) mailed on 23 September, 2004, which set a one (1) month shortened period for reply. A five month extension of time was filed on 28 March, 2005 (certificate of mailing date 23 March, 2005).

Petitioner asserts that Notice mailed on 23 September, 2004, was never received because it was not sent to the correct address. Specifically, petitioner asserts that a Request for Customer Number Data Change was filed on 22 August, 2003, requesting that the address associated with counsel's Customer Number be changed, but that the Office failed to enter the new address. Consequently, the Notice mailed on 23 September, 2004, asserts petitioner, was sent to the old correspondence address.

In support, petitioner has provided a copy of a Request for Customer Number Data Change requesting that the address associated with Customer Number 21133 be changed to "51543 Van Dyke, Suite 103, Shelby Township, Michigan 48317-4447." Additionally, a return receipt postcard itemizing the filing of a Form PTO/SB124A and postcard and bearing an Office-date stamp of 26 August, 2003, has been provided.

A review of the record reveals that on 6 February, 2003, the application was filed with a transmittal letter specifiying Customer Number 21133 to be used for the correspondence address. Additionally, the Notice mailed on 23 September, 2004, was mailed to counsel's previous address, and was returned as undeliverable on 6 October, 2004.

Based on the evidence in the file, the showing of record is that the Notice mailed on 23 September, 2004, was not received because it was mailed to the wrong address as a result of Office error. As such, there was no abandonment in fact.

The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

The petition fee will be credited to counsel's deposit account.

The application is being referred to Technology Center Art Unit 3751 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

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)
6622750	2003-09-23	10360024	2003-02-08	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
○ 3 ½ year	(1551)	◉ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

○ An attorney or agent registered to practice before the Patent and Trademark Office

◉ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Sole Patentee			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.			
Signature	/David Francis Bergeron/	Date (YYYY-MM-DD)	2007-11-19
Name	David Francis Bergeron		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 6622750
Issue Date: September 23,2003
Application No. 10360024
Filed: February 8,2003
Attorney Docket No.

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed November 19,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 19,2007. This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 7

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NOV 14 2003

OFFICE OF PETITIONS

BorgWarner, Inc.
Powertain Technical Center
3800 Automation Avenue, Suite 100
Auburn Hills, MI 48326

In re Application of	:	
Braford and Schmidt	:	DECISION REFUSING
Application No. 10/360,044	:	STATUS UNDER
Filed: February 6, 2003	:	37 CFR 1.47(a)
Attorney Docket No. DKT01062	:	
For: MULTI-DISK FRICTION DEVICE	:	
SELECTIVE LUBRICATION ON DEMAND	:	

This is a decision on the petition under 37 CFR 1.47(a), filed August 28, 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. 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.**

A grantable petition under 37 CFR 1.47(a) requires

(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 $130 as specified in 37 CFR § 1.17(h), and
(4) the last known address of the omitted inventor(s).

In addition to the above requirements, the signing inventors must sign the declaration on behalf of the non-signing inventor. See MPEP 409.03(a).

The instant petition fails to satisfy (2). The declaration does not list a mailing address or residential address for Schmidt. The declaration does not list the citizenship of Schmidt. Any request for reconsideration must be accompanied by a proper oath or declaration.

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.

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

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

cc: Gerald E. McGlynn, III
Bliss McGlynn, PC
2075 West Big Beaver Road, Suite 600
Troy, MI 48084-3443

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 10

Borg Warner, Inc.
Powertrain Technical Center
3800 Automation Avenue, Suite 100
Auburn Hills, MI 48326

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JAN 05 2004

OFFICE OF PETITIONS

In re Application of	:
Braford and Schmidt	: DECISION NOTING JOINDER OF
Application No. 10/360,044	: INVENTOR AND PETITION UNDER
Filed: February 6, 2003	: 37 CFR 1.47(a) MOOT
Attorney Docket No. DKT01062	:
For: MULTI-DISK FRICTION DEVICE SELECTIVE LUBRICATION ON DEMAND	:

Papers filed on December 18, 2003, in response to a "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on November 14, 2003, included a Declaration signed by a previously non-signing inventor in compliance with 37 CFR 1.63.

In view of the joinder of the inventor, further consideration under Rule 1.47(a) is moot; this application does not have any Rule 1.47 status and no such status should appear on the file wrapper. This application need not be returned to this Office for any further consideration under Rule 1.47(a).

For the above reasons, the petition is **dismissed as moot**.

This application is being returned to the Office of Initial Patent Examination to complete processing of the application.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

cc: Gerald E. McGlynn, III
Bliss McGlynn, PC
2075 West Big Beaver Road, Suite 600
Troy, MI 48084-3443

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FROM DIRECTORS OFFICE

MAY 25 2005

TECHNOLOGY CENTER 3600

Christopher & Weisberg, P.A.
200 East Las Olas Boulevard
Suite 2040
Fort Lauderdale, FL 33301

In re Application of:	:	
Eric Jason Stelnicki	:	NOTICE OF WITHDRAWAL
Application No. 10/360,054	:	FROM ISSUE
Filed: February 6, 2003	:	UNDER 37 CFR § 1.313(b)
Attorney Docket No. 1027-2U	:	

The above-identified application is withdrawn from issue after payment of the issue fee due to the unpatentability of one or more claims. See 37 CFR § 1.313(b).

The above-identified application is hereby withdrawn from issue.

The issue fee and publication fee are refundable upon written request. Applicant may also request that the fee be credited to a specified Deposit Account. Applicant may, however, wait until such time as the application is either allowed or abandoned to make such request. If the application is subsequently allowed, upon receipt of a new Notice of Allowance and Issue and Publication Fee Due, applicant may further request that the previously submitted issue fee and publication fee be applied toward payment of the issue fee and publication fee in the amount identified in the new Notice of Allowance and Issue and Publication Fee Due. This request, and any balance due, must be received on or before the due date noted in the new Notice of Allowance and Issue and Publication Fee Due in order to prevent abandonment of the application. If the application is abandoned, applicant may request either a refund or a credit to a specified Deposit Account.

Telephone inquires should be directed to Supervisory Patent Examiner Heather Shackelford at (571)-272-7049.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Donald T. Hajec, Director,
Technology Center 3600

cc: Office of Patent Publication: Office of Patent Publication

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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DIPINTO & SHIMOKAJI, P.C.
SUITE 480
1301 DOVE STREET
NEWPORT BEACH, CA 92660

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OCT 13 2005

OFFICE OF PETITIONS

In re Application of :
Greg Setser, et al. :
Application No. 10/360,097 :
Filed: February 5, 2003 :
Attorney Docket No. 138-0101-IPIC :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 8, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Restriction Requirement mailed December 16, 2003, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned at midnight on January 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 future correspondence solely to the address of record.

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 (Restriction Requirement); (2) the petition fee; (3) the required statement of unintentional delay have been received. Accordingly, the petition filed August 8, 2005 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

The application matter is being referred to Technology Center 1700, Art Unit 1732 for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Michael A. Shimokaji
8911 Research Drive
Irvine, CA 92618

UNITED STATES
PATENT AND
TRADEMARK OFFICE

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AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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WWW.USPTO.GOV

JUN 26 2003

#8

TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY UT 84110

In re Application of	:
Gert Moll et al	:
Serial No.: 10/360,101	: PETITION TO MAKE SPECIAL
Filed: February 7, 2003	:
Attorney Docket No.: 2183-5673	:

This is in response to applicants' petition filed June 17, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(d).

The petition fee of $130.00 will be charged to Deposit Account No. 20-1469, as directed.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, XII. Therefor the petition is **GRANTED**.

The application will be forwarded to the examiner for action on the merits commensurate with this decision.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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NOV 03 2003

Director's Office
Group 3700

Robert H. Johnston III
GRIGGS BERGEN & JOHNSTON LLP
2626 Cole Avenue, Suite 400
Dallas, TX 75204

Paper No. 5

In re Application of	:	**DECISION ON**
JENSEN, TIM ALLAN NYGAARD	:	**PETITION TO**
Application No.: 10/360,136	:	**MAKE SPECIAL**
Filed: February 07, 2003	:	

This is a decision on the petition filed August 25, 2003 to make special under 37 CFR 1.102(c).

Since the requirements of 37 CFR 1.102(c) and MPEP 708.02, VI have been met, the petition is granted.

The application is being forwarded to the examiner for an action on the merits.

Linda J. Sholl
Special Program Examiner
Technology Center 3700
Phone: (703) 308-1288

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Paper No. 5

MORGAN & FINNEGAN, LLP
345 PARK AVENUE
NEW YORK, NY 10154

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FEB 11 2004

OFFICE OF PETITIONS

In re Application of
Juzeszyn et al.
Application No. 10/360,153
Filed: February 6, 2003
Attorney Docket No. 2972-4025

ON PETITION

This decision concerns the November 21, 2003 "Petition under 37 CFR 1.182 to Obtain a Filing Date of February 6, 2003" which is being properly treated as a petition under 37 CFR 1.10(c) that the above-referenced application be accorded a filing date of February 6, 2003.

The petition is **GRANTED.**

The petition requests that the application be accorded a filing date of February 6, 2003, rather than the presently-accorded filing date of February 8, 2003, on the basis that the application was deposited in the U.S. Postal Service (USPS) "Express Mail Post Office to Addressee" service ("Express Mail") in accordance with 37 CFR 1.10 on February 6, 2003.

In support, the petition is accompanied by a copy of an "Express Mail" mailing label, bearing the number "EV170406076US." The same label number also appears on the application transmittal form which itemizes the application papers being mailed therewith. The Office has verified from the USPS database available to the USPTO that the package mailed under this label number had been accepted by the USPS on February 6, 2003 at 10:05 pm.

In view of the above, the petition is thus granted. The application is hereby accorded the requested filing date of February 6, 2003. No petition fee is owed.

The application file is being returned to the Office of Initial Patent Examination for correcting the filing date to February 6, 2003, and for mailing a corrected filing receipt reflecting that filing date. Upon completion of pre-examination, the application file will be forwarded to Technology Center 2100 for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

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MAIL

JAN 16 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Rutan & Tucker, LLP
14th Floor
611 Anton Boulevard
Costa Mesa, California 92626

In re Application of: John W. Addink et al.	)	DECISION ON PETITION TO
Application No. 10/360,157	)	MAKE SPECIAL UNDER 37
Filed: February 6, 2003	)	C.F.R. §1.102(c) AND MPEP §
For: INTERACTIVE IRRIGATION	)	708.02 (IV): APPLICANT'S AGE
SYSTEM	)	

This is a decision on the petition, filed November 10, 2003, under 37 C.F.R. §1.102(c) and M.P.E.P. §708.02(IV): Applicant's Age, to make the above-identified application special.

A grantable petition to make special under 37 C.F.R. § 1.102 and in accordance with M.P.E.P. § 708.02, Section IV must include a showing, as by a birth certificate or the applicant's statement, that the applicant is sixty five (65) years of age or more. No fee is required for this petition.

The petition includes a statement from applicant, John Addink, asserting that applicant is sixty five (65) years of age or more. Accordingly, the petition is **GRANTED.**

The application is being forwarded to the examiner for expedited prosecution.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

PTO/SB/44 (05-03)
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 : 7,160,399

DATED : January 9, 2007

INVENTOR(S) : Kuehmann, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent are hereby corrected as shown below:

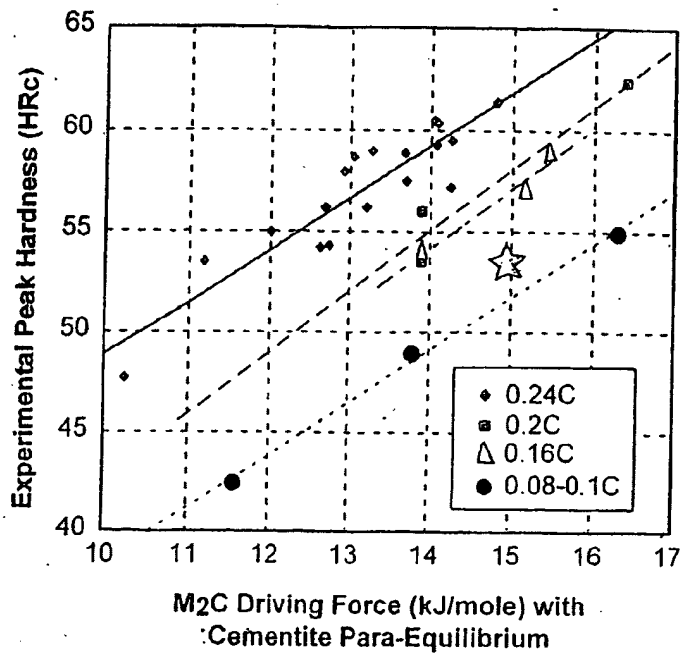

FIG. 3 CORRELATION BETWEEN PEAK HARDNESS AND M_2C DRIVING FORCES FOR VARYING CARBON (C) CONTENT.

MAILING ADDRESS OF SENDER: Banner & Witcoff, Ltd.
10 South Wacker Drive, Suite 3000
Chicago, IL 60606

PATENT NO. 7,160,399

No. of additional copies

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : 3-8-07

TO SPE OF : ART UNIT 1742

SUBJECT : Request for Certificate of Correction on Patent No.: 7160399 B2 (10/360204)

A response is requested with respect to the accompanying request for a certificate of correction:

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-915
Palm location **7580** - Tel. No. 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Should Fig. 3 be entro? Yes

Thank You For Your Assistance Please reply A/S/A/P

E. James
Certificates of Correction Branch

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ Approved — All changes apply.
- ☐ Approved in Part — Specify below which changes do not apply.
- ☐ Denied — State the reasons for denial below.

Comments:

Roy Venkatesh
SPE

1742
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark

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March 29, 2004

Harry F. Smith
Harrington & Smith
4 Research Dr.
Shelton, CT 06484-6212

In re application of
Holm, et al DECISION ON PETITION
Serial No.: 10/360,216
Filed: February 7, 2003
For: METHOD AND APPARATUS FOR COMBINING PROCESSING PWER OF MIDI-ENABLED MOBILE STATIONS TO INCREASE POLYPHONY

This is a decision on the petitions received on February 17, 2004, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Corrected Application Papers mailed March 25, 2003. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned May 28, 2003. The notice of abandonment was mailed February 9, 2004.

On February 17, 2004, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney responded to the Notice to File Corrected Application Papers on May 5, 2003.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Corrected Application Papers on May 5, 2003.

The petition is hereby GRANTED.

The application will be completed with the documents received on February 17, 2004 and released to Technology Center 2837.

The office regrets any inconvenience this may have caused the client.

Telephone inquiries concerning this matter may be directed to Doshie E. Day at (703) 308-3640.

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

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MCDERMOTT WILL & EMERY LLP
18191 VON KARMAN AVE.
SUITE 500
IRVINE CA 92612-7108

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MAR 2 0 2009

OFFICE OF PETITIONS

In re Patent No. 6,967,411
Issue Date: November 22, 2005
Application No. 10/360,244
Filed: February 7, 2003

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

It is noted that a fee of $2,055.00 was submitted by credit card payment to cover the difference in the 3½ maintenance fee; however, the fee should have been $490.00 which applicant reversed the payment(s) in the notice for Patent No. 6,588,721. Therefore, the Office will make the necessary corrections.

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.

Petitioner will not receive future correspondence related to maintenance fees for the patent unless a "Fee Address" Indication Form (see PTO/SB/47) and Request for Customer Number (see PTO/SB/125) are submitted.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3213.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: W. Eric Boyd, Esq.
Irvine Sensors Corporation
3001 Redhill Ave., Bldg 4/108
Costa Mesa, CA 92626

Attachment(s)

PTO/SB/47 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
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"FEE ADDRESS" INDICATION FORM

Address to:
Mail Stop M Correspondence
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P.O. Box 1450
Alexandria, VA 22313-1450

- OR -

Fax to:
571-273-6500

INSTRUCTIONS: The issue fee must have been paid for application(s) listed on this form. In addition, only an address represented by a Customer Number can be established as the fee address for maintenance fee purposes (hereafter, fee address). A fee address should be established when correspondence related to maintenance fees should be mailed to a different address than the correspondence address for the application. **When to check the first box below**: If you have a Customer Number to represent the fee address. **When to check the second box below**: If you have no Customer Number representing the desired fee address, in which case a completed Request for Customer Number (PTO/SB/125) must be attached to this form. For more information on Customer Numbers, see the Manual of Patent Examining Procedure (MPEP) § 403.

For the following listed application(s), please recognize as the "Fee Address" under the provisions of 37 CFR 1.363 the address associated with:

☐ Customer Number: _____

OR

☐ The attached Request for Customer Number (PTO/SB/125) form.

PATENT NUMBER (if known)	APPLICATION NUMBER

Completed by (check one):

☐ Applicant/Inventor _____ Signature

☐ Attorney or Agent of record _____ (Reg. No.) _____ Typed or printed name

☐ 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) _____ Requester's telephone number

☐ Assignee recorded at Reel _____ Frame_____ _____ Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more that one signature is required, see below*.

☐ *** Total of _____ forms are submitted.**

This collection of information is required by 37 CFR 1.363. 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 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313- 1450. DO NOT SEND COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop M Correspondence, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

PTO/SB/125A (11-08)
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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
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Please assign a Customer Number to the Address indicated below.

Firm *or* Individual Name			
Address			
City		State	Zip
Country			
Telephone		Email	

Please associate the following practitioner registration number(s) with the Customer Number assigned to the Address cited above.

☐ Additional practitioner registration numbers are listed on supplemental sheet(s) attached hereto.

Request Submitted by:

Firm Name (if applicable)			
Signature			
Name of person submitting request		Date	
Registration Number, if applicable		Telephone Number	

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop CN, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

PTO/SB/125B (11-08)
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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
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Request for Customer Number	**Practitioner Registration Number Supplemental Sheet**
	Page of Pages

Please associate the following practitioner registration number(s) with the Customer Number assigned to the Address cited on Request for Customer Number form attached.

Firm Name	
Date	☐ Additional supplemental sheets(s) attached hereto

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop CN, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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MAR 20 2006

OFFICE OF PETITIONS

In re Application of
Sridhar Sikha
Application No. 10/360,260
Filed: February 5, 2003
Attorney Docket No. SKHA001

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed October 20, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed March 19, 2003, which required the submission of replacement drawings to avoid the abandonment of the application. 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 20, 2003.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply (replacement drawings); (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of March 19, 2003 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This matter is being referred to the Office of Initial Patent Examination for pre-examination processing.

Frances Hicks
Petitions Examiner
Office of Petitions

SPE: Peter Cuomo

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/25/07

TO SPE OF : ART UNIT 3634

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/360,264 Patent No.: 7188739

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: Do not enter changes to "Title Page". All other changes are acceptable.

[signature] 6/14/07

[signature] 3634

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : **September 14,2007**

TO SPE OF : ART UNIT **3634**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/360,264** Patent No.: **7188739 B1**

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within **7** days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**.

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within **7** days, to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: In light of the copy of the initialed and signed PTO 1449, the certificate of correction is approved so that the foreign reference may be added to the list of references cited.

BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER

Brian Glessner
SPE

3634
Art Unit

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

CAMPBELL STEPHENSON LLP
11401 CENTURY OAKS TERRACE
BLDG. H, SUITE 250
AUSTIN, TX 78758

Mail Date: 04/26/2010

Applicant	: Christopher Stauber	: DECISION ON REQUEST FOR
Patent Number	: 7630953	: RECALCULATION of PATENT
Issue Date	: 12/08/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/360,269	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **527** 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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John G. Posa
Gifford, Krass, Groh, Sprinkle &
Citkowski, P.C.
280 N. Old Woodward Ave., Suite 400
Birmingham, MI 48009-5394

MAILED

DEC 0 6 2004

Technology Center 2100

In re Application of:
Patrick ZUILI
Application No. 10/360,270
Filed: February 7, 2003
For: FONT LEVEL ENCRYPTION METHOD AND APPARATUS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed October 25, 2004.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 **further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.**

There is no indication that Applicant has been notified of the request for withdrawal. Accordingly, the request is **DENIED.**

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

For Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SILICON VALLEY PATENT AGENCY
7394 WILDFLOWER WAY
CUPERTINO, CA 95014

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DEC 2 1 2007

OFFICE OF PETITIONS

In re Application of
Patrick Zuili
Application No. 10/360,270
Filed: February 7, 2003
Attorney Docket No. BSM-10202/29

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 2, 2007.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The 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, "applicant decided to take over the pending case", 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.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the

assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: PATRICK ZUILI
951 SW 4TH AVENUE
BOCA RATON, FL 33432

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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OFFICE OF PETITIONS

SILICON VALLEY PATENT AGENCY
7394 WILDFLOWER WAY
CUPERTINO, CA 95014

In re Application of
Patrick Zuili
Application No. 10/360,270
Filed: February 7, 2003
Attorney Docket No. BSM-10202/29

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 February 1, 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 Joe Zheng on behalf of all attorneys of record who are associated with customer No. 26797.

All attorneys/agents associated with the Customer Number 26797 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There are no pending Office actions at the present time.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: PATRICK ZUILI
20077 PALM ISLAND DRIVE
BOCA RATON, FL 33498

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/360,270	02/07/2003	Patrick Zuili	BSM-10202/29

CONFIRMATION NO. 9652

POWER OF ATTORNEY NOTICE

26797
SILICON VALLEY PATENT AGENCY
7394 WILDFLOWER WAY
CUPERTINO, CA 95014

OC000000029036481

Date Mailed: 03/24/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 02/01/2008.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Initial Patent Examination (571) 272-4000 or 1-800-PTO-9199

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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Yen Vu, Ph.D.
531 61st Street, Apt. D
Westmont, IL

In re Application of	:	
O'Rourke et al.	:	
Application No. 10/360,294	:	LETTER
Filed: February 7, 2003	:	
Attorney Docket No. 27702-10050	:	
For: Low Polarity Dimerate and Trimerate Esters as Plasticizers for Thermoplastic Polymer/Elastomer Composites		

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SEP 1 0 2003
OFFICE OF PETITIONS

Dear Dr. Vu:

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).

/s/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Marshall Gerstein & Borun
6300 Sears Tower
233 South Wacker
Chicago, IL 60606-6357

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Paper No. 6

Marshall Gerstein & Borun
6300 Sears Tower
233 South Wacker
Chicago, IL 60606-6357

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SEP 1 0 2003

OFFICE OF PETITIONS

In re Application of	:	
O'Rouke et al.	:	DECISION ACCORDING
Application No. 10/360,294	:	STATUS UNDER
Filed: February 7, 2003	:	37 CFR 1.47(a)
Attorney Docket No. 27702-10050	:	
For: Low Polarity Dimerate and	:	
Trimerate Esters as Plasticizers	:	
For Thermoplastic Polymer/Elastomer	:	
Composites	:	

This is in response to the petition under 37 CFR 1.47(a), filed August 25, 2003.

The petition is granted.

Petitioner has shown that Yen Vu, the non-signing inventor, has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the statement of facts of Gary Wentworth establishes that the inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that she sign the declaration.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventors at the addresses given in the present petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to Technology Center 1700.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of :
O'Rourke et al. : DECISION ON PETITION
Application No. 10/360,294 :
Filed: February 7, 2003 :
Attorney Docket No. 27702/10050 :

This is a decision on the petition under 37 CFR 1.182, filed April 7, 2005, requesting the correction of the citizenship of non-signing inventor Yen Vu in the above-identified application.

In the present petition, petitioners state that the USPTO accorded the application status under 37 CFR 1.47(a). Petitioners explain that the declaration and power of attorney executed by the joint inventors incorrectly indicated that inventor Vu was a United States citizen. Petitioners state that they subsequently realized that inventor Vu is a citizen of Vietnam.

With the present petition, petitioners submitted a supplemental declaration and power of attorney signed by the joint inventors on behalf of themselves and non-signing inventor Vu, providing the correct citizenship for inventor Vu.

The Office notes that a petitioner may correct deficiencies or inaccuracies relating to a non-signing inventor with a supplemental oath or declaration signed by all the joint inventors on behalf of themselves and the non-signing inventor. See 37 CFR 1.67(a). Accordingly, no petition is necessary. The petition is **dismissed** as involving a moot issue. The Office will not charge any petition fee.

The Office records will be corrected to indicate that inventor Vu is a citizen of Vietnam.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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MOTOROLA INC
600 NORTH US HIGHWAY 45
ROOM AS437
LIBERTYVILLE IL 60048-5343

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OFFICE OF PETITIONS

In re Application of
Marcia Otting, et al.
Application No. 10/360,296
Filed: February 7, 2003
Attorney Docket No. CS22119RL

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 14, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before June 20, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed March 20, 2006. Accordingly, the date of abandonment of this application is June 21, 2006.

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 $1400 and the publication fee of $300, (2) the petition fee of $1500; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to April Wise at (571) 272-1642.

This application is being referred to Publishing Division for processing into a patent.

Irvin Dingle
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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PAUL S MADAN
MADAN, MOSSMAN
& SRIRAM, PC
2603 AUGUSTA, SUITE 700
HOUSTON, TX 77057-1130

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OFFICE OF PETITIONS

In re Application of

Elder, et al.

Application No. 10/360,313

Filed: February 7, 2003

Attorney Docket No. IO-1066US

: DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 1, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to file a proper and timely response to the final Office action mailed September 26, 2005, which set a shortened statutory period for reply of three-months from its mailing date. A response was filed on January 30, 2006, with a request for an extension of time within the first month. The response was improper as indicted by a notice mailed April 3, 2006. A Notice of Abandonment was mailed May 10, 2006.

The Request for Continued Examination and amendment filed September 1, 2006, is noted.

The application file is being forwarded to Technology Center 2800, GAU 2863 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Daniel P. McCarthy
PARSONS, BEHLE & LATIMER
201-South Main Street, Suite 1800
P.O. Box 45898
Salt Lake City, UT 84145-0898

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AUG 2 0 2004
OFFICE OF PETITIONS

In re Application of	:	
Calvin D. Ostler, et al.	:	
Application No. 10/360,327	:	DECISION ON PETITIONS
Filed: February 7, 2002	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 5110.2P	:	AND UNDER 37 CFR 1.78(a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed June 4, 2004, 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 **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.

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 1.78(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., (August 2001), Section 201.11, Reference to First Application. The amendment filed fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and a substitute amendment[1] to correct the above matter is required.

Further, it is noted that a claim for priority of provisional Application No. 60/435,526 appears in the specification submitted on filing. However, petitioner did not include the claim for priority of this provisional application in the amendment filed June 4, 2004. For the record, petitioner needs to clarify whether or not a claim for priority of provisional Application No. 60/435,526 is still desired and if so, the substitute amendment filed in response to this decision should also include the claim for priority of provisional Application No. 60/435,526. Applicant is reminded that if it is stated that the claim for priority of this provisional application is no longer desired, the rights thereto would be forever lost.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

[1] See 37 CFR 1.121.

By hand: U.S. Patent and Trademark Office
220 20th Street S
Customer Window, Mail Stop Petitions
Crystal Plaza Two Lobby, Room 1B03
Arlington, VA 22202

By fax: (703) 872-9306
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Sherry D. Brinkley at (703) 305-9220[2].

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Frances M. Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[2] Effective September 27, 2004, the telephone number will be 571-272-3204

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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THOMAS E BRENNAN
12953 GRAND TRAVERSE DRIVE
DADE CITY FL 33525

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MAR 26 2007

OFFICE OF PETITIONS

In re Application of	:	
Thomas E. Brennan	:	
Application No. 10/360,333	:	ON PETITION
Filed: February 10, 2003	:	
Title: Golfball, a Team Golf Game System and Method of Play	:	

This is a decision on the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ERRONEOUSLY TREATED AS ABANDONED THROUGH NO FAULT OF THE APPLICANT", filed January 23, 2007, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted.

The above-identified application became abandoned for failure to timely file a response to the non-final Office action mailed March 29, 2006, which set a period for reply of three (3) months. No extensions of time under 37 CFR 1.136(a) were purchased. Accordingly, no reply having received, the application became abandoned on June 30, 2006. A Notice of Abandonment was mailed on January 3, 2007.

Petitioner argues that he timely mailed a reply on April 28, 2006. Petitioner has not included a USPTO date stamped postcard receipt itemizing a timely filed response, or included a copy of the response bearing a Certificate of Mailing or Transmission pursuant to 37 CFR 1.8 or an Express Mail mailing label number pursuant to 37 CFR 1.10.

Petitioner may wish to consider reviving the abandoned application pursuant to 37 CFR 1.137(a) or 37 CFR 1.137(b).

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(l) - currently **$250** for a small entity; (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 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m) - currently **$750** for a small entity; (3) A **statement** that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was **unintentional**. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) Any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to paragraph (d) of this section.

Enclosed for petitioner's convenience are blank copies of Form PTO/SB/61 (unavoidable delay) and PTO/SB/64 (unintentional delay).

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 should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: PTO/SB/61 (3 pages)
PTO/SB/64 (2 pages)
Statement of Privacy Act (1 page)

PTO/SB/61 (09-06)
Approved for use through 03/31/2007. 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 UNAVOIDABLY UNDER 37 CFR 1.137(a)	Docket Number (Optional)

First Named Inventor: Art Unit:

Application Number: Examiner:

Filed:

Title:

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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 any 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) Adequate showing of the cause of unavoidable delay.

1. Petition fee

☐ Small entity – fee $_____ (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity – fee $_____ (37 CFR 1.17(l)).

2. Reply and/or fee

A The reply and/or fee to the above-noted Office action in the form of _____ (identify the type of reply):

☐ has been filed previously on _____ .

☐ is enclosed herewith.

B The issue fee of $ _____

☐ has been filed previously on _____ .

☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(a). 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 8 hours 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.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)

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. An adequate showing of the cause of the delay, and 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(a) was unavoidable, is enclosed.

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	

Enclosure
☐ Fee Payment
☐ Reply
☐ Terminal Disclaimer Form
☐ Additional sheets containing statements establishing unavoidable delay
☐ _____

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

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 UNAVOIDABLY UNDER 37 CFR 1.137(a)

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

Signature	Date
Typed or printed name	Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

(Please attach additional sheets if additional space is needed.)

PTO/SB/64 (09-06)
Approved for use through 03/31/2007. 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

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JUN 05 2007

OFFICE OF PETITIONS

THOMAS E BRENNAN
12953 GRAND TRAVERSE DRIVE
DADE CITY FL 33525

In re Application of :
Thomas E. Brennan :
Application No. 10/360,333 : ON PETITION
Filed: February 10, 2003 :
Title: Golfball, a Team Golf Game :
System and Method of Play

This is a decision on the petition to revive under 37 CFR 1.137(b), filed May 4, 2007.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely file a response to the non-final Office action mailed March 29, 2006, which set a period for reply of three (3) months. No extensions of time under 37 CFR 1.136(a) were purchased. Accordingly, no reply having received, the application became abandoned on June 30, 2006. A Notice of Abandonment was mailed on January 3, 2007. Applicant filed a petition to withdraw the holding of abandonment on January 23, 2007. However, the petition was dismissed in a decision mailed on March 26, 2007.

With the instant petition, petitioner paid the required petition fee and made the proper statement of unintentional delay. The reply in the form of an Amendment was previously filed on January 23, 2007.

The matter is being forwarded to Group Art Unit 3714 for consideration of the Amendment filed January 23, 2007.

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
www.uspto.gov

Paper No. 6

Oren Asher
51 Bronte Road
Thornhill, ON
L3T 7J4 Canada AIR MAIL

COPY MAILED

APR 22 2005

OFFICE OF PETITIONS

In re Application of
Oren Asher
Application No. 10/360,334
Filed: February 10, 2003
Title: Peer-to-Peer Service Designer

DECISION ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(a), filed January 13, 2005.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." Extensions of time under 37 CFR 1.136(a) are permitted.

The above-identified application became abandoned for failure to file a timely reply in response to the nonfinal Office action mailed on March 12, 2004, which set a three-month shortened statutory period to respond. No reply having been received, the above-identified application became abandoned on June 13, 2004. A Notice of Abandonment was mailed on December 10, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, 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 § 114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. 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 statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

This petition lacks items (1) and (3) above.

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to be "unavoidable".[3] Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[4]

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).[5] Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[6]

As to item (3) above, petitioner alleges that he did not receive the nonfinal Office action of March 12, 2004. Specifically, petitioner states that he has filed a number of patent applications, and in his

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[3] 35 U.S.C. § 133.

[4] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

[5] See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

[6] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

experience it has taken two to three years before the Office issues an action. Petitioner explains he called the examiner in early December of 2004, because he did not received any correspondence from the Office regarding this application. Petitioner further states that the Examiner informed him that the application was abandoned for failure to respond to an Office action. Petitioner asserts that he never received any Office action from the USPTO.

A review of the record indicates no irregularity in the mailing of the nonfinal Office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by showing that the Office action was not in fact received. However, petitioner has not met the showing required to establish nonreceipt of an Office action. To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the **docket record** where the nonreceived Office action would have been entered had it been received and docketed.[2] A proper docket report consists of a "docket record **where the nonreceived Office action would have been entered had it been received and docketed**."[3] "For example, if a three-month period for reply was set in the nonreceived Office action, a copy of the docket record showing **all** replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."[4]

However, as petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the nonfinal Office action of March 12, 2004, was not entered into that system. The Office would like to see documentary evidence and records as may exist which would substantiate that petitioner exercised due diligence with respect to petitioner's most important business.

As to item (1), this application became abandoned for failure to file a response to the nonfinal Office action of March 12, 2004, within the period set for response. The proposed response required for consideration of a petition to revive must be an amendment, request for reconsideration or the filing of a continuing application. Petitioner has failed to file a reply previously, or with the present petition. Petitioner must submit a proper response to the nonfinal Office action with any renewed petition. A copy of the nonfinal Office action accompanies the present decision for petitioner's convenience.

Accordingly, the petition under 37 CFR 1.137(a) is **dismissed**.

---

[3] MPEP 711.03(c)(II) (emphasis added).

[4] Id.

Alternative Venue:

Instead of filing a renewed petition under 37 CFR 1.137(a), petitioner should consider filing a petition pursuant to 37 CFR 1.137(b) on the basis of **unintentional** delay.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action. The required reply in this instance must be an amendment, request for reconsideration or the filing of a continuing application.

(2) The petition fee as set forth in 37 CFR 1.17(m), currently an additional $750.00 for a small entity; and,

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell:**

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosures: PTO/SB/64
Nonfinal Office action dated March 12, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. 9

Oren Asher
51 Bronte Road
Thornhill ON L3T 7J4
CANADA

COPY MAILED

JUL 13 2005

OFFICE OF PETITIONS

In re Application of :
Oren Asher :
Application No. 10/360,334 : DECISION ON PETITION
Filed: February 10, 2003 :
Title: Peer-to-Peer Service Designer :

This is a decision on the petition under 37 CFR 1.137(b), filed July 1, 2005, to revive the above-identified application.

This application became abandoned for failure to reply timely to the nonfinal Office Action mailed March 12, 2004, which set a three (3) month shortened statutory period to reply. Accordingly, this application became abandoned on June 13, 2004. A Notice of Abandonment was mailed on December 10, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of an amendment, paid the petition fee, and made the proper statement of unintentional delay.

The petition is **granted**.

The application file is being forwarded to Technology Center Art Unit 2144.

Telephone inquiries should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

CYR & ASSOCIATES, P.A.
605 U.S. Highway 169
Suite 300
Plymouth MN 55441

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MAY 29 2009

OFFICE OF PETITIONS

In re Application of	:	
Steven W. Berhow et al.	:	
Application No. 10/360,362	:	DECISION ON PETITION
Filed: February 6, 2003	:	
Attorney Docket No. 33248.2	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 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 reply in a timely manner to the non-final Office action mailed, July 22, 2005, which set a shortened statutory period for reply of three (3) months. The reply that was received along with a three (3) month extension of time on April 10, 2006 (with a Certificate of Mailing dated April 7, 2006), was untimely as the extension of time that was requested was after the expiration of the maximum extendable period for reply. Accordingly, the application became abandoned on October 23, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR

1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (3).

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

(1) the delay in reply that originally resulted in the abandonment;

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 **would not be granted where the abandonment** or the failure to pay the fee for issuing the patent **was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). *See* In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay (more than 2 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 October 23, 2006. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, as Briggs and Morgan P.A. was counsel of record at the time of abandonment, Briggs and Morgan P.A. should explain why this application became abandoned while it was under their control and what efforts Briggs and Morgan P.A. made to further reply of itself and with whom this matter was discussed outside of Briggs and Morgan P.A.. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s), and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons then at Briggs and Morgan P.A., 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 2 years) could trigger, as here, a request for

additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons then at BRIGGS AND MORGAN P.A. and the responsible person(s) "Briggs and Morgan P.A." 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.

To expedite consideration, petitioner may wish to contact JoAnne Burke at (571) 272-4584 regarding the filing of the renewed petition under 37 CFR 1.137(b).

Ramesh Krishnamurthy
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
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/360,362	02/06/2003	Steven W. Berhow	33248.2

CONFIRMATION NO. 1033

POA ACCEPTANCE LETTER

44163
CYR & ASSOCIATES, P.A.
605 U.S. Highway 169
Suite 300
Plymouth, MN 55441

OC000000035853154

Date Mailed: 05/07/2009

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/24/2008.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/jlburke/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BRIGGS AND MORGAN P.A.
2200 IDS CENTER
80 SOUTH 8TH ST
MINNEAPOLIS MN 55402

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MAY 29 2009

OFFICE OF PETITIONS

In re Application of	:	
Steven W. Berhow et al.	:	
Application No. 10/360,362	:	DECISION ON PETITION
Filed: February 6, 2003	:	TO WITHDRAW
Attorney Docket No. 33248.2	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed February 21, 2007.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to attorneys/agents associated with Customer Number 32300 has been revoked by the Inventors of the patent application on November 24, 2008. 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 inquires concerning this decision should be directed to JoAnne Burke at 571-272- 4584.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: CYR & ASSOCIATES, P.A.
605 U.S. HIGHWAY 169
SUITE 300
PLYMOUTH, MN 55441

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
10/360,362	02/06/2003	Steven W. Berhow	33248.2

CONFIRMATION NO. 1033

POWER OF ATTORNEY NOTICE

32300
BRIGGS AND MORGAN P.A.
2200 IDS CENTER
80 SOUTH 8TH ST
MINNEAPOLIS, MN 55402

OC000000035853149

Date Mailed: 05/07/2009

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/24/2008.

- The Power of Attorney to you in this application has been revoked by the applicant. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/jlburke/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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HAMRE, SCHUMANN, MUELLER & LARSON PC
P O BOX 2902-0902
MINNEAPOLIS, MN 55402-0902

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OFFICE OF PETITIONS

In re Application of	:	
Mitsuaki Oshima et al	:	
Application No. 10/360,363	:	DECISION GRANTING PETITION
Filed: February 6, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 10873.0387USD2	:	

This is a decision on the petition, filed June 30, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 9, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2653 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

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Paper No. 7

Brian M. Hoffman
FENWICK & WEST L.L.P.
Silicon Valley Center
801 California Street
Mountain View, CA 94041

MAILED

JUN 18 2004

Technology Center 2100

In re Application of:
Peter Szor
Application No. 10/360,381
Filed: February 6, 2003
For: DYNAMIC DETECTION OF COMPUTER WORMS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed June 03, 2004.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed June 03, 2004 meets all the requirements. Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

James R. Matthews

for Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
703-305-9750

cc: Edward J. Radlo
SONNENSCHEIN NATH & ROSENTHAL LLP
685 Market Street, 6th Floor
San Francisco, CA 94105

UNITED STATES PATENT AND TRADEMARK OFFICE

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FINNEGAN HENDERSON FARABOW GARRETT & DUNNER
1300 I STREET, NW
WASHINGTON, DC 20005

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OCT 2 0 2004

OFFICE OF PETITIONS

In re Application of	:	
James S. Bates et al	:	
Application No. 10/360,417	:	ON PETITION
Filed: February 7, 2003	:	
Attorney Docket No. BSC-037C2	:	

This is a decision on the petition under 37 CFR 1.313(c), filed October 19, 2004,which is being treated under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 23, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 3732 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Wan Laymon
Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Date : October 20, 2004

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : James S. Bates et al
Application No. : 10/360,417
Filed : February 7, 2003

The above-identified application has been assigned Patent No. 6,811,554 and an issue date of November 2, 2004.

It is hereby directed that this application be withdrawn from issue at the request of the applicants. Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of November 2, 2004:

"All reference to Patent No. 6,811,554 to James S. Bates et al of Bloomington, IN for ATRAUMATIC MEDICAL RETRIEVAL DEVICE appearing in the Official Gazette of November 2, 2004 should be deleted since no patent was granted."

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Paul Harrison; Crystal Park 3, Suite 441 (FAX-703-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane Davis (CDS), CM1-6A07
Tamara K. Greene, PK3-910

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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	:
Bates, et al.	: DECISION ON APPLICATION
Application No. 10/360,417	: FOR PATENT TERM ADJUSTMENT
Filed: February 7, 2003	: AND
Patent No. 7,077,849	: NOTICE OF INTENT TO ISSUE
Issued: July 18, 2006	: CERTIFICATE OF CORRECTION

This decision is in response to the "NOTICE OF DETERMINATION OF ERROR IN PATENT TERM ADJUSTMENT AND REQUEST FOR CERTIFICATE OF CORRECTION", filed August 1, 2006, notifying the Office of an error in Patentees' favor in the determination of patent term adjustment under 35 U.S.C. 154(b).

The request for correction of the patent term adjustment (PTA) is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **zero (0)** days.

On July 18, 2006, the above-identified application matured into U.S. Patent No. 7,037,715. The patent issued with a Patent Term Adjustment of forty-one (41) days.

The Office determined a patent term adjustment of forty-one (41) days based on an adjustment for PTO delay of one hundred sixty-one (161) days pursuant to 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. §1.702(b), reduced by one hundred twenty (120) days of applicant delay pursuant to 35 U.S.C. 154 (b)(1)(C)(iii) and 37 C.F.R. 1.704(c)(10).

A review of the application reveals that Applicants filed a Request for Continued Examination on October 19, 2004. Pursuant to 37 CFR 1.702(b):

> The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:
>
> (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Accordingly, issuance of a certificate of correction pursuant to 35 U.S.C. 254 and 37 C.F.R. §1.322 is appropriate. No petition fee was required and none has been charged. The Office thanks Patentees for their good faith and candor in bringing this matter to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. 254 and 37 C.F.R. §1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **zero (0)** days subject to any disclaimers.

Telephone inquiries specific to this letter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Kery Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Draft Certificate of Correction (1 page)

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,077,849 B2

DATED : July 18, 2006

INVENTOR(S) : Bates, 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 (41) days

Delete the phrase "by 41 days" and insert – by 0 days—

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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BARNES & THORNBURG LLP
P.O. BOX 2786
CHICAGO, IL 60690-2786

Mail Date: 04/20/2010

Applicant	: Geert Maria Marcel Vandensande	: DECISION ON REQUEST FOR
Patent Number	: 7636410	: RECALCULATION of PATENT
Issue Date	: 12/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/360,436	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/07/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1919** 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.

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)
6,855,116	2005-02-15	10/360,468	2003-02-06	367.017

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
○ 3 ½ year	(1551)	◉ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Andrew S. McConnell/	Date (YYYY-MM-DD)	2009-04-21
Name	Andrew S. McConnell	Registration Number	32272

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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Commissioner for Patents
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Alexandria, VA 22313-1450
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In re Patent No. 6855116
Issue Date: February 15,2005
Application No. 10360468
Filed: February 6,2003
Attorney Docket No. 367.017

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 21,2009 ,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 April 21,2009 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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GLENN W. OHLSON
BARNES & THORNBURG
PO BOX 2786
CHICAGO, IL 60690-2786

COPY MAILED
AUG 25 2005
OFFICE OF PETITIONS

In re Application of :
Kenneth A. Stevens :
Application No. 10/360,484 :
Deposited: February 6, 2003 : ON PETITION
Title of Invention: :
STREAK FREE APPARATUS :
FOR PROCESSING AND :
STACKING PRINTED FORMS :

This is a decision on the Petition to Revive Abandoned Patent Application, filed July 15, 2005. The petition is properly treated under 37 CFR 1.137(a). Applicant also petitions for revival in the alternative under 37 CFR 1.137(b).

The petition under 37 CFR 1.137(a) is **dismissed.**

The petition under 37 CFR 1.137(b) is **granted.**

Background

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice") mailed February 18, 2004. The Notice set a non-extendable three (3) month period for reply. No response having been received, the application became abandoned on May 19, 2004. A Notice of Abandonment was mailed on July 8, 2004.

Applicant's Assertion

Applicant asserts that the payment of the issue fee was unavoidably delayed because Applicant was experiencing increasing financial difficulties which began in July 2001 through 2004.

Initially it is noted that the relevant period for revival of an application based upon unavoidable delay is from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a). It is this period that applicant must demonstrate that payment of the issue fee was unavoidable.

A Grantable Petition Under 37 CFR 1.137(a)

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (**1**)the required reply (unless previously filed), which may met by the filing of a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (**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).

Applicant lacks item (3) above. In order for the petition under 37 CFR 1.137(a) to be considered grantable, Applicant must demonstrate 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. In this instance, the relevant period is between May 18, 2004 and continues to run "until the filing of a grantable petition". 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).

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).

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

Applicant has not provided an adequate showing of unavoidable delay. Applicant asserts that the delay in paying the maintenance fee was unavoidable because the Applicant suffered financial setbacks.

Applicant is advised that a showing of "unavoidable" delay based upon financial difficulty must establish that Applicant lacked the financial resources to pay the patent fee(s) necessary to continue prosecution of the above-identified application. Such a showing must be supported by a **complete and thorough** showing of the responsible person's financial condition during the

entire period between May 18, 2004 through the time the instant petition was filed, including income (tax records), expenses, assets, credit and obligations, which made the delay in payment of the patent fee(s) unavoidable. Applicant should provide copies of all documents or records that would confirm the financial difficulty.

Applicant is advised that information provided may become public. Applicant is advised to take precautionary measures, to include redacting personal sensitive information such as social security numbers and account numbers prior to submitting the information to this Office.

Petition under 37 CFR 1.137(b)

With the instant petition, Applicant has satisfied the requirements of a grantable petition under 37 CFR 1.137(a). The issue fee is filed with the instant petition. Accordingly, the petition is granted.

Applicant's deposit account has been charged the small entity fee for a petition under 37 CFR 1.137(b), $750.00 (in addition to the petition fee under 37 CFR 1.137(a); the issue fee, $700.00, and the publication fee, $300.00)

This application is being referred to Publishing Division for processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Robert J. Van Der Wall
1320 South Dixie Highway
Suite 1275
Coral Gables, FL 33146

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AUG 2 6 2005

OFFICE OF PETITIONS

In re Application of:
ST. JOHN, Cali
Application No.: 10/360,488
Filed: February 08, 2003
Atty's Docket No.: 946-16
Title: BUSINESS METHOD FOR INDICIA WITH SANITIZED BEVERAGE CANS

DECISION ON PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed May 09, 2005 to revive the above-entitled application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper and timely reply to the final Office action mailed July 13, 2004, which set a shortened statutory period for reply of three (3) months. No timely extensions of time under the provisions of 37 CFR 1.136(a) were obtained and a Notice Of Appeal was not filed.[1] Accordingly, the above-identified application became abandoned at midnight on October 13, 2004.

The present petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that it includes: (1) the reply in the form of a Request For Continued Examination (RCE) and submission as required by 37 CFR 1.114; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply to the final Office action (in the form of the RCE and submission) is accepted as having been unintentionally delayed.

The application file is being referred to Technology Center AU 1733.

---

[1] The petition for revival was accompanied by payment of a $510 extension fee. However, an extension of time under 37 CFR 1.136(a) must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S, 8 USPQ2d 1630, 1631 (Comm'r Pats 1988). Accordingly, since the $510 extension of time fee submitted with the present petition on May 09, 2005 was filed 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 Richard M. Ross at (571) 272-3296 or, in his absence, the undersigned at (571) 272-3217.

Frances Hicks for

Brian Hearn
Petitions Examiner
Office Of Petitions

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JUN 29 2004

In re Application of
Richard Soltys *et al*
Application No. 10/360,508
Filed: February 7, 2003
Attorney Docket No. 110184.403C2

: DECISION ON PETITION

This is a decision on the petition to make special filed on May 5, 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 3713 is being advised of the granting of the instant petition, and will in turn advise the examiner to whom the application is assigned of the special status of this application and the need for action consistent with this Decision.

PETITION GRANTED.

Stephen Marcus, Special Program Examiner,
Technology Center 3700

Seed Intellectual Property Law Group PLLC
701 Fifth Ave.
Suite 6300
Seattle, WA 98104-7092

SPE X. Thai

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/360,508

Paper No.: _____

DATE : 8/5/05

TO SPE OF : ART UNIT 3713

SUBJECT : Request for Certificate of Correction on Patent No.: 6857961

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.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☒ **Denied** — State the reasons for denial below.

Comments:

Note the attached Exhibits A & B which stated the reasons why the reference FR 2775196 was not considered and should not be listed on the printed Patent.

SPE

3713
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

EXHIBIT A

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Frank Abramonte on November 17, 2004.

The application has been amended as follows:

Insert the following in the specification before "Background of the Invention": "This is a continuation-in-part of Application Number 09/790,480 filed, February 21, 2001 now U.S. Patent No. 6,685,568."

Information Disclosure Statement

The information disclosure statement filed November 11, 2004 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. All references submitted on the IDS were considered except for FR 2 775 196 which was in French.

EXHIBIT B

EXPRESS MAIL NO. EV335396537US

FORM PTO-1449 (REV. 7-80)

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

INFORMATION DISCLOSURE STATEMENT
(Use several sheets if necessary)

OIPE JC
NOV 0 2 2004
PATENT & TRADEMARK OFFICE

ATTY. DOCKET NO.	APPLICATION NO.
110184.403C2	10/360,508
APPLICANTS: Richard Soltys et al.	
FILING DATE: February 7, 2003	GROUP ART UNIT: 3713

U.S. PATENT DOCUMENTS

*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
JB	AA	1,034,402	07/30/12	Hardy	—	—	
	AB	1,727,800	09/10/29	Albert	—	—	
	AC	3,222,071	12/07/65	Lang	273	149	
	AD	3,751,041	08/07/73	Seifert	273	149 P	
	AE	3,814,436	06/04/74	Boren	273	149 P	
	AF	4,031,376	06/21/77	Corkin, Jr.	235	156	
	AG	4,448,419	05/15/84	Telnaes	273	143 R	
	AH	4,636,846	01/13/87	Villareal	358	100	
	AI	4,693,480	09/15/87	Smith	273	296	
	AJ	5,259,907	11/09/93	Soules et al.	156	277	
	AK	5,312,104	05/17/94	Miller	273	148 R	
	AL	5,416,308	05/16/95	Hood et al.	235	454	
	AM	5,511,784	04/30/96	Furry et al.	273	143 R	
	AN	5,518,249	05/21/96	Sines et al.	273	304	
	AO	5,654,050	08/05/97	Whalen-Shaw	428	35.7	
	AP	5,707,287	01/13/98	McCrea, Jr.	463	27	
JB	AQ	5,766,074	06/16/98	Cannon et al.	463	16	

FOREIGN PATENT DOCUMENTS

		DOCUMENT NUMBER	DATE	COUNTRY	TRANSLATION YES	TRANSLATION NO
	~~AR~~	~~2 775 196~~	~~08/27/99~~	~~FR~~		
JB	AS	1 291 045 A2	03/12/03	EP		

OTHER PRIOR ART *(Including Author, Title, Date, Pertinent Pages, Etc.)*

	AT	

EXAMINER: Julie Brocketti

DATE CONSIDERED: 11-17-04

* EXAMINER: Initial if reference considered, whether or not criteria is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant(s).

C:\NrPortbl\iManage\JASONA\528616_1.DOC

Date: 11/02/04

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PARSONS HSUE & DE RUNTZ LLP
595 MARKET STREET
SUITE 1900
SAN FRANCISCO, CA 94105

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NOV 1 0 2005

OFFICE OF PETITIONS

In re Application of	:	
Vaez-Iravani, et al.	:	
Application No. 10/360,512	:	DECISION ON PETITION
Filed: February 6, 2003	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. TNCR.195US1	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed August 22, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the Application Data Sheet (ADS) submitted September 27, 2004 and again on August 22, 2005.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
(2) the surcharge set forth in §1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

Please note, a reference to add the prior-filed application on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684,

207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> "Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251."

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. See In re deSeversky, supra. Note also MPEP 201.06(c). As such, the amendment, filed August 22, 2005, will not be entered. However, petitioner submitted an ADS on September 27, 2004 and again on August 22, 2005 which also includes the reference to the prior-filed provisional application.

The instant nonprovisional application was pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(iii). Additionally, the instant nonprovisional application was filed within twelve months of the filing date of the prior-filed provisional application, Application No. 60/356,500 which was filed on February 11, 2002, for which priority is claimed.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(6) in that (1) a reference to the prior-filed provisional application has been included in an ADS, as provided by 37 CFR 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §119(e) to the prior-filed provisional application satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

The application is being forwarded to Technology Center AU 2877 for consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/356,500.

Any inquiries concerning this decision may be directed to Petitions Attorney Edward Tannouse at (571) 272-3228. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

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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STEVEN N. FOX, ESQ.
P.O. BOX 251
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JUN 27 2005

OFFICE OF PETITIONS

In re Application of
Simon Fireman et al. :
Application No. 10/360,520 : ON PETITION
Filed: February 6, 2003 :
Attorney Docket Number: AQL-700.01 :

This is a decision on the petition under 37 CFR 1.137(b), filed June 6, 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 3, 2004. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been requested, this application became abandoned June 4, 2004. Accordingly, a Notice of Abandonment was mailed October 15, 2004.

Petitioner files the instant petition under 37 CFR 1.137(b). [1]

This application is being forwarded to Technology Center 3751 for appropriate action on the amendment filed June 6, 2005.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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OFFICE OF PETITIONS

In re Application of	:	
Allefs et al.	:	
Application No. 10/360,522	:	DECISION ON REQUEST
Filed: February 7, 2003	:	FOR
Atty Docket No. 12810-00156	:	PATENT TERM ADJUSTMENT
	:	

This is a decision on the "REQUEST FOR PATENT TERM ADJUSTMENT," filed on April 21, 2008. Applicants request correction of the patent term adjustment, partly on the basis of the Office taking in excess of three years to issue the patent.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentee is given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentee may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated

in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **two hundred sixty-nine (269)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 10, 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 0 days. This was based on an Office delay of 252 days reduced by an applicant delay of 261 days. Applicants timely filed the instant application for patent term adjustment. Applicants assert entitlement to Patent Term Adjustment for Office delay due to the withdrawal of the application from issue on June 7, 2007, due to potential interference, as communicated in the Office communication mailed on June 20, 2007. A new Notice of Allowance was mailed on March 10, 2008. Applicants request reconsideration of the patent term due to the delay caused by interference proceedings pursuant to 37 CFR 1.702(c).

35 U.S.C. 154(b) states, in pertinent part:

> (1) PATENT TERM GUARANTEES. –
>
> …
>
> (C) GUARANTEE OR ADJUSTMENTS FOR DELAYS DUE TO INTERFERENCES, SECRECY ORDERS, AND APPEALS.–Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to –
>
> (i) a proceeding under section 135(a);
>
> (ii) the imposition of an order under section 181; or
>
> (iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued under a decision in the

> review reversing an adverse determination of patentability, the term of the patent shall be extended 1 day for each day of the pendency of the proceeding, order, or review, as the case may be.
>
> (2) LIMITATIONS. –
>
> (A) IN GENERAL. – To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

37 CFR 1.702(c) states:

> 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 interference proceedings under 35 U.S.C. 135(a).

37 CFR 1.703(c) states

> The period of adjustment under § 1.702(c) is the sum of the following periods, to the extent that the periods are not overlapping:
>
> (2) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

A review of the record reveals that on June 7, 2007, a Notice of Withdrawal from Issue was mailed. On June 20, 2007, an Office communication was mailed, stating that all claims are allowable, except for potential interference. On March 10, 2008, a Notice of Allowance was mailed.

Thus, the period from June 7, 2007, until March 10, 2008, is the period under 37 CFR 1.702(c), resulting in additional PTO delay of 278 days.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance should be adjusted to two

hundred sixty nine (269) days (530 (252 + 278) days of Office delay reduced by 261 days of applicant delay).

Applicants are reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The $200 fee set forth in 37 CFR 1.18(e) is being charged to counsel's deposit account. No additional fees are required.

The application file is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Tuesday
Date: 12/9/2008

PALM INTRANET

Time: 17:07:19

PTA Calculations for Application: 10/360522			
Application Filing Date:	02/07/2003	PTO Delay (PTO):	252
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	261
Post-Issue Petitions:	0	Total PTA (days):	269
PTO Delay Adjustment:	278		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
83	12/09/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	278		
69	03/10/2008	MAIL NOTICE OF ALLOWANCE			
68	03/06/2008	ISSUE REVISION COMPLETED			
67	03/06/2008	DOCUMENT VERIFICATION			
66	03/06/2008	EXAMINER'S AMENDMENT COMMUNICATION			
65	03/06/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
64	02/27/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
63	03/03/2008	NOTICE OF ALLOWABILITY			
57	06/20/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
55	06/19/2007	INTERFERENCE COMMUNICATION: INITIAL MEMO DISPOSAL			
54	06/19/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
53	06/07/2007	DATE FORWARDED TO EXAMINER			
52	06/07/2007	WITHDRAWAL OF NOTICE OF ALLOWANCE			
51	04/18/2007	FINISHED INITIAL DATA CAPTURE			
50	03/27/2007	SEQUENCE FORWARDED TO PUBS ON TAPE			
49	03/12/2007	EXPORT TO INITIAL DATA CAPTURE			
48	03/09/2007	MAIL NOTICE OF ALLOWANCE			
47	03/05/2007	ISSUE REVISION COMPLETED			
46	03/05/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
45	03/05/2007	NOTICE OF ALLOWABILITY			
44	03/02/2007	DATE FORWARDED TO EXAMINER			
43	02/28/2007	AMENDMENT AFTER FINAL REJECTION		48	41

42	02/28/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
41	10/11/2006	MAIL FINAL REJECTION (PTOL - 326)			
40	10/02/2006	FINAL REJECTION			
39	07/24/2006	DATE FORWARDED TO EXAMINER			
38	07/19/2006	SUPPLEMENTAL RESPONSE		29	36
37	06/21/2006	DATE FORWARDED TO EXAMINER			
36	06/20/2006	RESPONSE AFTER NON-FINAL ACTION		92	34
35	06/20/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
34	12/20/2005	MAIL NON-FINAL REJECTION			
33	12/12/2005	NON-FINAL REJECTION			
32	10/06/2005	DATE FORWARDED TO EXAMINER			
31	09/30/2005	RESPONSE AFTER NON-FINAL ACTION		92	27
30	09/30/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
29	10/06/2005	CORRESPONDENCE ADDRESS CHANGE			
28	10/07/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
27	03/30/2005	MAIL NON-FINAL REJECTION			
26	03/21/2005	NON-FINAL REJECTION			
25	02/11/2005	DATE FORWARDED TO EXAMINER			
24	01/18/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
23	01/18/2005	WORKFLOW INCOMING AMENDMENT IFW			
22	12/15/2004	MAIL RESTRICTION REQUIREMENT	252		-1
21	12/13/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
20	01/17/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
19	06/26/2003	PRELIMINARY AMENDMENT			
18	01/17/2004	CASE DOCKETED TO EXAMINER IN GAU			
17.7	08/06/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	08/06/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	08/14/2003	APPLICATION RETURN FROM OIPE			
15	08/15/2003	APPLICATION IS NOW COMPLETE			
14	08/14/2003	APPLICATION RETURN TO OIPE			
13	08/14/2003	APPLICATION DISPATCHED FROM OIPE			
12	08/14/2003	APPLICATION IS NOW COMPLETE			

11	06/23/2003	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
10	02/07/2003	CLAIM PRELIMINARY AMENDMENT			
9	06/23/2003	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
8	06/23/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
7	07/09/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
6	04/22/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	04/14/2003	CLEARED BY L&R (LARS)			
3	04/08/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	02/25/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/07/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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OFFICE OF PETITIONS

In re Application of
Thomas Stuefe
Application No. 10/360,531
Filed: February 7, 2003
Attorney Docket No. 13913-097001 / 2002P00008

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 23, 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 September 22, 2006. On March 23, 2007, the present petition was filed. A Notice of Abandonment was subsequently mailed on April 10, 2007.

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination 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).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) under 37 CFR 1.114 and fee of $790; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay[1].

It is noted that petitioner submitted an extension of time with the present petition. Extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Since, no extension of time fees are due on a petition for revival, the $450 extension fee submitted with the present petition is being credited to counsel's deposit account.

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

This application is being referred to Technology Center AU 2192 for processing of the RCE 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

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OFFICE OF PETITIONS

SCHWEGMAN, LUNDGERG, WOESSNER
& KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

In re Application of	:	
Mark FREAS, et al	:	
Application No. 10/360,539	:	DECISION ON PETITION
Filed: February 6, 2003	:	TO WITHDRAW
Attorney Docket No. 723.071US1	:	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 27, 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 Suneel Arora on behalf of all agents/attorneys of record who are associated with Customer No. 21186.

All attorneys/agents of record 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).

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at 571-272-6735.

April Wise
Petitions Examiner
Office of Petitions

cc: MARK FREAS
2900 WEST EAU GALLIE BLVD.
MELBOURNE, FL 32935

cc: RICHARD W. WARNER
HARNESS, DICKEY &
PIERCE, P.L.C.
5445 CORPORATE DRIVE
TROY, MI 48098

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/360,539	02/06/2003	Mark Freas	723.071US1

CONFIRMATION NO. 8396

OC000000025022661

21186
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

Date Mailed: 07/25/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/27/2007.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
FORMER ATTORNEY/AGENT COPY

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OFFICE OF PETITIONS

In re Application of :
Todd G. Simpson et al :
Application No. 10/360,541 : ON PETITION
Filed: February 5, 2003 :
Attorney Docket No. ZICO0031 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 16, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 29, 2008, which set a shortened statutory period for reply of three (3) months. Three month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on August 30, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $1620; 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. 12/619,608.

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.

JOHN H. SHERMAN
C/O LEGAL DEPARTMENT
INTERMEC TECHNOLOGIES CORPORATION
550 2ND STREET, S.E.
CEDAR RAPIDS, IA 52401

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OFFICE OF PETITIONS

In re Application of
Jeffrey R. Haycraft
Application No. 10/360,562
Filed: February 6, 2003
Attorney Docket No. 39010RA

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed June 24, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of prior-filed provisional Application No. 60/354,608, filed February 6, 2002.

The petition is **Granted**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the surcharge set forth in 37 CFR 1.17(t);

(2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional; and

(3) the reference to the prior-filed provisional application supplied in an application data sheet (ADS)(37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. *See* 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5)(iii). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on February 6, 2003, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/354,608, which was filed on February 6, 2002, for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. *See* 35 U.S.C. §119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/354,608 is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

The examiner of Technology Center AU 3662 will consider the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/354,608, filed February 6, 2002.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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In re Patent No. 6933026
Issue Date: August 23,2005
Application No. 10360568
Filed: February 6,2003
Attorney Docket No. AERX-093

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed October 29,2009 ,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 October 29,2009 .
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)
6933026	2005-08-23	10/360,568	2003-02-06	AERX-093

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	/KARL BOZICEVIC, Reg. No. 28807/	Date (YYYY-MM-DD)	2009-10-29
Name	KARL BOZICEVIC	Registration Number	28807

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.

8/12/04

United States
Patent And
Trademark Office

P.O. Box 1450, Alexandria, Virginia 22313-1450 – www.uspto.gov

2655

02/06/04

Fleit, Kain, Gibbons, Gutman,
Bongini & Bianco P.L.
551 NW 77th Street
Suite 111
Boca Raton, FL 33487

Dear Applicant:

The Box PGPub replacement drawings for application number 10/360581 received on 013004 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, at 703 605-4283.

Kaletus King

Signature of Reviewer, Office of Pre-Grant Publication

8/12/04

United States
Patent And
Trademark Office

P.O. Box 1450, Alexandria, Virginia 22313-1450 – www.uspto.gov

2655

02/06/04

Fleit, Kain, Gibbons, Gutman,
Bongini & Bianco P.L.
551 NW 77th Street
Suite 111
Boca Raton, FL 33487

Dear Applicant:

The Box PGPub replacement drawings for application number 10/360582 received on 01/30/04 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, at 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
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SEED INTELLECTUAL PROPERTY LAW GROUP
701 FIFTH AVENUE
SUITE 6300
SEATTLE WA 98104-7092

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AUG 1 1 2004

OFFICE OF PETITIONS

In re Application of :
Erwin R. Ruckel et al :
Application No. 10/360,585 :
Filed: February 6, 2003 :
Attorney Docket No. 921042.444 :

ON PETITION

This is a decision on the petition, filed August 10, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on June 22, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary.

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

---

[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 AU 1714 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:
LERNER AND GREENBERG, P.A.
POST OFFICE BOX 2480
HOLLYWOOD, FL 33022-2480

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

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

Mail Date: 04/21/2010

Applicant	: Ronald L. Mahany	: DECISION ON REQUEST FOR
Patent Number	: 7606287	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/360,591	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/06/2003	: 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.

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

KRIEG DEVAULT LLP
ONE INDIANA SQUARE
SUITE 2800
INDIANAPOLIS IN 46204-2079

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FEB 19 2008

OFFICE OF PETITIONS

In re Application of	:	
Mike B. Cruse	:	
Application No. 10/360,604	:	DECISION ON
Filed: February 7, 2003	:	PETITION
Attorney Docket No. MRZH-4	:	

This is in response to the petition to revive under 37 CFR 1.137(b), filed January 18, 2008.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above application became abandoned for failure to timely submit corrected drawings as required by the Notice Regarding Drawings mailed on March 22, 2006. This Notice set a non-extendable period for reply of two months to submit corrected drawings. No corrected drawings having been received, the application became abandoned on May 23, 2006. A Notice of Abandonment was mailed on April 4, 2007.

With the instant petition, applicant paid the petition fee, submitted corrected drawings, and made the proper statement of unintentional delay.

The matter is being forwarded to the Office of Patent Publication for processing into a patent.

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
WWW.USPTO.GOV

Paper No. None

MADSON & AUSTIN
GATEWAY TOWER WEST
SUITE 900
15 WEST SOUTH TEMPLE
SALT LAKE CITY UT 84101

COPY MAILED
MAR 14 2007
OFFICE OF PETITIONS

In re Application of	:	
Laurent Ruel	:	
Application No. 10/360,610	:	
In re Patent No. 7,032,926	:	
Filing Date: February 7, 2003	:	DECISION ON PETITION
Issue Date: April 25, 2006	:	UNDER 37 C.F.R. §3.81(B)
Attorney Docket Number: 3390.2.3	:	
Title: INFLATABLE SAFETY DEVICE	:	

This is a decision on the petition filed December 4, 2006 pursuant to 37 C.F.R. §3.81(b)[1], to correct the Assignee's information on the Issue Fee Transmittal Form PTOL-85(b).

It is noted in passing that on the third page of this petition, Petitioner has requested expedited handling of this matter. This petition has not been accorded expedited handling, since the Office did not discover this request until the present petition was processed in the ordinary course of business. In the future, should Petitioner wish to seek expedited handling of a particular matter, this should be done in a more prominent manner, such as the filing of a separate petition, rather than merely placing the request at the end of a petition, where it will not be discovered until the primary matter is reviewed in the ordinary course of business.

On September 5, 2006, Applicant filed a "Request for Certificate of Correction under 37 C.F.R. §1.322." On September 29, 2006, the Certificates of Correction Branch dismissed Applicant's

1 See Official Gazette, June 22, 2004.

request. On October 19, 2006, Applicant filed a second "Request for Certificate of Correction under 37 C.F.R. §1.322," which was dismissed via the mailing of a decision on October 31, 2006.

With the present petition, Petitioner requests that a Certificate of Correction be issued correcting the name of an assignee. Petitioner submits a "Certificate of Correction" for this purpose, which indicates that both the name and address of the Assignee which appears on the face of the patent should be changed.

37 C.F.R. §3.81(b), effective June 25, 2004, reads:

(b) After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in 3.11 before issuance of the patent, and must include a request for a certificate of correction under 1.323 of this chapter (accompanied by the fee set forth in 1.20(a)) and the processing fee set forth in 1.17(i) of this chapter.

Office records show that the assignment for the above-identified application was received in the Office on February 7, 2003, which is prior to the payment of the Issue Fee on February 2, 2006.

The petition is **GRANTED**.

Payment of the required $130 processing fee and the required $100 certificate of correction fee is acknowledged.

The Certificates of Correction Branch will be notified of this decision so that the requested Certificate of Correction can be issued.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

5-26-06

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Patent No. : 7,033,669
Inventor(s) : Ronald O. Skidds
Issued : April 25, 2006
Title : CATIONICALLY DYED FIBERS AND ARTICLES CONTAINING THE SAME
Docket No. : 1005-219

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of 37 CFR 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Fee(s) Transmittal Form PTOL-85B. After payment of the issue fee, correction of assignment data submitted on the PTOL-85B can only be done by Certificate of Correction under 37 CFR 1.323, with a request under 37 CFR 3.81(b).

A request for a patent to be corrected to state the name of the assignee must:

A. state that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent;
B. include a request for a certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); and
C. include the processing fee set forth in 37 CFR 1.17(i).

If the request is granted, Certificates of Correction Branch will be notified that a Certificate of Correction may be issued.
See Manual of Patent Examining Procedure, Section 1481.01 (Rev. 3) (Oct. 2005).

Applicant has not included items A and or C above, accordingly, the request for Certificate of Correction to add or change the assignee data is dismissed.
Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: 571-273-8300
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

In view of the foregoing, your request is hereby denied.

Eva James
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) **308-9390 ext. 124** or (703) 305-8309

Bryan H. Davidson
Nixon & Vanderhye
901 North Glebe Road, 11th floor
Arlington, Virginia 22203-1808

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

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DEC 0 1 2006
OFFICE OF PETITIONS

In re Application of :
Ronald O. Skidds :
Application No. 10/360669 :
Filing or 371(c) Date: 02/07/2003 :
Patent No.: 7033669 :
Issue Date: 04/25/2006 :
Attorney Docket No. :
60017.0014USU1 :

This is a decision on the "Petition Under 37 Rule 183 & Request for Certificate of Correction Under Rule 323 to Include Assignee Name", filed May 22, 2006, requesting a change in the name of the assignee after payment of the issue fee. The petition is properly treated under 37 CFR 3.81(b) [1].The delay in treating this petition is regretted.

The Petition is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "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.

Applicant files the instant petition and requests correction of the assignee name.

Applicable Law, Rules and MPEP

37 CFR 3.81(b) provides:

After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17 (i) of this chapter. (Emphasis supplied).

[1] See, 1283 OG 148 22 June 2004, 69 Fed. Reg. 29865 26 May 2004

Analysis and conclusion

Applicant has failed to state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent. Applicant should file a Request for Reconsideration of Petition and include the statement.

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 matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 1-9-09

Paper No.: _____

TO SPE OF : ART UNIT 4700

SUBJECT : Request for Certificate of Correction on Patent No.: 7033669 (10/360669

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.

Reconsideration of Pet. under Rule 3.81(b) E. James

Thank You For Your Assistance

Certificates of Correction Branch 124
Tel. No. 703-308-9390 ext.

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 _____

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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NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

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JAN 22 2008

OFFICE OF PETITIONS

In re Application of :
Ronald O. Skidds :
Application No. 10/360669 :
Filing or 371(c) Date: 02/07/2003 :
Patent No.: 7033669 :
Issue Date: 04/25/2006 :
Attorney Docket No. :
60017.0014USU1 :

This is a decision on the "Request for Reconsideration of Petition Under 37 CFR 3.81(b)," filed December 8, 2006, requesting a change in the name of the assignee after payment of the issue fee. The delay in treating this petition is regretted.

The Petition is **granted**.

The petition was accompanied by a certificate of correction as required by 3.81(b), and the fee submitted with the present petition. Further, Office assignment records reflect Honeywell International Inc., is the assignee of record. As the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed after issuance of this application into a patent.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

Derek L. Woods
Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 4

Li K. Wang
Arnall Golden Gregory LLP
1201 West Peachtree Street
Suite 2800
Atlanta, GA 30309-3450

MAILED
APR 22 2004
Technology Center 2100

In re Application of:
James Y. Lin
Application No. 10/360,671
Filed: February 7, 2003
For: METHOD FOR SYNCHRONIZATION OF POLICY CACHE WITH VARIOUS POLICY-BASED APPLICATIONS

DECISION ON PETITION TO MAKE SPECIAL UNDER M.P.E.P. §708.02(II)

This is a decision on the petition, filed 11 December 2003, requesting the grant of special status based on M.P.E.P. §708.02, Section II (Infringement).

M.P.E.P. §708.02, Section II sets out the prerequisites for a grantable petition of a special status based on actual infringement and states in relevant part:

Subject to a requirement for a further showing as may be necessitated by the facts of a particular case, an application may be made special because of actual infringement (but not for prospective infringement) upon payment of the fee under 37 CFR 1.17(h) and the filing of a petition accompanied by a statement by the applicant, assignee, or an attorney/agent registered to practice before the Office alleging:

(A) That there is an infringing device or product actually on the market or method in use;

(B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

Petitioner's submission is deficient in that it does not comply with (c). Petitioner indicates that a "careful and thorough search of the prior art has been conducted during the prosecution of the parent application, U.S. Pat. App. No. 09/465,123". However, the search performed for the claims of the parent application is not an clear indication that a "careful and thorough search of the prior art" has been made for the claims in the present application.

Accordingly, the Petition is **DISMISSED**. The application file is being forwarded to Central Files to await examination in its proper turn based on its effective filing date.

Any request for reconsideration must be filed within two months of the mailing date of this decision.

Any inquiry concerning this decision should be directed to Vincent N. Trans whose telephone number is (703) 305-9750.

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
703-305-9750

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-145

NOV 16 2004

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NOV 16 2004

OFFICE OF THE DIRECTOR
TC 3600

JOHN G. POSA
Gifford, Krass, Groh, Sprinkle,
Anderson & Citowski, P.C.
280 N. Old Woodward Ave., Suite 400
Birmingham, MI 48009-5394

In re application of
Patrick Zuili
Application No. 10/360,688 :
Filed: February 07, 2003 :
For: METHOD IMPROVING PAY-PER- :
CLICK WEB-BASED SEARCH ENGINES,
AND THE LIKE

DECISION ON REQUEST
FOR WITHDRAWAL OF
ATTORNEY

This is a decision on the request filed on October 25, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition A) above.

As to condition A), the attorneys listed in the request (Customer Number 25006) do not correspond with those named in the Power of Attorney in the declaration, thereby creating confusion as to who is withdrawing. The original Power of Attorney appointed 16 attorneys. Of these attorneys, Lionel D. Anderson is not associated with Customer No. 25006. 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.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868

SNM/pav: 11/10/04

OIPE JC136
DEC 0 8 2004
PATENT & TRADEMARK OFFICE

PTO/SB/83 (06-03)
Approved for use through 11/30/2005. OMB 0651-0035
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT

Application Number	10/360,688
Filing Date	February 7, 2003
First Named Inventor	Zuili
Art Unit	3629
Examiner Name	
Attorney Docket Number	BSM-10302/29

APPROVED
JUL 22 2005

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby apply to withdraw as attorney or agent for the above identified patent application.

The reasons for this request are:

Client is overly demanding and has unrealistic expectations regarding acceptable policies and procedures.

CORRESPONDENCE ADDRESS

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☒ Change the correspondence address and direct all future correspondence to:

☐ Customer Number

OR

☒ Firm *or* Individual Name	Serge Atlan				
Address	Brite Smart Corporation				
Address	320 Plaza Real, Suite 209				
City	Boca Raton	State	FL	ZIP	33432
Country	U.S.				
Telephone	561-361-8510	Fax	561-361-0337		

☒ This request is made on behalf of myself and
- ☒ all the attorneys/agents of record,
- ☐ the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- ☐ the attorneys/agents associated with Customer Number

This request is enclosed in **triplicate** (including any attachments).

Name	John C. Posa		
Signature		Registration No.	37,424
Date	December 2, 2004		

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

3629

CERTIFICATE OF MAILING BY FIRST CLASS MAIL (37 CFR 1.8) Applicant(s): Zuili				Docket No. BSM-10302/29	
Application No. 10/360,688	Filing Date February 7, 2003		Examiner	Customer No. 25006	Group Art Unit 3629

Invention: METHOD IMPROVING PAY-PER-CLICK WEB-BASED SEARCH ENGINES, AND THE LIKE

DEC 0 6 2004 PATENT & TRADEMARK OFFICE

I hereby certify that this Request for Withdrawal as Attorney or Agent; acknowledgement postcard
(Identify type of correspondence)

is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on December 2, 2004
(Date)

Ann K. Andrusiak
(Typed or Printed Name of Person Mailing Correspondence)

Ann Andrusiak
(Signature of Person Mailing Correspondence)

Note: Each paper must have its own certificate of mailing.

P07A/REV04

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FOLEY & LARDNER LLP
321 NORTH CLARK STREET, SUITE 2800
CHICAGO IL 60610-4764

COPY MAILED

JUN 0 6 2007

OFFICE OF PETITIONS

In re Application of	:	
MINTER, Darin	:	
Application No. 10/360,695	:	DECISION ON PETITION
Filed: February 7, 2003	:	TO WITHDRAW
Attorney Docket No. 026832/0101	:	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 **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, "responsible attorney changed 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 the undersigned at 571-272- 7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **PAUL E. SCHAAFSMA, NOVUSIP LLC**
521 WEST SUPERIOR STREET, SUITE 221
CHICAGO, IL 60610-3135

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FOLEY & LARDNER LLP
321 NORTH CLARK STREET, SUITE 2800
CHICAGO IL 60610-4764

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MAR 04 2008

OFFICE OF PETITIONS

In re Application of :
MINTER, Darin :
Application No. 10/360,695 :
Filed: February 7, 2003 :
Attorney Docket No. 026832/0101 :

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 17, 2007.

The request is **NOT APPROVED.**

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The 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 reason set forth in the request, "the undersigned responsible attorney changed 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 the undersigned at 571-272- 7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **PAUL E. SCHAAFSMA, NOVUSIP LLC**
521 WEST SUPERIOR STREET, SUITE 221
CHICAGO, IL 60610-3135

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FOLEY & LARDNER LLP
321 NORTH CLARK STREET, SUITE 2800
CHICAGO, IL 60610-4764

COPY MAILED

MAY 23 2008

In re Application of :

MINTER, Darin :
Application No. 10/360,695 : DECISION ON PETITION
Filed: February 7, 2003 : TO WITHDRAW
Attorney Docket No. **026832/0101** : FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 22, 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 D. Rechtin on behalf of all attorneys of record. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **DARIN MINTER**
1465 INDIAN GRASS LANE
GRAYSLAKE, IL 60030

cc: **PAUL SCHAAFSMA**
NOVUSIP, LLC
521 WEST SUPERIOR STREET, SUITE 221
CHICAGO, IL 60610-3135

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. 3

BACON & THOMAS
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA, VA 22314

COPY MAILED
SEP 0 9 2003
OFFICE OF PETITIONS

In re Application of :
Chih-Jen Fang :
Application No. 10/360,748 : NOTICE
Filed: February 10, 2003 :
Attorney Docket No. FANG3012/EM :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center AU 1733.

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

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413+

MAILED

APR 26 2010

OFFICE OF PETITIONS

In re Application of

Vaidhyanathan Venkiteswaran

Application No. 10/360,755

Filed: November 30, 2001

Attorney Docket No. 10903.0001

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a), filed April 13, 2010. This is also a decision on the petition under 37 CFR 1.182 to expedite the petition under 37 CFR 1.181.

The petition under 37 CFR 1.182 is granted.

The petition under 37 CFR 1.181 is also granted.

On November 30, 2001, provisional application 60/336,057 was filed and accorded a filing date of November 30, 2001. On November 27, 2002, applicant filed a petition under 37 CFR 1.53(c)(3) to convert the provisional application a non-provisional application. The petition was granted by a decision mailed February 28, 2003. The provisional application was converted to non-provisional application 10/360,755 and retained the filing date of the provisional application—November 30, 2001. On April 29, 2003, a Notice to File Corrected Application Papers was mailed, to which applicant responded on September 2, 2003. The record reflects that the Office changed the filing date of the application to September 2, 2003.

A review of the application file history revealed no circumstance that should have resulted in the application filing date being changed to September 3, 2003. Accordingly, the petition to restore the application filing date to November 30, 2001, is granted.

Deposit account 06-0916 will be charged $400.00 for the fee for the petition under 37 CFR 1.182.

The application file is being forwarded to the Office of Patent Application Processing where the application filing date will be changed to November 30, 2001, and a corrected filing receipt issued.

Further inquires regarding this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

OIPE JC176
DEC 10 2002
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION OF

Daly et al.

Appln. No.: 60/337,169

Filed: December 10, 2001

Title: DOUBLE ENDED BLOWER

Confirmation No.: Unknown

Group Art Unit: Unassigned

Examiner: Unassigned

December 10, 2002

* * * * *

PETITION TO CONVERT PROVISIONAL APPLICATION TO NON-PROVISIONAL APPLICATION UNDER 37 C.F.R. § 1.53(c)(3)

Hon. Commissioner of Patents
Washington, D.C. 20231

Sir:

Applicants Petition to convert the above-captioned provisional application to a non-provisional application under 37 C.F.R. §1.53(c)(3). Applicants enclose the required fee of $130 under 37 C.F.R. 1.17(i) to convert this application to a non-provisional application.

The Commissioner is authorized to charge the fees for the basic application ($740), the surcharge required by §1.16(e) ($130) and the conversion fee ($130) required under 37 C.F.R. §1.17(i), and any other fees necessary for conversion to our Deposit Account 03-3975 under Order Number 74066/282753 for which purpose a duplicate copy of this sheet is attached.

12/11/2002 CNGUYEN 00000107 033975 60337169

01 FC:1460 130.00 CH
02 FC:1001 740.00 CH
03 FC:1051 130.00 CH

Respectfully submitted,

Pillsbury Winthrop LLP

By: _____

Paul T. Bowen
Reg. No.:38009
Tel. No.: (703) 905-2020
Fax No.: (703) 905-2500

1600 Tysons Boulevard
McLean, VA 22102
(703) 905-2000

DEC 1 0 2002
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION OF
Daly et al.
Appln. No.: 60/337,169
Filed: December 10, 2001
Title: DOUBLE ENDED BLOWER

Confirmation No.: Unknown
Group Art Unit: Unassigned
Examiner: Unassigned

December 10, 2002

* * * * *

PETITION TO CONVERT PROVISIONAL APPLICATION TO NON-PROVISIONAL APPLICATION UNDER 37 C.F.R. § 1.53(c)(3)

Hon. Commissioner of Patents
Washington, D.C. 20231

Sir:

Applicants Petition to convert the above-captioned provisional application to a non-provisional application under 37 C.F.R. §1.53(c)(3). Applicants enclose the required fee of $130 under 37 C.F.R. 1.17(i) to convert this application to a non-provisional application.

The Commissioner is authorized to charge the fees for the basic application ($740), the surcharge required by §1.16(e) ($130) and the conversion fee ($130) required under 37 C.F.R. §1.17(i), and any other fees necessary for conversion to our Deposit Account 03-3975 under Order Number 74066/282753 for which purpose a duplicate copy of this sheet is attached.

Respectfully submitted,
Pillsbury Winthrop LLP

By: _____

Paul T. Bowen
Reg. No.:38009
Tel. No.: (703) 905-2020
Fax No.: (703) 905-2500

1600 Tysons Boulevard
McLean, VA 22102
(703) 905-2000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Inventor(s): Daly et al.
Appln. No.: 60 | 337,169
Series Code ↑ | Serial No. ↑
Filed: December 10, 2001

Group Art Unit: Unassigned
Examiner: Unassigned
Atty. Dkt. P 282753
M# | Client Ref

Appln. Title: DOUBLE ENDED BLOWER

Hon. Commissioner of Patents
Washington, D.C. 20231

Sir:

OIPE JC176 DEC 10 2002 PATENT & TRADEMARK OFFICE

REPLY/AMENDMENT/LETTER

Date: December 10, 2002

This is a reply/amendment/letter in the above-identified application and includes the herewith attachment of same date and subject which is incorporated hereinto by reference and the signature below is treated as the signature to the attachment in absence of a signature thereto.

FEE REQUIREMENTS FOR CLAIMS AS AMENDED

1. Small Entity claim
A. ☒ NOT made
B. ☐ Withdrawn
C. ☐ made herewith
D. ☐ made previously
For B & C See Required Separate Paper (Pat-256)

	Claims remaining after amendment	Highest number previously paid for		Present Extra	Large/Small Entity	Additional Fee	Fee Code Lg/Sm
2. Total Effective Claims	12	**minus	20	0	x $18/$9 =	+ $0	103/203
3. Independent Claims	2	***minus	3	0	x $84/$42 =	+ $0	102/202
4. If amendment enters proper multiple dependent claim(s) into this application for first time (leave blank if this is a reissue application) ..... add					+ $280/$140 =	+ $0	104/204
5. Original due Date:		☐ NONE					
6. Petition is hereby made to extend the original due date to cover the date this response is filed for which the requisite fee is attached			(1 mo) (2 mos) (3 mos) (4 mos) (5 mos)	$110/$55 = $400/$200 = $920/$460 = $1,440/$720= $1,960/$980=	+ $0		115/215 116/216 117/217 118/218 128/228
7. Enter any previous extension fee paid since above original due date and subtract					- $0		
8.					Extension Fee	+ $0	
9. If Terminal Disclaimer attached, add Rule 20(d) official fee					+ $110/$55	+ $0	148/248
10. If IDS attached requires Official Fee under Rule 97 (c), ... add or if Rule 97(d) Request ..... add					+ $180 + $180	+ $0	126 126
11. After-Final Request Fee per rules 129(a) and 17(r)					+ $740/370	+ $0	146/246
12. Surcharge Under 1.16(e)					x $130 ea	+ $130	149/249
13. Basic Application Fee.....					+ $740/370	+ $740	1179/1279
14. Petition Fee for Conversion Under 1.53(c)(3)						+ $130	
15.					TOTAL FEE =	$1000	

16. *If the entry in this space is less than entry in next space, the "Present Extra" result is "0".
17. **If the "Highest number previously paid for" in this space is less than 20, write "20" in this space.
18. ***If the "Highest number previously paid for" in this space is less than 3, write "3" in this space.

PLEASE CHARGE OUR DEP. ACCT

Our Deposit Account No. 03-3975)
(Our Order No. 74066 | 282753
C# | M#

CHARGE STATEMENT: The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (missing or insufficiencies only) now or hereafter relative to this application and the resulting Official Document under Rule 20, or credit any overpayment, to our Accounting/Order Nos. shown above, for which purpose a duplicate copy of this sheet is attached.

This CHARGE STATEMENT does not authorize charge of the issue fee until/unless an issue fee transmittal sheet is filed.

Query: Is appeal deadline now? If so, file Notice of Appeals separately.

Pillsbury Winthrop LLP
Intellectual Property Group
By Atty: Paul T. Bowen | Reg. No. 38009
Sig: | Fax: (703) 905-2500
Tel: **(703) 905-2020**

P.O. Box 10500
McLean, VA 22102
Tel: (703) 905-2000

Atty/Sec: PTB/dlh

NOTE: File this cover sheet in duplicate with PTO receipt (PAT-103A) and attachments

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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ADAMS AND REESE, L.L.P.
4500 ONE SHELL SQUARE
NEW ORLEANS LA 70139-4596

COPY MAILED
MAY 1 8 2006
OFFICE OF PETITIONS

In re Application of	:	
Feng, Li-Qun	:	DECISION ON PETITION
Application No. 10/360,761	:	TO WITHDRAW
Filed: February 6, 2002	:	FROM RECORD
Attorney Docket No. 7437-1	:	

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, 2006, which is being treated as a request to withdraw from employment in a proceeding before the Office under 37 C.F.R. § 10.40.

The request is **APPROVED**.

A review of the file record indicates that Warner J. Delaune, Jr. and the attorneys of record: (1) do not have power of attorney in this patent application; but (2) has been employed or otherwise engaged in the proceedings in this patent application. The attorneys of Adams and Reese, L.L.P. may not act in a representative capacity under 37 C.F.R. § 1.34 unless appointed in an acceptable power of attorney under 37 C.F.R. § 1.32(b).

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named inventor; or (2) the assignee of the entire interest. All future communications from the Office will continue to be directed to the first named inventor at the below-listed address until otherwise properly notified by the applicant.

The application became abandoned for failure to timely reply to the Office action mailed September 20, 2005.

Telephone inquires concerning this decision should be directed to Petitions Examiner Liana Chase at 571-272-3206.

David Buczl
Petitions Examiner
Office of Petitions

cc:

LI-QUN FENG
RM 102 BLDG. 14 LANE 935
HU TAI ROAD, SHANGHAI
200072

MARALYN LEAF
INTERNATIONAL BLUEWATER INVESTMENTS, INC.
100 S.E. 2ND STREET, SUITE 2330
MIAMI, FL 33131

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/354,290	02/07/2002	Jan G. Fager	1504-1002

CONFIRMATION NO.

OC000000009928614

000466
YOUNG & THOMPSON
745 SOUTH 23RD STREET 2ND FLOOR
ARLINGTON, VA 22202

Date Mailed: 04/29/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **02/06/2003**, to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,764**. The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIRPETT
Office of Initial Patent Examination
(703) 308-0910

PART 2 - OFFICE COPY

BEST AVAILABLE COPY

#3

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/341,047	10/30/2001	J. Robert Degenkolb	1244US

CONFIRMATION NO.

00000009238944

Graco Minnesota Inc.
P. O. Box 14[illegible]
Minneapolis, MN 55440-1441

Date Mailed: 12/12/2002

DECISION DISMISSING REQUEST UNDER 37 CFR 1.53(c)(3) TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **10/30/2002**, to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is dismissed because it does not comply with all the requirements of 37 CFR 1.53(c)(3).

A grantable request under 37 CFR 1.53(c)(3) to convert a provisional application to a non-provisional application must be accompanied by the fee set forth in 37 CFR 1.17(i) and an amendment including at least one claim if no claim is present in the provisional application and be filed prior to the earliest abandonment of the provisional application filed under 37 CFR 1.53(c) or expiration of twelve months after the filing date of the provisional application filed under 37 CFR 1.53(c). The present request is not grantable because:

It is not accompanied by the fee required by 37 CFR 1.17(i).

Any request for reconsideration of this decision must be filed within TWO MONTHS of the date of this decision. This time will NOT be extended pursuant to 37 CFR 1.136. The request must be accompanied by the items noted above.

Any inquiries related to this decision should be directed to Customer Service at (703) 308-1202.

A copy of this notice MUST be returned with the reply.

JANICE [illegible]
Office of Initial Patent Examination

PART 3 - COPY TO BE RETURNED WITH RESPONSE

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/341,047	10/30/2001	J. Robert Degenkolb	1244US

CONFIRMATION NO.

OC000000009978158

Graco Minnesota Inc.
P. O. Box 1441
Minneapolis, MN 55440-1441

Date Mailed: 05/07/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on , to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,766.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPRELT
Office of Initial Patent Examination
(703) 308-0910

PART 2 - OFFICE 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

Paper No. None

Graco Minnesota Inc.
P. O. Box 1441
Minneapolis MN 55440-1441

COPY MAILED
FEB 19 2004
OFFICE OF PETITIONS

In re Application of
Robert J. Degenkolb and William A. Stusek
Application No. 10/360,766
Filed: October 30, 2001
Attorney Docket No. 1244US
Title: DIRECT FEED EXTRUDER SUPPLY SYSTEM

DECISION ON PETITION

This is in response to the petition under 37 C.F.R. §1.47(a)[1], filed October 30, 2001.

On December 19, 2001, the application was deposited, identifying Robert J. Degenkolb and William A. Stusek as joint inventors. The application was deposited without a fully executed oath or declaration.

On October 30, 2002, petitioner submitted a copy of the declaration[2], the instant petition, a copy of a letter, a print-out of an online search for the non-signing inventor, and what appears to be a print-out of the online tracking results from the website of Federal Express.

---

[1]A grantable petition under 37 C.F.R. §1.47(a) requires:

(1) the petition fee of $130;
(2) a surcharge of either $65 or $130 if the petition is not filed at the time of filing the application, as set forth in 37 CFR § 1.16(e);
(3) a statement of the last known address of the non-signing inventors;
(4) either
  a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
  b) proof that the non-signing inventor cannot be found or reached after diligent effort;
(5) a declaration which complies with 37 CFR §1.63.

2 The declaration submitted with the instant petition was executed by joint inventor Degenkolb.

The petitioner has met requirements (1) - (3) and (5) above. Regarding the first two requirements, the petition fee and the associated surcharge have been charged to Petitioner's Deposit Account, as authorized in the petition.

The fourth requirement has not been met. The petitioner has set forth that on October 14, 2002, a letter was sent to the last known address of the non-signing inventor, along with a copy of the specification, claims, and drawings.

Unfortunately, the statement of facts does not reveal who mailed this package to the non-signing inventor, although the letter was signed by a paralegal by the name of Andrea Pahan. It is noted that no statement of facts from Ms. Pahan has been submitted. This is not acceptable, as the statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted.

Put another way, where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers must be specified in a statement of facts by the person who presented the inventor with the application papers.

One cannot refuse to sign something which one has not seen. A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR §1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed[3].

For this reasons, the petition under 37 C.F.R. §1.47(b) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Renewed Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application**. Any extensions of time will be governed by 37 C.F.R. §1.136(a).

On renewed petition, petitioner should submit a statement(s) from one having firsthand knowledge of the mailing.

The reply to this letter may be submitted by mail[4], hand-delivery[5], or facsimile[6].

---

3 In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

5 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.

Paul Shanoski
Attorney
Office of Petitions
United States Patent and Trademark Office

6 (703) 872-9306.

PROVISIONAL APPLICATION COVER SHEET

This is a request for filing a PROVISIONAL APPLICATION under 37 C.F.R. 1.53 (b)(2).

Docket Number	1244US	Type a plus sign (+) inside this box →	X

INVENTOR(s)/APPLICANT(s)			
Last Name	First Name	MI	Residence (City and either State or Foreign Country)
Degenkolb	J.	Robert	Bryan, OH
Stusek	William	A.	Clemmons, NC

TITLE OF THE INVENTION
Direct Feed Extruder Supply System

CORRESPONDENCE ADDRESS					
Graco Minnesota Inc. P. O. Box 1441 Minneapolis					
STATE	Minnesota	ZIPCODE	55440-1441	COUNTRY	U.S.A.

ENCLOSED APPLICATION PARTS *(check all that apply)*			
☒ Specification	Number of Pages 5	☐ Small Entity Statement	
☒ Drawing(s)	Number of Sheets 1	☐ Other (specify)	

METHOD OF PAYMENT (check one)		
☐ A check or money order is enclosed to cover the Provisional filing fees ☒ The Commissioner is hereby authorized to charge filing fees and credit Deposit Account Number: **07-1775**	Provisional Filing Fee Amount ($)	$160.00

The invention was made by an agency of the United States Government or under a contract with an agency of the United States Government.

☒ No.

☐ Yes, the name of the U. S. Government agency and the Government contract number are:

Respectfully submitted,

Douglas B. Farrow

Date: October 30, 2001
Reg. No.: 28582

☐ Additional inventors are being named on separately numbered sheets attached hereto.

"Express Mail" Certificate

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37CFR 1.10 on the date indicated below and is addressed to Box Provisional Patent Application, Asst Commissioner for Patents, Washington, DC 20231. Mailing Label EL680890565US

Andrea Pahan — October 30, 2001 (Date)

Adjustment date: 02/20/2004 AKELLEY
02/24/2003 AWONDAF1 00000070 071775 60341047
01 FC:1001 750.00 CR
02 FC:1460 130.00 CR
03 FC:1460 130.00 CR
02/20/2004 AKELLEY 00000016 071775 10360766

01 FC:1460 130.00 DA
02 FC:1051 130.00 DA
03 FC:1001 750.00 DA

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

Graco Minnesota Inc.
P. O. Box 1441
Minneapolis MN 55440-1441

COPY MAILED

APR 27 2004

OFFICE OF PETITIONS

In re Application of
Robert J. Degenkolb and William A. Stusek
Application No. 10/360,766
Filed: October 30, 2001
Attorney Docket No. 1244US
Title: DIRECT FEED EXTRUDER SUPPLY SYSTEM

DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.47(A)

This is in response to the renewed petition under 37 C.F.R. §1.47(a)[1], filed April 20, 2004.

On December 19, 2001, the application was deposited, identifying Robert J. Degenkolb and William A. Stusek as joint inventors. The application was deposited without a fully executed oath or declaration.

On October 30, 2002, petitioner submitted a copy of the declaration[2], the instant petition, a copy of a letter, a print-out of an online search for the non-signing inventor, and what

[1] A grantable petition under 37 C.F.R. §1.47(a) requires:
(1) the petition fee of $130;
(2) a surcharge of either $65 or $130 if the petition is not filed at the time of filing the application, as set forth in 37 CFR § 1.16(e);
(3) a statement of the last known address of the non-signing inventors;
(4) either
a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
b) proof that the non-signing inventor cannot be found or reached after diligent effort;
(5) a declaration which complies with 37 CFR §1.63.

2 The declaration submitted with the instant petition was executed by joint inventor Degenkolb.

appears to be a print-out of the online tracking results from the website of Federal Express.

The original petition was dismissed via the mailing of a decision on February 19, 2004, as the petitioner made an allegation that the joint-inventor refused to sign the application papers, but lacked firsthand knowledge of the underlying events.

With the renewed petition, Petitioner has included a statement from one having firsthand knowledge of the events surrounding the refusal.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a).

The petition is **GRANTED** and 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 inventors at the addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the application will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0011.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/389,515	06/19/2002	Richard Kounai Chang	ARL 01-34

CONFIRMATION NO.

OC000000009978284

Carolyn P. Bourget
Army Research Laboratory
Intellectual Property Law Branch
2800 Powder Mill Road
Adelphi, MD 20783-1197

Date Mailed: 05/07/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **03/10/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,767.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L. TIRPETT
Office of Initial Patent Examination
(703) 308-0910

PART 2 - OFFICE COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/362,362	03/07/2002	Allan Westersten	AVSI-0010 (108328.00010)

CONFIRMATION NO.

OC000000009978383

T. Ling Chwang
Jackson Walker L.L.P.
Suite 600
2435 N. Central Expressway
Richardson, TX 75080

Date Mailed: 05/07/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **03/06/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,768.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/364,372	03/14/2002	Gerald J. Julien	NK1518PR

CONFIRMATION NO.

OC000000009979975

J. Michael Neary
542 SW 298th Street
Federal Way, WA 98023

Date Mailed: 05/07/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **03/14/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,769.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/260,769	03/14/2002	Gerald J. Julien	NK1518PR

CONFIRMATION NO.

OC000000009979975

J. Michael Neary
542 SW 298th Street
Federal Way, WA 98023

Date Mailed: 05/07/2003

LETTER REGARDING UNTIMELY NON-PUBLICATION REQUEST

This is in response to the Nonpublication Request submitted 3/14/03.

The Nonpublication Request submitted with your request under 37 CFR 1.53(c)(3) to convert the above-identified provisional application to a non-provisional application is ineffective because it does not comply with 37 CFR 1.213(a)(1). A Nonpublication Request must be submitted with the nonprovisional application upon filing. See 37 CFR 1.213(a)(1). A nonprovisional application resulting from the conversion under § 1.53(c)(3) of a provisional application maintains the original provisional application filing date.

The Nonpublication Request submitted with your § 1.53(c)(3) conversion request is untimely since it was not submitted upon filing, that is, it was submitted after the application filing date.

Any inquiries related to this decision should be directed to the Office of Patent Legal Administration (OPLA) at (703) 308-6906.

Janice Tippett
Program Assistant, OIPE

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/388,547	06/12/2002	Lance P. Ford	AMBI:081USP1

CONFIRMATION NO.

OC000000010009634

FULBRIGHT & JAWORSKI L.L.P.
Suite 2400
600 Congress Avenue
Austin, TX 78701

Date Mailed: 05/12/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **03/20/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,772.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Gregory D. DeGrazia
The Pinehurst Office Center, Suite #101
39400 North Woodward Avenue
Bloomfield Hills MI 48304-5151

COPY MAILED

OCT 2 6 2006

OFFICE OF PETITIONS

In re Application of	:	
Nolte, et al.	:	
Application No. 10/360,773	:	ON PETITION
Filed: March 26, 2002	:	
Attorney Docket No. TOOL CHANGE SYSTEM FOR A MACHINE	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 7,, 2006 (certificate of mailing date April 5, 2006), to revive the above-identified application.

This application became abandoned for failure to timely submit corrected drawings within three (3) months of the mailing of the Notice of Allowability, mailed October 27, 2005. Accordingly, this application became abandoned on January 28, 2006. A Notice of Abandonment was mailed on March 17, 2006.

Applicants have submitted a proper reply in the form of corrected drawings, an acceptable statement of the unintentional nature of the delay in responding to the October 27, 2005 Notice of Allowability, and the petition fee.

The petition is **granted**.

This application is being forwarded to Publishing Division for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/367,859	03/27/2002	Hans J. Nolte	60126-202

CONFIRMATION NO.

OC000000010009649

Gregory D. DeGrazia
The Pinehurst Office Center
Suite #101
39400 North Woodward Avenue
Bloomfield Hills, MI 48304-5151

Date Mailed: 05/12/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **03/27/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,775.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/380,781	05/14/2002	Chris Carswell Barrs	

CONFIRMATION NO.

OC000000010215570

NAISH SAILS HAWAII,
A DIVISION OF NALU KAI INCORPORATED
SUITE 387
810 HAIKU RD
HAIKU, HI 96708

Date Mailed: 06/09/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **05/14/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,778.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/459,343	04/01/2003	Robert Galli	P00868-US

003017
BARLOW, JOSEPHS & HOLMES, LTD.
101 DYER STREET
5TH FLOOR
PROVIDENCE, RI 02903

CONFIRMATION NO.
OC000000010910273

Date Mailed: 09/23/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **07/23/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,781.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/367,647	03/26/2002	Stefano Giuliano	60,126-201

CONFIRMATION NO.

OC000000010914347

Gregory D. DeGrazia
The Pinehurst Office Center
Suite #101
39400 North Woodward Avenue
Bloomfield Hills, MI 48304-5151

Date Mailed: 09/24/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **03/26/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,782.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

PART 2 - OFFICE COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/382,559	05/24/2002	Daniel Dupret	58763.000011

CONFIRMATION NO.

OC000000010914376

21967
HUNTON & WILLIAMS
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

Date Mailed: 09/24/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **05/27/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,783.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/445,146	02/05/2003	Matt Winkler	AMBI:084USP1

CONFIRMATION NO.

OC000000010914397

32425
FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVE.
SUITE 2400
AUSTIN, TX 78701

Date Mailed: 09/24/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **04/08/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,784.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/390,262	06/19/2002	Steven J. Taylor	03004.010000.

CONFIRMATION NO.

OC000000010914449

5514
FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

Date Mailed: 09/24/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **05/19/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,785.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : **March 28, 2008**

TO SPE OF : ART UNIT **1794**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/360785** Patent No.: **7250216 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: _____

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
SPE

1794
Art Unit

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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/380,782	05/14/2002	Chris Carswell Barrs	

CONFIRMATION NO.

OC000000010914480

NAISH SAILS HAWAII,
A DIVISION OF NALU KAI INCORPORATED
SUITE 387
810 HAIKU RD.
HAIKU, HI 96708

Date Mailed: 09/24/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **05/14/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,786.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L. TIPPETT
Office of Initial Patent Examination
(703) 308-0910

PART 2 - OFFICE COPY

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : **March 28, 2008**

TO SPE OF : ART UNIT **1794**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/360785** Patent No.: **7250216 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.

- [X] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: _____

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
SPE

1794
Art Unit

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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/386,689	06/05/2002	Lloyd G. Mitchell	P35275 069906.011

CONFIRMATION NO.

OC000000010914570

21003
BAKER & BOTTS
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

Date Mailed: 09/24/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **06/05/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,787.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE D. TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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Paper No. 3

WARNER, NORCROSS & JUDD
INTELLECTUAL PROPERTY GROUP
900 FIFTH THIRD CENTER
111 LYON STREET, N.W.
GRAND RAPIDS, MI 49503-2489

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NOV 1 9 2003

OFFICE OF PETITIONS

In re Application of
James B. Roufs et al
Application No. 10/360,789
Filed: May 7, 2002
Attorney Docket No. 18716.77181-001

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 6, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional Application No. 09/878,377, filed June 12, 2001, and on the petition under 37 CFR 1.78(a)(6) for the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/210,746, filed June 12, 2000 set forth in the amendment filed concurrently with the instant petition..

The petition is **Granted**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;[1]
> **(2)** the surcharge set forth in § 1.17(t); and
>
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

---

[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

The instant application was filed on May 7, 2002 and was pending at the time of filing of the instant petition. A reference to the prior-filed application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(3).

As to the benefit claim under 37 CFR 1.78(a)(6):

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the surcharge set forth in 37 CFR 1.17(t);

(2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional; and

(3) the reference to the prior filed provisional application supplied in an application data sheet (ADS)37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5)(i). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application seeks acceptance of a claim for priority under 35 U.S.C. §119(e) for the benefit of prior-filed provisional Application No. 60/210,746, filed June 12, 2000. A reference to the prior- filed application has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Also, the reference to the prior-filed applications was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. §§120 and 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior applications under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) should <u>not</u> be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior applications. In order for the instant application to be entitled to the benefit of the prior applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

Any questions concerning this matter may be directed to Karen Creasy at (703) 305-8859 .

This application is being forwarded to Office of Initial Patent Examination for pre-examination processing and the mailing of a Filing Receipt, which includes the priority claim to the prior-filed applications.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/378,340	05/07/2002	James B. Roufs	18716.77181-001

CONFIRMATION NO.

OC000000010943828

28440
WARNER, NORCROSS & JUDD
IN RE: ALTICOR INC.
INTELLECTUAL PROPERTY GROUP
111 LYON STREET, N. W. STE 900
GRAND RAPIDS, MI 49503-2489

Date Mailed: 09/29/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **05/06/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,789.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPEDT
Office of Initial Patent Examination
(703) 308-0910

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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/394,364	07/03/2002	Alexander Sergeevich Pouchkarev	

CONFIRMATION NO.

OC000000011104051

NAISH SAILS HAWAII
A DIVISION OF NALU KAI INC.
SUITE 387
810 HAIKU RD.
HAIKU, HI 96708

Date Mailed: 10/27/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **07/03/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,791.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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Paper No.

Martin E. Hsia
Cades Schutte LLP
P O Box 939
Honolulu, HI 96808-0939

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DEC 0 6 2004

OFFICE OF PETITIONS

In re Application of:	:	
Pouchkarev	:	CORRECTED
Application No. 10/360,791	:	DECISION REFUSING
Filed: July 3, 2003	:	STATUS UNDER
Title of Invention: SAFETY SYSTEM	:	37 CFR 1.47(b)
FOR KITE THAT INDUCES STABLE AND	:	
POWERLESS DESCENT	:	

This is in response to a petition under 37 CFR 1.47(b), filed April 27, 2004, to allow a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, to make application on behalf of and as agent for all inventors. The four (4) month extension of time requested is hereby granted. The delay in treating this petition is regretted.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on July 3, 2003, without an executed oath or declaration. This Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice") on October 27, 2003, requiring, *inter*

alia, a properly signed oath or declaration and a late filing fee, oath or declaration and surcharge.

In response to the Notice, Applicant files the instant petition wherein Applicant avers that the nonsigning inventor refuses to join in the application. Applicant also provides, in lieu of an assignment of the invention, a discussion in the petition citing to legal precedent, that Applicant is entitled to clear title to the invention.

Applicable Law

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor(s); (5) proof of proprietary interest; and (6) proof of irreparable harm. Applicant lacks item (5).

As to item (5), applicant failed to show or provide proof that Nalu Kai, Inc., has sufficient proprietary interest in the subject matter to justify the filing of the application (see MPEP 409.03(f)). Acceptable proof would include a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to the Rule 47(b) applicant.

> A proprietary interest obtained other than by assignment or agreement to assign may be demonstrated by an appropriate legal memorandum to the effect that a court of competent jurisdiction (federal, state, or foreign) would by the weight of authority in that jurisdiction award title of the invention to the 37 CFR 1.47(b) applicant. The facts in support of any conclusion that a court would award title to the 37 CFR 1.47(b) applicant should be made of record by way of an affidavit or declaration of the person having firsthand knowledge of same. The legal memorandum should be prepared and signed by an attorney at law familiar with the law of the jurisdiction involved. A

> copy (in the English language) of a statute (if other than the United States statute) or a court decision (if other than a reported decision of a federal court or a decision reported in the United States Patents Quarterly) relied on to demonstrate a proprietary interest should be made of record.

MPEP 409.03(f).

Applicant must provide a legal memorandum supporting his assertion that Nalu Kai Inc. (Nalu Kai), has sufficient proprietary interest in the invention such that a Hawaiian court would award title of the invention to Nalu Kai.

It is noted that Applicant provides references to the Supreme Court, and Federal and a state court case in the petition. Applicant states that "[u]pon information and belief, based on the precedent which is discussed below, Nalu Kai is entitled to clear title to the "fifth line" safety system and to the above-identified patent application and any patent that issues thereon." *Petition* at p.6.

A review of the record reveals that the nonsigning inventor signed an Employee Acknowledgement Form. Applicant also paid the filing fee for the provisional application that was filed by the inventor. These facts tend to militate towards a finding that the agent was an employee of Nalu Kai. However, the inventor also submitted invoices for each of the inventions created during the relationship. Commensurate with the invoices submitted, assignments were executed. These facts tend to militate towards a finding that the agent was an independent contractor. The issue revolves around the nature of the relationship between the employer/principal and the agent/putative employee.

In determining whether one is an employee or an independent contractor, factors considered include the amount of control exercised over the manner and means of carrying out the work of the agent, whether the agent was paid by time or by the job, whether the principal supplies the tools and equipment used in the work, the length of time the agent works for the principal, etc. The Supreme Court case provided discusses the employee, and does not address the issue of independent contractor. Nor has applicant provided a discussion of whether the Hawaiian

courts would find that the agent was an employee of Nalu Kai. Applicant adds to the ambiguity of whether the agent was an employee or an independent contractor when he states that "… Mr. Pouchkarev was employed *or* engaged by Nalu Kai…." (Emphasis supplied). *Petition* at p.6. Was the inventor employed or engaged? If the agent was engaged by Nalu Kai, a memorandum that discusses engagement and that a court would award title to Nalu Kai based upon the engagement should be filed.

While it is true that the inventor assigned several other inventions to Nalu Kai, the inventor here, unlike the inventor in *Fish v. Air-O-Fan Products Corp.*, 285 F.2d 208 (9th Cir. (Cal.) 1960), was not hired as a worker and did not receive a regular salary. In *Fish*, there was no ambiguity as to whether the inventor was an employee of the company.

The State court case relied upon discusses the formation of implied contracts, and Applicant asserts that "[t]he nature of the employment relationship at the time of the inventive work clearly shows an implied-in-fact contract to assign patent rights." The nature of the relationship also clearly shows that the inventor was paid for each invention and assigned each invention. Was an invoice for this invention submitted? When did the putative employment contract terminate? The employee handbook states that the employment was terminable at-will by either the inventor or Nalu Kai.

The issue is whether Nalu Kai has demonstrated sufficient proprietary interest in the application. What was the nature of the employment relationship? Was the inventor an employee or an independent contractor? What are the factors that Hawaiian courts apply to determine whether one is an employee or an independent contractor? If the inventor is an independent contractor, would a Hawaiian court award title of the invention to Nalu Kai?

An appropriate legal memorandum to the effect that a court of competent jurisdiction (federal, state, or foreign) would by the weight of authority in that jurisdiction award title of the invention to the 37 CFR 1.47(b) applicant. The facts in support of any conclusion that a court would award title to the 37 CFR 1.47(b) applicant should be made of record by way of an affidavit or declaration of the person having firsthand knowledge of same.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-0025
Attn: Office of Petitions

By hand: Customer Window Located at:
U.S. Patent & Trademark Office
220 20th Street S.
Customer Window, Mail Stop PETITIONS
Crystal Plaza Two, Lobby Room 1B03
Arlington, VA 22202

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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Martin E. Hsia
Cades Schutte LLP
P O Box 939
Honolulu, HI 96808-0939

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APR 0 8 2005

OFFICE OF PETITIONS

In re Application of:	:	
Pouchkarev	:	
Application No. 10/360,791	:	DECISION GRANTING
Filed: July 3, 2003	:	STATUS UNDER
Title of Invention: SAFETY SYSTEM	:	37 CFR 1.47(b)
FOR KITE THAT INDUCES STABLE AND	:	
POWERLESS DESCENT	:	

This is in response to a Petition Under 37 CFR 1.47(a), filed June 1, 2004, to allow a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, to make application on behalf of and as agent for all inventors.

The petition is **granted**.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

Petitioner has shown that the non-signing inventor, Alexander Sergeevich Pouchkarev, refuses to join in the application.

As provided in Rule 1.47(b), 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 (571) 272-3232.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Alexander Sergeevich Pouchkarev
150 WEST OAK KNOLL DRIVE
SAN ANSELMO, CA 94960

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APR 0 8 2005
OFFICE OF PETITIONS

In re Application of:	:	
Pouchkarev	:	
Application No. 10/360,791	:	LETTER
Filed: July 3, 2003	:	
Title of Invention: SAFETY SYSTEM	:	
FOR KITE THAT INDUCES STABLE AND	:	
POWERLESS DESCENT	:	

Dear Mr. Pouchkarev:

You are named as an inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 CFR 1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein 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 make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (571) 272-3232. 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: Martin E. Hsia
Cades Schutte LLP
P O Box 939
Honolulu, HI 96808-0939

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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DIW 10-02

Paper No. 4

WYATT, GERBER & O'ROURKE, L.L.P.
99 PARK AVENUE
NEW YORK NY 10016

COPY MAILED

JAN 08 2003

OFFICE OF PETITIONS

In re Application of	:
Anthony Petracca	: DECISION DISMISSING
Application No. 10/166,799	: PETITION TO ACCORD FILING
Filed: 5 September, 2002	: DATE AND GRANTING PETITION
For: DRAWING FOR WINNERS OVER THE	: TO CONVERT APPLICATION TO
INTERNET	: PROVISIONAL APPLICATION

This is a decision on the petition, filed on 5 September, 2002, to accord the above-identified application a filing date of 11 June, 2002, with a complete specification, including at least one claim, as a part of the original disclosure. This is also a decision on the petition filed on 5 September, 2002, to convert the above-identified application to a provisional application under 35 U.S.C. § 111(b) and 37 CFR 1.53(c)(2)(ii).

The petition under 37 CFR 1.53(b) is dismissed.

The petition under 37 CFR 1.53(c)(2)(ii) is granted.

On 11 June, 2002, a bundle of papers was deposited in the USPTO, and was assigned Application No. 10/166,799. The papers consisted of, *inter alia*, 11 pages of written description, one (1) page of abstract, and two (2) sheets of drawings. Accordingly, on 15 July, 2002, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had not been accorded a filing date because the specification did not include at least one claim.

In response, on 31 August, 2001, the present petition was filed,

accompanied by seven (7) pages, numbered Pages 13-20, containing eight (8) claims. Petitioner asserts that the seven (7) pages of claims were filed with the other application papers on 11 June, 2002, and subsequently misplaced in the USPTO.

The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals that 11 pages of written description, one (1) page of abstract, and two (2) sheets of drawings were received on 11 June, 2002. No pages of claims were filed on 11 June, 2002, since no such pages are present among the application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. Counsel's assertion in the petition that Pages 13-20 containing claims were filed with the application papers deposited on 11 June, 2002, is not more persuasive than the contents of the official USPTO file.

It is noted that the USPTO has a long-established and well publicized practice for *prima facie* establishing the date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of section 503 of the Manual of Patent Examining Procedure (MPEP).[1] This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If

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[1]The public was afforded a "reminder" of the then extent post card receipt practice at 857 *Off. Gaz. Pat. Off.* 667 (*O.G.*) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the *O.G.* that contains important *O.G.* notices of continuing relevance.

a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims and abstract) number of claims, number of sheets of drawings, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.[2]

Petitioner further states that this application is a continuation-in-part of prior-filed Application No. 09/624,634 and that the prior application is incorporated into the present application. At the outset, it is noted that only material which was contained in the prior application and would not be considered new matter in the prior application may be incorporated by reference. Furthermore, whether the claims were part of a copending application is not an issue here, however, since the copending application was not specifically incorporated by reference into the disclosure of this application.[3] To allow one to retroactively incorporate by reference a second application into a first application would allow the addition of matter into an application that was not present on filing which would be contrary to our statutes and rules. Still further, the question of new matter is not an issue here. A specification, including at least one claim, was simply not filed in the present application in the USPTO on 11 June, 2002.

In addition to a properly itemized postcard, petitioner may avoid in the future the predicament which has occurred by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit petitioner to amendment the continuing application to include any subject matter in such prior application(s), without the need for a petition.[4]

In summary, as petitioner simply has no evidence that the claims were filed with the original application papers, the application

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[2]MPEP 503.

[3]See MPEP 608.01(p).

[4]MPEP 201.06(c).

cannot be accorded a filing date as of the date that the original application papers were deposited.

As petitioners have provided no convincing evidence that the specification, including claims, was filed in the USPTO on 11 June, 2002, the petition must be **dismissed**.

Petitioner requests, in the alternative, that this application be converted to a provisional application. The petition is **granted**.

The new provisional application number will be communicated to applicants by OIPE in due course. The application will be reprocessed as a provisional application using only the application papers filed on 11 June, 2002. The seven (7) pages of claims filed with the present petition will not be used for processing, but will be retained in the application file.

The petition fee for the petition to convert has been assessed to counsel's deposit account, No. 23-3428.

Therefore the application is being returned to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of 11 June, 2002, as a **PROVISIONAL** application under 35 U.S.C. 111(b) and 37 CFR 1.53(b)(2), including the assignment of a new provisional application number.

Telephone inquiries concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (703)308-6918.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/166,799	06/11/2002	Anthony Petracca	

CONFIRMATION NO.

OC000000009460767

Wyatt, Gerber & O'Rourke, L.L.P.
99 Park Avenue
New York, NY 10016

Date Mailed: 01/31/2003

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **09/05/2002,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **60/421,124.** The filing receipt for the provisional application number will be mailed to the applicant by OIPE in due course.

JOHN S DILL
Office of Initial Patent Examination
(703) 308-0910

PART 2 - OFFICE COPY

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
60/421,124	06/11/2002	Anthony Petracca	

CONFIRMATION NO. 6460

Wyatt, Gerber & O'Rourke, L.L.P.
99 Park Avenue
New York, NY 10016

WITHDRAWAL NOTICE

OC000000009460768

Date Mailed: 01/31/2003

WITHDRAWAL OF PREVIOUSLY SENT NOTICE

It has come to the attention of the Office that the Notice on 07/15/2002 was sent in error. Please disregard that Notice. The application is complete and will be processed for examination. The Official Filing Receipt is enclosed. We apologize for any inconvenience this has caused.

A copy of this notice MUST be returned with the reply.

Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 3 - OFFICE COPY

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.
60/421,124	06/11/2002	Anthony Petracca	

CONFIRMATION NO.

OC000000011104741

Wyatt, Gerber & O'Rourke, L.L.P.
99 Park Avenue
New York, NY 10016

Date Mailed: 10/27/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **06/10/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,792.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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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.
60/402,847	08/12/2002	Jerry D. Horning	1294US

CONFIRMATION NO.

OC000000011234214

Graco Minnesota Inc.
P.O. Box 1441
Minneapolis, MN 55440-1441

Date Mailed: 11/10/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **08/06/2003,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,793.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L. TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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Copied from 60402847 on 08/15/2006

#6

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
60/287,873	04/30/2001	Ahmed Tewfik	1064.026PRV

CONFIRMATION NO.

OC000000011263088

23735
DIGIMARC CORPORATION
19801 SW 72ND AVENUE
SUITE 100
TUALATIN, OR 97062

Date Mailed: 11/13/2003

DECISION GRANTING REQUEST TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **04/29/2002,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is granted.

The application will be processed in the Office of Initial Patent Examination (OIPE) as a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), including the assignment of a new non-provisional application number.

The non-provisional application number is **10/360,794.** The filing receipt for the non-provisional application number will be mailed to the applicant by OIPE in due course.

JANICE L TIPPETT
Office of Initial Patent Examination
(703) 308-0910

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9405 SW GEMINI DRIVE
BEAVERTON OR 97008

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APR 22 2005

OFFICE OF PETITIONS

In re Application of
Tewfik, et al.
Application No. 10/360,794
Filed: April 30, 2001
Attorney Docket No. 1064.026PRV

: DECISION ON PETITIONS
: UNDER 37 CFR §1.78(a)(3),
: §1.78(a)(6) AND 37 CFR §1.183

This is a decision on (1) the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed April 29, 2002, 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 and (2) the petition under 37 CFR §1.183 requesting waiver of 37 CFR §§ 1.78(a)(3) and (a)(6) as that rule operates in conjunction with 37 CFR §1.17(t)."

The petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is **Granted**.

The petition under 37 CFR §1.183 requesting waiver of 37 CFR §§ 1.78(a)(3) and (a)(6) as that rule operates in conjunction with 37 CFR 1.17(t) 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);[1] 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

[1]Pursuant to petitioner's authorization, deposit account no. 50-1071 will be charged the required surcharge of $1,280.00.

additional information where there is a question whether the delay was unintentional.

The instant application was filed on April 30, 2001 and as a conversion of provisional application no. 60/287,873 and was pending at the time of filing of the instant petition. A reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii).

Additionally, since the subject nonprovisonal application was not filed within twelve months of the filing dates of the newly claimed provisional applications, the subject application must also include a benefit claim under 35 U.S.C. §120 to the intermediate prior nonprovsional applications that were filed within twelve months of the filing dates of the provisional applications for which priority is claimed. Petitioner has identified the intermediate prior nonprovisional applications that are directly claiming the benefit of the provisional applications and has indicated the relationship between the nonprovisional applications. (Eg., an indication that the subject application is a continuation-in-part of the prior nonprovisional applications). The proper reference has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). *See* 35 U.S.C. §§ 120 and§ 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and and § 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should <u>not</u> be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and §§ 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR §§ 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the replacement Filing Receipt accompanying this decision on petition includes the prior-filed applications should <u>not</u> be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A replacement Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 2611 for appropriate action on the amendment submitted April 29, 2002, including consideration by the examiner of the claim

under 35 U.S.C. § 120 and 37 CFR §1.78(a)(2) for the benefit of the prior-filed applications, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR §1.78(a)(5) for the benefit of the prior-filed provisional applications.

WITH RESPECT TO WAIVER OF THE SURCHARGE REQUIRED BY 37 CFR 1.78(a)(3)(ii), 37 CFR 1.78(a)(6)(ii), AND 37 CFR 1.17(t).

Petitioner requests under 37 CFR §1.183 waiver of the applicable surcharge under 37 CFR §1.78(a)(3)(ii) and §1.78(a)(6)(ii) for the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 120 and §119(e)as set forth in 37 CFR §1.17(t). In this regard, petitioner states that this is an extraordinary situation where waiver of the applicable fee is justified since the priority claim could not be made until after provisional application no. 60/287,873, filed April 30, 2001, was converted to a utility application. The conversion request was filed on April 29, 2002. Therefore, the priority claim would have to be filed beyond the expiration of the 4 month/16 month time period from the nonprovisional application's filing date, or April 30, 2001. 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii)

APPLICABLE RULES

37 CFR §1.78(a)(2)(i), (ii) and (iii), §1.78(a)(3)(i)(ii)(iii), §1.78(a)(5)(i)(ii)(iii), and §1.78(a)(6)(i)(ii)(iii) provide:

> (2)(i) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).
>
> (ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which

the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(i) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application for a design patent;
(B) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or
(C) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence following the title.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

5(i) Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference to each such prior-filed provisional application, identifying it by the provisional application number (consisting of series code and serial number).

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed provisional application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed provisional application. These time periods are not extendable. Except as provided in paragraph(a)(6) of this section, the failure to timely submit the reference is considered a waiver of any benefit under 35 U.S.C. 119(e) to such prior-filed provisional application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(B) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence following the title.

6) If the reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(5)(ii) of this section, the claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application may be accepted during the pendency of the later-filed application if the reference identifying the prior-filed application by provisional application number was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application must be accompanied by:

(i) The reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section to the prior-filed provisional application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(5)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

37 CFR 1.183 states that:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

OPINION

In order to grant any petition under 37 CFR 1.183, petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985). Petitioner has not shown that either condition exists in this case.

The circumstances of this case do not demonstrate an extraordinary situation, much less one where justice requires waiver of the rules. The failure to timely submit the claim for priority of the earlier application within the time period set forth in 37 CFR 1.78(a)(ii) was a circumstance entirely within petitioner's control, and could have been avoided by the exercise of reasonable care and diligence. Petitioner chose to file a petition to convert provisional application no. 60/287,873 to a nonprovisional application. Petitioner could have just as easily filed a nonprovisional application claiming benefit to the provisional application and timely filed the benefit claims. Furthermore, since the USPTO did not cause or contribute to petitioner's delay, this case is even further removed from consideration as one where "justice requires" equitable relief. See Helfgott & Karras, P.C. v. Dickinson, 209 F.3d 1328, 54 USPQ2d 1425 (Fed. Cir. 2000).

Petitioner's prosecution choices resulted in this predicament. The Office does not remedy tactical errors in prosecution or mistakes with 37 CFR 1.183. Nitto Chemical Industry. Co., Ltd. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (circumstances are not extraordinary, and do not require waiver of the rules, when a party makes an avoidable mistake in filing papers).

Circumstances resulting from petitioner's failure to exercise due care, or lack of knowledge of, or failure to properly apply, the Patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the granting of relief. See, In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990); In re Bird & Son, Inc. 195 USPQ 586, 588 (Comm'r Pats. 1977).

This is not an "extraordinary situation" where "justice requires" an extraordinary remedy.

As authorized, the $130 fee for the petition under 37 CFR 1.183 will be charged to petitioner's Deposit Account No. 50-1071.

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: (703) 872-9306
ATTN: Office of Petitions

Any questions concerning 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Patent No. 7,123,762
Issue Date: October 17, 2006
Application No. 10/360,814
Filed: February 10, 2003
Attorney Docket No. 220309US20

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed March 29, 2010.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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COOLEY GODWARD KRONISH, LLP
ATTN: PATENT GROUP
SUITE 1100
777 – 6TH STREET, NW
WASHINGTON, DC 20001

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DEC 0 2 2009

OFFICE OF PETITIONS

In re Patent No. 7,590,848	:	
Issue Date: September 15, 2009	:	
Application No. 10/360,896	:	ON PETITION
Filed: February 7, 2003	:	
Attorney Docket No. TRCX-004/01US	:	

This is a decision on the petition filed September 30, 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 the April M. Wise at (571) 272-1642. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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OCT 05 2007

OFFICE OF PETITIONS

CARDINAL HEALTH
7000 CARDINAL PLACE
LEGAL DEPARTMENT - INTELLECTUAL PROPERTY
DUBLIN OH 43017

In re Application of	:	
GROTHER et al.	:	
Application No. 10/360,905	:	DECISION ON PETITION
Filed: 02/07/2003	:	
Attorney Docket No. RPS-6114-US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 14, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of November 1, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No proper extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is February 2, 2007. The Office mailed a Notice of Abandonment on May 17, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee; and (3) a proper statement of unintentional delay.

Pursuant to 37 CFR 1.136, a request for an extension of time must be filed before the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, the $1,020.00 extension of time fee will be credited to petitioner's Deposit Account.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

This application is being referred to Technology Center AU 1615 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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BROWDY AND NEIMARK
624 NINTH STREET, NW
SUITE 300
WASHINGTON DC 20001-5303

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MAR 3 0 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Takeshi Katagiri et al :
Application No. 10/360,912 :
Filed: February 10, 2003 :
Attorney Docket No. KATAGIRI5 :

This is a decision on the petition, filed March 29, 2005,[1] under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 10, 2005 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.[2]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 3682 will consider the request for continued examination under 37 CFR 1.114, submitted March 16, 2005.

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1]Evidence has been provided to show that the original petition was received on March 25, 2005.

[2] 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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James Robert DeLuze
2032 Kapiolani Blvd. Apt 1 C
Honolulu HI 96826

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JUL 15 2005

OFFICE OF PETITIONS

In re Application of :
DeLuze : DECISION ON PETITION
Application No. 10/630,923 :
Filed: February 6, 2003 :
For: GAS CATALYSIS OF FUSION :
REACTIONS :

This is a decision on the petition under 37 CFR 1.137(a) and supplementary statements, filed February 18, 2005, February 22, 2005, and March 11, 2005, to revive the above-identified application.

The petition is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is not a final agency decision.

This application became abandoned October 21, 2004 for failure to timely reply to the non-final Office action mailed July 20, 2004. The non-final Office action set a three (3) month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136 were timely requested. Notice of Abandonment was mailed January 28, 2005.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the 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).

Petitioner fails to present a showing to the satisfaction of the Director that the entire delay in filing the required reply from

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the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The Office may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable." See, 37 CFR 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

Petitioner attributes the delay in timely submitting a proper reply to the non-final Office action to a medical condition. Petitioner states that on October 3, 2004, "acute decompensation of my illness occurred." Petitioner states that on October 4, 2004, he saw his attending physician where the doctor "evaluated my decompensated condition, medication levels were significantly increased and I underwent advised rest." Petitioner states that he "recovered to point able to resume work on office action on February 22, 2005." Petitioner states he "finished work today, March 11, 2005."

Petitioner has included a letter dated February 14, 2005 purportedly from Denis Mee-Lee, M.D. (hereinafter Mee-Lee) wherein Mee-Lee states petitioner suffers from major depressive disorder, post traumatic stress disorder, and generalized anxiety, and that petitioner has been his patient for many years. Mee-Lee states petitioner is disabled by the aforementioned conditions. Mee-Lee states that the "nature of his disability allows him to proceed with this work at a pace limited by the intensity of his illness and that his disability is "very stress reactive."

Copied from 10630923 on 07/21/2005

Mee-Lee states that he saw petitioner for a "routine examination" on October 4, 2004 and that "his condition was severely compromised at that time due to stresses that occurred October 3, 2004." Mee-Lee further states that petitioner required "significant increases in medication dosages in an attempt to just keep him stable" and that he was "totally unable to do much of anything at that time." Mee-Lee further states that petitioner has "remained in this state through this time and was unable to do any business with the USPTO up to the present time." Mee-Lee further states that "[h]opefully, he will be able to restart his work within the next 30-60 days."

The arguments and supporting statement submitted by petitioner have been reviewed, but are not found to be persuasive. The non-final Office action was mailed July 20, 2004. A response was due on or before October 20, 2004. Petitioner states that he was working on a reply to the non-final Office action on July 14, 2004 at the time that his condition worsened on October 3, 2004; notably, 17 days before the reply was due.

The statement by Mee-Lee fails to give a professional opinion as to whether or not petitioner's medical condition would have prevented him from timely responding to the Office action. Moreover, the Mee-Lee statement is vague with regards to the time periods discussed within the statement. Specific dates regarding the alleged medical condition and the exact nature of the illness are not set forth. Mee-Lee merely states that petitioner was "totally unable to do much of anything at that time." Mee-Lee does not give a professional opinion insofar as what petitioner's alleged illness would have prevented him from doing and for how long. Moreover, petitioner himself states that his medication was increased that he underwent "advised rest."

Mee-Lee also states that petitioner was "unable to do any business with the USPTO up to the present time" and that "[h]opefully, he will be able to restart his work within the next 30-60 days." These statements would seem to imply that as of February 14, 2005, the date the letter from Mee-Lee is dated, petitioner remains unable to conduct business before the Office due to petitioner's medical condition.

Petitioner's actions would seem to conflict with Mee-Lee's statement that petitioner is unable to any conduct business before the Office at the present time and petitioner's own argument that his medical condition prevented his timely reply to the Office action.

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The instant petition is accompanied by what purports to be the required reply to the outstanding Office action. The fact that the Mee-Lee alleges petitioner's medical condition prevented petitioner from conducting business before the Office and continues, perhaps for another 30-60 days from the date the letter was drafted, to prevent petitioner from conducting business before the Office would seem to be contradicted by the fact that petitioner, while allegedly continuing to suffer from the medical condition, was able to draft the reply to the outstanding Office action, and submit said reply along with the instant petition.

Thus, petitioner has failed to establish a nexus between the alleged medical condition and the failure to timely submit a proper reply to the outstanding Office action.

ALTERNATE VENUE

Petitioner is urged to consider filing a petition stating that the delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply. *See*, enclosed copy of petition under 37 CFR 1.137(b).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: **Mail Stop Petition**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-9300

Copied from 10630923 on 07/21/2005

By hand:

U.S. Patent and Trademark Office
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) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: PTO/SB/64

Copied from 10630923 on 07/21/2005

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

James Robert DeLuze
2032 Kapiolani Blvd. Apt 1 C
Honolulu HI 96826

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JUL 22 2005

OFFICE OF PETITIONS

In re Application of :
DeLuze : CORRECTED DECISION
Application No. 10/360,923 : ON PETITION
Filed: February 6, 2003 :
For: GAS CATALYSIS OF FUSION :
REACTIONS :

This is a decision on the petition under 37 CFR 1.137(a) and supplementary statements, filed February 18, 2005, February 22, 2005, and March 11, 2005, to revive the above-identified application. This decision corrects the decision mailed July 15, 2005.

The petition is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is not a final agency decision.

This application became abandoned October 21, 2004 for failure to timely reply to the non-final Office action mailed July 20, 2004. The non-final Office action set a three (3) month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136 were timely requested. Notice of Abandonment was mailed January 28, 2005.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the 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).

Petitioner fails to present a showing to the satisfaction of the Director that the entire delay in filing the required reply from

the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The Office may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable." See, 37 CFR 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

Petitioner attributes the delay in timely submitting a proper reply to the non-final Office action to a medical condition. Petitioner states that on October 3, 2004, "acute decompensation of my illness occurred." Petitioner states that on October 4, 2004, he saw his attending physician where the doctor "evaluated my decompensated condition, medication levels were significantly increased and I underwent advised rest." Petitioner states that he "recovered to point able to resume work on office action on February 22, 2005." Petitioner states he "finished work today, March 11, 2005."

Petitioner has included a letter dated February 14, 2005 purportedly from Denis Mee-Lee, M.D. (hereinafter Mee-Lee) wherein Mee-Lee states petitioner suffers from major depressive disorder, post traumatic stress disorder, and generalized anxiety, and that petitioner has been his patient for many years. Mee-Lee states petitioner is disabled by the aforementioned conditions. Mee-Lee states that the "nature of his disability allows him to proceed with this work at a pace limited by the intensity of his illness and that his disability is "very stress reactive."

Mee-Lee states that he saw petitioner for a "routine examination" on October 4, 2004 and that "his condition was severely compromised at that time due to stresses that occurred October 3, 2004." Mee-Lee further states that petitioner required "significant increases in medication dosages in an attempt to just keep him stable" and that he was "totally unable to do much of anything at that time." Mee-Lee further states that petitioner has "remained in this state through this time and was unable to do any business with the USPTO up to the present time." Mee-Lee further states that "[h]opefully, he will be able to restart his work within the next 30-60 days."

The arguments and supporting statement submitted by petitioner have been reviewed, but are not found to be persuasive. The non-final Office action was mailed July 20, 2004. A response was due on or before October 20, 2004. Petitioner states that he was working on a reply to the non-final Office action on July 14, 2004 at the time that his condition worsened on October 3, 2004; notably, 17 days before the reply was due.

The statement by Mee-Lee fails to give a professional opinion as to whether or not petitioner's medical condition would have prevented him from timely responding to the Office action. Moreover, the Mee-Lee statement is vague with regards to the time periods discussed within the statement. Specific dates regarding the alleged medical condition and the exact nature of the illness are not set forth. Mee-Lee merely states that petitioner was "totally unable to do much of anything at that time." Mee-Lee does not give a professional opinion insofar as what petitioner's alleged illness would have prevented him from doing and for how long. Moreover, petitioner himself states that his medication was increased that he underwent "advised rest."

Mee-Lee also states that petitioner was "unable to do any business with the USPTO up to the present time" and that "[h]opefully, he will be able to restart his work within the next 30-60 days." These statements would seem to imply that as of February 14, 2005, the date the letter from Mee-Lee is dated, petitioner remains unable to conduct business before the Office due to petitioner's medical condition.

Petitioner's actions would seem to conflict with Mee-Lee's statement that petitioner is unable to any conduct business before the Office at the present time and petitioner's own argument that his medical condition prevented his timely reply to the Office action.

The instant petition is accompanied by what purports to be the required reply to the outstanding Office action. The fact that the Mee-Lee alleges petitioner's medical condition prevented petitioner from conducting business before the Office and continues, perhaps for another 30-60 days from the date the letter was drafted, to prevent petitioner from conducting business before the Office would seem to be contradicted by the fact that petitioner, while allegedly continuing to suffer from the medical condition, was able to draft the reply to the outstanding Office action, and submit said reply along with the instant petition.

Thus, petitioner has failed to establish a nexus between the alleged medical condition and the failure to timely submit a proper reply to the outstanding Office action.

ALTERNATE VENUE

Petitioner is urged to consider filing a petition stating that the delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply. *See*, enclosed copy of petition under 37 CFR 1.137(b).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: **Mail Stop Petition**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-9300

By hand:

U.S. Patent and Trademark Office
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) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: PTO/SB/64

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/360,940	02/06/2003	Hans-Christoph Haenlein	115-3631-U

CONFIRMATION NO.
1555

Kwadjo Adusei-Poku
Masco Corporation
21001 Van Born Road
Taylor MI 48180

Decision Dismissing Petition under 37 CFR 1.138(c)

The declaration of express abandonment will not be recognized

This is in response to the petition under 37 CFR 1.138(c) for express abandonment to avoid publication of the above-identified application, for which a faxed copy of the original petition was received on February 20, 2004.

The petition is dismissed.

The Application was published on September 18, 2003, in compliance with 35 U.S.C. 122(b), the publication number is US20030173423A1, and it is available on the USPTO web site at http://www.uspto.gov/patft/index.htm1.

The application was published as scheduled.

Telephone inquiries should be directed to the Office of Patent Publication, the Pre-Grant Publication Division, at 703-605-4283.

Barbara J. Debnam
Office of Patent Publication
Pre-Grant Publication Division

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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APR 24 2007

OFFICE OF PETITIONS

CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

In re Application of	:	
James Pristas et al	:	
Application No. 10/360,941	:	DECISION GRANTING PETITION
Filed: February 6, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 67,036-019/B05634/HSC0117	:	

This is a decision on the petition, filed January 8, 2007, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on February 6, 2004. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of August 2, 2007 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3208.

This application is being forwarded to Technology Center Art Unit 2618 for examination in due course.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/360,941	02/06/2003	James Pristas	67,036-019/B05634/HSC0117

CONFIRMATION NO. 4142

26096
CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

Date Mailed: 04/24/2007

Communication Regarding Rescission Of Nonpublication Request and/or Notice of Foreign Filing

Applicant's rescission of the previously-filed nonpublication request and/or notice of foreign filing is acknowledged. The paper has been reflected in the Patent and Trademark Office's (USPTO's) computer records so that the earliest possible projected publication date can be assigned.

The projected publication date is 08/02/2007.

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv), 1272 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (571) 272-3282. Questions regarding publications of patent applications should be directed to the patent application publication hotline at (703) 605-4283 or by e-mail pgpub@uspto.gov.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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SEP 28 2006
OFFICE OF PETITIONS

ALFRED DAVID SAUER
3427 TIMBERWOOD CIRCLE
NAPLES, FL 34105

In re Application of	:	
Alfred D. Sauer	:	
Application No. 10/360,953	:	ON PETITION
Filed: March 10, 2003	:	
Attorney Docket No. 02-5169	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 3, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 3711 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
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 4

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

COPY MAILED

MAY 2 2 2003

OFFICE OF PETITIONS

In re Application of :
Caty, et al. :
Application No. 10/360,959 : ON PETITION
Filed: February 7, 2003 :
Attorney Docket No.: 5858P8483 :

This decision in response to the petition filed April 7, 2003 in response to the "Notice of Incomplete Nonprovisional Application ("Notice") mailed March 24, 2003. This response is being treated as a petition to accord this application a filing date of February 7, 2003.

The application was filed February 7, 2003. The Notice mailed March 24, 2003 by the Office of Initial Patent Examination notified applicant that the application had not been accorded a filing date as the application appeared to have been deposited without drawings as required under 35 USC 113.

In response, the present petition was filed April 7, 2003. Petitioner argues that the Notice should be withdrawn as the application as deposited with three sheets of drawings. Petitioner has included as proof of mailing and proof of receipt of the referenced drawings a return postcard date stamped by the Office on February 7, 2003. A copy of the original drawing sheets purportedly filed with the application on February 7, 2003 was also supplied.

The original drawing sheets submitted with the application papers have not been located. However, in view of the evidence presented, the petition to accord the application a filing date of February 7, 2003 is GRANTED.

Since the original drawing sheets cannot be located in the Office, the copy supplied with the instant petition will be used for examination purposes.

The petition fee of $130.00 submitted with the instant petition is unnecessary. A refund from the Finance Office, Refund Section, has been requested on petitioner's behalf.

This application will be returned to the Office of Initial Patent Examination for further processing with a filing date of February 7, 2003.

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
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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HONEYWELL INTERNATIONAL INC.
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

COPY MAILED

NOV 16 2005

OFFICE OF PETITIONS

In re Application of	:	
Burgess R. Johnson et al	:	
Application No. 10/360,962	:	DECISION GRANTING PETITION
Filed: February 7, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. H0003885-5837	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 20, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before September 19, 2005, as required by the Notice of Allowance and Fee(s) Due, mailed June 17, 2005. No Notice of Abandonment has been mailed.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the $1,400 issue fee and $300 publication fee; (2) the petition fee of $1,500; and (3) and an adequate statement of unintentional delay have been received. Accordingly, the issue and publication fees are accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Publishing Division for further processing.

Frances Hicks
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3-29-10

Paper No.: _____

TO SPE OF : ART UNIT 2856

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/360,987 Patent No.: 6877374

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES: Please Check figures

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: _____

HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Hezron E. Williams
SPE

2856
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Second Sight, LLC
P.O. Box 905
Santa Clarita CA 91380-9005

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SEP 2 0 2005

OFFICE OF PETITIONS

In re Application of :
Brian V. MECH et al. :
Application No. 10/360,988 : ON PETITION
Filed: February 7, 2003 :
Attorney Docket No. S244-USA :

This is a decision on the petition under 37 CFR 1.137(b), filed July 6, 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 restriction requirement mailed September 23, 2003, which set a shortened statutory period for reply of one (1) month. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 24, 2003.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an election; (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the restriction requirement of September 23, 2003 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand 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 of 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPP 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 David A. Bucci at (571) 272-7099 or in his absence, the undersigned at (571) 272-3217.

The application file is being referred to Technology Center AU 2814 for appropriate action on the concurrently filed election.

Brian Hearn
Petitions Examiner
Office of Petitions

Cc: Second Sight Medical Products, Inc.
12744 San Fernando Road, Building 3
Sylmar, CA 91342

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.: 07-06

Paper No: __

MORRISON & FOERSTER, LLP
SUITE 300
1650 TYSONS BLVD.
MCLEAN VA 22102

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JUL 12 2006

OFFICE OF PETITIONS

In re Application of	:	
Dooley, et al.	:	
Application No. 10/361,006	:	DECISION
Filing Date: 10 February, 2003	:	
Attorney Docket No.: 38613.0004	:	

This is a decision on the petition filed on 22 June, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

NOTE:

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.

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 Restriction requirement mailed on 15

July, 2005, with reply due absent extension of time on or before Monday, 17 October, 2005;

- the instant application went abandoned after midnight 15 October, 2005;
- the Examiner mailed a Notice of Non-Responsive Amendment on 18 November, 2005;
- it does not appear that the Office mailed the Notice of Abandonment before the instant petition was filed;
- on 22 June, 2006, Petitioner filed the instant petition (with fee), with the reply in the form of an amendment/election, and made the statement of unintentional delay–thus Petitioner appears to have satisfied the requirements under 37 C.F.R. §1.137(b);
- 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

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and

---

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]

[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[4] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[5] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

As to the Allegations
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.

Petitioner appears to have satisfied the regulatory requirements.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) hereby is **granted**.

The instant application is released to the Examiner in Technology Center 1600 for further processing in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

UNITED STATES PATENT AND TRADEMARK OFFICE

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MORRISON & FOERSTER
1650 TYSONS BOULEVARD
SUITE 300
McLEAN, VA 22102

COPY MAILED
JAN 28 2004
OFFICE OF PETITIONS

In re Application of	:	
Helmut D. Link	:	
Application No. 10/361,007	:	NOTICE
Filed: February 10, 2003	:	
Attorney Docket No. 246472004300	:	

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

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

MAR 24 2004

STEPHEN B. MAEBIUS
FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

In re Application of	:
Gary L. Griffiths et al	:
Serial No.: 10/361,026	: WITHDRAWAL OF ATTORNEY
Filed: February 10, 2003	:
Attorney Docket No.: 018733-1157	:

This is in response to applicants' attorneys' request, filed February 26, 2004, to withdraw from representation in the above identified application.

37 CFR 10.40 Withdrawal from employment.
(b) Mandatory withdrawal . A practitioner representing a client before the Office shall withdraw from employment if:
(1) The practitioner knows or it is obvious that the client is bringing a legal action, commencing a proceeding before the Office, conducting a defense, or asserting a position in litigation or any proceeding pending before the Office, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any person;
(2) The practitioner knows or it is obvious that the practitioner's continued employment will result in violation of a Disciplinary Rule;
(3) The practitioner's mental or physical condition renders it unreasonably difficult for the practitioner to carry out the employment effectively; or
(4) The practitioner is discharged by the client.
(c) Permissive withdrawal. If paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matters pending before the Office unless such request or such withdrawal is because:
(1) The petitioner's client:
(i) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
(ii) Personally seeks to pursue an illegal course of conduct;
(iii) Insists that the practitioner pursue a course of conduct that is illegal or that is prohibited under a Disciplinary Rule;
(iv) By other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively;
(v) Insists, in a matter not pending before a tribunal, that the practitioner engage in conduct that is contrary to the judgment and advice of the practitioner but not prohibited under the Disciplinary Rule; or
(vi) Has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of legal services.
(2) The practitioner's continued employment is likely to result in a violation of a Disciplinary Rule;
(3) The practitioner's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
(4) The practitioner's mental or physical condition renders it difficult for the practitioner to carry out the employment effectively;
(5) The practitioner's client knowingly and freely assents to termination of the employment; or

(6) The practitioner believes in good faith, in a proceeding pending before the Office, that the Office will find the existence of other good cause for withdrawal.

Applicants' attorney has provided no reason for withdrawal, as required.

The request to withdraw is **DISMISSED**.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at Office facsimile number.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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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SCHWEGMAN, LUNDBERG, WOESNER
& KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

In re Application of	:	
NADEN, et al.	:	
Application No. 10/361,027	:	DECISION ON PETITION
Filed: February 07, 2003	:	TO WITHDRAW
Attorney Docket No. 20067.0020US01	:	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 11, 2006.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to SCHWEGMAN, LUNDBERG, WOESNER & KLUTH, P.A. has been revoked by the assignee of the patent application on November 15, 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 first copied address below until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Patricia Volpe at 571-272- 6825.

P Volpe

Patricia Volpe
Petitions Examiner
Office of Petitions

cc: HAMRE, SCHUMANN, MUELLER & LARSON, P.C.
P.O. BOX 2902
MINNEAPOLIS MN 55402-0902

cc: HAMRE, SCHUMANN, MUELLER & LARSON, P.C.
225 SOUTH SIXTH STREET
SUITE 2650
MINNEAPOLIS MN 55402

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
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/361,027	02/07/2003	Mark Naden	1094.203US1

CONFIRMATION NO. 3112

OC000000021299152

21186
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Date Mailed: 11/20/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/15/2006.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

PVolpe

PATRICIA A VOLPE
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FORMER ATTORNEY/AGENT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No. 6

ATTN: AMSEL-LG0L (GEORGE B. TERESCHUK, ESQ.)
U.S. ARMY COMMUNICATIONS-ELECTRONICS COMMAND
FORT MONMOUTH, NJ 07703-5010

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JUL 1 5 2004

OFFICE OF PETITIONS

In re Application of	:	
Wilson, Robert E.	:	
Application No. 10/361,035	:	ON PETITION
Filed: January 30, 2003	:	
Attorney Docket No. CECOM 5480	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 25, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed April 29, 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 30, 2003. A Notice of Abandonment was mailed on June 4, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

The file is now being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to the undersigned at (703) 306-0482.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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Technology Center 2100

In re Application of: Judge et al.
Application No. 10/361,067
Filed: February 7, 2003
For: SYSTEMS AND METHODS FOR AUTOMATED WHITELISTING IN MONITORED COMMUNICATIONS

DECISION ON PETITION TO MAKE SPECIAL UNDER M.P.E.P.§708.02(II): INFRINGEMENT

This is a decision on the petition filed September 24, 2004 under 37 C.F.R. 102(d) and M.P.E.P. § 708.02(II): Infringement, to make the above-identified application special.

The Petition is **GRANTED**.

M.P.E.P. § 708.02, Section II which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in **37 CFR 1.17(h)**;

(b) A statement by the applicant, assignee, or an attorney/agent registered to practice before the Office alleging:

(1) That there is an infringing device or product actually on the market or method in use;

(2) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(3) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

(c) Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

Petition to Make Special **GRANTED** since all of the requirements for special status under MPEP § 708.02(II) have 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 II. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

12/16/04

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
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MBS