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MAYER, BROWN, ROWE & MAW LLP
190 SOUTH LASALLE ST
CHICAGO IL 60603-3441

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AUG 2 5 2004
OFFICE OF PETITIONS

In re Application of :
James E. Schulte, et al. :
Application No. 10/427,426 : ON PETITION
Filed: April 30, 2003 :
Attorney Docket No. 03127389 :

This is a decision on the petition under 37 CFR §1.78(a)(3), filed March 19, 2004, to accept an unintentionally delayed claim under 35 U.S.C.§ 120 for the benefit of prior-filed nonprovisional application 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 application.

The instant pending nonprovisional application was filed on April 30, 2003, and was pending at the time of filing of the instant petition. While a reference to the prior-filed provisional application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter filed with the above-identified application.

The current procedure where a claim for priority under 37 CFR §1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR §§1.78(a)(2(ii) and 1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority

to the provisional application 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 nonprovisional Application No. 09/843,103 in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt.

In view of the above, the $1330 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 Sherry Brinkley at (703) 305-9220. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The examiner of Technology Center AU 1751 will take appropriate action on the amendment filed March 19, 2004, including consideration of the claim for benefit under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application.

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

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

[1] Note MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

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2941 FAIRVIEW PARK DR, SUITE 200
FALLS CHURCH, VA 22042-2924

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MAY 11 2007

OFFICE OF PETITIONS

In re Patent No. 7,147,670	:
Issue Date: December 12, 2006	: DECISION ON PETITION
Application No. 10/427,426	: UNDER 37 CFR 1.78(a)(3)
Filed: April 30, 2003	:
Attorney Docket No. 047440002 CNUS05	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 5, 2007 to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional application No. 09/419,345 filed October 15, 1999.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is applicable to applications filed on or after November 29, 2000 and is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Further, a 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) and (iii) 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 Director may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1).

Petitioner should note that, since the application has issued as patent, a petition under 37 CFR 1.78(a)(3), along with the submission of a Certificate of Correction, would be the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application. *See* MPEP 1481, Rev. 2, May 2004, page 1400-85, second column.

If petitioner desires to add the claim for priority on the front page of the Letter Patents by way of a Certificate of Correction then petitioner must submit (1) a renewed petition under 37 CFR 1.78(a)(3), no further petition fee required; and (2) a Request for a Certificate of Correction, including the $100 fee. The request for a Certificate of Correction will be construed as the amendment required under 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

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

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

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

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

In re Application of :
Catherine White :
Application Number: 10/427437 : ON PETITION
Filing Date: 04/30/2003 :
Attorney Docket Number: :
White.C-15 :

This is a decision in reference to the letter filed on March 5, 2009, which, in view of payment of the fee due for a petition under under 37 CFR 1.137(a), is treated as a petition to review the above-identified application unavoidably abandoned.

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 to withdraw the holding of abandonment," or as discussed below "Renewed Petition under 37 CFR 1.137(b)."

The application became abandoned on July 31, 2004, for failure to timely file a response to the non-final Office action mailed on April 30, 2004, which set a three (3)-month shortened statutory period for reply. No extensions of the time for reply under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on February 4, 2005.

On March 5, 2009, petitioner, *pro se*, submitted the subject petition and fee.

A grantable petition under 37 CFR 1.137(a) must be accompanied by:

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

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

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

(3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

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

The petition lacks items (1) and (3).

With regards to item (1), the required reply to the Office action mailed on April 30, 2004 has not been filed. In this regard, it is noted that letters were filed by applicant on March 23, 2006, March 27, 2007, and July 26, 2007. Additionally, the present petition was filed on March 5, 2009. An additional letter was filed on March 15, 2009. None of these letters, however, is in the form of an amendment, in compliance with 37 CFR 1.121, in response to the non-final Office action mailed on April 30, 2004. A proper reply to the outstanding Office action must be filed with any grantable petition.

A copy of the Office action mailed on April 30, 2004 is enclosed for petitioner's reference in preparing a proper reply.

With regard to item (3), the Director may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Director to be "unavoidable".[1] Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> 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

[1] 35 U.S.C. § 133.

> agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[2]

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).[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.[3]

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

(1) The delay in reply that originally resulted in expiration;
(2) The delay in filing an initial petition pursuant to § 1.137(a) to revive the application; and
(3) The delay in filing a *grantable* petition pursuant to § 1.137(a) to revive the application.[4]

This petition lacks the showing required by periods (1) and (2).

At the outset, it is noted that the papers filed on March 5, 2009 contains nothing cognizable as an explanation of unavoidable

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[2] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

[3] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

[4] See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131 at 53158 (October 10, 1997).

delay in responding to the non-final Office action mailed on April 30, 2004.

Rather, the showing of record, based on a review of the Official file, is that petitioner *pro se* is unfamiliar with the patent prosecution process and with the procedure required to revive an abandoned application.

With regard to period (1), petitioner must that the entire delay in filing a timely response to the non-final Office action mailed on April 30, 2004 was unavoidable.

Further, with regard to period (2), petitioner must show that the entire delay in filing the subject petition, which was not filed until four and one-half years after the application became abandoned on July 31, 2004, and over four years after the mailing of the Notice of Abandonment on February 4, 2005, was unavoidable.

MPEP 711.03(c) states that:

> An applicant who fails to file a petition under 37 CFR 1.137(a) "promptly" upon becoming notified, or otherwise becoming aware, of the abandonment of the application will not be able to show 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 removal of the language in 37 CFR 1.137(a) requiring that any petition thereunder be "promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment" should not be viewed as: (A) permitting an applicant, upon becoming notified, or otherwise becoming aware, of the abandonment of the application, to delay the filing of a petition under 37 CFR 1.137(a); or (B) changing (or modifying) the result in In re Application of S, 8 USPQ2d 1630 (Comm'r Pat. 1988), in which a petition under 37 CFR 1.137(a) was denied due to the applicant's deliberate deferral in filing a petition under 37 CFR 1.137. An applicant who deliberately chooses to delay the filing of a petition under 37 CFR 1.137 (as in Application of S, 8 USPQ2d at 1632) will not be able to show 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" or even make an appropriate 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."

It is further noted that the petition filed on March 5, 2009 states that petitioner received on October 29, 2005 a letter from her registered patent practitioner, Gene Scott, stating that the subject utility application for patent "appears to be unpatentable." Petitioner further states that attorney Scott "recommends Design Patent protection."

In this regard, MPEP 711.03(c) states that a delay resulting from a deliberately chosen course of action on the part of the applicant does not become an "unintentional" delay within the meaning of 37 CFR 1.137(b) because: (A) the applicant does not consider the claims to be patentable over the references relied upon in an outstanding Office action. If petitioner decided not to pursue timely reviving the application because petitioner did not believe the subject matter of the application to be patentable, such delay would be intentional, rather than unavoidable.

A delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP does not constitute an "unavoidable" delay. *See* Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (N.D. Ind. 1987), Vincent v, Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891). A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (1) the applicant's reliance upon oral advice from Office employees; or (2) the Office's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. *See* In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985); *see also* In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994) (while the Office attempts to notify applicants of deficiencies in their responses in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in their responses in a manner permitting a timely correction).

As such, the showing of record leads to a conclusion that the entire delay in responding to the Office action mailed on April 30, 2004, is not unavoidable. The petition will therefore be **dismissed**.

Lastly, it is noted that the correspondence address remains that of petitioner's chosen counsel, Gene Scott. Applicant has appointed an attorney or agent to conduct all business before the Patent and Trademark Office. Double correspondence with an applicant and applicant's attorney or agent will not be undertaken. Accordingly, applicant is required to conduct all future correspondence with this Office through the attorney or agent of record. See 37 CFR 1.33.

If applicant no longer wishes to be represented by counsel, a revocation of power of attorney and change of correspondence address should be filed. A copy of a revocation of power of attorney and change of correspondence address form is enclosed for petitioner's use.

A courtesy copy of this decision will be mailed to the address in the petition. All future correspondence, however, 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
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

Cc:

CATHERINE R. WHITE
P.O. BOX 29462
LOS ANGELES CA 90029

Encl: Office action of April 30, 2004
PTO/SB/81

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/427,437	04/30/2003	Catherine White	White.C-15	7643

22197 7590 04/30/2004

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

EXAMINER
KLEBE, GERALD B

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 04/30/2004

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

Office Action Summary	Application No.	Applicant(s)
	10/427,437	WHITE, CATHERINE
	Examiner	Art Unit
	Gerald B. Klebe	3618

KB

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 30 April 2003.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-9 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 28 July 2003 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

GBKlebe 20 April 04

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. Should applicant wish these references to be printed on a patent issuing from this application, a Form PTO-1449, "List of Prior Art cited by Applicant", listing these references must be provided in accordance with requirements set forth in 37 CFR 1.97, 1.98, and MPEP Section 609.

Drawings

2. The drawings are objected to for the following informalities:

Figure 4 shows a quantity Vset which is not described anywhere in the disclosure.

Appropriate correction is required.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore,

a) the potentiometers recited in claim 4 and in claim 8 as being mounted on the handlebar must be shown or the feature(s) canceled from the claim(s); and

b) the Rf resistor recited in claim 5 and in claim 9 in combination with the capacitor Cf must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Abstract

4. The Abstract is objected to for the following informalities:

line 3: the phrase "of the" appears to be a typographical error and should be deleted.

Appropriate correction or clarification is required.

Specification - Objections

5. The specification is objected to for the following informalities:

page 7, line 7 refers to quantity Rf in Figure 4; however, no such quantity appears in the figure.

Claims Rejections - 35 U.S.C. § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 recites the limitation "castor type wheel". The recitation "castor type" renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "castor type") thereby rending the scope of the claim unascertainable. See MPEP § 2173.05(d).

Claims Rejections - 35 U.S.C. § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Catto (US 5894898), cited by Applicant in view of Andruet (US 5004061) in further view of Lin (US 6679343 B2).

a. Catto discloses an apparatus comprising: **(re: claim 1)** a platform (Fig 1, item 1) for supporting a person standing on the platform (refer col 2, lines 35-46); a plurality of wheels (3, 4, and 21) engaging the platform in rolling motion; a handlebar (6) extending upwardly from the platform for stabilizing the person and for controlling speed of two of the wheels (refer col 3, lines 46-47 and lines 62-67; and col 4, lines 1-9); and an electrical circuit engaging the apparatus (Fig 12, and associated text); the electrical circuit comprising components of: (Figs 3 and 12) a battery (14), a plurality of solar cells (12) fixed exteriorly to the platform; an electric motor (16) engaged with the wheels; and a means for motor speed control (refer col 2, lines 42-46); the motor speed control means including the electrical circuit components interconnected for charging the battery and driving the two of the wheels (although only one of the wheels is driven in the embodiment shown, both of the rear wheels may be driven; refer col 5, lines 21-23).

b. **Regarding the further feature of claim 1,** Catto lacks explicit disclosure of the motor speed control means including dual operational amplifiers in a push-pull configuration.

However, Andruet teaches an electric motor powered vehicle wherein the motor control system controls the wheel drive motors using a control circuit (75; refer Figures 5 and 6, and column 8, lines 29ff) including dual operational amplifiers in a push-pull configuration (refer Fig 5, and associated text) to control the wheel drive motors. Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the disclosure of Catto as regards the motor circuit components to have explicitly disclosed the motor control circuit to include dual operational amplifiers in a push-pull configuration for motor control in accordance with the teachings of Andruet as a conventional method of controlling two motors of the same axle set to obtain the speed differential effect between the two motors as needed to accomplish steering-by-driving as suggested by the reference at column 8, lines 27ff.

c. **Regarding the further feature of claim 1** wherein the motor control means includes a tachometer and a potentiometer input, **and the feature of claim 4** wherein the potentiometers are mounted on the handlebar, Lin teaches a control device for an electric apparatus of a motor driven wheeled platform for supporting a person standing on the platform wherein the motor speed control means includes a potentiometer input (12) drawing power from the battery mounted on the handlebar. Regarding the tachometer, Lin is silent, however, the examiner takes Official Notice that it is old and well-known in the art to provide tachometer in the visual field of view of operators controlling the speed of a vehicle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the motor control means of Catto to include tachometer and potentiometer inputs in accordance with the teachings of Lin in order to locate them in a place on the apparatus easily accessible and visible to the operator.

d. **Regarding the further feature of claim 1** wherein solar cells are also fixed exteriorly to the handle bar, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have provided additional solar cells mounted at various exterior locations on the apparatus since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

e. **Regarding the feature of claim 3** wherein the op amps are ULN3755W, the op amps (Fig 5 items 57 and 63) used in the motor control circuit of Andruet are not identified specifically; however, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have used ULN3755W op amps as a matter of design choice depending upon the specific electrical and electronic characteristics of the wheel drive motor(s) , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

f. **Regarding the feature of claim 5** wherein the RfCf time-constant of the push-pull circuit is selected to prevent system oscillation by compensating for inherent dynamic mechanical lag in the motor(s), Andruet selects time constants for the circuit for a number of different variants (for example, refer col 2, line 63 to col 4, line 14 where he discusses a variant aimed at producing a braking effect for the vehicle); therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have selected the RfCf time constant for the push-pull circuit to be any number of useful values as a design choice dependent upon the electronic characteristics of the motor(s) being controlled in order to provide

an acceptable drive response behavior in environments in which the vehicle was expected to be used, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Catto (US 5894898), cited by Applicant, in view of Andruet (US 5004061) and Lin (US 6679343 B2), and further in view of Kiffe (US 5161635).

As discussed above, the combination of Catto, Andruet and Lin disclose all the features of the invention of claim 1 from which claim 2 depends.

The combination of Catto, Andruet and Lin fails to teach an electric motor drive apparatus wherein the forward pair of wheels are caster wheels.

However, Kiffe teaches a motor driven vehicle using a pair of casters as the front wheels.

Therefore, it would have been obvious to one of ordinary skill in the art to substitute the dual caster wheels of Kiffe for the single front wheel of the combination of Catto, Andruet and Lin in order to provide a safety redundancy against blowout of the front wheel.

11. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lautzenhiser et al. (US 5012165) in view of Weisz (US 6494278).

a. Lautzenhizer et al. discloses an apparatus (10) comprising: a platform (combination 14, 16 and 18; refer col 6, lines 60-67); the platform mounted on two caster wheels (19a, b) forward, and two drive wheels (12a, b) rearwardly; the plurality of wheels engaging the platform in rolling motion; a handlebar extending upwardly from the platform (taken as the armrest including control arm 54, shown in Figs 1-2); and an electrical circuit engaging the

apparatus (Figs 5-12); the electrical circuit comprising components: a battery (60), and electric motor (26a, 26b) engaged with two of the wheels and a means for motor speed control; the motor speed control means including dual operational amplifiers (104, 106) in push-pull configuration (refer col 8, lines 59-61), and a potentiometer input (Fig 9, items 76a, b) drawing power from the battery (refer col 7, lines 55-57); the electrical circuit components interconnected for charging the battery (refer col 10, lines 28-35) and for driving the two of the wheels; and (**re: claim 8**) wherein the potentiometer controlling the vehicle speed is mounted on the handlebar (Figs 1-2, item 54; and refer col 8, lines 9-16). Lautzenhizer is silent regarding provision of a tachometer functionally engaged for speed stabilizing; however, the examiner takes Official Notice that it is old and well-known in the art to provide a tachometer as part of the instrument cluster in the visual field of the operator for use in aiding the control of the speed of land vehicles.

b. **Relative to the further feature of claim 6,** Lautzenhizer et al. lacks electric clutches.

c. However, (**re: the feature of claim 6**) Weisz teaches an electric wheelchair drive system using electric-controlled clutches in combination with wheel-hub electric motors (refer Fig 6, and associated text); and (**re: claim 7**) wherein the clutches are interconnected for disengagement by a control mounted on the handlebar (refer Fig 8).

d. Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the wheelchair electric drive system of Lautzenhizer et al. to engage the two drive wheels of the apparatus with the electric motors operating through electric clutches in accordance with the teachings of Weisz in order to provide a wheel drive mechanical connection that can be readily removed from the vehicle, which is less

likely to apply excessive stresses to the frame of the vehicle and which permits improved control of the motor of the wheel, as suggested by the reference at column 1, lines 39-44.

e. **Regarding the feature of claim 9** wherein the RfCf time-constant of the push-pull circuit is selected to prevent system oscillation by compensating for inherent dynamic mechanical lag in the motor(s), Lautzenhizer et al. selects time constants for the circuit for a number of different reasons (for example, refer col 11, lines 1-35 where these are adjusted as a part of the means for controlling the maximum power that is supplied to the electric motors by controlling the modulation of the pulse-width of the power signal and hence the current sent to the motors; as another example, these are adjusted dynamically to cause the motor to function as a generator and thereby provide dymamic braking of a wheel as discussed at col 11, line 46 to col 12, line 19); therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have selected the RfCf time constant for the push-pull circuit to be any number of useful values as a design choice dependent upon the electronic characteristics of the motor(s) being controlled in order to provide an acceptable drive response behavior in environments in which the vehicle was expected to be used, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Prior Art made of Record

12. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art of Ahsing et al. teaches a motorized wheelchair with motor control circuit comprising operational amplifiers, tachometer and potentiometer; Cragg teaches a motorized wheelchair wherein the drive is engaged/disengaged by pivoting the wheel drive gear

away from a pinion gear of the motor; Biddle teaches a motorized wheelchair with drive wheels at the front; Bradt teaches an electric motor drive golf cart; Hawkins teaches a motoized carrying cart; Inman teaches a motorized pallet truck with motor-driven wheels at the rear and casters at the front; Read teaches a motor control electronic system for an electric drive vehicle that employs operational amplifiers in push-pull configurations, potentiometer speed controller; and having a tachometer; Yamaha Motor Co. teaches clutch connection between the drive motor and wheel of an electric vehicle.

Conclusion

13. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe at 703-305-0578, fax 703-872-9306; Mon.-Fri., 8:00 AM - 4:30 PM ET, or to Supervisory Patent Examiner Brian L. Johnson, Art Unit 3618, at 703-308-0885.

Note that the examiner's fax number has changed.

Official correspondence should be sent to the following TC 3600 Official Rightfax numbers as follows: Regular correspondence: 703-872-9326; After Finals: 703-872-9327; Customer Service: 703-872-9325.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gbklebe / Art Unit 3618 / 20 April 2004

BRIAN L. JOHNSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

4/26/04

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

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MAR 12 2010

In re Application of :
Catherine White :
Application Number: 10/427437 : LETTER
Filing Date: 04/30/2003 :
Attorney Docket Number: :
White.C-15 :

This is a communication in response to the letter filed on November 2, 2009.

Applicant, *pro se*, states, *inter alia*, "I am ready to complete whatever forms are required by the Patent Office to continue the processing of the Solar Powered Transporter application…" Applicant further states "I would never have intentionally let my … application be abandoned."

Any further consideration of this application must be by way of a renewed petition under 37 CFR 1.137(a) or a petition under 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)).

Petitioner is reminded that MPEP 711.03(c) states that a delay resulting from a deliberately chosen course of action on the part of the applicant does not become an "unintentional" delay within the meaning of 37 CFR 1.137(b) because: (A) the applicant does not consider the claims to be patentable over the references relied upon in an outstanding Office action. If petitioner decided not to pursue timely reviving the application because petitioner did not believe the subject matter of the application to be patentable, such delay would be intentional, rather than unavoidable.

Nevertheless, should petitioner decide to file a petition under 37 CFR 1.137(b), a petition fee of $810.00 and the petition form PTO/SB/64, would be required to be filed, along with a reply to the outstanding Office action. A copy of the Office action was mailed with the decision mailed on September 9, 2009.

It appears that applicant is unfamiliar with practice before the USPTO. It is recommended that applicant consult with a registered patent practitioner when filing papers in the Office.

Lastly, it is noted that the correspondence address remains that of petitioner's chosen counsel, Gene Scott. Applicant has appointed an attorney or agent to conduct all business before the Patent and Trademark Office. Double correspondence with an applicant and applicant's attorney or agent will not be undertaken. Accordingly, applicant is required to conduct all future correspondence with this Office through the attorney or agent of record. See 37 CFR 1.33.

If applicant no longer wishes to be represented by counsel, a revocation of power of attorney and change of correspondence address should be filed. A copy of a revocation of power of attorney and change of correspondence address form is enclosed for petitioner's use.

A courtesy copy of this decision will be mailed to the address in the petition. All future correspondence, however, 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
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

Cc:

CATHERINE R. WHITE
P.O. BOX 29462
LOS ANGELES CA 90029

Encl: PTO/SB/64
PTO/SB/81

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

MAILED

JUN 14 2010

OFFICE OF PETITIONS

LETTER

In re Application of :
Catherine White :
Application Number: 10/427437 :
Filing Date: 04/30/2003 :
Attorney Docket Number: :
White.C-15 :

This is a communication in response to the letter filed on March 25, 2010.

As stated previously, the application became abandoned on July 31, 2004, for failure to timely file a response to the non-final Office action mailed on April 30, 2004. A grantable petition to revive the application must be filed before the application can be further examined.

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)).

Petitioner is reminded that MPEP 711.03(c) states that a delay resulting from a deliberately chosen course of action on the part of the applicant does not become an "unintentional" delay within the meaning of 37 CFR 1.137(b) because: (A) the applicant does not consider the claims to be patentable over the references relied upon in an outstanding Office action. If petitioner decided not to pursue timely reviving the application because petitioner did not believe the subject matter of the application to be patentable, such delay would be intentional, rather than unavoidable.

Nevertheless, should petitioner decide to file a petition under 37 CFR 1.137(b), a petition fee of $810.00 and the petition form PTO/SB/64, would be required to be filed, along with a reply to the outstanding Office action. A copy of the Office action was mailed with the decision mailed on September 9, 2009.

Petitioner was apprised in the letter mailed on March 12, 2010, of the need for a grantable petition, including a reply, and the fee, in order to continue prosecution of the application. Failure to submit these items may be considered intentional delay.

It appears that applicant is unfamiliar with practice before the USPTO. It is recommended that applicant consult with a registered patent practitioner when filing papers in the Office.

Lastly, it is noted that the correspondence address remains that of petitioner's chosen counsel, Gene Scott. Applicant has appointed an attorney or agent to conduct all business before the Patent and Trademark Office. Double correspondence with an applicant and applicant's attorney or agent will not be undertaken. Accordingly, applicant is required to conduct all future correspondence with this Office through the attorney or agent of record. See 37 CFR 1.33.

If applicant no longer wishes to be represented by counsel, a revocation of power of attorney and change of correspondence address should be filed. A copy of a revocation of power of attorney and change of correspondence address form is enclosed for petitioner's use.

A courtesy copy of this decision will be mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record.

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

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P.O. Box 1450
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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

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Senior Petitions Attorney
Office of Petitions

Cc:

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OFFICE OF PETITIONS

KENNETH I. KOHN
KOHN & ASSOCIATES, PLLC
SUITE 410
30500 NORTHWESTERN HIGHWAY
FARMINGTON HILLS MI 48334

In re Application of	:	
Gil	:	
Application No. 10/427,506	:	DECISION
Filed: 30 April, 2003	:	
Attorney Docket No. 3174.00004	:	

This is a decision on the petition filed on 19 March, 2007, to revive an application under 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

The Office regrets the delay in addressing the instant matter, however, the petition was presented to the attorneys in the Office of Petitions only at this writing.

The petition as considered under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to Notice of Allowance/Allowability and Fees Due (as to the drawing requirement) mailed on 6 November, 2006, with reply due absent extension of time on or before 6 February, 2007;
- the application went abandoned by operation of law after midnight 6 February, 2007;
- the Office mailed the Notice of Abandonment on 6 March, 2007;

- on 19 March, 2007, Petitioner submitted the instant petition under 37 C.F.R. §1.137(b) with fee and reply in the form of the drawing requirement, and made the statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always should note that those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS AND ANALYSIS

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

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

Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[3]

And the Petitioner must be diligent in attending to the matter.[4] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

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

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

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[5]))

As to Allegations
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a proper reply, a statement/showing of unintentional delay, and–where appropriate—a terminal disclaimer and fee.

Petitioner appears to have satisfied the requirements under the regulation.

CONCLUSION

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

The instant application is released to Publications Branch to be processed into a patent in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[6]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[4] 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.

[5] 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.

[6] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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Paper No. 7

Law Offices of John Chupa & Associates, PC
Suite 205
28535 Orchard Lake Rd.
Farmington Hills, MI 48334

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OFFICE OF PETITIONS

In re Application of :
Robert Loh, et al. :
Application No. 10/427,524 : ON PETITION
Filed: April 30, 2003 :
Attorney Docket No. 213-009 :

This is a decision on the petition, filed October 8, 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 February 10, 2004, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extension of time under the provisions of 37 CFR 1.136(a) was obtained. A Notice of Abandonment was mailed on September 22, 2004.

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 3662 for consideration of the response filed October 8, 2004.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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MERIT MEDICAL SYSTEMS, INC.
C/O STOEL RIVES, LLP
ONE UTAH CENTER
201 SOUTH MAIN STREET -- SUITE 1100
SALT LAKE CITY, UT 84111

Mail Date: 04/21/2010

Applicant	: Ulf R. Borg	: DECISION ON REQUEST FOR
Patent Number	: 7604660	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/427,539	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/01/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **398** 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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MERIT MEDICAL SYSTEMS, INC.
C/O STOEL RIVES, LLP
ONE UTAH CENTER
201 SOUTH MAIN STREET -- SUITE 1100
SALT LAKE CITY, UT 84111

Mail Date: 05/18/2010

Applicant : Ulf R. Borg
Patent Number : 7604660
Issue Date : 10/20/2009
Application No: 10/427,539
Filed : 05/01/2003

: 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 **438** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (PTA) days determined by the recalculation.

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

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

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

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PAULEY PETERSEN & ERICKSON
2800 W. HIGGINS ROAD
SUITE 365
HOFFMAN ESTATES, ILLINOIS 60195

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OCT 0 7 2005

OFFICE OF PETITIONS

In re Application of :
Candace Dyan Krautkramer :
Application No. 10/427,564 :
Filed: May 1, 2003 :
Attorney Docket No. KCC-18125.4 :

DECISION ON PETITION
37 CFR 1.181 AND 1.137(b)

This is a decision on the petition filed May 6, 2005, which requests under (1) 37 CFR 1.181 (no fee), withdrawal of the holding of abandonment, and, alternatively, the petition filed September 14, 2005, which requests under (2) 37 CFR 1.137 (b) revival of the above captioned application. A statement of unintentional delay and request for refund was also submitted on September 14, 2005.

The petition under 37 CFR 1.181 is **DISMISSED**.
The petition under 37 CFR 1.137(b) is **GRANTED**.

BACKGROUND

A Notice of Allowance (Notice) was mailed to the above-identified correspondence address on May 19, 2004, which set a non-extendable statutory period of three (3) months within which to pay the issue fee. On the same date, a Notice of Allowability was mailed which set a non-extendable period of three (3) months to file formal drawings. The issue fee was received on July 26, 2004. As the formal drawings were not submitted on or before the due date, this application became abandoned by operation of law (respectively, 35 USC 151 and 133) on August 20, 2004. A Notice of Abandonment was mailed on April 18, 2005.

A) Petition filed under 37 CFR 1.181

The petitioner requests withdrawal of the holding of abandonment under 37 CFR 1.181, stating that formal drawings were submitted July 26, 2004, well within the three month time period set in the Notice of Allowability mailed on May 19, 2004. The petitioner submitted copies of 1) the Transmittal of New Drawings to Correct Informalities, and seven sheets of formal drawings (Figures 1-17), submitted by Certificate of Mailing on July 23, 2004; and 2) a stamped, return receipt postcard, stamped by the USPTO on July 26, 2004.

Careful inspection of the Transmittal letter indicated that the petitioner misidentified all the identifying indicia including the application serial number, filing date, title of the invention

and the inventor's name, by wrongly associating the drawings with another application. Note that MPEP 502 states:

> A minor error in the identification of the application can be corrected by the *>Office< provided the correct identification can be quickly discovered. Examples of minor errors are transposed numbers, typographical errors, and listing the parent application number. The failure to give any application number is not a minor error. The Office often experiences difficulty in matching incoming papers with the application file to which they pertain because insufficient or erroneous information is given.

Also, regarding use of the certificate of mailing, MPEP 512 states:

> (D) In situations wherein the correspondence includes papers for more than one application (e.g., a single envelope containing separate papers responding to Office actions in different applications) or papers for various parts of the Office (e.g., a patent issue fee transmittal form PTOL-85B and an assignment), each paper must have its own certification as a part thereof or attached thereto. Although **>Part B of Form PTOL-85, Notice of Allowance and Fee(s) Due<, may contain a Certificate of Mailing thereon, a separate Certificate of Mailing is required for all papers included with this form, including formal drawings**.

The petitioner erroneously captioned the transmittal letter filed July 26, 2004 for another application. Where there is clear error on the part of the Office, a withdrawal of the holding of abandonment is granted; however, when there is clear error on the part of the applicant, withdrawal will not be granted. Although the postcard receipt indicates that drawings were filed, this receipt is not part of the file kept by the Office. The evidence submitted by the applicant indicates that the transmittal letter was identified with another application, thus the Office could not make an association of any formal drawings filed with the instant application.

For the reasons explained above, the petition under 37 CFR 1.181 is dismissed.

B) Petition filed under 37 CFR 1.137(b)

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR §1.137(b) in that (1) the required reply including formal drawings at the time of filing the petition; (2) the petition fee of $1500.00 (for a large entity) at the time of filing the petition have been received; 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 37 CFR 1.137(b) was unintentional. Accordingly, the reply to the Notice of Allowance/Notice of Allowability mailed May 19, 2004 is accepted as having been unintentionally delayed. The issue fee and publication fee were paid on July 26, 2004. A copy of the PTO-948 Draftsman Review Form approving the drawings submitted September 14, 2005 is attached.

C) Statement of Unintentional Delay and Request for Refund
The petitioner states that a telephone inquiry was made to the Examiner regarding status of the petition to withdraw the holding of abandonment, and was directed to the Office of Petitions. Regrettably, the Office failed to notify the applicant of the status of the application, as well as receipt of the petition. Until recently, requests for withdrawal of the holding of abandonment were handled in the Technology Center where the application was examined. The Office of Petitions, at the time of the inquiry, had no record of the 37 CFR 1.181 petition. With the filing of the petition under 37 CFR 1.137(b), the matter was directed to and promptly decided by the Office of Petitions. Refund of the fee will not be granted because the petition fee is required by statute for consideration of a petition under 37 CFR 1.137(b), whether the petition is granted or not.

This matter is being referred to the Office of Patent Publications to be processed into a patent.

Telephone inquiries concerning this decision should be directed to Angela Ortiz at (571) 272-6051, or in her absence, the undersigned at (571) 272-3217.

Francis Ricks for
Brian Hearn
Petitions Examiner
Office of Petitions

Attachment: PTO-948 Draftsman Review Form

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/427,569	05/01/2003	3643	1444	5175-146	9	42	5

CONFIRMATION NO. 7469

CORRECTED FILING RECEIPT

OC000000011145073

20792
MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

Date Mailed: 10/30/2003

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)

John H. Hebrank, Durham, NC;

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/380,049 05/06/2002

Foreign Applications

If Required, Foreign Filing License Granted: 06/27/2003

Projected Publication Date: To Be Determined - pending completion of Missing Parts

Non-Publication Request: No

Early Publication Request: No

Title

Methods and apparatus for identifying live eggs by detecting embryo heart rate and/or motion

Preliminary Class

119

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

GRANTED

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

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

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

NOT GRANTED

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

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Paper No. 4

Myers Bigel Sibley & Sajovec
PO Box 37428
Raleigh NC 27627

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SEP 3 0 2003

OFFICE OF PETITIONS

In re Application of
John H. Hebrank
Application No. 10/427,569
Filed: May 1, 2003
Attorney Docket No. 5175-146

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.10, filed July 9, 2003, requesting that the above-identified application be accorded a filing date of May 1, 2003, rather than the presently accorded filing date of May 2, 2003.

Petitioner alleges that the application was deposited in Express Mail service on May 1, 2003. In support of the allegation, the petition is accompanied by a copy of Express Mail label No. EV193586835US. The Express Mail label does not contain a "date-in;" however, the label contains a United States Postal Service (USPS) stamp of May 1, 2003. The same Express Mail label number was placed on the original application papers located in the official file.

In view of the above, the petition is **granted**. No petition fee is necessary. Accordingly, the $130.00 petition fee will be refunded to Deposit Account No. 50-0220.

This application file will be forwarded to the Office of Initial Patent Examination for correction of the filing date to May 1, 2003, and the mailing of a corrected filing receipt.

Telephone inquiries should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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LAW OFFICE OF LIAUH & ASSOC.
4224 WAIALAE AVENUE
HONOLULU, HI 96816

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APR 20 2005

OFFICE OF PETITIONS

In re Application of :
Leo Smith :
Application No. 10/427,587 :
Filed: April 30, 2003 : ON PETITION
Title of Invention: :
TOOL PROVIDD WITH CONSPICUOUS :
IDENTIFICATION OF SPECIFICATION :
THEREOF :

This is a decision on the Petition to Revive Improperly Abandoned Application With Returned Postcard, filed March 21, 2005. The petition is properly treated under 37 CFR 1.181.

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, 2004. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No reply having been received, the application became abandoned on November 14, 2004. A Notice of Abandonment was mailed on March 11, 2005.

Applicant's Assertion

Applicant asserts that a timely reply to the non-final Office action was filed on November 16, 2004. In support of this assertion, Applicant provides, *inter alia*, copies of an Amendment and a Return-receipt postcard. A review of the Amendment and Return-receipt postcard reveal that applicant filed the amendment and postcard using application serial number 10/427,387, instead of the presently assigned application serial number of 10/427,587.

A review of Application serial number 10/427,387, reveals that an Amendment was received in the Office and placed in that application on November 16, 2004. The same Amendment has been filed in this petition. A further review of the amendment reveals that the amendment included the correct inventor, filing

date, attorney docket number, Group Art Unit and Examiner (for application serial number 10/427,587). Apparently the Amendment was filed in this Office on November 16, 2004, and due to errors on the part of applicant and this Office, was inadvertently placed in application serial number 10/427,387. Accordingly, the petition is granted.

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

A refund of the petition fee has been credited to Applicant's deposit account 50-1260.

Finally, Applicant is advised that comments as to the conscience of the Commissioner, and as to arbitrary use of government power are inappropriate in this venue.

The application file is being referred to Technology Center Art Unit 3723 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

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P O BOX 160727
AUSTIN, TX 78716-0727

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OCT 1 4 2005

OFFICE OF PETITIONS

In re Application of	:
Bruce J. Currivan et al	: DECISION ON PETITIONS
Application No. 10/427,593	: UNDER 37 CFR 1.78(a)(3) AND
Filed: May 1, 2003	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. BP 2630	:

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed August 25, 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 satisfy item (1) above. In this regard, the amendment, as currently worded, would appear to indicate that this application is directly claiming benefit to provisional Application Nos. 60/151,680, filed August 31, 1999 and 60/367,564, filed March 26, 2002. However, this application cannot directly claim benefit to the aforementioned provisional applications since the filing date (May 1, 2003) is more than twelve months from the filing date

of those provisional applications. It is appropriate for this application to claim direct benefit to the third provisional application, No. 60/416,889, since this application was filed within twelve months of the filing date thereof.

Accordingly, a substitute amendment which correctly sets forth the benefit claim, and in compliance with 37 CFR 1.121, is required and should be accompanied by a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6). No additional fees are required.

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

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

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:
Bruce J. Currivan et al	: DECISION ON PETITIONS
Application No. 10/427,593	: UNDER 37 CFR 1.78(a)(3) AND
Filed: May 1, 2003	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. BP2630	:

This is a decision on the renewed petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed October 20, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§120, 365(c) and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **Granted**.

The present pending nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

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

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 119(e) to the prior-filed applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should <u>not</u> be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 365(c) and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should <u>not</u> be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

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

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

This matter is being referred to Technology Center Art Unit 2611 for examination in due course and for appropriate action on the amendment submitted October 20, 2005, including consideration by the examiner of the claim for benefit to the prior-filed applications.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

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AUSTIN, TX 78716-0727

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OFFICE OF PETITIONS

In re Application of	:
Bruce J. Currivan et al	:
Application No. 10/427,593	: DECISION ON PETITION
Filed: May 1, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. BP2630	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) filed January 30, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed applications set forth in the amendment filed October 20, 2005.

The petition is **DISMISSED as moot** in view of the granting of the petition to accept the late claim for priority to the nonprovisional and provisional applications in a decision mailed November 9, 2005.

Petitioner states that this petition is being re-submitted in view of the "Notice of Non-Compliant Amendment (37 C.F.R. § 1.121)," mailed January 12, 2006, which indicated that the amendment of October 20, 2005 is unsigned or not signed in accordance with 37 CFR 1.4. However, it is not necessary to re-submit the petition under 37 CFR 1.78(a)(3) and (a)(6) here since the petition was already granted, as noted above. It is only necessary that petitioner comply or reply to the Notice of January 12, 2006, which petitioner has done.

It is noted that the amendment of October 20, 2005 contains an "s-signature" which is permitted by 37 CFR 1.4(d)(2)(i). Specifically, the signature on the October 20, 2005 amendment appears as follows: "/SXShort/," with the attorney's typed name and registration number appearing below the "s-signature." As this type of signature is provided by the rule, the mailing of the notice of January 12, 2006 appears to have been done in error.

No further action being required by the Office of Petitions, this matter is being referred to Technology Center AU 2611 for examination in due course, including consideration by the examiner of the claim for benefit of the prior-filed applications under 35 U.S.C. § 120 and 119(e).

Frances Hicks
Petitions Examiner
Office of Petitions

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WOOD, HERRON & EVANS, LLP
2700 CAREW TOWER
441 VINE STREET
CINCINNATI, OH 45202

Mail Date: 04/21/2010

Applicant	: Marvin J. Dainoff	: DECISION ON REQUEST FOR
Patent Number	: 7644024	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/427,603	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/01/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2014** 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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TECHNOLOGY CENTER 2600

CHRISTIE, PARKER & HALLE, LLP
P.O. BOX 7068
PASADENA, CA 91109-7068

In re Application of: Paul Yurt et al. :
Application Serial No.: 10/427,615 : DECISION ON PETITION
Filed: April 30, 2003 :
For: AUDIO AND VIDEO :
TRANSMISSION AND RECEIVING
SYSTEM

This is a decision on the petition filed October 22, 2003 under 37 C.F.R. § 1.102(d) to make the above-identified application special.

A grantable petition under 37 C.F.R. § 1.102(d), M.P.E.P. § 708.02, item 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 or the pertinent prior art. Further, 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 fails to meet the requirements for special status inasmuch as the evidence of record fails to clearly establish that an infringing system or product actually is on the market or that an infringing method is in use as required in (1). Merely believing that such a system and/or method is on the market or in use does not positively establish actual use or availability on the market.

The petition is **DENIED**.

Should applicant desire reconsideration, he or she should supplement this petition by including the information as outlined above. No further petition fee is required. Any request for reconsideration must be filed within **TWO MONTHS** from the date of this decision.

Doris To
Special Program Examiner
Technology Center 2600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 5/27/08

TO SPE OF : ART UNIT 3711

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/427657 Patent No: 7195360 B2

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

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within 7 days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code COCX.

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within 7 days, to:

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

VIRGINIA TOLBERT
Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: _____

Gene Kim

Digitally signed by Gene Kim
DN: cn=Gene Kim, c=US, o=PTO, ou=AU 3711, email=eugene.kim@uspto.gov
Date: 2009.11.12 14:50:22 -05'00'

SPE

3711
Art Unit

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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JUL 20 2004

DCM

In re Application of Maurice W. Lee, Jr., et al. Serial Number: 10/427,668 Filed: April 30, 2003 For: INDEPENDENT CONTROL OF A FLAVOR ENHANCEMENT CHAMBER AND A FOOD PREPARATION CHAMBER FOR A FOOD PREPARATION DEVICE	:	PETITION UNDER M.P.E.P.708.02 IV

This is in response to the petition filed April 30, 2003, requesting that the above-identified application be granted Special Status under Section 708.02 IV of the MPEP and 37 CFR 1.102(c) **(no fee required)**.

The request for Special Status considered under Section 708.02 IV of the MPEP is granted because criteria under 37 CFR 1.102(c) has been met.

Accordingly the petition is **GRANTED.**

Marian C Knode

Marian C. Knode, Special Programs Examiner
Technology Center 1700
Chemical and Materials Engineering

Bill D. McCarthy
Fellers, Snider, Blankenship, Bailey & Tippens
Bank One Tower
100 North Broadway, Suite 1700
Oklahoma City OK 73102-8820

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OFFICE OF PETITIONS

INCUBE, INC.,
C/O LEVINE BAGADE HAN LLP
2400 GENG ROAD, SUITE 120
PALO ALTO, CA 94303

In re Application of	:	
Mir A. IMRAN, et al	:	
Application No. 10/427,672	:	DECISION ON PETITION
Filed: May 1, 2003	:	TO WITHDRAW
Attorney Docket No. INCBNE00101	:	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 8, 2009.

The request is **APPROVED**.

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

The request was signed by Johney U. Han on.behalf of the attorneys of record associated with Customer No. 40518.

The attorneys of record associated with Customer No. 40518 have been withdrawn.

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

All future communications from the Office will be directed to the first signing inventor at the address below until otherwise properly notified by the applicant.

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

Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: MIR A. IMRAN
1390 WILLOW ROAD,
MENLO PARK, CA 94025

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/427,672	05/01/2003	Mir A. Imran	INCBNE00101

CONFIRMATION NO. 8772

POWER OF ATTORNEY NOTICE

84179
InCube, Inc., c/o Levine Bagade Han LLP
2400 Geng Road
Suite 120
Palo Alto, CA 94303

OC000000036661807

Date Mailed: 06/26/2009

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/08/2009.

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

/dcgoodwyn/

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

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MAHAMEDI PARADICE KREISMAN LLP
550 WINCHESTER BOULEVARD
SUITE 605
SAN JOSE, CA 95128

MAILED

JUN 15 2010

OFFICE OF PETITIONS

In re Application of :
Mir A. Imran et al :
Application No. 10/427,672 :
Filed: May 1, 2003 :
Attorney Docket No. ICUB.P014C1

ON PETITION

This is a decision on the petition, filed June 14, 2010 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 2, 2010 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 3736 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/
Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

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Paper No. 4

JoAnne M. Denison
Suite 1608
212 W. Washington Blvd.
Chicago, IL 60606-3487

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JUL 2 8 2003

OFFICE OF PETITIONS

In re Application of	:	
Mitchell	:	
Application No. 10/427,673	:	DECISION GRANTING
Filed: May 1, 2003	:	PETITION
For: Cat Box Decorative Screen With Interchangeable Panels	:	

This is a decision on the petition filed July 15, 2003, to accord the above-identified application a filing date of May 1, 2003.

On May 1, 2003, the application was filed.

On June 25, 2003, the Office of Initial Patent Examination mailed a Notice stating that drawings were not present and that a filing date had not been accorded and the filing date would be the date of receipt of drawings.

In response, the present petition was filed alleging that two sheets of drawings were deposited on May 1, 2003. In support, petitioner has submitted a postcard receipt which acknowledges receipt of 2 sheets of drawings on May 1, 2003.[1] Petitioner has also submitted a copy of the missing documentation.

Upon review of the record, the drawings deposited on May 1, 2003, have not been located. However, the evidence is convincing that the application papers deposited on May 1, 2003, included two sheets of drawings and that the drawings were subsequently misplaced in the PTO. Therefore, the application is complete and entitled to a filing date of May 1, 2003.

In view of the above, the petition is **granted**. The copy of the two sheets of drawings submitted with the petition will be used for examination purposes.

No petition fee is required and none has been charged.

The Notice mailed June 25, 2003, was sent in error and is hereby vacated.

---

[1] Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 1, 2003, using the application papers filed on May 1, 2003, and the copy of the two sheets of drawings (Figures 1, 2, 3, 4, 5, and 6) filed on July 15, 2003.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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WILLIAM ANTHONY DRUCKER
Suite 800
1901 L Street, N.W.
Washington, DC 20036-3506

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MAR 2 8 2007

OFFICE OF PETITIONS

In re Application of

Joffre, et al. :

Application No. 10/427,679

: DECISION ON PETITION

Filed: May 1, 2003

:

Attorney Docket No. TOURB0014

This is a decision on the petition under 37 CFR 1.137(b), filed January 12, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to file a proper reply 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 from its mailing date. A response was filed on May 2, 2005, with a request for an extension of time within the third month. An Advisory Action mailed May 24, 2005, advised petitioner that the response of May 2, 2005, failed to place the application in condition for allowance. No further responses were filed within the allowable period. The application became abandoned on May 4, 2005. A Notice of Abandonment was mailed on August 29, 2005.

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 Request for Continued Examination filed January 12, 2007, is noted and made of record

The application is being forwarded to Technology Center 2800, GAU 2877 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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Michael A Bernadicou, Esq.
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles CA 90025-1026

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OFFICE OF PETITIONS

In re Application of	:	DECISION
DUDI I. AMIR et al.	:	
Application No. 10/427,681	:	ON PETITION
Filed: April 30, 2003	:	
Attorney Docket No. 42P15828	:	UNDER 37 CFR 1.137(b)

This is a decision on the petition filed March 13, 2006, to revive the above identified application under 37 CFR 1.137(b).

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

This application became abandoned for failure to file a timely response to a Restriction Requirement mailed July 8, 2005, which set a one (1) month shortened statutory period for reply. No extensions of the time for reply under 37 CFR 1.136(a) were obtained. No response was filed and thus the application became abandoned at midnight on August 8, 2005. A Notice of Abandonment was mailed February 14, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an election, (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Office action of July 8, 2005 is accepted as having been unintentionally delayed.

The petition fee in the amount of $1500.00 has been applied to the finance records for the instant patent application.

The response to the Restriction Requirement filed March 13, 2006 will be referred to Technology Center 1725 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3286.

Cynthia M. Kratz
Petitions Attorney

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Paper No. 5

BLACK LOWE & GRAHAM PLLC
816 Second Avenue
Seattle, WA 98104

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OFFICE OF PETITIONS

In re Application of	:	
Shenefelt, Perkins, and Fairfax	:	DECISION ACCORDING
Application No. 10/427,687	:	STATUS UNDER
Filed: April 30, 2003	:	37 CFR 1.47
Attorney Docket No. BOEI-1-1155	:	
For: R2V PACKAGING PROCESS AND SYSTEM	:	

This is in response to the petition under 37 CFR 1.47(a) filed September 30, 2003.

The petition is granted.

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

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

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

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

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

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Paper No. 6

Roxanne M. Fairfax
4529 - 103rd Avenue SE
Everett, WA 98205

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NOV 1 8 2003

OFFICE OF PETITIONS

Letter

In re Application of :
Shenefelt, Perkins, and Fairfax :
Application No. 10/427,687 :
Filed: April 30, 2003 :
Attorney Docket No. BOEI-1-1155 :
For: R2V PACKAGING PROCESS AND :
SYSTEM :

Dear Ms. Fairfax:

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: BLACK LOWE & GRAHAM PLLC
816 Second Avenue
Seattle, WA 98104

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JUL 2 9 2004

Technology Center 2100

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

In re Application of: Kobayashi et al.
Application No. 10/427,689
Filed: 4/29/03
For: STORAGE SYSTEM AND DATA BACKUP METHOD FOR THE SAME

DECISION ON PETITION FOR ACCELERATED EXAMINATION UNDER M.P.E.P. §708.02(VIII)

This is a response to the petition filed January 26, 2004, under 37 C.F.R. §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. § 102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Petition to Make Special **GRANTED** since all of the requirements for special status under MPEP § 708.02(VIII) have been met.

The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. §708.02, Section VIII. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
703-308-0885

BLJ: 7/28/04

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Paper No. 02092006

FEB 15 2006

FULBRIGHT AND JAWORSKI LLP
555 S. Flower Street, 41ST Floor
Los Angeles, CA 90071

In re Application of	:	
ARI M. HUKKI et al.	:	ON PETITION
Application Number 10/427,695	:	UNDER
Filed: 05/01/2003	:	37 CFR § 1.144
For: SCREEN ENERGIZER	:	

This is in response to the petition filed on June 7, 2005, under 37 CFR § 1.144, requesting supervisory review of the requirement for restriction in the instant application.

The petition is **GRANTED**.

Background

The instant application was originally filed with a total of 63 claims, six of which are independent claims. All of the claims are directed to a screening system, and recited various features of the system in different combinations and with varying specificity. All the claims are drawn to a single disclosed embodiment of the invention.

In an office action mailed on October 5, 2004, the examiner required applicant to elect between six groups of claims, each of which consist of one of the independent claims and all the claims that depend therefrom. According to the examiner, each group of claims is directed to a patentably distinct species of the claimed invention.

Petitioner requested reconsideration of the requirement with the election filed on December 9, 2004. The requirement for restriction was made final by the examiner in an office action mailed on March 8, 2005.

Analysis

In as much as Petitioner's specification and claims are generic to a single disclosed embodiment of the screening system, the requirement to elect between the groups of claims advanced by the examiner is in error. Therefor, the requirement for election of species was improper and is hereby withdrawn.

The application will be forwarded to the examiner for a prompt non-final action on all the pending claims and consideration of the response filed by Petitioner concurrently with the petition.

Telephone inquiries should be directed to Katherine Matecki at (571) 272-6951.

Robert Oberleitner
Director, Technology Center 3600
(571) 272-5350

km/sm: 2/13/06
SM

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Technology Center 2100

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

In re Application of: FUKUMORI, et al. Application No. 10/427,697 Filed: April 29, 2003 For: METHOD FOR BACKING UP POWER SUPPLY OF DISK ARRAY DEVICE AND SYSTEM THEREOF	DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a response to the Petition filed April 23, 2004, duplicate copy filed February 3, 2005, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in **37 CFR 1.17(h)**;

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Petition to Make Special **GRANTED** since all of the requirements for special status under MPEP § 708.02(VIII) have been met.

Since the claimed invention involves processes for accessing/controlling storage systems and database/file management, it is suggested that relevant classes/subclasses 711/100+ and 707/1+ be included in the field of search.

The application file is being forwarded to the Examiner for accelerated examination in accordance with the procedures set forth in M.P.E.P. §708.02, Section VIII. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3595

SDL: 04/04/2005

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Paper No. None

McAndrews, held & Malloy, Ltd.
34th Floor
500 West Madison Street
Chicago IL 60661

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MAR 02 2005

OFFICE OF PETITIONS

In re Application of
Chai-Mei Jimmy Yu
Application No. 10/427,710
In re Patent No. 6,803,077
Filing Date: April 30, 2003
Issue Date: October 12, 2004
Attorney Docket Number 14961US01
Title: METHOD FOR PREPARING MESOPOROUS TIO2 THIN FILMS WITH HIGH PHOTOCATALYTIC AND ANTIBACTERIAL ACTIVITIES

DECISION ON PETITION
UNDER 37 C.F.R. §1.183

This is a decision on the petition filed November 8, 2004, pursuant to 37 C.F.R. §1.183, to waive the rules and accept the correction of the assignee on the front page of the above-identified letters patent and for issuance of a certificate of correction.

Both the certificate of correction and the petition fees have been charged to Petitioner's Deposit Account, as authorized in the petition.

The petition is **GRANTED**.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested certificate of correction.

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

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

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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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JUN 16 2008

OFFICE OF PETITIONS

In re Application of	:	
Miska HANNUKSELA	:	
Application No. 10/427,714	:	DECISION ON PETITION
Filed: April 30, 2003	:	
Attorney Docket No. **915-005.050**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 06, 2008, 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 March 12, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed December 12, 2007. Accordingly, the date of abandonment of this application is March 13, 2008.

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 $1440 and the publication fee of $300, (2) the petition fee of $1540; and (3) a proper statement of unintentional delay. Accordingly, the failure to timely pay the issue fee as required by the Notice of Allowance is accepted as being unintentionally delayed.

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

This application is being referred to the Office of Data Management for processing into a patent.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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Paper No.

CATHRYN CAMPBELL
McDERMOTT WILL & EMORY
7TH FLOOR
4370 LA JOLLA VILLAGE DRIVE
SAN DIEGO, CA 92122

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MAY 2 0 2004

OFFICE OF PETITIONS

In re Application of	:	
Streisand et al.	:	
Application No. 10/427,715	:	
Filed: April 30, 2003	:	ON PETITION
Attorney Docket Number:	:	
66778-302(P-UC 5754)	:	

This is in response to the Petition filed September 29, 2003, requesting that the application be accorded a filing date including Figure 2A as part of the original disclosure.

Application papers in the above-identified application were filed on April 30, 2003. On July 28, 2003, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application, indicating, *inter alia*, that Figure 2A described in the specification appeared to have been omitted from the application. The Notice set a two-month period for reply, with extensions of time available under 37 CFR §1.136(a).

In response, Applicant files the instant petition wherein Applicant Figure 2A was included among the original application papers filed on April 30, 2003, but was not labeled as Figure 2A. Applicant has also filed replacemebt Figures 2A and 2B and requests that the replacement drawing Figures be entered in the application.

It is obvious from the petition that no drawing Figures were actually missing on April 30, 2003. Rather, the pages were simply mislabeled as a result of Applicant's filing error. However, the Notice mailed July 28, 2003, was correct in stating that Figure 2A described in the specification appeared to have been omitted from the application. Therefore, the requirement to submit the omitted Figure set forth in the Notice will not be withdrawn.

Accordingly, the petition is dismissed.

Applicants are advised that a petition is not necessary in this instance to add the drawing figures. New drawings may be entered by the primary examiner without a petition so long as the drawings contain no new matter. See, MPEP § 608.02(a). Applicants may add figure(s) described in the specification on the basis that the drawings are not new matter.

The petition fee will not be refunded, since the petition was not necessitated by any error on the part of the USPTO.

This application is being forwarded to the Office of Initial Patent Examination, Customer Corrections, for further processing, with the filing date of April 30, 2003, using the drawing Figures filed on that date.

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

Derek L. Woods
Petitions Attorney
Office of Petitions

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DIW 02-04

Paper No. 5

MACMILLAN, SOBANSKI & TODD, LLC
ONE MARITIME PLAZA - FOURTH FLOOR
720 WATER STREET
TOLEDO OH 43604

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FEB 13 2004

OFFICE OF PETITIONS

In re Application of	:
Rapp, White, Denny, Mollenkamp,	:
Rain, Francis, and Maresca	:
Application No. 10/427,718	: DECISION REFUSING STATUS
Filed: 30 April, 2003	: UNDER 37 CFR 1.47(a)
Atty Docket No. 1-23779	:

This is in response to the petition filed under 37 CFR 1.47(a) on 29 January, 2004.

The petition is **DISMISSED**.

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

The above-identified application was filed on 30 April, 2003, without an executed oath or declaration. Accordingly, on 26 June, 2003, a Notice to File Missing Parts of Nonprovisional Application was mailed, requiring the statutory basic filing fee, an executed oath or declaration and a surcharge for their late filing.

In response, on 29 January, 2004 (certificate of mailing 26 January, 2004), petitioners filed a five (5) month extension of time, the statutory basic filing fee, the present petition, along with a declaration naming Jeremy A. Rapp, Matthew R. White, Brent Denny, Nicholas R. Mollenkamp, Mark Rain, Douglas Francis, and Louis Marseca as joint inventors signed joint inventors Rapp, White, Rain, and Francis on behalf of themselves and joint

inventors Denny, Mollenkamp, and Maresca.

Petitioners state that joint inventors Denny and Mollenkamp have failed to return the declaration. Additionally, a were returned as undeliverable. Additionally a copy of the application sent to joint inventor Maresca is asserted to have been returned as undeliverable.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of $130 or $65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks items (1) and (2).

In regards to item (1), petitioners have not provided proof that Denny and Mollenkamp were ever sent or presented with a copy of the application as filed (specification, including claims, drawings, if any, and the declaration).[1] Petitioners may show proof that a copy of the application was sent or given to the non-signing inventor for review by providing a copy of the cover letter transmitting the application papers (specification, including claims, drawings, if any, and the declaration) to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Likewise, before a *bona fide* refusal to sign the declaration can be alleged, petitioners must show that a copy of the application was sent or given to the inventor. If the inventor refuses in writing, petitioners must submit a copy of that written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of fact.

---

[1] MPEP 409.03(d).

With regards to joint inventor Maresca, petitioners have not provided sufficient proof that diligent efforts were made to locate the non-signing inventor.[2] Although petitioners state that copy of the application sent to the last known address of the non-signing inventor was returned as undeliverable, petitioners must show diligent efforts to locate the non-signing inventor by providing a copy of an envelope showing that a letter sent to the last known address of the non-signing inventor was returned as undeliverable by the post office. Details of the efforts made to locate the non-signing inventor should be set forth in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Additionally, if Maresca no longer lives at the last known address, petitioners may show diligent efforts (*e.g.,* by use of Internet or other database searches) to determine a current address for the non-signing inventor. If a more recent address is discovered, petitioners should send or give a copy of the application papers to the inventor at that address.

If the envelope sent to the non-signing inventor at the last known address is returned as undeliverable by the post office, petitioners should provide a copy of the envelope showing that the application was returned as undeliverable with any renewed petition. If the inventor refuses in writing to sign, a copy of that written refusal should be provided with any renewed petition. If the inventor refuses orally, petitioners should submit details of the refusal in an affidavit or declaration of facts by a person having first-hand knowledge of the refusal.

If repeated attempts to contact the non-signing inventor are unsuccessful, petitioners will have shown that despite diligent efforts, the inventor could not be reached.

In regards to item (2), the declaration contains is defective in that it contains non initialed and/or non-dated alterations.[3] Specifically, there is an uninitiated and/or undated alteration in the signature block for joint inventor Francis. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67 signed by the inventor to whom the error or deficiency relates is required.[4]

---

[2] MPEP 409.03(d).

[3] See 37 CFR 1.52(c).

[4] 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.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 8

MACMILLAN, SOBANSKI & TODD, LLC
ONE MARITIME PLAZA - FOURTH FLOOR
720 WATER STREET
TOLEDO OH 43604

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OCT 0 5 2004

OFFICE OF PETITIONS

In re Application of	:
Rapp, White, Denny, Mollenkamp,	:
Rain, Francis, and Maresca	:
Application No. 10/427,718	: DECISION ACCORDING STATUS
Filed: 30 April, 2003	: UNDER 37 CFR 1.47(a)
Atty Docket No. 1-23779	:

This is in response to the renewed petition filed under 37 CFR 1.47(a) on 13 September, 2004.

The petition is **GRANTED**.

Petitioners have shown that non-signing inventor Louis J. Maresca cannot be reached and that non-signing inventor Brent Denny has refused to sign the declaration. Specifically, petitioners have shown, via the statement of petitioner's registered patent attorney Richard S. MacMillan that a letter sent to joint inventor Maresca was returned as undeliverable. Additionally, despite diligent efforts, joint inventor Maresca could not be located. Further, a copy of the application papers was sent to the last known address of non-signing joint inventor Denny. However, Denny has failed to sign and return the declaration. It is noted that previously non-signing joint inventor Mollenkamp has now signed the declaration.

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 Declaration. Notice of the filing of this application will also be published in the Official Gazette.

Counsel's deposit account, No. 13-0005, has been charged for a five (5) month extension of time as authorized in the present petition.

The application is being forwarded to Technology Center 2800 for examination in due course.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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OCT 0 5 2004

OFFICE OF PETITIONS

Brent Denny
28730 Georgetown Road
Salem, OH 44460

In re Application of
Rapp et al.
Application No. 10/427,718
Filed: 30 April, 2003
For: DEVICE FOR MEASURING UNIVERSAL JOINT OPERATING ANGLES IN A DRIVE TRAIN SYSTEM

Dear Mr. Denny:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at 571/272-3231. Requests for information regarding your application should be directed to the File Information Unit at 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

MACMILLAN, SOBANSKI & TODD, LLC
ONE MARITIME PLAZA - FOURTH FLOOR
720 WATER STREET
TOLEDO OH 43604

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OCT 0 5 2004

OFFICE OF PETITIONS

Louis Maresca
974 Polaris Crossing Blvd
Westerville OH 43081

In re Application of
Rapp et al.
Application No. 10/427,718
Filed: 30 April, 2003
For: DEVICE FOR MEASURING UNIVERSAL JOINT OPERATING ANGLES IN A DRIVE TRAIN SYSTEM

Dear Mr. Maresca:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at 571/272-3231. Requests for information regarding your application should be directed to the File Information Unit at 703/308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 703/308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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21355 EAST DIXIE HIGHWAY
SUITE 115
MIAMI, FL 33180

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MAY 30 2008

OFFICE OF PETITIONS

In re Application of	:	
Gerhard Weber, et al.	:	
Application No. 10/427,731	:	DECISION GRANTING PETITION
Filed: May 1, 2003	:	UNDER 37 CFR 1.55(c)
Attorney Docket No. 7054-X07-002	:	

This is a decision on the petition under 37 CFR 1.55(c), filed December 21, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for the benefit of priority to foreign German Application No. 20101277.8 (*sic* 20101227.8), filed January 24, 2001.

The petition is **GRANTED**.

This 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. 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 Director may require additional information where there is a question whether the delay was unintentional.); and

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

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

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.55(c) 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. § 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 application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

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

This application is being referred to Technology Center AU 3732 for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any inquiries directly pertaining to this matter may be directed to Sherry D. Brinkley at (571) 272-3204.

Sherry D. Brinkley

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/427,731	05/01/2003	3732	740	7054-X07-002	13	2

CONFIRMATION NO. 6087

CORRECTED FILING RECEIPT

27317
Fleit Gibbons Gutman Bongini & Bianco PL
21355 EAST DIXIE HIGHWAY
SUITE 115
MIAMI, FL 33180

OC000000030209952

Date Mailed: 05/29/2008

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Gerhard Weber, Inning, GERMANY;
Albert Mehl, Holzkirchen, GERMANY;
Stephan Holzner, Muhldorf am Inn, GERMANY;
Wolfram Gloger, Weilheim, GERMANY;

Power of Attorney:

Martin Fleit--16900
Robert Kain Jr--30648
Jose Gutman--35171
Jon Gibbons--37333
Stephen Bongini--40917
Paul Bianco--43500

Domestic Priority data as claimed by applicant

This application is a CON of PCT/DE01/04177 11/08/2001

Foreign Applications

GERMANY DE 200 19 033.4 11/08/2000
GERMANY 20101227.8 01/24/2001

If Required, Foreign Filing License Granted: 08/28/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/427,731**

Projected Publication Date: Not Applicable
Non-Publication Request: No
Early Publication Request: No

**** SMALL ENTITY ****

Title

SURFACE MAPPING AND GENERATING DEVICES AND METHODS FOR SURFACE MAPPING AND SURFACE GENERATION

Preliminary Class

433

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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

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

NOT GRANTED

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

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SWANSON & BRATSCHUN, L.L.C.
8210 SOUTHPARK TERRACE
LITTLETON CO 80120

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AUG 04 2009

OFFICE OF PETITIONS

In re Patent No. 7,514,469
Qi Jia
Issue Date: April 7, 2009
Application No. 10/427,746
Filed: April 30, 2003
Attorney Docket No. 0062.23
Title: Formulation of a Mixture of Free-B-Ring Flavonoids and Flavans as a Therapeutic Agent

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is in response to the "Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. §1.705(d)" filed May 29, 2009.

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

On April 7, 2009, the above-identified application matured into US Patent No. 7,514,469 with a patent term adjustment of 430 days. This request for reconsideration of patent term adjustment (including the required fee) was timely filed within two months of the issue date of the patent. See 37 CFR 1.705(d).

Patentee requests recalculation of the patent term adjustment based on the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that pursuant to Wyeth, a PTO delay under 35 U.S.C. §154(b)(1)(A) overlaps with a delay under 35 U.S.C. §154(b)(1)(B) only if the delays "occur on the same day." Patentees maintain that the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b) is 617 days.

Thus, patentees request that the determination of patent term adjustment be increased by 617 days to a total of one thousand forty-seven (1047) days.

The 617-day period is calculated based on the application having been filed under 35 U.S.C. §111(a) on April 30, 2003, and a request for continued examination (RCE) having been filed on January 7, 2008. The filing of a RCE cuts-off the applicants' ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment. 37 CFR § 1.703(b)(1).

Accordingly, patentee asserts the period of adjustment under § 1.702(b) is 617 days, counting the number of days beginning on May 1, 2006 and ending on January 7, 2008.

The period of reduction of 201 days for applicant delay is not in dispute.

The Office finds that as of the filing of the request for continued examination (RCE) on January 7, 2008, the application was pending three years and 617 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 631 days is correct. Further, a reduction of 201 days for applicants' failure to engage in reasonable efforts to conclude prosecution was taken.

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

At issue is whether patentees should accrue 617 days of patent term adjustment for the Office taking in excess of three years to issue the patent, as well as 631 days for Office failure to take certain actions within specified time frames (or examination delay).

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

> to the extent that the periods of delay attributable to grounds specified in paragraph (1) overlap, the period of

> any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

Likewise, 37 CFR 1.703(f) provides that:

> To the extent that periods of delay attributable to the grounds specified in §1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed.

As explained in *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 54366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

The current wording of § 1.703(f) was revised in response to the misinterpretation of this provision by a number of applicants. The rule was slightly revised to more closely track the corresponding language of 35 U.S.C. 154(b)(2)(A). The relevant portion differs only to the extent that the statute refers back to provisions of the statute whereas the rule refers back to sections of the rule. This was not a substantive change to the rule nor did it reflect a change of the Office's interpretation of 35 U.S.C. 154(b)(2)(A). As stated in the *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding §1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed. The grounds specified in these sections cover the A) guarantee of prompt Patent and Trademark Office responses, B) guarantee of no more than 3 year application pendency, and C) guarantee or adjustments for delays due to interference, secrecy orders and appeals. A section by section analysis of 35 U.S.C. 154(b)(2)(A) specifically provides that:

> Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)-(C), total adjustments granted for restorations under [35 U.S.C. 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under [35 U.S.C.] 181 and administrative delay under [35 U.S.C.] 154(b)(1)(A)), the term should not be extended for each ground of delay but only for the

actual number of days that the issuance of a patent was delayed; See 145 Cong. Rec. S14,718[1]

As such, the period for over 3 year pendency does not overlap only to the extent that the actual dates in the period beginning three years after the 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, April 30, 2003 to the date the patent issued on April 7, 2009(except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)).

The Office did not delay 631 days and then delay an additional 617 days. Accordingly, 631 days of patent term adjustment (not 617 days and 631 days) was properly entered because the entire period of delay of 631 days attributable to grounds specified in § 1.702(a)(1)-(4) overlaps with the adjustment of 617 days attributable to the delay in the issuance of the patent under 37 CFR 1.702(b). Further, patentee failed to engage by an uncontested period of 201 days.

In view thereof, the Office affirms that the correct revised determination of patent term adjustment at the time of the issuance of the patent is 430 days (631 - 201).

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

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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).

Telephone inquiries specific to this matter should be directed to Charlema Grant, Petitions Attorney, at (571) 272-3215.

Kery A. Fries

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration

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SWANSON & BRATSCHUN, L.L.C.
8210 SOUTHPARK TERRACE
LITTLETON, CO 80120

Mail Date: 04/20/2010

Applicant	: Qi Jia	: DECISION ON REQUEST FOR
Patent Number	: 7514469	: RECALCULATION of PATENT
Issue Date	: 04/07/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/427,746	: OF WYETH
Filed	: 04/30/2003	:
		:

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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JOSHUA D. ISENBERG
JDI PATENT
809 CORPORATE WAY
FREMONT, CA 94539

Mail Date: 05/21/2010

Applicant	: Jacqueline Fidanza	: DECISION ON REQUEST FOR
Patent Number	: 7645934	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/427,749	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/29/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1039** 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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WESTERN DIGITAL TECHNOLOGIES, INC.
ATTN: SANDRA GENUA
20511 LAKE FOREST DRIVE - E-118G
LAKE FOREST, CA 92630

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OFFICE OF PETITIONS

In re Application of	:	
Nalin H. Chheda	:	
Application No. 10/427,760	:	DECISION GRANTING PETITION
Filed: April 30, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. K35A1252	:	

This is a decision on the petition, filed October 28, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 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 2651 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions

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

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MORGAN, LEWIS & BOCKIUS LLP
1111 PENNSYLVANIA AVENUE
WASHINGTON, D.C. 20004

MAY 2 4 2005

In re Application of:
IRFAN RAHIM
Serial No.: 10/427,777
Filed: April 30, 2003
Title: HIGH PERFORMANCE LATERAL BIPOLAR TRANSISTOR

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed on April 29, 2005, to withdraw the holding of abandonment of the above-identified application.

The petition to withdraw the holding of abandonment is **DENIED**.

Any request for reconsideration of this decision must be submitted within two months of the date of this decision in order to be accepted as being timely filed.

This application was held abandoned for failure to timely file a reply the Office action (a restriction requirement) of February 12, 2004. A Notice of Abandonment was mailed on December 3, 2004.

Petitioner states that counsel did not receive the Office action of February 12, 2004. Petitioner asserts that a search of the file jacket and docketing records did not indicate that an Office action was received. A copy of petitioner's docket record was provided in support of petitioner's declaration. Petitioner further asserts that a change of address was submitted on October 29, 2004, and requests that the Office action be re-mailed to the current address and the period for reply be reset.

A review of the application file indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the correspondence address of record. This presumption may be overcome by a showing that the Office action was not received at the correspondence address of record at the time the Office action was mailed. Consequently, petitioner must establish that the Office action was not received at the correspondence address provided when the application papers were originally filed.

The file record indicates that the assignee designated Customer No. 20583 as the correspondence address of record on filing. See Utility Patent Application Transmittal, form PTO/SB/05, item 19, filed April 30, 2003. The address listed for Customer No. 20583 is "JONES DAY, 222 East 41st Street, NY, NY 10017." The Power of Attorney filed April 30, 2003, and executed by the assignee also lists Customer No. 20583 as correspondence address. This is the address where the Office action was mailed to on February 12, 2004.

Section 403 of the Manual for Patent Examining Procedure (M.P.E.P.), in effect at the time the application was filed, states that "[a]s the Office will not recognize more than one correspondence address (37 CFR 1.33(a)), any inconsistencies between the correspondence address resulting from a Customer Number being provided in an application for the correspondence address and any other correspondence address provided in that application would be resolved in favor of the address of the Customer Number."[1]

The showing of record establishes only that the petitioner did not receive the Office action at the petitioner's current address. However, the Office action was not mailed to the petitioner's current address because it was not the correspondence address of record at the time the Office action was mailed. As such, it is immaterial that the petitioner has demonstrated that the Office action was not received at his current location. Petitioner must establish that the Office action was not received at the correspondence address provided in the originally filed Transmittal Form. Since the petitioner has not made the requisite showing, the holding of abandonment is deemed proper. The petition to withdraw the holding of abandonment must be denied.

A copy of the restriction requirement is enclosed for petitioner's record.

Petitioner may wish to consider filing a petition to revive under 37 CFR 1.137. Inquiries regarding filing a petition to revive should be directed to the Office of Petitions.

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.

Sharon Gibson, Director
Technology Center 2800 - Semiconductors,
Electrical & Optical Systems & Components

Enclosure: Copy of the Restriction Requirement mailed February 12, 2004

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[1] Under current Office practice, applicant may use either the same or different customer number(s) for the correspondence address, the fee address and/or a list of practitioners. The customer number associated with the correspondence address is the customer number used to obtain access to the Patent Application Information Retrieval (PAIR) system at http://pair.uspto.gov. See MPEP § 1730 for additional information regarding PAIR.

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WASHINGTON, DC 20004

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AUG 29 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Irfan Rahim :
Application No. 10/427,777 :
Filed: April 30, 2003 :
Attorney Docket No. 9818-077-999 :

This is a decision on the petition under 37 CFR 1.137(b), filed July 21, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Restriction Requirement mailed February 12, 2004, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned at midnight on March 12, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137 (b) in that (1) the reply in the form of an Amendment (Restriction Requirement); (2) the petition fee; (3) the required statement of unintentional delay have been received. Accordingly, the petition filed July 21, 2005 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this matter may be directed to Wanda Banks at (571) 272-3277.

The application matter is being referred to Technology Center 2800, Art Unit 2822 for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions

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Paper No: __

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& BOCKIUS, LLP.
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3000 EL CAMINO REAL
PALO ALTO CA 94306

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OFFICE OF PETITIONS

In re Application of	:	
Hyde	:	
Application No. 10/427,779	:	DECISION
Filing Date: 30 April, 2003	:	
Attorney Docket No.: 10254-015-999	:	

This is a decision on the petition filed on 20 June, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to a non-final Office action mailed on 5 October, 2005, with reply due absent extension of time on or before 5 January, 2006;
- the application went abandoned by operation of law after midnight 5 January, 2006;
- the Office mailed the Notice of Abandonment on 14 April, 2006
- on 20 June, 2006, Petitioner filed the instant petition with fee and the reply in the form of

an amendment with terminal disclaimer and fee, and made the statement of unintentional delay..

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(4) Imposing a monetary sanction;
(5) Requiring a terminal disclaimer for the period of the delay; or
(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).
[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

STATUTES, REGULATIONS AND ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

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 Technology Center 3700 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[8]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[8] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing.The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation,or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Morgan, Lewis & Bockius, LLP
2 Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306

COPY MAILED

JUL 21 2008

In re Application of	:	
Edward R. Hyde, Jr.	:	
Application No. 10/427,779	:	DECISION ON PETITION
Filed: April 30, 2003	:	TO WITHDRAW
Attorney Docket No. 061115-0015US	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed June 24, 2008.

The request is **APPROVED**.

A review of the file record indicates that Thomas D. Kohler: (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, all the attorneys associated with customer number 25243 have 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).

The correspondence address has been changed to the inventor and is copied below.

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

Telephone inquires concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Dr. Edward R. Hyde, Jr.
30 Putnam Park Road
Redding, CT 06896

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
10/427,779	04/30/2003	Edward R. Hyde JR.	061115-0015US

CONFIRMATION NO. 7991

POWER OF ATTORNEY NOTICE

24341
MORGAN, LEWIS & BOCKIUS, LLP.
2 PALO ALTO SQUARE
3000 EL CAMINO REAL
PALO ALTO, CA 94306

OC000000031070747

Date Mailed: 07/21/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/24/2008.

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

/kainabinet/

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

SPE D. Wu

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/427,889

Paper No.: _____

DATE : 6/21/05

TO SPE OF : ART UNIT 1713

SUBJECT : Request for Certificate of Correction on Patent No.: 6887961

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

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

Lamonte M. Newsome

Thank You For Your Assistance

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

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

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

Comments:

D. Wu — **SPE**

1713 — **Art Unit**

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : November 16,2007

TO SPE OF : ART UNIT 1621

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/427,830 Patent No.: 6963009 B2

Deleted: 4

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Deleted: 243

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Deleted: D552164

Deleted: S

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: _____

Yvonne Eyler 12/19/07

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

YVONNE EYLER, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY C[illegible]

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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FAY SHARPE/LUCENT
1228 Euclid Avenue, 5th Floor
The Halle Building
Cleveland, OH 44115-1843

Mail Date: 04/21/2010

Applicant	: Mark Patrick Barry	: DECISION ON REQUEST FOR
Patent Number	: 7590917	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/427,833	: OF WYETH
Filed	: 05/01/2003	:
		:

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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MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

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NOV 03 2003

OFFICE OF PETITIONS

In re Application of	:	
Scott Jeffrey Minch	:	DECISION GRANTING
Application No. 10/427,840	:	PETITION
Filed: May 1, 2003	:	
Attorney Docket No. 9040-27	:	

This is a decision on the paper styled "PETITION TO ACCORD THE PROPER FILING DATE" filed August 18, 2003, which is properly treated as a petition under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of May 1, 2003, rather than the presently accorded filing date of May 2, 2003.

Applicant requests the earlier filing date on the basis that the application was purportedly deposited with the U.S. Postal Service (USPS) as Express Mail on May 1, 2003, pursuant to the requirements of 37 CFR 1.10. In support, applicant provided a copy of the Express Mail label, receipt no. EV193586844US. The same Express Mail receipt number appears on the copy of the original Application Transmittal Letter submitted with the present petition. It is noted that while the "date-in" on the copy of the Express Mail receipt was left blank, it includes a receipt stamp dated "May 1, 2003" but the City and the State where the package was accepted is not legible. Further, the copy of the USPS Track/Confirm system information shows that the package in question was accepted on May 1, 2003.

In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on May 1, 2003. Accordingly, the instant application is entitled to a filing date of May 1, 2003, and has been so accorded.

The petition is granted.

No petition fee is required and none has been charged.

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

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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ADELI & TOLLEN, LLP
11940 SAN VICENTE BLVD., SUITE 100
LOS ANGELES CA 90049

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JUN 22 2009

OFFICE OF PETITIONS

In re Application of	:	
Pun, et al.	:	
Application No. 10/427,843	:	DECISION
Filed/Deposited: 30 April, 2003	:	
Attorney Docket No.: APLE.P0028	:	

This is a decision on the petition filed on 1 June, 2009, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition as considered under 37 C.F.R. §1.181 is **GRANTED**.

NOTE:

Petitioner is cautioned that his filing from California was not received until after midnight eastern time 5 March, 2009, and the Electronic Acknowledgment Receipt reflects that it was received at "00:39:20" on 6 March, 2009.

As to the Request to Withdraw
the Holding of Abandonment

Petitioners always are directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness and showing requirements for relief under 37 C.F.R. §1.181.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action mailed on 5 December, 2008 (the Notice of Abandonment refers—in error it appears—to a 23 October, 2008, Office action), with reply due absent extension of time on or before 5 March, 2009.

The application went abandoned after midnight 5 March, 2009.

On 6 May, 2009, the Office mailed a Notice of Abandonment.

On 1 June, 2009, Petitioner filed a petition requesting withdrawal of the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred timely reply. Petitioner included therewith a copy of the dated ("06-MAR-2009") Electronic Acknowledgment Receipt evidencing Office receipt of an amendment on that date. It is evident that Petitioner authorized charges as necessary (*i.e.*, a one-(1-) month extension of time to make timely the reply to Deposit Account 50-3804, which now is charged—and so satisfied Petitioner's burden to make a showing pursuant to 37 C.F.R. §1.181 (with narrative and documentary support) consistent with the guidance in the Commentary at MPEP 711.03(c)(I), which provides in pertinent part:

***

> 37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), (e), or (g) (see MPEP §513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.
>
> Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP §503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.
>
> Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. §1.8(b) and MPEP §512. As stated in 37 C.F.R. §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered

> into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).
>
> 37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. §1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512. [1]

***

Again, Petitioner is cautioned that his filing from California in fact was not received until after midnight eastern time 5 March, 2009, and the Electronic Acknowledgment Receipt reflects that it was received at "00:39:20" on 6 March, 2009.[2] Thus, the requirement for an extension of time.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

---

[1] *See*: MPEP §711.03(c) (I)(B).

[2] *See*: Users guide at: http://www.uspto.gov/ebc/efs_help.html , which provides in pertinent part:

> EFS-Web utilizes standard web-based screens and prompts to enable you to submit patent application documents in PDF format directly to the USPTO within minutes. When creating your PDF documents, you choose the tool, process and workflow with which you author your documents; convert them to standard PDF files and then submit them to USPTO's secure servers. Additionally, EFS-Web allows submission of *PCT-EASY*.ZIP compressed files to submit International PCT applications and ASCII text files (.TXT) to submit your bio-sequence listings, computer program listings, mega tables, etc. EFS-Web is safe, simple and secure and gives you all of the same benefits as paper filings, including an electronic receipt that acknowledges your submission date.

[3] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[4],[5]

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.[6]

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required, when it is to be made and how it is to be supported.

---

[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] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

[6] 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).

It appears that Petitioner has satisfied the showing required.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.181 is **granted**, and the 6 May, 2009, Notice of Abandonment is **vacated**.

The instant application is released to the Technology Center/AU 2621 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[7]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[7] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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ADELI & TOLLEN, LLP
11940 SAN VICENTE BLVD., SUITE 100
LOS ANGELES CA 90049

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OFFICE OF PETITIONS

In re Application of	:	
Pun, et al.	:	
Application No. 10/427,843	:	DECISION
Filed/Deposited: 30 April, 2003	:	(UPDATE COMMUNICATION)
Attorney Docket No.: APLE.P0028	:	

This is an update to the 22 June, 2009, decision on the petition filed on 1 June, 2009, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application. This addresses only an matter as to a charge to a deposit account, and in no way alters the substance of the 22 June decision granting the petition

The record indicates that Petitioner's filing from California was submitted on 5 March, 2009, Pacific Time, with a certificate of EFS transmission and received after midnight Eastern Time, and the Electronic Acknowledgment Receipt reflects that it was received at "00:39:20" on 6 March, 2009.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action mailed on 5 December, 2008 (the Notice of Abandonment refers—in error it appears—to a 23 October, 2008, Office action), with reply due absent extension of time on or before 5 March, 2009.

The application went abandoned after midnight 5 March, 2009.

On 6 May, 2009, the Office mailed a Notice of Abandonment.

On 1 June, 2009, Petitioner filed a petition requesting withdrawal of the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred timely (i.e., before midnight Petitioner's local time) reply over a 5 March, 2009, certificate of EFS transmission. Petitioner included therewith a copy

of the reply and a copy of the dated ("06-MAR-2009") Electronic Acknowledgment Receipt evidencing Office receipt of an amendment.

The extension of time fee previously charged to Deposit Account 50-3804, is now refunded.

Once again, in all other particulars, the 22 June, 2009, decision granting the petition is maintained.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[2] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

MOSER, PATTERSON & SHERIDAN, LLP
595 SHREWSBURY AVENUE
SUITE 100
SHREWSBURY, NJ 07702

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AUG 20 2003

OFFICE OF PETITIONS

In re Application of	:
Kloeppel et al.	: DECISION GRANTING
Application No. 10/427,845	: PETITION
Filed: 1 May, 2003	:
Attorney Docket No. SEA/10929	:

This is a decision on the petition, filed on 9 July, 2003, under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of 1 May, 2003, rather than the presently accorded filing date of 30 April, 2003.

Petitioners allege that the application was deposited in Express Mail service on 1 May, 2003. In support, petitioners have provided a copy of Express Mail Label No. EV026406737US (the same Express Mail number found on the first page of the specification accompanying the original application papers located in the official file), showing a "date-in" of "5-1-03".

It is noted that the Utility Patent Application Transmittal sheet filed with the original application papers incorrectly lists the Express Mail number as EV026406745US. However, since the correct Express Mail number was found on the first page of the specification as filed, there is sufficient evidence to link the Express Mail number on petitioner's Express Mail label to the application papers deposited on 1 May, 2003. Petitioners are cautioned to ensure that the correct Express Mail number appears on all papers as filed.

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

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to **1 May, 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

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OFFICE OF PETITIONS

GORDON & REES LLP
101 WEST BROADWAY, SUITE 1600
SAN DIEGO CA 92101

In re Application of
HATCH, et al.
Application No. 10/427,854
Filed: May 1, 2003
Attorney Docket No. **8478-PA01**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 12, 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 Neil F. Martin 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.

There is an outstanding Office action mailed November 2, 2006 that requires a reply from the applicant. Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **JAMES A. HATCH**
6172 PASEO CAMAS
CARLSBAD, CA 92009

cc: **ROBERT COGAN**
NATH & ASSOCIATES
1264 EL CAMINO REAL, SUITE 406
SAN DIEGO, CA 92130

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ONE HEALTH PLAZA 430/2
EAST HANOVER, NJ 07936-1080

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OFFICE OF PETITIONS

In re Application of	:	
Monika Petszulat et al	:	
Application No. 10/427,861	:	DECISION GRANTING PETITION
Filed: May 1, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 118-8380E	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 2, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely reply to the Office action of October 23, 2003.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action of October 23, 2003 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-8680.

The application file is being referred to Technology Center AU 1617 for appropriate action on the accompanying response.

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

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IBM CORPORATION
ROCHESTER IP LAW DEPT. 917
3605 HIGHWAY 52 NORTH
ROCHESTER, MN 55901-7829

Mail Date: 04/20/2010

Applicant	: Paul Allen Ganfield	: DECISION ON REQUEST FOR
Patent Number	: 7617332	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/427,865	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/01/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1236** 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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OLSON & HIERL, LTD.
36th Floor
20 North Wacker Drive
Chicago IL 60606

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MAR 3 1 2006

OFFICE OF PETITIONS

In re Application of	:	
James KERMODE, *et al.*	:	
Application No. 10/427,881	:	ON PETITION
Filed: May 1, 2003	:	
Attorney Docket Number: ACU-123	:	

This is a decision on the petition under 37 CFR 1.137(b), filed on January 20, 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 on February 14, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned, by operation of law, on May 15, 2005. A Notice of Abandonment was mailed on August 18, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) a reply in the form of the argument and amendment under 37 CFR 1.111; (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office Action of February 14, 2005 is accepted as having been unintentionally delayed.

The application file is being referred to Technology Center AU 3739 for appropriate action on the concurrently filed amendment.

Application No. 10/064,579

Telephone inquiries concerning this decision should be directed to Anatoly Vortman at (571) 272-6051, or in his absence to the undersigned at (571) 272-7099.

David Bucci
Petitions Examiner
Office of Petitions

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IBM CORPORATION
ROCHESTER IP LAW DEPT. 917
3605 HIGHWAY 52 NORTH
ROCHESTER, MN 55901-7829

Mail Date: 04/20/2010

Applicant	: Kent Harold Haselhorst	: DECISION ON REQUEST FOR
Patent Number	: 7660908	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/427,886	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/01/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1623** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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Paper No. 4

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627-7428

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OFFICE OF PETITIONS

In re Application of
Tompson et al. :
Application No. 10/427,894 :
Filed: May 1, 2003 :
Attorney Docket No. 998-919

This is a decision in response to the Petition to Accord the Proper Filing Date under 37 CFR 1.10(c), filed June 7, 2003, Requesting the application be accorded a filing date of May 1, 2003, instead of the presently accorded filing date of May 2, 2003.

Petitioner alleges the application was deposited in "Express Mail" service with the U.S. Postal Service, on May 1, 2003. In support, Petitioner provides a copy of the Express Mail label, receipt number EV193586756US, with a "Date-In" of May 1, 2003. The Express Mail label contains a United States Postal Service (USPS) stamp of May 1, 2003. The same Express Mail label number was placed on the original application papers located in the official file.

The Office considers the date the correspondence is shown to have been deposited as "Express Mail" to be the "date-in" on the Express Mail mailing label. *See* MPEP §513. The date indicated on the "date-in" on the Express Mail mailing label verifies that the package was actually mailed. In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on May 1, 2003.

In view of the foregoing, this Petition in **Granted**.

This application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to May 1, 2003.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

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WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA, PA 19104-2891

Mail Date: 04/21/2010

Applicant	: Angela Chiu	: DECISION ON REQUEST FOR
Patent Number	: 7593637	: RECALCULATION of PATENT
Issue Date	: 09/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/427,896	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/30/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1247** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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ALEXANDRIA, VA 22313-1450
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Paper No. 5

PILLSBURY WINTHROP, LLP
P.O. BOX 10500
MCLEAN VA 22102

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OCT 02 2003

OFFICE OF PETITIONS

In re Application of	:	
Adamczyk et al.	:	DECISION ON PETITION
Application No. 10/427,911	:	UNDER 37 CFR 1.137(f)
Filed: 2 May, 2003	:	
Atty Dkt No. P 302812/RP-00931-US2	:	

This is a decision on the petition under 37 CFR 1.137(f),[1] filed on 4 September, 2003, to revive the above-identified application.

The petition is **dismissed** as inappropriate for the reasons stated below.

The record discloses that, on 2 May, 2003, 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 in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing."

On 4 September, 2003, petitioners filed a request 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. The present petition was also filed on 4 September, 2003. In this regard, petitioner states that an international or foreign application corresponding to the instant

[1] 37 CFR 1.137(f) provides for revival of a nonprovisional application which became abandoned pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing.

application was filed on 2 May, 2003, the same date that the instant application was filed.

The instant nonprovisional application did not become abandoned as a result of the filing of a corresponding application filed in another country, or under a multilateral international agreement, **subsequent** to the filing of the present 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 2 May, 2003, and the corresponding foreign application was also filed on 2 May, 2003. 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 filed on the same day in another country or under the multilateral international agreement. In view of petitioner's statement that the corresponding foreign application was filed on 2 May, 2003, the same date as the date of filing of the subject application, the filing of the corresponding foreign application cannot be considered to have been filed **subsequent** 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 either filed on the same date or filed prior to the filing date (this would be true if the corresponding foreign or international

application has a filing date of 2 May, 2003) as 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(f) is inappropriate and, consequently, must be dismissed.

As requested, the Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(I) has been rescinded. As indicated in the attached Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing, the projected date of publication is 8 January, 2004.

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.[2] Accordingly, as authorized, the required $1300.00 petition fee will not be refunded.

The application is being forwarded to Technology Center 3600 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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

[2] *See* 35 U.S.C. § 41(c)(7).

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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/427,911	05/02/2003	Rick Adamczyk	P 302812/RP-00931-US2

CONFIRMATION NO. 9080

OC000000010957436

00909
PILLSBURY WINTHROP, LLP
P.O. BOX 10500
MCLEAN, VA 22102

Date Mailed: 10/01/2003

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

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

The projected publication date is 01/08/2004.

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 (703) 305-9282. 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".

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JEAN-CLAUDE BOUDREAU
CRIQ BUILDING
8475, CHRISTOPHE-COLOMB
MONTREAL QC H2M 2N9 CANADA

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OFFICE OF PETITIONS

In re Application of	:	
Jean-Claude Ouellet et al	:	
Application No. 10/427,964	:	DECISION ON PETITION
Filed: May 2, 2003	:	
Attorney Docket No. 109.2	:	

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

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Notice of Drawing Inconsistency with Specification, mailed April 12, 2006, which set a non-extendible one (1) month or thirty (30) day period, whichever was longer. As no reply was received within the period set, this application became abandoned on May 13, 2006. A Notice of Abandonment was mailed on July 20, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) a reply to the Notice of April 12, 2006, (2) the petition fee of $750, and (3) a proper statement of unintentional delay.

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

This application is being referred to Publishing Division for appropriate action in accordance with this decision.

Frances Hicks
Petitions Examiner
Office of Petitions

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Paper No. 9

HOGAN & HARTSON LLP
IP GROUP, COLUMBIA SQUARE
555 THIRTEENTH STREET, N.W.
WASHINGTON DC 20004

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DEC 22 2003

OFFICE OF PETITIONS

In re Application of
Jordan, Taylor & Johnston
Application No. 10/428,006
Filed: May 2, 2003
Attorney Docket No. 82001-0367
For: CONSTRAINT-BASED PRODUCTION PLANNING AND SCHEDULING

DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 CFR 1.47(A) DISMISSED AS MOOT

This is in response to the petition under 37 CFR 1.47(a), filed October 30, 2003, and the Request for Withdrawal of Petition under 37 CFR 1.47(a), file November 20, 2003.

Papers filed on November 20, 2003, included a Declaration signed by the previously nonsigning inventor, David Jordan, in compliance with 37 CFR 1.63.

In view of the joinder of the inventor, 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).

Regarding finances, petitioner's deposit account will be credited the $130 petition fee paid on October 30, 2003 and petitioner's deposit account will be charged an additional $530 to purchase a three month extension of time. Petitioner has already paid $420 of the $950 owed in extension of time fees.

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

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11-18-05

TO SPE OF : ART UNIT 2859

SUBJECT : Request for Certificate of Correction on Patent No.: 6952887

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

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

Should Claims be accepted? Thanks

EVA JAMES

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:

TMR

SPE

2859
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : **4/10/2008**

TO SPE OF : ART UNIT **1600 (1616)**

SUBJECT : Request for Certificate of Correction on Patent No.:**6,929,801**

Attn: Konata George

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

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

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

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

***Ok to enter change to item (30) "PN 8411" to –PN 8144--**

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

Thank You For Your Assistance

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

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

Comments:

_____

_____

_____

_____

_____

/Johann Richter/ SPE 1616

SPE Art

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SUITE 600
DALLAS TX 75201-2980

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MAR 1 0 2006

OFFICE OF PETITIONS

In re Application of :
Arecco, et al. : DECISION ON PETITION
Application No. 10/428,022 :
Filed: April 30, 2003 :
Docket No.: 062891.1115 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed February 23, 2006.

This application was held abandoned October 28, 2005 for failure to timely submit a proper reply to the non-final Office action mailed July 27, 2005. Notice of Abandonment was mailed February 7, 2006.

Petitioner asserts that a response to the non-final Office action was timely submitted on October 24, 2005 and has submitted as proof of USPTO receipt of the reply a return postcard dated stamped October 24, 2005.

The original amendment submitted October 24, 2005 has not been located. However, in view of the evidence presented, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

The application file is being forwarded to Technology Center 2600 for further processing.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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DIW Dec-05

PETER SILTEX YUEN
2765 HENESSY DRIVE
SAN JOSE CA 95148

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DEC 16 2005

OFFICE OF PETITIONS

In re Application of	:	
Yuen et al.	:	LETTER DISMISSING PETITION
Application No. 10/428,026	:	TO WITHDRAW
Filed: 30 April, 2003	:	HOLDING OF ABANDONMENT
For: ELECTRONIC HUMAN BREATH	:	
FILTRATION DEVICE	:	

This is a decision on the petition filed 28 June, 2005, requesting withdraw the holding of abandonment of the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to respond in a timely manner to the non-final Office action mailed 15 November, 2004. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 2 June, 2005.

The petition, which is signed by inventor Peter Siltex Yuen, cannot be considered on the merits because it is not properly signed. Specifically, 37 CFR 1.4 requires that all papers filed in the USPTO must be signed by either a registered patent attorney or all of the inventors in an application. As this application contains an executed declaration listing Peter Siltex Yuen and Bessie Yuen Chan, the petition must be signed by both inventors or by their representative.

Applicants should file a new petition signed by both joint inventors or their representative. No additional petition fee is due.

A reply to this communication should be submitted within two (2) weeks of receipt of this communication.

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
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Alexandria, VA 22313-1450
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DIW Feb-06

PETER SILTEX YUEN
2765 HENESSY DRIVE
SAN JOSE CA 95148

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FEB 0 2 2006

OFFICE OF PETITIONS

In re Application of	:	
Yuen et al.	:	DECISION ON PETITION TO
Application No. 10/428,026	:	WITHDRAW HOLDING OF
Filed: 30 April, 2003	:	ABANDONMENT
For: ELECTRONIC HUMAN BREATH	:	
FILTRATION DEVICE	:	

This is a decision on the petition filed on 29 December, 2005, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the Office action requiring restriction or election mailed on 15 November, 2004, which set a one (1) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 2 June, 2005. A communication styled as a petition to withdraw the holding of abandonment was filed on 28 July, 2005. On 16 December, 2005, an Office communication was mailed, stating that the paper filed 28 July, 2005, was not properly signed, and that a properly signed petition must be filed.

Petitioners, *pro se*, assert that the Office action mailed on 15 November, 2004, was never received.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner

stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the Office action was properly mailed to the petitioners at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioners have submitted a statement that inventor Peter S. Yuen checked his records, who tracked the receipt Office communication, but never received the Office communication mailed 15 November, 2004. Petitioners have also provided an explanation of their mail receipt system, and have provided a copy of a mail log.

The petitioners have made a sufficient showing of nonreceipt of the Office action. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED.**

The application file is being referred to Technology Center 3700 technical support staff for remailing of the Office action mailed 15 November, 2004. The period for reply will be reset from the mailing date thereof.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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Clements Bernard PLLC
1901 Roxborough Road
Suite 300
Charlotte NC 28211

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JUN 2 5 2009

OFFICE OF PETITIONS

In re Application of	:	
Klausmeier et al.	:	DECISION REFUSING STATUS
Application No. 10/428,048	:	UNDER 37 CFR 1.47(a)
Filed: May 2, 2003	:	
Attorney Docket No. 10.0469	:	

This is in response to the petition under 37 CFR 1.47(a), filed September 3, 2004.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a). Also, this decision does not stay any other period for reply that may be running against the application. 37 CFR 1.181(f).

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

As to item (1), the applicable statute (35 U.S.C. § 116) requires that a "diligent effort" have been expended in attempting to find or reach the non-signing inventor. *See* MPEP 409.03(a). The showing currently fails to demonstrate that a diligent effort was made to find or locate non-signing inventor Daniel Klausmeier, such that the declaration can be accepted under 37 CFR 1.47(a). Where inability to find or locate a named inventor is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor.

To date, petitioner has shown that an effort was made to find this inventor through three unsuccessful mailings to the inventor via Federal Express. Although this effort was helpful, it did not constitute a diligent effort. The mailing label and detailed results for the July 9, 2004 mailing and the address presented on the other letters do not establish that the address to which they were sent was the correct addresses for the inventor. In particular, the record does not show that there was any effort to search for possible changes in the inventor's location. The record merely shows that attempts were made to contact the inventor via Federal Express at the last known address, with no additional searching to ensure that the last known address was likely to be accurate for the inventor.

Petitioner should, at the very least, conduct a search of the regional or national registry(s). The results of such search should be made in any future petition for reconsideration. *See* MPEP 409.03(d). Additionally, petitioner should state whether he has access to the non-signing inventors' personnel records and, if so, what does inspection of the records reveal as to a forwarding address, an address of the nearest living relative, or the address of an emergency contact who may be helpful in locating the inventor? What does inspection of the phone directories for those address locations reveal? If all other attempts to locate or reach the inventor, e.g., through personnel records, co-workers, E-mail, the Internet or the telephone, etc., continue to fail, then applicant will have established that the inventor cannot be reached after diligent effort or has refused to join in the application. **The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein and should be accompanied by documentary evidence in support of the statement of facts.** It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

Moreover, the confirmation of delivery for the July 9, 2004 letter does not suggest that the filed application, including the claims, were received and considered by the inventor such that no response to the letter may be construed as refusal by conduct. Failure to respond to three mailings does not constitute refusal by conduct. Additional attempts to contact the inventors are necessary, and each of these attempts must be to an address that searching suggests is the correct contact point for the inventor.

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration. Whenever an omitted inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

As to item (3), the petition fee paid is insufficient. A petition under 37 C.F.R. 1.47(a) must include the fee of $200.00, as set forth in 37 C.F.R. 1.17(g). To date, $130.00 has been paid. The deficiency of $70.00 must be paid.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By Internet:	EFS-Web[1]

Telephone inquiries should be directed to the undersigned at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

[1] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

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

Clements Bernard PLLC
1901 Roxborough Road
Suite 300
Charlotte NC 28211

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OCT 28 2009

OFFICE OF PETITIONS

In re Application of	:	
Klausmeier et al.	:	DECISION REFUSING STATUS
Application No. 10/428,048	:	UNDER 37 CFR 1.47(a)
Filed: May 2, 2003	:	
Attorney Docket No. 10.0469	:	

This is in response to the renewed petition under 37 CFR 1.47(a), filed July 2, 2009.

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). Also, this decision does not stay any other period for reply that may be running against the application. 37 CFR 1.181(f).

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

As to item (1), as discussed in the decision mailed June 25, 2009, the showing currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate non-signing inventor Daniel Klausmeier or that Mr. Klausmeier refuses to sign, such that the declaration can be accepted under 37 CFR 1.47(a). Rather, the present petition indicates that co-inventor Klausmeier can be found and is willing to sign, at least as the sole inventor.

As to item (2) above, the supplemental declaration lacks compliance with 37 CFR 1.63(a)(2) in that the supplemental declaration does not list all the named inventors. Petitioner's attention is directed to MPEP Section 602, which states:

> "Where joint inventors execute separate oaths or declarations, each oath or declaration should make reference to the fact that the affiant is a joint inventor together with each of the other joint inventors indicating them by name. This may be done by stating that he or she does verily believe himself or herself to be the original, first and joint inventor together with 'A' or 'A & B, etc."

Accordingly, a new declaration which lists all the inventors and is signed by co-inventor Daniel Klausmeier is required to affect joinder. *See also* MPEP Sections 201.03 and 409.03(a). The Declaration filed January 26, 2004 already lists all of the inventors, is signed by co-inventor Edward Spague and leaves the signature block of co-inventor Daniel Klausmeier blank.

In regard to the required petition fee, $70.00 from the $130.00 payment filed with the renewed petition has been applied to the outstanding petition fee balance to fully satisfy the fee. The $130.00 payment for the filing of a late oath or declaration was not necessary as the surcharge was already paid with the declaration filed January 26, 2004. The remaining $60.00 will be refunded to the address of record by U.S. Treasury check.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
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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

By Internet: EFS-Web[1]

Telephone inquiries should be directed to the undersigned at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

[1] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

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Suite 250
Charlotte NC 28211

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OFFICE OF PETITIONS

In re Application of	:	
Klausmeier et al.	:	DECISION NOTING JOINDER OF
Application No. 10/428,048	:	INVENTOR AND PETITION
Filed: May 2, 2003	:	UNDER 37 CFR 1.47(a)
Attorney Docket No. 10.0469	:	

This is in response to the renewed petition under 37 CFR 1.47(a), filed November 4, 2009, which included a Declaration signed by a previously non-signing inventor, Daniel E. Klausmeier.

The petition is **DISMISSED AS MOOT**.

In view of the joinder of the inventor, further consideration under § 1.47(a) is not necessary. This application does not have any Rule 1.47 status and no such status should appear on the record for this file. This application need not be returned to this Office for any further consideration under 37 CFR 1.47(a).

Jurisdiction over this application is being forwarded to the Office of Data Management for appropriate action in the normal course of business.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Pet. Dec.

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Mailed: 5/23/05

NE

In re application of Mu-Li et al. Serial No. 10/428,050 Filed: May 2, 2003 For: OPEN-CELL MIROCELLULAR POLYSTRYENE FOAMS AND METHOD FOR MAKING THE SAME	:	DECISION ON PETITION

This is a response to the PETITION TO WITHDRAWAL HOLDING OF ABANDONMENT filed February 1, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of December 8, 2004, for failure to timely file a proper reply to the Office letter mailed April 19, 2004 be withdrawn since the applicants did timely file a reply on August 19, 2004.

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicant's reply was properly filed on August 19, 2004 as evidenced by the copy of the USPTO date stamp return receipt postcard indicating receipt of the reply at the USPTO on August 19, 2004. Accordingly, any holding of abandonment for failure to timely file a proper reply to the Office letter mailed December 8, 2004 is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to the examiner for entry and processing and consideration of the reply originally filed August 19, 2004.

The Petition is **GRANTED**.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

BIRCH STEWART KOLASCH & BIRCH
P.O. Box 747
Falls Church, VA 22040-0747

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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DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
Washington, DC 20006-5403

Mail Date: 04/21/2010

Applicant	: Peter J. Dreyfuss	: DECISION ON REQUEST FOR
Patent Number	: 7585305	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/428,072	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/02/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **593** 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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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
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WWW.USPTO.GOV

Paper No. 4

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L STREET NW
WASHINGTON DC 20037-1526

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FEB 23 2004

OFFICE OF PETITIONS

In re Application of
Shunichi Sato
Application No. 10/428,074
Filed: May 2, 2003
Attorney Docket No.
R2184.0052/P052 B
Title: LASER DIODE HAVING AN ACTIVE LAYER CONTAINING N AND OPERABLE IN A 0.6UM WAVELENGTH BAND

DECISION ON PETITION

This is a decision on the "Petition re. submission of missing application papers", filed August 27, 2003, which is properly treated as a petition under 37 C.F.R. §1.53(e) requesting that page twenty-two (22) of the specification be accorded a filing date of May 2, 2003 as part of the original disclosure.

The application was deposited on May 2, 2003. However, on June 27, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice to File Corrected Application Papers - Filing Date Granted" (notice), stating that the application had been accorded a filing date of May 2, 2003 and that a substitute specification and replacement drawings would be required. The notice further indicated and that the application appeared to have been deposited without page twenty-two (22) of the specification.

In response, on August 27, 2003, Petitioner filed the present petition. The petition is further accompanied by the petition fee, replacement drawings, a substitute specification, and a copy of applicants' postcard receipt acknowledging receipt of

"Specification (107 pages)" in the United States Patent and Trademark Office (Office) on May 2, 2003. Petitioner requests that the application, including page twenty-two (22) of the specification be accorded a filing date May 2, 2003.

Upon review of the record, the above-mentioned page has not been located among the application papers. However, the evidence is convincing that the application papers deposited on May 2, 2003 included page twenty-two (22) of the specification, and this page was subsequently misplaced in the Office.

Therefore, the application, including page twenty-two (22) of the specification, was complete on filing and entitled to a filing date of May 2, 2003, as part of the original disclosure.

Accordingly, the petition is **GRANTED**.

The portion of the notice mailed June 27, 2003 which stated that the application was filed without page twenty-two (22) of the specification was sent in error, and that portion is hereby **VACATED**. Therefore, no petition fee is necessary. The petition fee of $130 will be refunded to Petitioner's Deposit Account.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 2, 2003, using the substitute specification and replacement drawings submitted with the instant petition.

Any inquiries related to this decision should be directed to the undersigned at (703) 305-0011.

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

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MAR 0 4 2005

TECHNOLOGY CENTER 3600

Miller Thompson, LLP
20 Queen Street West, Suite 2500
Toronto, ON
M5H 3S1
Canada

In re Application of
Terry Cassaday
Application No. 10/428,080
Filed: May 2, 2003
For: CLIP

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicant's Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181 filed in the United States Patent and Trademark Office on December 21, 2004.

The petition is **DISMISSED**.

A review of the file record indicates that the application was held abandoned for failure to timely file a response to the Office action mailed May 5, 2004, which set a three-month shortened statutory period. The application became abandoned at midnight on November 5, 2004, and a Notice to that effect was mailed on November 30, 2004.

Petitioner contends that a response was filed on August 4, 2004 by facsimile transmission. In support thereof, petitioner submits, a copy of a response bearing a Certificate of Transmission signed by Debbie Oats and dated August 4, 2004.

Petitioner's evidence of a timely filing based on a Certificate of Transmission is considered to be insufficient. In this regard, any petition to withdraw the holding of abandonment based upon a Certificate of Transmission by facsimile must include the following requirements:

(1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and

(2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512), <u>by the person who signed the certificate</u>.

While meeting requirement (1) above the petition fails, under requirement (2), to also include a statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of sending the original

response by facsimile transmission on the date indicated on the certificate, by the person who signed the certificate, in this instance Debbie Oats.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."

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

SNM/rwg: 2/10/05

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United States Patent and Trademark Office
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SEP 13 2005

TECHNOLOGY CENTER 3600

Eugene J.A. Gierczak
MILLER THOMSON LLP
20 Queen Street West, Suite 2500
Toronto, Ontario, Canada M5H 3S1

In re Application of
Terry Cassaday
Application No. 10/428,080
Filed: May 2, 2003
For: CLIP

DECISION ON RENEWED 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 April 27, 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 August 4, 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: 8/15/05

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

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SEP 26 2007

OFFICE OF PETITIONS

DUANE MORRIS LLP
Suite 700
1667 K Street, N.W.
Washington DC 20006

In re Application of	:	
Royall, et al.	:	DECISION ON PETITION
Application No. 10/428,098	:	
Filed: May 2, 2003	:	
Atty. Dkt. No.: ROY03 747 DIV2	:	

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed April 30, 2007.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

This application became abandoned January 25, 2006 for failure to timely submit a proper reply to the non-final Office action mailed October 24, 2005. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed May 19, 2006. The petition filed May 24, 2006 referenced by petitioners does not appear to have been received.

The instant petition has not been reviewed on the merits because the petition has not been signed in accordance with 37 CFR 1.4(d). Any renewed petition must be properly executed.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision. Further correspondence with respect to this matter should be addressed as follows:

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

By facsimile: (571) 273-8300

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

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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

DUANE MORRIS LLP
Suite 700
1667 K Street, N.W.
Washington DC 20006

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JAN 03 2008

OFFICE OF PETITIONS

In re Application of	:
Royall, et al.	: DECISION ON PETITION
Application No. 10/428,098	:
Filed: May 2, 2003	:
Atty. Dkt. No.: ROY03 747 DIV2	:

This is a decision on the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181, filed October 4, 2007.

This application was held abandoned for failure to timely submit a proper reply to the non-final Office action mailed October 24, 2005. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed May 19, 2006. A petition to withdraw the holding of abandonment was filed May 24, 2006, as established by the stamped return postcard accompanying the instant petition. However, the petition filed May 24, 2006 does not appear in the application file.

Petitioners assert that a response to the non-final was timely submitted on January 13, 2006 and have provided as proof of submission and proof of receipt a postcard bearing a USPTO date stamp to this effect.

The original response filed January 13, 2006 has not been located in the application file.

However, in view of the evidence thereof, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

The application file is being forwarded to Technology Center 3600 for consideration of the response to the non-final Office action.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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DIW 02-05

TIMOTHY J. KLIMA
HARBIN KING & KLIMA
500 NINTH STREET S.E.
WASHINGTON DC 20003

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FEB 15 2005

OFFICE OF PETITIONS

In re Application of	:	
Mario Spatafora	:	
Application No. 10/428,113	:	ON PETITION
Filed: 2 May, 2003	:	
Attorney Docket No. 2545-0413	:	

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on 11 January, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 29 September, 2004, for failure to timely submit the issue fee and publication fees in response to the Notice of Allowance and Issue Fee Due, mailed on 28 June, 2004, which set a three (3) month statutory period for

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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)).

reply. The filing of the present petition precedes the mailing of Notice of Abandonment.

On 5 November, 2004, petitioners submitted a Request for Continued Examination, accompanied by an Information Disclosure Statement as the required reply.

37 CFR 1.137(b)(1) states however, that in an application abandoned for failure to pay the issue fee, the required reply must be the payment of the issue fee or any outstanding balance thereof. If the application is subsequently allowed, applicant may request that the previously submitted issue fee be applied toward payment of the issue fee required by the new notice of allowance.[2]

As such, the issue fee and the publication fee will be charged to counsel's deposit account, No. 50-3272, as authorized on the issue fee transmittal form filed on 7 February, 2005.

It is noted that the application has subsequently been allowed, and will be forwarded to the Publishing Division for processing into a patent.

The application is being referred to the Publishing Division for processing into a patent.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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[2]The request to apply the issue fee to the new Notice of Allowance must be made in writing and should be accompanied by the new Issue Fee Transmittal Form (PTOL-85(b)), along with a copy of this decision. Additionally, if the issue fee has increased from the previously paid issue fee, the balance due at the time of payment must be submitted. **Failure to timely request in writing that the previously paid issue fee be applied towards the new Notice of Allowance and payment of any balance due will result in the abandonment of the application.**

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JUN 16 2005

ERIC ROBINSON
PMB 955
21010 Southbank Street
Potomac Falls, VA 20165

In Re Application of
YAMAZAKI, ET AL. : NOTICE OF WITHDRAWAL
Application No. 10/428,158 : FROM ISSUE
Filed: May 2, 2003 :
Title: SEMICONDUCTOR DEVICE AND MICROPROCESSOR

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

The application is being withdrawn to permit reopening of prosecution. The examiner will communicate the reasons to you.

If the issue fee has been submitted, the applicant may request a refund, or may request that the fee be credited to a deposit account. However, the applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a specified Deposit Account.

Telephone inquiries should be directed to David Nelms at (571) 272-1787.

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

James L. Dwyer
Director, Technology Center 2800
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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ERIC J. ROBINSON
PMB 955
21010 SOUTHBANK STREET
POTOMAC FALLS, VA 20165

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OFFICE OF PETITIONS

In re Application of :
Shunpei Yamazaki et al :
Application No. 10/428,158 : ON PETITION
Filed: May 2, 2003 :
Attorney Docket No. 0756-7150

This is a decision on the petition filed, April 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 February 13, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred 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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER, 8th FLOOR
SAN FRANCISCO, CA 94111-3834

In re Application of: Shinohara, et al.
Application No. 10/428,181
Filed: April 30, 2003
For: ACCESS MANAGEMENT SERVER, METHOD THEREOF, AND PROGRAM RECORDING MEDIUM

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed November 15, 2004, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in **37 CFR 1.17(h)**;

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Petition to Make Special **GRANTED** since all of the requirements for special status under MPEP § 708.02(VIII) 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 VIII. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Brian L. Johnson
Special Program Examiner 3/1/05
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3595

SDL

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TECHNOLOGY CENTER 2100

TOWNSEND, TOWNSEND and CREW, LLP
TWO EMBARCADERO CENTER, 8TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3834

In re Application of: OKUMOTO ET AL.
Application No. 10/428,198
Filed: April 30, 2003
For: METHOD, SYSTEM, AND STORAGE CONTROLLER FOR CONTROLLING SHARED MEMORIES

DECISION ON PETITION FOR ACCELERATED EXAMINATION UNDER M.P.E.P.§708.02(VIII) & 37 C.F.R. 102(d)

This is a decision on the petition filed July 28, 2004 under 37 C.F.R. 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. § 102(d) states in relevant part:

> A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Petition to Make Special **GRANTED** since all of the requirements for special status under MPEP § 708.02(VIII) 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 VIII. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3595

5/12/05

JC

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

MAILED
JUL 12 2005
Technology Center 2100

In re Application of: Eguchi, et al.
Application No. 10/428,204
Filed: 30 April 2003
For: DATA RESTORING METHOD AND AN APPARATUS USING JOURNAL DATA AND AN IDENTIFICATION INFORMATION

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a decision on the petition filed 6 August 2004, and its duplicate copy that was resubmitted 2 February 2005, under 37 C.F.R. 102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **DISMISSED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(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.

The petition filed 6 August 2004 fails to adequately meet requirement (e) as set forth above. Responsive to requirement (e), applicant must provide 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 should ensure that the above discussion is directed to *how the language of each of the independent claims are specifically distinguishable and patentable from the references* provided pursuant to requirement (d) supra.

Applicant's petition fails to discuss the **claimed limitations** with respect to the references in accordance with the requirements of 37 CFR 1.111 (b) and (c). The petition does not point out specific limitations in each of the independent claims that may distinguish the invention over the references. Petitioner simply recites claims 1, 9 and 12 -- each of the independent claims and then proffers one permuted summation of the claimed features with an averment that none of the references meet this synopsis. This amalgamation of limitations precedes a list of reference-descriptions, and serves as the petition's basis for distinguishing the independent claims from the given references. The permutation of claimed features, however, does not provide the requisite specificity regarding the limitations associated with each of the independent claims for correlation/contrast with the referenced prior art. Petitioner is required to submit a detailed discussion that includes identifying claim limitations with particularity for each independent-claim that cannot be found in the relevant prior art references.

In the discussion of how the claims are patentable over the references, the petition must show, for each independent-claim, specific limitations that distinguish over each given reference in order to specify "how the claimed subject matter is patentable over the references."

Petition to Make Special **DISMISSED**.

Petitioner is given one opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the mail date of this decision.

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.

Brian L. Johnson
Special Program Examiner 7/6/05
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3595

GO

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Chun-Pok Leung
TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834

MAIL

SEP 2 8 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:
Yoshiaki EGUCHI et al
Application No. 10/428,204
Filed: April 30, 2003
For: DATA RESTROING METHOD AND AN APPARATUS USING JOURNAL DATA AND AN IDENTIFICATION INFORMATION

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the renewed petition, filed on September 14, 2005 under 37 C.F.R. §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. § 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.

Applicant's submission of September 14, 2005 meets all the criteria set out above. Accordingly, the petition is **GRANTED**. The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. § 708.02. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. § 1309.

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

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November 2, 2009

Joseph A. Powers
Duane Morris
30 South 17th Street
Philadelphia, PA 19103

Patent No.: 7,001,165 B2
Application No.: 10/428,227
Inventor(s): Kevin D. Hartley, et al.
Issued: February 21, 2006
Title: **SIZER FOR FORMING SHAPED POLYMERIC ARTICLES AND METHOD OF SIZING POLYMERIC ARTICLES**

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 1.323.

A petition under C.F.R. 1.182 is required to correct the alleged errors in incorrect inventor's name or order of inventor's names, since inventor's names are printed solely in accordance with the typed/printed names (not the signatures), and since non-initialed and non-dated changes are not taken into consideration. Therefore, no correction is in order here under the provisions of Rule 1.322 and /or 1.323 (required fee currently $100), unless a petition is granted (See M.P.E.P. 605.04(b).

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

Any request under 37 CFR 1.182 (required fee currently $130.00) should be directed to the following address or facsimile number:

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

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

By fax: (571) 273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
571 272-0460 (voice)
571 270-9892 (fax)

vt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 12/3/09 **Paper No.:** —

TO SPE OF : ART UNIT 1791

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/428227 Patent No.: 7001165B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

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

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

Comments: This correction is fine and should be entered.

/Joseph S. Del Sole/

/Joseph S. Del Sole/ 1791

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

TIMOTHY J MARTIN, PC
9250 W 5TH AVENUE
SUITE 200
LAKEWOOD CO 80226

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MAR 0 8 2004

OFFICE OF PETITIONS

In re Application of	:	
Barbara S. Houghteling	:	
Application No. 10/428,245	:	DECISION ON PETITION
Filed: May 2, 2003	:	UNDER 37 C.F.R. §1.53(e)
Attorney Docket No. 1864	:	
Title: INFANT SUPPORT SYSTEM	:	

This is a decision on the "petition to accord a filing date pursuant to 37 C.F.R. §1.53(e)", filed September 2, 2003, requesting the application, including four (4) sheets of drawings be accorded a filing date of May 2, 2003 as part of the original disclosure.

The application was deposited on May 2, 2003. However, on June 24, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application" (Notice), stating that the application had NOT been accorded a filing date, and advising applicants that the application was deposited without drawings, and a filing date would be accorded when the drawings were received.

In response, on September 2, 2003, applicants filed the present petition. The petition is further accompanied by a copy of four (4) sheets of drawings1, along with a copy of applicants' postcard receipt acknowledging receipt of "informal drawings (4 pages)" in the United States Patent and Trademark Office (Office) on May 2, 2003. Applicants request that the application, including four (4) sheets of drawings be accorded a filing date of May 2, 2003.

1 A duplicate copy of drawings were submitted on January 29, 2004.

Upon review of the record, the above-mentioned figures have not been located among the application papers. However, the evidence is convincing that the application papers deposited on May 2, 2003 included four (4) sheets of drawings, and these four (4) sheets of drawings were subsequently misplaced in the Office.

Therefore, the application, including four (4) sheets of drawings, was complete on filing and entitled to a filing date of May 2, 2003 as part of the original disclosure.

Accordingly, the petition is **GRANTED**.

The portion of the notice mailed June 24, 2003 which stated that new drawings were required was sent in error, and that potion is hereby **VACATED**. Therefore, no petition fee is necessary. The petition fee of $130 will be refunded to petitioner's Deposit Account.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 2, 2003, using the original application papers filed on that date, as well as the four (4) sheets of drawings submitted on September 2, 2003.

Any inquiries related to this decision should be directed to Attorney Paul Shanoski at (703) 305-0011.

Derek L Woods, for
Jay Lucas
Interim Supervisory Petitions Examiner
Office of Petitions
United States Patent and Trademark Office

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 5

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

COPY MAILED

FEB 25 2004

OFFICE OF PETITIONS

In re Application of Heltovics et al. Application No. 10/428,246 Filed: May 2, 2003 Attorney Docket No. CM2397C For: METHODS AND COMPOSITIONS FOR IMPROVED FRAGRANCING OF A SURFACE	DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the 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.

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

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. 6

Andrew James Peter Shefferd
78 Botham Drive
Slough, Berkshire SL1 2LZ
UNITED KINGDOM

COPY MAILED

FEB 25 2004

OFFICE OF PETITIONS

Letter

In re Application of :
Heltovics et al. :
Application No. 10/428,246 :
Filed: May 2, 2003 :
Attorney Docket No. CM2397C :
For: METHODS AND COMPOSITIONS FOR IMPROVED FRAGRANCING OF A SURFACE :

Dear Mr. Shefferd:

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: THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

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Paper No. 10

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

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NOV 2 6 2003

OFFICE OF PETITIONS

In re Application of
Alvarez et al.
Application No. 10/428,275
Filed: May 1, 2003
Attorney Docket No. 21402-585
(CURA-885)
For: THERAPEUTIC POLYPEPTIDES,
NUCLEIC ACIDS ENCODING SAME, AND
METHODS OF USE

ON PETITION

This is in response to the petition under 37 CFR 1.47(a), filed October 3, 2003. Applicant obtained a two-month extension of time. Accordingly, the petition is timely filed.

The petition is dismissed.

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 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).

On May 1, 2003, applicant filed the above-identified application, without an executed oath or declaration. Accordingly, on June 6, 2003, a "Notice to File Missing Parts of Application" was mailed, requiring, *inter alia*, an executed oath or declaration and a surcharge for its late filing. In response, on October 3, 2003, applicant filed, *inter alia*, the present petition, a declaration signed by all of the joint inventors except for inventors Ji, Fernandes and Rastelli, and paid the requisite fees.

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) as set forth above.

As to item (1), applicant states that a Declaration in Support of 37 CFR 1.47, setting forth the pertinent facts of the nonsigning inventors' refusal to sign the declaration, accompanies the present petition. However, such documents were not received by the Office. Accordingly, the record fails to demonstrate, with a documented showing, that the three non-signing inventors were presented with a complete copy of the application papers. Unless inventors Ji, Fernandes and Rastelli were presented with a copy of the application papers (specification, claims and drawings), they could not attest that they had "reviewed and understands the application papers," and therefore, could not sign the declaration. See 409.03(d). Applicant should show that copies of the application papers were presented to all three nonsigning inventors, but that they did not respond to the requests that they sign the declaration in order to show that the inventors have refused to join in the application. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events.

Accordingly, applicant has not met the requirements of 37 CFR 1.47(a), and thus, the petition must be **dismissed** without prejudice.

The Office finance records indicate that applicant submitted three petition fees totaling $390.00. Only one petition fee of $130.00 is necessary. Therefore, the balance of $260.00 will be refunded to Deposit Account No. 50-0311.

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: 2011 South Clark Place
Customer Window
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 12

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

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JAN 16 2004

OFFICE OF PETITIONS

In re Application of
Alvarez et al.
Application No. 10/428,275
Filed: May 1, 2003
Attorney Docket No. 21402-585
(CURA-885)
For: THERAPEUTIC POLYPEPTIDES,
NUCLEIC ACIDS ENCODING SAME, AND
METHODS OF USE

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.47(a), filed January 9, 2004.

Petitioner has shown that the non-signing inventors have refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of facts of Nicole Carlucci establishes that the inventors were mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that they 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 petition. 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 decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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

Weizhen Ji
375 Old Rock Road
Branford, CT 06405

In re Application of :
Alvarez et al. :
Application No. 10/428,275 : LETTER
Filed: May 1, 2003 :
Attorney Docket No. 21402-585 :
(CURA-885) :
For: THERAPEUTIC POLYPEPTIDES, :
NUCLEIC ACIDS ENCODING SAME, AND :
METHODS OF USE :

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JAN 16 2004
OFFICE OF PETITIONS

Dear Weizhen 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).

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Elma Fernandes
77 Florence Road, #2b
Branford, CT 06405

In re Application of Alvarez et al. Application No. 10/428,275 Filed: May 1, 2003 Attorney Docket No. 21402-585 (CURA-885) For: THERAPEUTIC POLYPEPTIDES, NUCLEIC ACIDS ENCODING SAME, AND METHODS OF USE	:	LETTER

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JAN 16 2004
OFFICE OF PETITIONS

Dear Ms. Fernandes:

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).

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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

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Luca Rastelli
52 Peperbush Lane
Guilford, CT 06437

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JAN 16 2004

OFFICE OF PETITIONS

In re Application of :
Alvarez et al. :
Application No. 10/428,275 : LETTER
Filed: May 1, 2003 :
Attorney Docket No. 21402-585 :
(CURA-885) :
For: THERAPEUTIC POLYPEPTIDES, :
NUCLEIC ACIDS ENCODING SAME, AND :
METHODS OF USE :

Dear Luca Rastelli:

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).

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BUCKLEY, MASCHOFF & TALWALKAR L.L.C.
50 LOCUST AVENUE
NEW CANAAN, CT 06840

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SEP 0 4 2008

In re Application of Mark E. Albrecht Application No. 10/428,286 Filed: May 2, 2003 Attorney Docket No. P16499	: : : : :	DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 15, 2008, 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 13, 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 September 14, 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 and fee of $510.00; (2) the petition fee of $1,540.00; and (3) a proper statement of unintentional delay.

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 Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 3621 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

MAY 10 2006

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

In re Application of Javier Alarcon et al Serial No. 10/428,295 Filed: May 02, 2003 For: MULTICOATED OR MULTILAYER ENTRAPMENT MATRIX FOR PROTEIN BIOSENSOR	: : : : : : : :	NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(b)

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

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

PTO records reveal that the issue fee has not been paid. If the issue fee has been submitted, the applicant may request a refund or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a deposit account.

The application is being forwarded to the examiner for action.

George C. Elliott

George C. Elliott, Director
Technology Center 1600

DAVID W. HIGHET
BECTON, DICKINSON AND COMPANY
1 BECTON DRIVE, MC110
FRANKLIN LAKES NJ 07417

cc: Allowed Files
Drafting Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Jack J'maev
11800 Central Ave:, No. 10
Chino, CA 91710

MAILED

DEC 06 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

In re application of
Jiri Poliacek et al
Application No. 10/428,319
Filed: April 29, 2003
For: METHOD AND APPARATUS FOR FLOATING INSTALLATION OF TILES

DECISION ON PETITION TO MAKE SPECIAL (PROSPECTIVE MANUFACTURE)

This is a decision on the petition under 37 C.F.R §1.102(d) filed August 12, 2003 to make the above-identified application special. The petition requests that the above-identified application be made special under the procedure set forth in MPEP 708.02, item I: Prospective Manufacture.

The petition is **GRANTED**.

MPEP 708.02 states that a Petition to Make Special based on Prospective Manufacture must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) the possession by the prospective manufacturer of sufficiently available capital (stating approximately the amount) and facilities (stating briefly the nature thereof) or that sufficiently available capital and facilites will be made available upon grant of a patent, with the proviso that if the prospective manufacturer is an individual a corroborating statement from a responsible party is required; (B) that the prospective manufacturer will not begin or increase production unless certain that the patent will be granted; (C) that the prospective manufacturer obligates themselves to manufacture the invention in the U.S. in quantity immediately upon the allowance of claims or issuance of a patent which will protect the investment of capital and facilities; and (D) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed August 12, 2003 includes all of the requirements above and, therefore, the petition is **GRANTED**.

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

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

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

kjd: 12/2/04

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OFFICE OF PETITIONS

FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

In re Patent No. 7,527,793
Issued: May 5, 2009
Application No. 10/428,335
Filed: May 2, 2003
Dkt. No.: 047940-0128

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed March 20, 2009 and the "RENEWED REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed June 22, 2009. This matter is being properly treated as an application for patent term adjustment under 37 CFR 1.705(d). Patentees request that the patent term adjustment determination for the above-identified patent be changed from 594 days to 931 days. Patentees also request deferral of a decision the merits of the application for patent term adjustment.

As there is no specific regulatory authority to defer treatment on the merits of an application for patent term adjustment, patentees request for deferral of the instant decision is hereby **DISMISSED**.

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

The above-identified application matured into U.S. Pat. No. 7,527,793 on May 5, 2009. The patent issued with a patent term adjustment of 594 days. The requests for reconsideration of patent term adjustment was timely filed. See, 37 C.F.R. § 1.705.

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

Patentees assert entitlement to a patent term adjustment of 931 days (633 + 337 - 39 (applicant delay)).

The Office agrees that an RCE was filed 3 years and 337 days after the filing date of this application. The Office agrees that certain actions were not taken within the specified time frames, and thus, the entry of a period of adjustment of 633 days for Office delay is correct. At issue is whether Patentees should accrue 337 days of patent term adjustment for the Office taking

in excess of three years to issue the patent, as well as 633 days for Office failure to take certain actions within a specified time frame (or examination delay).

The Office contends that the entire 337-day period overlaps with the period of 633 days of examination delay. Patentees' calculation of the period of overlap is inconsistent with the Office's interpretation of this provision. 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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

Likewise, 37 CFR 1.703(f) provides that:

> To the extent that periods of delay attributable to the grounds specified in §1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed.

As explained in *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 56366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A),* 69 Fed. Reg. 34283 (June 21, 2004).

As such, the period for over 3 year pendency does not overlap only to the extent that the actual dates in the period beginning three years after the date on which the application was filed overlap with the actual dates in the periods for failure of the Office to take action within specified time frames.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the entire period during which the application was pending before the Office, May 2, 2003 to April 4, 2007 (the date on which the RCE was filed). The Office accorded 633 days of patent term adjustment prior to the filing of the RCE for the Office failing to respond within specified time frames during the pendency of the application. All of the 337 days for Office delay in issuing the patent overlap with the 633 days of examination delay.

The 337 days attributed to the delay in the issuance of the patent overlaps with the adjustment of 633 days attributable to the grounds specified in 37 C.F.R. § 1.702(a)(1). Accordingly, at issuance, the Office properly entered no additional days of patent term adjustment for the Office taking in excess of three years to issue the patent.

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

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

In re Patent No. 7,527,793
Issued: May 5, 2009
Application No. 10/428,335
Filed: May 2, 2003
Dkt. No.: 047940-0128

: 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 October 2, 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 931 days. The petition is deemed timely, having been filed within two months of the mail date of the decision on petition mailed September 21, 2009. See, 37 CFR 1.181(f).

The petition to correct the patent term adjustment indicated on the above-identified patent 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 May 3, 2006 and ends on April 3, 2007, the day before the RCE was filed, and not May 4, 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 336 days not 337 days. As such, the correct patent term adjustment is 930 days, not 931 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. See 37 CFR 1.323(a)(4).

Patentees also request that a decision on this request for reconsideration of patent term adjustment be deferred or delayed. There is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance. Accordingly, the request to hold in abeyance a decision on the merits of the instant application for patent term adjustment is **DISMISSED**.

The Office acknowledges receipt of 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 930 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 : 7,527,793 B2

DATED : **May 5, 2009** **DRAFT**

INVENTOR(S) : Bae, 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 594 days

Delete the phrase "by 594 days" and insert – by 930 days--

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NEEDLE & ROSENBERG, P.C.
SUITE 1000
999 PEACHTREE STREET
ATLANTA GA 30309-3915

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OFFICE OF PETITIONS

In re Application of	:	
Kenward et al.	:	
Application No. 10/428,339	:	ON PETITION
Filed: April 30, 2003	:	
Attorney Docket No. 07121.0005US2	:	

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3282.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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ATLANTA GA 30309-3915

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DEC 1 6 2008

OFFICE OF PETITIONS

In re Application of	:	
Kimberly D. Kenward et al	:	
Application No. 10/428,339	:	DECISION ON PETITION
Filed: April 30, 2003	:	
Attorney Docket No. 07121.0005U2	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 20, 2008, to revive the above-identified application.

The petition is **GRANTED**.

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

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final rejection mailed March 19, 2008, is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 1638 for appropriate action by the Examiner in the normal course of business on the reply received October 20, 2008.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JJGJR.: 03-06

Paper No: 14

MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO CA 92130-2040

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MAR 0 9 2006

OFFICE OF PETITIONS

In re Application of :
Stetter, et al. :
Application No. 10/428,340 :
Filing Date: 1 May, 2003 :
Attorney Docket No.: 564462004500 :

DECISION

This is a decision on the petition filed on 26 January, 2006, requesting withdrawal of the holding of abandonment under 37 C.F.R. §1.181.

The petition as considered under 37 C.F.R. §1.181 is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Notice to Comply in connection with the requirements of 37 C.F.R. §1.821(e) mailed on 1 November, 2004, with reply due absent an extension of time on or before 3 January, 2005;

- the application went abandoned after midnight 1 January, 2005;

- the Office mailed the Notice of Abandonment on 4 January, 2006;

- on 26 January, 2006, Petitioner filed a the instant petition, with, *inter alia*, copies of the reply averred to have been submitted (Computer Readable Sequence Listing (1 CD + duplicate)) via US Postal Service (USPS) Express Mail (Label No. EV391856663US) on

31 January, 2005–notably, though the hand-written "Date In" and the USPS date stamp clearly indicate a date of 1/31/05 and JAN 31 2005, respectively, the Office failed to give Petitioner the submission date under 37 C.F.R. §1.10–with a request and fee for extension of time,[1] along with a date-stamped ("OIPE FEB 1 2005") receipt card (see: MPEP §503[2]) evidencing Office receipt thereof.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3]

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[1] Notably, the extension of time was charged to Petitioner's deposit account in February 2005.

[2] MPEP §503 provides in pertinent part:

§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

[3] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6] And the Petitioner must be diligent in attending to the matter.[7] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.

It appears that Petitioner has satisfied the showing requirements described above.

CONCLUSION

The petition as considered under 37 C.F.R. §1.181 hereby is **granted**, the 4 January, 2006, Notice of Abandonment hereby is **vacated**, and fees are waived and were not charged.

---

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

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

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

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

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

The instant file is released to 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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INTELLECTUAL PROPERTY DEPARTMENT
555 EAST WELLS STREET, SUITE 1900
MILWAUKEE WI 53202

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In re Application of	:	
Lin-Min TAU et al.	:	
Application No. 10/428,353	:	DECISION ON PETITION
Filed: June 18, 2001	:	
Attorney Docket No. DOW-34728	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 21, 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 January 17, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is April 18, 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 1,540.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the final Office action of January 17, 2008 is accepted as having been unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,050.00 extension of time fee submitted with the petition on August 21, 2008 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 undersigned at (571) 272-4231.

This application is being referred to Technology Center AU 1796 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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Indianapolis IN 46204

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OFFICE OF PETITIONS

In re Application
Badylak
Application No. 10/428,355
Filed: May 2, 2003
Dkt. No.: 3220-72832

: PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed August 1, 2009. Applicants submit that the correct patent term adjustment to be indicated on the patent is 394 days, not 66 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.

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(d) 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 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.

Applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the

request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The 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

[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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INDIANAPOLIS, IN 46204

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OCT 23 2009

OFFICE OF PETITIONS

In re Application of :
Stephen F. BADYLAK :
Application No. 10/428,355 : DECISION GRANTING PETITION
Filed: May 2, 2003 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **3220-72832** :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 22, 2009, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 1, 2009 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 1651 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

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

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BARNES & THORNBURG LLP
11 SOUTH MERIDIAN
INDIANAPOLIS IN 46204

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JUN 16 2010

OFFICE OF PETITIONS

In re Application :
Badylak :
Application No. 10/428,355 : PATENT TERM ADJUSTMENT
Filed: May 2, 2003 :
Dkt. No.: 3220-72832 :

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed May 28, 2010. This matter is being properly treated pursuant to 37 CFR 1.705(b) as an application for patent term adjustment.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 393 days, not 66 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.

Insofar 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 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.

Applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time

of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The receipt is acknowledged of the required patent term adjustment application fee under 37 CFR 1.705(b) of $200.00. See, 37 CFR 1.18(e).

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

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

/ALESIA M. BROWN/

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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& ZAFMAN LLP
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026

MAIL

SEP 2 8 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:
Galvin MILLER et al.
Application No. 10/428,356
Filed: May 2, 2003
For: OBJECT SELECTION USING HIT TEST TRACKS

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition, filed on September 15, 2005 under 37 C.F.R. §102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **DISMISSED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

> A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:
>
> (A) Submits a petition to make special accompanied by the fee set forth in 37 CFR § 1.17(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.

> In those instances where the request for this special status does not meet all the prerequisites set forth above, applicant will be notified and the defects in the request will be stated. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Group Special Program Examiner.

Applicant's submission filed September 15, 2005 fails to adequately meet requirement (c) and (e) as set forth above. Responsive to requirement (c), applicant must submit a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application. Responsive to requirement (e), applicant must provide a "detailed discussion of the references, which discussion points out, with the particularly requirement by 37 CFR § 1.111(b) and (c), how the claimed subject matter is patentable over the references." Petitioner should ensure that the above discussion is directed to how the language of each of the independent claims are specifically distinguishable and patentable from the references provided pursuant to requirement (e) supra.

Applicant's petition provided no statement that a pre-examination search was made and no discussions of the references and how the claimed subject matter is patentable over the references.

Accordingly, the petition is **DISMISSED**. Petitioner is given one opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the mail date of this decision.

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.

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

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Kevin G. Shao
BLAKELY, SOKOLOFF, TAYLOR
& ZAFMAN LLP
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026

MAILED

FEB 15 2006

TECHNOLOGY CENTER 2100

In re Application of:
Galvin MILLER et al.
Application No. 10/428,356
Filed: May 2, 2003
For: OBJECT SELECTION USING HIT TEST TRACKS

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the renewed petition, filed on December 19, 2005 under 37 C.F.R. §102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **DENIED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

> A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:
>
> (A) Submits a petition to make special accompanied by the fee set forth in 37 CFR § 1.17(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.

> 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 Special Program Examiner.

Applicant's submission filed December 19, 2005 fails to adequately meet requirement (e) as set forth above. Responsive to requirement (e), applicant must provide a "**detailed discussion of the references**, which discussion points out, with the particularly requirement by 37 CFR § 1.111(b) and (c), how the claimed subject matter is patentable over the references." Petitioner should ensure that the above discussion is directed to how the language of each of the **independent claims** are specifically distinguishable and patentable from the references provided pursuant to requirement (e) supra.

Applicant's discussion merely referred to a title of the prior art and/or the prior art disclosed a data processing system. Thus, provided no discussions of the references and provided no detail how the claimed subject matter is patentable over the cited references.

Accordingly, the petition is **DENIED**.

The application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

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

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OFFICE OF PETITIONS

In re Application of	:	
Murphy et al.	:	DECISION ON APPLICATION
Application No. 10/428,360	:	FOR
Filed: May 1, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. MXI-354CP2N3	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION UNDER 37 CFR §1.705(b)," filed December 26, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred forty-three (243) days to at least three hundred sixty-one (361) days. In part, Applicants make this assertion in consideration of the Office taking in excess of 3-years of the actual filing date of the application to issue the patent.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for

seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

As to the application for patent term adjustment at the time of mailing of the notice of allowance, the application for patent term adjustment is **GRANTED**.

On September 26, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 243 days. On December 26, 2006, applicants timely submitted the instant application for patent term adjustment[1]. Applicants contend that the period of adjustment for Office delay should be 363 days rather than 245 days. Specifically, applicants argue that because the first Office Action mailed March 3, 2005 was vacated in favor of the Office Action mailed on June 29, 2005, the June 29, 2005 date should be used in calculating the period of adjustment pursuant to 37 CFR §1.702(b).

A review of the record confirms that on June 29, 2005, a restriction requirement vacating the March 3, 2005 action was mailed. In this instance, the June 29, 2005 date will be used in calculating the period of adjustment under § 1.702(a)(1). Thus, the period of adjustment is 363 days, counting the number of days beginning on July 2, 2004 and ending on June 29, 2005.

The period of reduction of record of 2 days is not in dispute.

In view thereof, the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred sixty-one (361) days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any additional adjustment accrued both for Office delay in issuing the patent

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[1] PALM records indicate that the Issue Fee payment was also received on December 26, 2006.

more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

PALM INTRANET

Day : Monday
Date: 3/5/2007
Time: 06:53:35

PTA Calculations for Application: 10/428360			
Application Filing Date:	05/01/2003	PTO Delay (PTO):	245
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	2
Post-Issue Petitions:	0	Total PTA (days):	361
PTO Delay Adjustment:	118		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
72	03/05/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		245	
71	03/05/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	363		
63	09/26/2006	MAIL NOTICE OF ALLOWANCE			
62	09/26/2006	MAIL EXAMINER'S AMENDMENT			
61	09/21/2006	ISSUE REVISION COMPLETED			
60	09/21/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
59	09/18/2006	EXAMINER'S AMENDMENT COMMUNICATION			
58	09/18/2006	NOTICE OF ALLOWABILITY			
57	08/31/2006	CORRESPONDENCE ADDRESS CHANGE			
56	08/28/2006	CORRESPONDENCE ADDRESS CHANGE			
55	07/27/2006	DATE FORWARDED TO EXAMINER			
54	07/24/2006	AMENDMENT AFTER FINAL REJECTION			
53	07/10/2006	CORRESPONDENCE ADDRESS CHANGE			
52	04/25/2006	MAIL FINAL REJECTION (PTOL - 326)			
51	04/17/2006	FINAL REJECTION			
50	12/09/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
49	02/02/2006	DATE FORWARDED TO EXAMINER			
48	01/23/2006	RESPONSE AFTER NON-FINAL ACTION		2	45
47	12/09/2005	REFERENCE CAPTURE ON IDS			
46	12/09/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	10/21/2005	MAIL NON-FINAL REJECTION			
44	10/17/2005	NON-FINAL REJECTION			
43	09/18/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
		INFORMATION DISCLOSURE STATEMENT			

42	08/22/2003	CONSIDERED			
41	08/01/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
40	08/02/2005	DATE FORWARDED TO EXAMINER			
39	07/20/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
38	06/29/2005	MAIL RESTRICTION REQUIREMENT			
37	06/27/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
36	04/23/2005	DATE FORWARDED TO EXAMINER			
35	04/14/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
34	04/14/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
33	03/03/2005	MAIL RESTRICTION REQUIREMENT	245		-1
32	03/02/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
31	07/29/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
30	07/29/2004	CASE DOCKETED TO EXAMINER IN GAU			
29	10/07/2003	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
28	09/18/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	08/22/2003	REFERENCE CAPTURE ON IDS			
26	08/22/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
25	08/21/2003	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
24	08/01/2003	REFERENCE CAPTURE ON IDS			
23	08/01/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	05/01/2003	PRELIMINARY AMENDMENT			
21	10/23/2003	APPLICATION RETURN FROM OIPE			
20	10/23/2003	APPLICATION IS NOW COMPLETE			
19	10/23/2003	APPLICATION RETURN TO OIPE			
18	10/23/2003	APPLICATION DISPATCHED FROM OIPE			
17	10/23/2003	APPLICATION IS NOW COMPLETE			
16	05/01/2003	A DOCUMENT THAT CONTAINS, AT LEAST IN PART, A WRITTEN DESCRIPTION OF AN INVENTION, AND OF THE MANNE			
15	10/07/2003	ADDITIONAL APPLICATION FILING FEES			
14	10/07/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			

13	10/07/2003	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
12	10/21/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
11	09/04/2003	CORRESPONDENCE ADDRESS CHANGE			
10	09/05/2003	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
9	08/07/2003	CORRECTED PAPER			
7	05/01/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
5	05/29/2003	CLEARED BY L&R (LARS)			
4	05/26/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	05/20/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/01/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	05/01/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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FEB 29 2008

In re Patent No. 7,201,900	:	
Issued: April, 10, 2007	:	DECISION ON REQUEST
Application No. 10/428,360	:	FOR RECONSIDERATION OF
Filed: May 1, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. MXI-354CP2N3	:	AND
	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed on July 26, 2007. Pursuant to patentee's duty of good faith and candor to the Office, patentee states that it is believed that the patent term adjustment should be 361 days rather than 460 days, as stated on the front page of the issued patent.

The request for review of the determination of patent term adjustment (PTA) is **granted**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **three hundred sixty one (361)** days.

On July 26, 2007, patentee submitted the instant request. On April 10, 2007, the above-identified application matured into U.S. Patent No. 7,201,900, with a revised patent term adjustment of 460 days.

Patentee states that it is believed that the patent term adjustment at issuance is 99 days greater than that which patentee is entitled to. Specifically, patentee states that the USPTO incorrectly added 99 days of patent term adjustment for failure to issue a patent within three years of the actual filing date of the application under 35 U.S.C. § 154(b). Patentee states that it is believed that the 99 days of patent term adjustment is in error because it overlaps with the 363 days of patent term adjustment determination stated in the decision on patent term adjustment mailed on March 5, 2007.

Upon review, patentee's assertion is correct, as it is noted that the instant patent issued 3 years and 344 days after its filing date. However, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap, with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b) (1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f). In this instance, the period of delay of 344 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 363 days attributable to grounds specified in § 1.702(a)(1). Thus, no additional period of adjustment beyond the 363 days should have been entered. The period of adjustment of 99 days is being removed.

In view thereof, the patent should have issued with a revised Patent Term Adjustment of three hundred sixty one (361) days (363 days of Office delay reduced by two (2) days of patentee delay).

As this letter was submitted as an advisement to the Office of an error in Patentee's favor, the Office will not assess the $200.00 application fee under 37 CFR 1.705(b). The Office thanks patentee for its good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three hundred sixty one (361)** days.

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,201,900 B2

DATED : **April 10, 2007**

INVENTOR(S) : Murphy 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 460 days

Delete the phrase "by 460 days" and insert – by 361 days--

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CHICAGO IL 60610

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JAN 08 2009

OFFICE OF PETITIONS

In re Application of	:	
David H. Griesinger	:	LETTER REGARDING
Application No. 10/428,366	:	PATENT TERM ADJUSTMENT
Filed: May 2, 2003	:	
Attorney Docket No.	:	
11336-517 (P02056 US U2)	:	

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed on June 17, 2008. Applicants request that the initial determination of patent term adjustment under 35 USC 154(b) of 839 days be reviewed for accuracy.

The request for review of patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) at the time of the mailing of the Notice of Allowance is 834 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 27, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 USC 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is eight hundred thirty-nine (839) days. The instant request for review of patent term adjustment was timely filed.[1]

Applicants state that the PTA calculation appears to be longer than appropriate. Applicants state no specific basis for the request.

A review of the record reveals that Applicants should have been assessed an additional delay of five (5) days. On July 26, 2007, a final office action was mailed. On October 31, 2007,

[1] PALM Records indicate that the issue fee was paid on July 14, 2008.

three (3) months and five (5) days after the mailing of the final office action, applicants filed a response.

37 CFR 1.704(b) states, in pertinent part that:

> An applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

Therefore, Applicants should have been assessed a reduction in patent term adjustment for the period of delay from October 27, 2008, (three (3) months from the mailing date of the final rejection mailed on July 26, 2007), to October 31, 2008 (the date the reply was filed), or five (5) days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is eight hundred thirty-four (834) days (839 days of Office delay, reduced by 5 days of Applicant delay).

To the extent that applicants are aware of any specific delay, applicants should so advise the Office.

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

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term

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

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Encl: Revised PALM Calculation

Day : Wednesday

PALM INTRANET

Date: 1/7/2009
Time: 17:19:46

PTA Calculations for Application: 10/428366			
Application Filing Date:	05/02/2003	PTO Delay (PTO):	839
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	834
PTO Delay Adjustment:	-5		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
71	01/07/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		5	
60	03/27/2008	MAIL NOTICE OF ALLOWANCE			
59	03/25/2008	ISSUE REVISION COMPLETED			
58	03/25/2008	DOCUMENT VERIFICATION			
57	03/25/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
56	03/21/2008	NOTICE OF ALLOWABILITY			
52	02/22/2008	NEW OR ADDITIONAL DRAWING FILED			
51	03/15/2008	DATE FORWARDED TO EXAMINER			
50	02/22/2008	RESPONSE AFTER EX PARTE QUAYLE ACTION			
49	02/07/2008	MAIL EX PARTE QUAYLE ACTION (PTOL - 326)			
48	02/04/2008	EX PARTE QUAYLE ACTION			
47	10/31/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
46	12/10/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
45	11/28/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
44	10/31/2007	REFERENCE CAPTURE ON IDS			
43	10/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
42	11/13/2007	DATE FORWARDED TO EXAMINER			
41	10/31/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
40	11/13/2007	DATE FORWARDED TO EXAMINER			
39	10/31/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
		DISPOSAL FOR A RCE/CPA/129 (EXPRESS			

38	11/13/2007	ABANDONMENT IF CPA)			
37	10/31/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
36	10/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	10/31/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
34	07/26/2007	MAIL FINAL REJECTION (PTOL - 326)			
33	07/23/2007	FINAL REJECTION			
32	01/16/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	05/10/2007	DATE FORWARDED TO EXAMINER			
30	04/03/2007	RESPONSE AFTER NON-FINAL ACTION			
29.7	01/16/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	01/16/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	01/03/2007	MAIL NON-FINAL REJECTION			
27	12/26/2006	NON-FINAL REJECTION			
26	01/09/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
25	02/18/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
24	12/11/2006	DATE FORWARDED TO EXAMINER			
23	11/20/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
22	10/19/2006	MAIL RESTRICTION REQUIREMENT	839		-1
21	10/16/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
20	04/10/2006	CASE DOCKETED TO EXAMINER IN GAU			
19	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
18	01/09/2006	REFERENCE CAPTURE ON IDS			
17.7	01/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	01/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	06/30/2005	CASE DOCKETED TO EXAMINER IN GAU			
15	05/18/2004	PRELIMINARY AMENDMENT			
14	02/18/2005	REFERENCE CAPTURE ON IDS			
13.7	02/18/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	02/18/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

12	02/11/2005	CASE DOCKETED TO EXAMINER IN GAU			
11	05/18/2004	WORKFLOW INCOMING AMENDMENT IFW			
10	03/29/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	03/29/2004	CASE DOCKETED TO EXAMINER IN GAU			
8	10/29/2003	APPLICATION DISPATCHED FROM OIPE			
7	10/30/2003	APPLICATION IS NOW COMPLETE			
6	09/12/2003	ADDITIONAL APPLICATION FILING FEES			
5	09/12/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	06/26/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	05/19/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/15/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/02/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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OFFICE OF PETITIONS

Kevin J. Moriarty
Patent Department
DEERE & COMPANY
One John Deere Place
Moline IL 61265-8098

In re Application of
Dirk Weichholdt
Application No. 10/428,375
Filed: May 2, 2003
Attorney Docket No. 09136-US
Title: COMBINE WITH STRAW CHOPPER

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

This is a decision on the petition filed July 13, 2005, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R §1.113 in a timely manner to the final Office action mailed August 25, 2004, which set a shortened statutory period for reply of three (3) months. On November 24, 2004, an amendment was received, and an advisory action was mailed on December 17, 2004. No further responses were received, and no extensions of time were requested. Accordingly, the above-identified application became abandoned on November 26, 2004. A Notice of Abandonment was mailed on May 13, 2005.

With the present petition, petitioner has filed the petition fee, a Request for Continued Examination (RCE) under 37 C.F.R. §1.114 as well as the associated fee and the proper statement of unintentional delay. The RCE has been accepted as the required reply under 37 C.F.R. §1.137(b)(1). The amendment submitted on November 24, 2004 shall serve as the required submission.

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.

As such, the petition is **GRANTED**.

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

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

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MYERS BIGEL
SIBLEY & SAJOVEC
P.O. BOX 37428
RALEIGH, NC 27627

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OFFICE OF PETITIONS

In re Application of	:	
Gustafson, et al.	:	
Application No. 10/428,406	:	DECISION ON PETITION
Filed: 5 May, 2003	:	
Attorney Docket No.: 5690-134	:	

This is a decision on the petition (styled as a "Petition to Accord Proper Filing Date" on an Express Mail Mailing Label Under 37 C.F.R. §1.10(c)), filed on 28 October, 2004, and seeking for the above-identified application a filing date of 2 May, 2003, instead of the presently accorded filing date of 5 May, 2003.

The petition is **DISMISSED**.

NOTES:

(1) 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 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.10(c)."

(2) There will be no further reconsideration thereafter.

BACKGROUND AND ANALYSIS

The record reflects that:

- the instant application was received and given a filing date of 5 May, 2003;

- the Office mailed a Notice of Missing Parts on 23 June, 2003, and set forth therein a "Filing/Receipt Date" of "05/05/23";

- Petitioner filed a response to the Notice on 23 September, 2003, but failed to address the filing date matter;

- the Office mailed an Updated Filing Receipt–again reflecting a filing date of "050/05/2003"–on 26 July, 2004;

- as indicated above, Petitioner filed the instant petition on 28 October, 2004.

An applicant may file and the Office may consider a petition under 37 C.F.R. §1.10(c) "provided * * * [t]he petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date[.]" (Emphasis supplied.)

Petitioner clearly was on notice of the intent of the Office to accord a filing date of 5 May, 2003, more than sixteen (16) months (counted from the Notice of Missing Parts) before the instant petition was filed–more than thirteen months if counted only from Petitioner's response to the Notice.

Nonetheless, Petitioner alleges–apparently without documentary and/or other support–that the instant "petition [was] filed promptly after Applicant became aware of the improperly accorded filing date."

Petitioner is asked: In light of the clear indication on 23 June, 2003, in the Notice of Missing Parts that the Office would accord a filing date other than that sought by Petitioner:

- What if any documentation supports Petitioner's allegation that the instant petition was promptly filed; and

- What if any statement of facts by Petitioner may support Petitioner's allegation that the instant petition was promptly filed?

As of this writing, Petitioner has failed to satisfy the showing requirement of the regulation and the petition hereby is **dismissed** and the petition fee is charged as authorized to Deposit Account 50-0220.

The renewed petition, if any, must be accompanied by the corroborating evidence required by 37 C.F.R. §1.10(c).

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

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

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

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

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

US 1042840704P1

Creation date: 09-17-2003
Indexing Officer: TBERHE1 - TERHASE BERHE
Team: OIPEScanning
Dossier: 10428407

Legal Date: 08-27-2003

No.	Doccode	Number of pages
1	PETDEC	2
2	IMIS	2

Total number of pages: 4

Remarks:

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

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OFFICE OF PETITIONS

In re Application of
Blake R. Urban et al
Application No. 10/428,407
Filed: May 2, 2003
Attorney Docket No. 9400-15

DECISION GRANTING
PETITION

This is a decision on the paper styled "PETITION TO ACCORD THE PROPER FILING DATE" filed July 18, 2003, which is properly treated as a petition under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of May 2, 2003, rather than the presently accorded filing date of May 5, 2003.

Applicants request the earlier filing date on the basis that the application was purportedly deposited with the U.S. Postal Service (USPS) as Express Mail on May 2, 2003, pursuant to the requirements of 37 CFR 1.10. In support, applicants provided, inter alia, a copy of the Express Mail label, receipt no. EV193631384US. The same Express Mail receipt number appears on the copy of the original Application Transmittal Letter submitted with the present petition. It is noted that while the "date-in" on the copy of the Express Mail receipt was left blank, it includes a receipt stamp dated "May 2, 2003" but the City and the State where the package was accepted is not legible.

A search of the USPS's Track and Confirm system information confirms that a package bearing Express Mail label No. EV193631384US was accepted at 5:31 pm on May 2, 2003.

In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on May 2, 2003.

The petition is granted.

No petition fee is required and none has been charged.

The application is being returned to Initial Patent Examination Division for correction of the filing date to May 2, 2003 and mailing of a corrected Filing Receipt.

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

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

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ARENT FOX PLLC
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, DC 20036

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OFFICE OF PETITIONS

In re Application of

Morris Mann :

Application No. 10/428,409

: DECISION ON PETITION

Filed: May 1, 2003

:

Attorney Docket No. 529-028

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

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the election/restriction requirement mailed December 12, 2005, which set a shortened period for reply of one (1) month 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 January 13, 2006. A Notice of Abandonment was mailed on June 27, 2006.

The election filed May 11, 2007, is noted and made of record.

The "Power of Attorney" filed May 11, 2007, is noted and made of record.

The application is being forwarded to Technology Center 1600, GAU 1617 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: "Notice of Acceptance of Power of Attorney"

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/428,409	05/01/2003	Morris Mann	529-028

CONFIRMATION NO. 8236

OC000000024304067

4372
ARENT FOX PLLC
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, DC 20036

Date Mailed: 06/11/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/11/2007.

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

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

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ANTHONY EDW. J CAMPBELL
PO BOX 160370
AUSTIN, TX 78716

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OFFICE OF PETITIONS

In re Application of
Gwendolyn M.W. Rolle
Application No. 10/428,428
Filed: May 3, 20023
Attorney Docket No. WPB397

ON PETITION

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

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue fee on or before September 10, 2004. The issue fee was submitted on September 13, 2004. A Notice of Abandonment was mailed on September 24, 2004. On November 6, 2006, the present petition was filed.

This application has been abandoned for an extended period of time. The U.S. Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." *See* Changes to Patent Practice and Procedure, 62 Fed. Reg., at 53160 and 53178; 1203 Off. Gaz. Pat. Office, at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the U.S. Patent and Trademark Office).

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

The application is being referred to the Office of Publications to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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EMIL CHANG
LAW OFFICES OF EMIL CHANG
874 JASMINE DRIVE
SUNNYDALE CA 94086

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OFFICE OF PETITIONS

In re Application of :
Kanyu Cao et al :
Application No. 10/428,444 : ON PETITION
Filed: May 1, 2003 :
Attorney Docket No. HYPERBAND-01 :

This is a decision on the petition under 37 CFR 1.137(b), filed October 5, 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 action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by

---

[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s) (1).

Petitioner submitted a total of $974 whereas the fees owed total $1009 ($700 issue, $300 publication fee and $9 for copies). A total of $35 remains outstanding. New fees effective December 8, 2004.

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

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

By hand: Customer Window located at:

Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

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

Karen Creasy

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

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EMIL CHANG
LAW OFFICES OF EMIL CHANG
874 JASMINE DRIVE
SUNNYDALE CA 94086

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OFFICE OF PETITIONS

In re Application of	:	
Kanyu Cao et al	:	
Application No. 10/428,444	:	DECISION GRANTING PETITION
Filed: May 1, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. HYPERBAND-01	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed April 13, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance mailed July 16, 2004, is accepted as having been unintentionally delayed.

A review of the Office finance records does not show the receipt of the Credit Card Payment form authorizing the charge for the required balance of $35, as stated to have been submitted with the petition on April 13, 2006.

However, in view of the "Notice Regarding Change In Entity Status And Deficient Issue Fee" (Notice), submitted on April 21, 2008, the required fees have been received. Additionally, small entity status has been removed as requested, all future fees must be paid at the large entity rate.

Further, there is no indication that the person signing the Notice of April 21, 2008, was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant request desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted.

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

This matter is being referred to the Office of Data Management to be processed into a patent.

/Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
600 GALLERIA PKWY, NW
SUITE 1500
ATLANTA, GA 30339

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ORAMETRIX, INC.
2350 CAMPBELL CREEK BOULEVARD, SUITE 400
RICHARDSON TX 75082

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In re Application of	:	
Rohit Sachdeva et al.	:	
Application No. 10/428,461	:	
Filed: May 2, 2003	:	DECISION ON PETITION
Attorney Docket No. MBHB 03-389	:	UNDER 37 C.F.R. §1.181(A)
Title: METHOD AND SYSTEM FOR	:	
INTEGRATED ORTHODONTIC	:	
TREATMENT PLANNING USING	:	
UNIFIED WORKSTATION		

This is a decision on the petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment, filed on March 10, 2006.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed July 21, 2005, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on October 22, 2005. A Notice of abandonment was mailed on March 7, 2006.

With the present petition, Petitioner has alleged that the mailing was not received. Petitioner has indicated that his company "does not maintain a log of the received mail" and is therefore "unable to provide any records or documentation in support of the claim' that the Office action was not received.

RELEVANT PORTIONS OF THE C.F.R. AND MPEP

MPEP 711.03(c) states, in part:

> PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION
>
> In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).
>
> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).
>
> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).
>
> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).
>
> Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based upon unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

ANALYSIS

The showing in the present petition is not sufficient to withdraw the holding of abandonment. Petitioner has not asserted that he has searched the file jacket. Furthermore,

it has been made clear that there are no docket records maintained, and as such, Petitioner will be unable to provide the evidentiary showing required by Delgar v. Schulyer. Unfortunately, unless this evidentiary showing is provided, a petition filed under this section of the C.F.R. cannot be granted.

Petitioner has not established non-receipt of the communication. Therefore, the petition under 37 C.F.R. §1.181 must be **DISMISSED**.

CONCLUSION

Any renewed petition under 37 C.F.R. §1.181 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 request for reconsideration should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.181," and should only address the deficiencies noted in this decision.

Petitioner may wish to consider filing a petition under 37 C.F.R. §§1.137(a) and/or (b).

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[1], hand-delivery[2], or facsimile[3].

Paul Shanoski

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

Encl. Copy of the non-final office action of July 21, 2005

---

1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
3 (571) 273-8300- please note this is a central facsimile number.

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2350 CAMPBELL CREEK BOULEVARD, SUITE 400
RICHARDSON TX 75082

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In re Application of	:	
Rohit Sachdeva et al.	:	
Application No. 10/428,461	:	
Filed: May 2, 2003	:	DECISION ON RENEWED PETITION
Attorney Docket No. MBHB 03-389	:	UNDER 37 C.F.R. §1.181(A)
Title: METHOD AND SYSTEM FOR	:	
INTEGRATED ORTHODONTIC	:	
TREATMENT PLANNING USING	:	
UNIFIED WORKSTATION		

This is a decision on the renewed petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment, filed on June 28, 2006.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed July 21, 2005, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on October 22, 2005. A Notice of abandonment was mailed on March 7, 2006.

The original petition was received on March 10, 2006, and was dismissed via the mailing of a decision on May 5, 2006, as Petitioner asserted that his company does not maintain a log of the received mail and was therefore unable to provide any records or documentation in support of the claim that the Office action was not received.

RELEVANT PORTIONS OF THE C.F.R. AND MPEP

MPEP 711.03(c) states, in part:

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

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

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

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

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

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

ANALYSIS

With this renewed petition, Petitioner has explained that although his company does not maintain a docket record, he personally maintains a docket record.

With this renewed petition, Petitioner has submitted additional evidence and has met each of the requirements of Delgar v. Schuyler, enumerated in the portion of the MPEP reproduced above.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.181(a) is GRANTED. The holding of abandonment is WITHDRAWN.

The Technology Center will be notified of this decision. The Technology Center's support staff will mail a new non-final Office action.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

The Power of Attorney filed on June 14, 2004, has been entered and made of record. The Office regrets failing to previously update the Office records.

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
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DEC 01 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8403

In re application of	:	**DECISION ON PETITION**
Gil Spitzer	:	**TO MAKE SPECIAL**
Application No. 10/428,462	:	**(INFRINGEMENT)**
Filed: May 2, 2003	:	
For: SYSTEM AND METHOD FOR PREPAID ROADSIDE ASSISTANCE		

This is a decision on the petition under 37 C.F.R §1.102(d) filed November 12, 2003 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 November 12, 2003 lacks requirement 2(C) above. In this regard, the present application file has been reviewed, and no copy can be found of the Information Disclosure Statement referred to in paragraph 2 of the petition. Furthermore, there is no statement from applicant or his attorney that a careful and thorough search of the prior art has been conducted, or that the person signing the petition has a good knowledge of the prior art. 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.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR: 11/23/04

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

#3

MAILED
FROM DIRECTORS OFFICE

JAN 24 2005

TECHNOLOGY CENTER 3600

Hedman & Costigan P.C.
1185 Avenue of The Americas
New York, NY 10036

In re Application of
Ugo Gussalli Beretta
Application No. 10/428,467
Filed: May 2, 2003
For: DEVICE FOR EXTRACTING AND EJECTING A CARTRIDGE CASE IN A FIREARM

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicant's petition to revive, which is taken as a petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on October 14, 2004.

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

☐ Postcard receipt being dated_____.

☐ USPTO return facsimile receipt dated _____ which identifies the application by serial number and the type of Response that was filed on that date.

☒ Certificate of Mailing signed on June 21, 2004 and supported by a statement under 37 C.F.R. 1.8(b)(3), by the attorney requesting withdrawal.

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

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

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

This application is being forwarded to the Supervisory Legal Instruments Examiner for entry of the response filed with the petition, then to the examiner for prompt action on the response.

SNM/rwg: 1/15/05

STEVEN N. MEYERS
SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 3600

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

HEDMAN & COSTIGAN P.C.
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

COPY MAILED
SEP 22 2006
OFFICE OF PETITIONS

In re Application of :
Ugo Gussalli Beretta :
Application No. 10/428,467 :
Patent No. 6,966,137 :
Filed: May 2, 2003 :
Issue Date: November 22, 2005 :
Attorney Docket No. 163-481 :
Title: DEVICE FOR EXTRACTING :
AND EJECTING A CARTRIDGE CASE :
IN A FIREARM

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

This is a notice regarding your "letter," which is properly treated as a request for acceptance of a fee deficiency submission under 37 C.F.R §1.28(c).

37 C.F.R. §1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

(a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
(b) The small entity fee actually paid, and when;
(c) The deficiency owed amount (for each fee erroneously paid); and
(d) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

Petitioner has met requirement (d) above.

Petitioner has failed to identify each of the type of fees that was erroneously paid as a small entity, the small entity fee that was actually paid, when the small entity fees were

paid, and the deficiency owed amount for each fee erroneously paid.

Therefore, the petition under 37 C.F.R §1.28(c) must be **DISMISSED.**

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.28(c)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and any renewed petition may be submitted by mail[1], hand-delivery[2], or facsimile[3].

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[4]. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

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

---

1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
3 (571) 273-8300- please note this is a central facsimile number.
4 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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

WILLIAMS, MORGAN & AMERSON, P.C.
10333 RICHMOND AVE.
SUITE 1100
HOUSTON, TX 77042

Mail Date: 04/21/2010

Applicant	: Gregory N. Christie	: DECISION ON REQUEST FOR
Patent Number	: 7669134	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/428,523	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/02/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1143** 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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BRACEWELL & PATTERSON, L.L.P.
ATTN: J. WENDY DAVIS, PH.D.
P.O BOX 61389
HOUSTON TX 77208-1389

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NOV 12 2004

OFFICE OF PETITIONS

In re Application of :
Jorg M. Steiner et al :
Application No. 10/428,546 :
Filed: May 2, 2003 :
Attorney Docket No. 0376FV.044318 :

NOTICE

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/428,571	05/02/2003	1742	750	1353-DIV-01	6	11	1

CONFIRMATION NO. 8921

CORRECTED FILING RECEIPT

OC000000011860437

35811
IP DEPARTMENT OF PIPER RUDNICK LLP
3400 TWO LOGAN SQUARE
18TH AND ARCH STREETS
PHILADELPHIA, PA 19103

Date Mailed: 02/09/2004

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)

Saiji Matsuoka, Okayama, JAPAN;
Tetsuo Shimizu, Okayama, JAPAN;
Kei Sakata, Chiba, JAPAN;
Osamu Furukimi, Chiba, JAPAN;

Assignment For Published Patent Application

Kawasaki Steel Corporation, a corporation of Japan, Kobe-shi, JAPAN;

Domestic Priority data as claimed by applicant

This application is a DIV of 09/980,300 12/31/2001 PAT 6,676,774
which is a 371 of PCT/JP01/02749 03/30/2001

Foreign Applications

JAPAN 2000-106340 04/07/2000
JAPAN 2000-107870 04/10/2000
JAPAN 2000-114933 04/17/2000
JAPAN 2000-286009 09/20/2000
JAPAN 2000-299640 09/29/2000

If Required, F reign Filing License Granted: 06/26/2003

Projected Publication Date: Incomplete Reply

Non-Publication Request: No

Early Publication Request: No

Title

Methods of manufacturing hot-rolled and hot-dip galvanized steel sheet excellent in strain age hardening property

Preliminary Class

148

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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 6/12/06

Paper No.: —

TO SPE OF : ART UNIT 2855

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/428578 Patent No.: 6862924 B2

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

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

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

Virginia Tolbert

Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

SPE _____ Art Unit _____

UNITED STATES PATENT AND TRADEMARK OFFICE

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APR 04 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

FISH & NEAVE IP GROUP
ROPES & GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

In re Application of :

DEVINE, GEOFFREY, et al. :
Application No. 10/428,593 : DECISION ON PETITION
Filed: May 2, 2003 : TO MAKE SPECIAL
For: **COMMUNICATIONS SWITCHING ARCHITECTURE** :

This is a decision on the petition filed February 14, 2005, 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.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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APR 16 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

In re Application of
Gregory C. Smith, et al.
Application No. 10/428600
Filed: May 01, 2003
For:
MULTIMEDIA USER INTERFACE

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as agent of record filed on August 30, 2004.

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

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

Attorneys/agents listed in the Request to withdraw are withdrawn.

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

The file is being returned to TC 2600 Technical Support Staff to update the correspondence address and then will be forwarded to the files repository.

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

Cc:
David T. Shoneman
Thomson Licensing Inc.
2 Independent Way, Suite 200
Princeton, NJ 08543-5312

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 T. SHONEMAN
THOMPSON LICENSING INC.
2 INDEPENDENT WAY, SUITE 200
PRINCETON, NJ 08543

COPY MAILED

MAY 17 2007

OFFICE OF PETITIONS

In re Application of :
Gregory C. Smith et al. :
Application No. 10/428,600 : ON PETITION
Filed: May 1, 2003 :
Attorney Docket No. **G1** :

This is a decision on the petition filed April 16, 2007 under 37 Cfr 1.137(b), [1] to revive the above-identified application.

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

The receipt of formal drawings on April 16, 2007, April 11, 2007 certificate of mail date, after the 30 days set for submission in the Notice of Drawing Inconsistency, mailed February 15, 2007, caused the instant application to become abandoned on March 16, 2007. Accordingly, a Notice of Abandonment was mailed May 4, 2007, after the filing of the instant petition.

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
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.

(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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ALEXANDRIA, VA 22313-1450
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Paper 4

ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD CT 06905-5619

COPY MAILED
NOV 05 2003
OFFICE OF PETITIONS

In re Application of
Klaus M. Irion et al.
Application No. 10/428,606
Filed: May 2, 2003
Attorney Docket No 02581-P0528A

DECISION GRANTING PETITION

This is a decision on the petition filed August 11, 2003 under 37 CFR 1.53, in response to the "Notice to File Missing Parts" mailed June 30, 2003.

The instant application was filed May 2, 2003 and a filing date was accorded. However, according to the "Notice" mailed, the application papers submitted did not include Figures 4,5,6 and 8[1]

Petitioner asserts that the papers containing Figures 4,5,6, and 8 were among the papers filed on May 2, 2003, and submits a "legible" postcard receipt in evidence thereof. The postcard receipt, identifies the application and acknowledges, inter alia, the number of drawing sheets to be 6 and bears a United States Patent and Trademark Office date-stamp of May 2, 2003. Further, the postcard receipt lacks any notation of non-receipt of any item listed.

In view of the foregoing, the petition is **Granted.**

Given the basis for granting the petition, the petition fee in the amount of $130.00 will be credited back to deposit account no. 19-4516.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing, using the application papers received in the Office on May 2, 2003 and the two sheets of drawings (sheets 4/6 and 5/6) containing Figures 4,5,6 and 8 submitted on petition August 11, 2003.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]The "Notice to File Missing Parts" mailed June 30, 2003 also indicated that items had been omitted from the application.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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FAY SHARPE LLP
1100 SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND OH 44114

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JAN 25 2007

OFFICE OF PETITIONS

In re Application of :
Templin et al. :
Application No. 10/428,608 : ON PETITION
Filed: May 2, 2003 :
Attorney Docket No. SMBZ 2 :
00996

This is a decision on the petition, filed October 30, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) so that the Letters Patent will issue to the assignee.

The request is **DISMISSED**.

Petitioner states that the correct assignee's name is Mitel Networks Corporation and that an incorrect assignee's name was included on the Part B - Fee(s) Transmittal form at the time of payment of the issue fee. Accordingly, petitioner requests that the patent issue to Mitel Networks Corporation.

37 CFR 3.81(b), effective June 25, 2004, reads:

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

[1] *See* MPEP 1309, subsection II, Official Gazette at 1283 OG 148 (June 22, 2004) or Final Register at 69 FR 29865 (May 26, 2004).

> 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 under 37 CFR 3.81(b) was not accompanied by a request for a certificate of correction (and fee) as required by 3.81(b). *See also* MPEP 1481.01. As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted at this time.

A review of Office database assignment records reflects that an assignment to Mitel Networks Corporation was recorded on June 22, 2005 (reel/frame 016164/0677). Therefore, upon submission of the required certificate of correction and fee, it would be appropriate for the Office to issue a certificate of correction to correct the front page of the Letters Patent to reflect that Mitel Networks Corporation was the assignee of record at the time of issuance of the application into a patent. *Note also* 35 U.S.C. § 152.

In view of the above and **after issuance of this application into a patent, the Certificates of Correction Branch is instructed to issue a certificate of correction upon submission by petitioner of a request for a certificate of correction (and fee) which sets forth Mitel Networks Corporation, as the assignee**. *No certificate of correction will be issued which sets forth an assignee other than the assignee set forth in this request. A copy of this decision* ***must*** *accompany the request for a Certificate of Correction.*

No further renewed request under 37 CFR 3.81(b) is necessary for consideration by the Office of Petitions for issuance of a certificate of correction in the name of the assignee set forth in this request, since this decision operates as an instruction to the Certificates of Correction Branch to issue the requested certificate of correction.

Alternatively, if petitioner desires to have the correct assignee data appear on the front page of the Letters Patent, petitioner may wish to consider filing a petition to withdraw the subject application from issue under 37 CFR 1.313(c)(2). The petition to withdraw from issue under 37 CFR 1.313(c)(2) must be accompanied

by a request for continued examination (RCE) and submission (which may be a request under 37 CFR 3.81(b)).

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3219. Any questions concerning issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

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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Date : June 7, 2007

Patent No. :7,197,139
Inventor(s) :Robert Charles Templin et al.
Issued :March 27, 2007
Title :REPLACEABLE PERSONAL DIGITAL ASSISTANT CRADLE FOR A
:TELEPHONE
Docket No. :

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.

Any inquiry concerning this communication should be directed to Ms. A. Green at (703) 308-9380 ext. 123.

For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 or (703) 308-9380 Ext. 123

James E. Scarbrough, Esq.
Fay Sharpe LLP
1100 Supeiror Avenue,
7th Flr.
Cleveland, Ohio 44114-2579

CBN/arg

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INTER-TEL (DELAWARE), INC.
A MITEL COMPANY
7300 WEST BOSTON STREET
CHANDLER AZ 85226

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MAR 25 2008
OFFICE OF PETITIONS

In re Patent No. 7,197,139	:	
Templin et al.	:	
Issue Date: March 27, 2007	:	ON PETITION
Application No. 10/428,608	:	
Filed: May 2, 2003	:	
Attorney Docket No. SMBZ 2 00996	:	

This is in response to the REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR APPLICANT'S MISTAKE (37 C.F.R. §1.323) filed May 24, 2007. This also responds to the resubmission of this request by way of REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR APPLICANT'S MISTAKE (37 C.F.R. § 1.323 and 37 C.F.R. §3.81(b)) filed September 25, 2007 and by way of SUPPLEMENTAL/CORRECTED REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR APPLICANT'S MISTAKE TO CORRECT THE NAME OF THE ASSIGNEE (37 C.F.R. § 1.323 and 37 C.F.R. §3.81(b)) filed September 26, 2007. The undersigned regrets the delay in processing this request.

The request is **GRANTED**.

On October 30, 2006, applicants filed the initial request under 37 CFR 3.81(b)[1] to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) so that the Letters Patent will issue to assignee Mitel Networks Corporation.

By decision mailed January 25, 2007, the request was dismissed because the request was not accompanied by a request for a certificate of correction (and fee) as required by 3.81(b). See also MPEP 1481.01.

---

[1] *See* MPEP 1309, subsection II, Official Gazette at 1283 OG 148 (June 22, 2004) or Final Register at 69 FR 29865 (May 26, 2004).

It was determined that upon review of Office database assignment records an assignment to Mitel Networks Corporation was recorded on June 22, 2005 (reel/frame 016164/0677). Therefore, it was concluded that upon submission of the required certificate of correction and fee, it would be appropriate for the Office to issue a certificate of correction to correct the front page of the Letters Patent to reflect that Mitel Networks Corporation was the assignee of record at the time of issuance of the application into a patent. *Note also* 35 U.S.C. § 152.

Further, petitioner was advised that after issuance of this application into a patent, the Certificates of Correction Branch was instructed to issue a certificate of correction upon submission by petitioner of a request for a certificate of correction (and fee) which set forth Mitel Networks Corporation, as the assignee, along with a copy of the decision.

Unfortunately, upon request for a certificate of correction (and fee) and presentation of the prior decision, the Certificate of Corrections Branch denied the request. See decision mailed June 7, 2007.

In response, patentee filed the instant requests. A review of the requests filed reveals that patentee has submitted 1) a statement that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent; 2) 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 3) the processing fee set forth in 37 CFR 1.17(i). In view thereof, the request is granted.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3219. Any questions concerning issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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6500 CITY WEST PARKWAY
SUITE 100
MINNEAPOLIS MN 55344-7704

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APR 0 4 2006

OFFICE OF PETITIONS

In re Application of
Frank HAGEMEISTER, *et al.*
Application No. 10/428,622
Filed: May 2, 2003
Attorney Docket No. **00635.0362-US-01**

ON PETITION

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

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee and the publication fee in a timely manner in reply to the Notice of Allowance and Fee(s) Due, mailed on April 4, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned, by operation of law, on July 5, 2005. A Notice of Abandonment was mailed on December 15, 2005.

The instant petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee of $700 and of the Publication Fee of $300; (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the Issue fee and the Publication Fee payments are accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Anatoly Vortman at (571) 272-6051, or in his absence to the undersigned at (571) 272-7099.

The application file is being forwarded to the Office of Patent Publication.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

October 6, 2005

Douglas W. Cameron
IBM Corporation
Intellectual Property Law
P. O. Box 218
Yorktown Heights, NY 10598

In re Application of:
Cherubini et al
Serial No: 10/428,667 On Petition
Filing Date: May 2, 2003
For: **METHOD AND APPARATUS FOR RELIABLE RESYNCHRONIZATION OF SEQUENTIAL DECODERS**

In response to the petitions received on July 11, 2005, 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 June 27, 2003. Which set forth a shortened statutory period for reply of two months. Accordingly, the above-identified application became abandoned August 28, 2003. The notice of abandonment was mailed on May 11, 2005.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Part of Nonprovisional Application on July 24, 2003.

The office regrets any inconvenience this may have caused the client.

Telephone inquiries concerning this application may be directed to Doshie E. Day (703) 308-3640.

Doshie E. Day
Program Management Assistant
Office of Initial Patent Examination

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Commissioner for Patents
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Alexandria, VA 22313-1450
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DEC - 1 2004

In re Application of	:	
Frederick Gambrell	:	
Serial No. 10/428,671	:	DECISION ON PETITION
Filed: May 2, 2003	:	TO WITHDRAW AS ATTORNEY
For: BASEBALL GAME AND	:	
METHOD OF PLAY	:	

By papers filed on October 29, 2004, counsel has petitioned to withdraw as attorney of record in this application.

The petition is GRANTED.

Applicant is advised that the correspondence address for this application is:

Mr. Frederick Gambrell
N-NAS, Inc.
P.O. Box 780892
San Antonio, TX 78278

E. Rollins-Cross, Director
Technology Center 3700

Curt Harington
6300 State University Drive, Suite 250
Long Beach, CA 90815

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DAVID J. HIGGINS
1706 RED BUD RD.
CALHOUN, GA 30701

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AUG 0 8 2005

OFFICE OF PETITIONS

In re Application of :
David J. Higgins :
Application No. 10/428,672 :
Filed: May 2, 2003 :
Attorney Docket No. N/A :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed July 25, 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(a)."

This application became abandoned for failure to timely reply to the non-final Office action mailed December 17, 2004. A one (1) month extension of time having been obtained pursuant to the provisions of 37 CFR 1.136(a), the date of abandonment of this application is April 18, 2005. A Notice of Abandonment was mailed on July 7, 2005.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) The petition fee as set forth in § 1.17(l);

(3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

This petition lacks item (2).

The required $250.00 petition fee (37 CFR 1.17(l), effective December 8, 2004) has not been submitted. Petitioner has submitted $55.00, however an additional $195.00 must be submitted before the petition can be reviewed on the merits. As such, the petition must be dismissed.

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

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

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

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

Telephone inquiries should be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
United States Patent and Trademark Office

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www.uspto.gov

DAVID J. HIGGINS
1706 RED BUD RD.
CALHOUN, GA 30701

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OFFICE OF PETITIONS

In re Application of :
David J. Higgins :
Application No. 10/428,672 :
Filed: May 2, 2003 :
Attorney Docket No. N/A :

ON PETITION

09/01/2005 TL0111 00000006 10428672
01 FC:2452 250.00 OP

This is a decision on the petition under 37 CFR 1.137(a), filed July 25, 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(a)."

This application became abandoned for failure to timely reply to the non-final Office action mailed December 17, 2004. A one (1) month extension of time having been obtained pursuant to the provisions of 37 CFR 1.136(a), the date of abandonment of this application is April 18, 2005. A Notice of Abandonment was mailed on July 7, 2005.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) The petition fee as set forth in § 1.17(l);

(3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

08/08/2005 ARELLEY 00000005 10428672
01 FC:1999 -55.00 OP

(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 (2).

The required $250.00 petition fee (37 CFR 1.17(l), effective December 8, 2004) has not been submitted. Petitioner has submitted $55.00, however an additional $195.00 must be submitted before the petition can be reviewed on the merits. As such, the petition must be dismissed.

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

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

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

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

Telephone inquiries should be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
United States Patent and Trademark Office

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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Alfred D. Lobo, Esq.,
LOBO & CO., L.P.A.
933 The Leader Building
526 Superior Avenue
Cleveland, OH 44114-1401

Mail Date: 04/21/2010

Applicant	: Jiren Gu	: DECISION ON REQUEST FOR
Patent Number	: 6984688	: RECALCULATION of PATENT
Issue Date	: 01/10/2006	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/428,685	: OF WYETH
Filed	: 05/02/2003	:
		:

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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Alexandria, Virginia 22313-1450
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PVF -- ORACLE INTERNATIONAL CORPORATION
c/o PARK, VAUGHAN & FLEMING LLP
2820 FIFTH STREET
DAVIS, CA 95618-7759

Mail Date: 04/21/2010

Applicant	: Sunil Kunisetty	: DECISION ON REQUEST FOR
Patent Number	: 7664826	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/428,690	: OF WYETH
Filed	: 05/01/2003	:
		:

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

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

In re Patent No. 6797107
Issue Date: September 28,2004
Application No. 10428696
Filed: May 2,2003
Attorney Docket No. 1005.125

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

This is a decision on the electronic petition, filed November 17,2008 ,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 November 17,2008 . 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 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.

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)
6797107	2004-09-28	10428696	2003-05-02	

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	/DavidMGange/	Date (YYYY-MM-DD)	2008-11-17
Name	David M. Gange	Registration Number	55198

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

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SMITH-HILL AND BEDELL, P.C.
16100 NW CORNELL ROAD, SUITE 220
BEAVERTON OR 97006

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MAR 2 8 2007

OFFICE OF PETITIONS

In re Patent No. 7,113,486	:	
Issued: September 26, 2006	:	
Application No. 10/428,698	:	ON PETITION
Filed: May 1, 2003	:	
Attorney Docket No: TUT 2605	:	

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed November 2, 2006, and is treated 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.33d 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 and the petition is **GRANTED**. Status as a small entity has also been removed.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (571) 272-3282.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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Paper No.

ERICSSON INC.
6300 LEGACY DRIVE
M/S EVR 1-C-11
PLANO TX 75024

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SEP 28 2009
OFFICE OF PETITIONS

In re Application of Robertsson Application No. 10/428,733 Filed: May 1, 2003 Attorney Docket No.: P17517-US2 Title: BI-DIRECTIONAL PROBING AND TESTING OF SOFTWARE	DECISION ON PETITION PURSUANT TO 37 C.F.R. § 1.137(B)

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed June 23, 2009, to revive the above-identified application.

This petition pursuant to 37 C.F.R. § 1.137(b) is **DISMISSED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R § 1.113 in a timely manner to the final Office action mailed May 23, 2008, which set a shortened statutory period for reply of three months. An after-final amendment was received on September 19, 2008 along with a one-month extension of time, and an advisory action was mailed on December 17, 2008. No additional extensions of time under the provisions of 37 C.F.R § 1.136(a) were obtained (a second after-final response was received on January 23, 2009, which was subsequent to the expiration of the maximum extendable period for response). Accordingly, the above-identified application became abandoned on September 24, 2008. A notice of abandonment was mailed on July 20, 2009.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

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

With this petition, Applicant has submitted the petition fee, an amendment, and the proper statement of unintentional delay.

The second and third requirements of Rule 1.137(b) have been satisfied. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

The instant petition is not grantable because the first requirement of Rule 1.137(b) has not been satisfied. Petitioner did not submit the required reply to the Office action. The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.[2] In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. §1.137(b)(1) (*i.e.*, a Notice of Appeal (and fee required by law); an amendment that *prima facie* places the application in condition for allowance; a continuing application under 37 C.F.R. § 1.53(b); a request for continuing examination under 37 C.F.R. § 1.114, if applicable; or a 37 C.F.R. § 1.129(a) submission, if applicable). An amendment was received along with this petition. <u>This submission has been considered by the Examiner, and it has been determined that it fails to place the application in condition for allowance for the reason(s) set forth in the attached Advisory Action</u>.

1 <u>See</u> Rule 1.137(d).
2 <u>See</u> M.P.E.P. § 711.03(c).

If reconsideration of this petition is desired, Petitioner may file a reply including a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C § 704.

If reconsideration of this decision is desired, any response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C § 704.

Any future submission concerning this matter should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[3] hand-delivery,[4] or facsimile.[5] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[6]

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[7] All other inquiries concerning examination procedures should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Encl. Advisory Action

---

3 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
4 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
5 (571) 273-8300- please note this is a central facsimile number.
6 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
7 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/428,733	Applicant(s) ROBERTSSON, PER-OLA	
	Examiner JUNCHUN WU	Art Unit 2191	

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

THE REPLY FILED 23 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 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: 1-22.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

/Wei Y. Zhen/
SPE, Art Unit 2191

Continuation of 3. The independent claims 1, 8 and 15 have been amended and changed the scope of calims and will be required further consideration and/or search.

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JOHN S. BEULICK
ARMSTRONG TEASDALE LLP
ONE METROPOLITAN SQ., SUITE 2600
ST. LOUIS MO 63102

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FEB 2 4 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of	:
Ping Xue et al	:
Application No. 10/428,734	:
Filed: May 2, 2003	:
Attorney Docket No. 128636	:

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

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on August 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 2882 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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MICHAEL I. STEWART
SIM & MCBURNEY
6TH FLOOR
330 UNIVERSITY AVENUE
TORONTO ON M5G 1R7 CA CANADA

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FEB 19 2008

OFFICE OF PETITIONS

In re Application of	:	
Naveen N. Anand et al	:	
Application No. 10/428,754	:	DECISION DISMISSING PETITION
Filed: May 5, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 1038-1265 MIS:sd	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 17, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 08/483,576, filed June 7, 1995.

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 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

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

On filing, the present application claimed benefit of priority to nonprovisional Application No. 09/007,093, filed January 14, 1998. The February 8, 2007 amendment seeks to claim benefit of priority to nonprovisional Application No. 08/483,576, filed June 7, 1995. The amendment to claim benefit of priority to nonprovisional Application No. 08/483,576 is improper in this application as it lacks the proper chain of priority. In this regard, while Application No.

09/007,093 has a proper chain of benefit of priority, there is no like chain of benefit of priority to nonprovisional Application No. 08/483,576.

Where an application claims a benefit under 35 U.S.C. 120 of a chain of applications, the application must make a reference to the first (earliest) application and every intermediate application. *See* Sampson v. Ampex Corp., 463 F.2d 1042, 1044 45, 174 USPQ 417, 418 19 (2d Cir. 1972); Sticker Indus. Supply Corp. v. Blaw Knox Co., 405 F.2d 90, 93, 160 USPQ 177, 179 (7th Cir. 1968); Hovlid v. Asari, 305 F.2d 747, 751, 134 USPQ 162, 165 (9th Cir. 1962). *See also* MPEP § 201.11. In addition, every intermediate application must also make a reference to the first (earliest) application and every application after the first application and before such intermediate application. MPEP Section 201.06(d).

In view of the above, petitioner must correct the claim for benefit of priority to Application No. 08/483,576 if petitioner wishes to claim priority of that application in the present application. Any request for reconsideration of this decision on petition should be accompanied by a renewed petition under 37 CFR 1.78(a)(3).

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

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

By hand: Customer 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 Irvin Dingle at (571) 272-3210.

David Bucci
Petition Examiner
Office of Petitions

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APR 27 2009

OFFICE OF PETITIONS

In re Application of	:	
Naveen N. Anand et al	:	
Application No. 10/428,754	:	DECISION DISMISSING PETITION
Filed: May 5, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 1038-1265 MIS:sd	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed March 31, 2008, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 08/483,576, filed June 7, 1995.

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 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

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

The reference to the prior applications must identify all of the prior applications and indicate the relationship (i.e., continuation, divisional, or continuation-in-part) between each nonprovisional application in order to establish copendency throughout the entire chain of prior applications.

Moreover, it is not sufficient to just identify all of the prior applications in the chain. To be proper, the appropriate references must have actually been made in each intermediate application

in the chain of prior applications. If an applicant desires, for example, the following benefit claim: "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which claims the benefit of provisional Application No. A, filed ---," then Application No. C must have a reference to Application No. B and provisional Application No. A, and Application No. B must have a reference to provisional Application No. A.

The amendment filed February 7, 2007 in this application states that the instant application is a continuation of Application No. 09/007,093, which is a continuation of Application No. 08/483,576. However, a review of the record of Application No. 09/007,093 as a continuation application, it did not include a claim of priority to Application No. 08/483,576. Thus, the break in the chain occurs in application No. 09/007,093 with respect to carrying forward the benefit claim to Application No. 08/483,576.

In view of the above, petitioner must correct the claim for benefit of priority to Application No. 08/483,576 if petitioner wishes to claim priority of that application in the present application. Any request for reconsideration of this decision on petition should be accompanied by a renewed petition under 37 CFR 1.78(a)(3).

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

By mail: Mail Stop PETITIONS
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Post Office Box 1450
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401 Dulany Street
Alexandria, VA 22314

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

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

David Bucc
Petition Examiner
Office of Petitions

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KONRAD RAYNES & VICTOR, LLP.
ATTN: IBM37
315 SOUTH BEVERLY DRIVE,
SUITE 210
BEVERLY HILLS CA 90212

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JAN 1 4 2009

OFFICE OF PETITIONS

In re Application of	:	
Michael Leo Walker	:	DECISION ON APPLICATION
Application No. 10/428,758	:	FOR
Filed: May 1, 2003	:	PATENT TERM ADJUSTMENT
Docket No. SJO920020055US1	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b)," filed June 26, 2008. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 433 days to 543 days.

The application for patent term adjustment is **GRANTED to the extent indicated herein**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **525 days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 31, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 433 days. On June 26, 2008, applicant timely submitted the instant application for patent term adjustment[1].

[1] The Office records show applicant paid the issue fee on June 26, 2008.

Applicant disputes the reduction of 7 days for applicant delay in responding to the nonfinal Office action mailed December 16, 2005. Applicant asserts that neither a reduction under 37 CFR 1.704(b) nor 37 CFR 1.704(c)(8) is warranted. Applicant states an Amendment was filed timely on March 16, 2006, within three months of the mail date of the nonfinal Office action. Applicant asserts that a supplemental Amendment was filed on March 23, 2006, at the request of the Examiner. Applicant submitted a copy of the response, showing a certificate of maling dated March 16, 2006, and a copy of the itemized return postcard, associated with the filing of the response, with a USPTO date-stamp of March 20, 2006.

A review of the application file confirms that a reply to the nonfinal Office action was received in the USPTO on March 20, 2006. Thus, the date of receipt of the response on March 20, 2006, should be properly used for purposes of calculating compliance with 37 CFR 1.704(b).[2]

Calculation of applicants' delay is based on the date of receipt of the response in the Office. In this regard, applicant's attention is directed to 37 CFR 1.703(f), which provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. Furthermore, as stated in Section 2731 of the Manual of Patent Examining Procedure:

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[2] 37 CFR 1.704(b) states:

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

> The date indicated on a certificate of mailing is used only to determine whether the correspondence is timely (including whether any extension of the time and fee are required) so as to avoid abandonment of the application or termination or dismissal of proceedings. The actual date of receipt of the correspondence in the Office is used for all other purposes. See 37 CFR 1.8(a). Thus, while the date indicated on any certificate of mailing or transmission under 37 CFR 1.8 will continue to be taken into account in determining timeliness, the date of filing (37 CFR 1.6) will be the date used in a patent term adjustment calculation.

Applicant's response was received on March 20, 2006. Thus, the period of adjustment should be reduced by 4 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the nonfinal Office action, March 17, 2006, and ending on the date the reply was filed, March 20, 2006. See 37 CFR 1.704(b).[3] Accordingly, a reduction of 4 days pursuant to 37 CFR 1.704(b) will be entered. Further, the record supports a conclusion that the supplemental reply filed March 23, 2006, was expressly requested by the examiner within the meaning of 37 CFR 1.704(c)(8). Thus, the reduction of 7 days will be removed.

---

[3] 37 CFR 1.704(b) states:

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

Further, a review of the application history reveals the patent term should have been adjusted by 13 days, not 10 days. for the Office's failure to respond to the reply of March 20, 2006, not later than four months after the date on which the reply was filed. See 37 CFR 1.703(a)(2). Applicants filed a reply of March 20, 2006. However, the Office did not respond with the mailing of the final Office action until August 2, 2006, four months and 13 days later. Accordingly, the period of adjustment of 10 days will be removed and a period of adjustment of 13 days will be entered.

Next, applicant disputes the reduction of 103 days for applicant delay in responding to the final Office action of August 2, 2006. The Office mailed a final Office action on August 2, 2006. On November 8, 2006, the Office mailed a letter restarting the period for reply (and re-mailing the Office action). Applicant filed a response in compliance with 37 CFR 1.113(c) on February 13, 2007, three months and five days after the date of the mailing of the Office action as re-mailed on November 8, 2006. Accordingly, the period of reduction of 103 days is being removed and a period of reduction of 5 days pursuant to 37 CFR 1.704(b) is being entered.

Lastly, the record reveals that a period of reduction of 12 days should be entered for applicant delay in responding to the final Office action mailed on November 1, 2007. See 37 CFR 1.704(b). Applicant filed a reply to the final Office action on February 13, 2008, three months and 12 days after the mailing of the Office action. Thus, applicant failed to engage in reasonable efforts to conclude prosecution (processing or examination) of the application. Accordingly, a period of reduction of 12 days pursuant to 37 CFR 1.704(b) is being entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is **525 days** (546 days of Office delay - 21 days of applicant delay).

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Applicant is reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicant will be notified in the

Issue Notification letter that is mailed to applicant approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

Day : Monday
Date: 1/12/2009

PALM INTRANET

Time: 18:18:35

PTA Calculations for Application: 10/428758			
Application Filing Date:	05/01/2003	PTO Delay (PTO):	543
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	110
Post-Issue Petitions:	0	Total PTA (days):	525
PTO Delay Adjustment:	92		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
101	01/12/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	13		
100	01/12/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		10	
99	01/07/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		4	
98	01/07/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	7		
97	01/07/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		5	
96	01/07/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	103		
95	01/07/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		12	
78	03/31/2008	MAIL NOTICE OF ALLOWANCE			
77	03/28/2008	ISSUE REVISION COMPLETED			
76	03/28/2008	DOCUMENT VERIFICATION			
75	03/28/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
74	03/27/2008	EXAMINER'S AMENDMENT COMMUNICATION			
73	03/27/2008	NOTICE OF ALLOWABILITY			
72	02/20/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
71	02/12/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
70	02/15/2008	DATE FORWARDED TO EXAMINER			
69	02/13/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
68	02/15/2008	DATE FORWARDED TO EXAMINER			
67	02/13/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
66	02/15/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
65	02/13/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			

64	02/13/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
63	11/01/2007	MAIL FINAL REJECTION (PTOL - 326)			
62	10/29/2007	FINAL REJECTION			
61	08/17/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
60	09/17/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
59	09/05/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
58	09/05/2007	MISCELLANEOUS INCOMING LETTER			
57	08/21/2007	DATE FORWARDED TO EXAMINER			
56	08/17/2007	RESPONSE AFTER NON-FINAL ACTION			
55	08/17/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
54	05/17/2007	MAIL NON-FINAL REJECTION			
53	05/14/2007	NON-FINAL REJECTION			
52	02/23/2007	DATE FORWARDED TO EXAMINER			
51	02/13/2007	RCE- AF PROCESSED			
50	02/23/2007	DATE FORWARDED TO EXAMINER			
49	02/13/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		103	37
48	02/23/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
47	02/13/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
46	02/01/2007	MAIL ADVISORY ACTION (PTOL - 303)			
45	01/31/2007	ADVISORY ACTION (PTOL-303)			
44	11/01/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	01/29/2007	DATE FORWARDED TO EXAMINER			
42	01/19/2007	AMENDMENT AFTER FINAL REJECTION			
40	11/21/2006	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
39	11/08/2006	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
38.7	11/01/2006	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
38	11/01/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	08/02/2006	MAIL FINAL REJECTION (PTOL - 326)	10		30
36	08/02/2006	IFW TSS PROCESSING BY TECH CENTER			

		COMPLETE			
35	06/12/2006	FINAL REJECTION			
34	04/05/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
33	03/23/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
32	03/20/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	03/31/2006	DATE FORWARDED TO EXAMINER			
30	03/23/2006	RESPONSE AFTER NON-FINAL ACTION		7	25
29	03/23/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
28	03/20/2006	REFERENCE CAPTURE ON IDS			
27.7	03/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	03/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26	11/25/2005	MISCELLANEOUS INCOMING LETTER			
25	12/16/2005	MAIL NON-FINAL REJECTION	533		-1
24	12/12/2005	NON-FINAL REJECTION			
23	04/01/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
22	11/15/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
21	09/08/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
20	05/01/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
19	09/16/2005	CASE DOCKETED TO EXAMINER IN GAU			
18.7	04/01/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	04/01/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	11/15/2004	REFERENCE CAPTURE ON IDS			
16.7	11/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	11/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	02/02/2005	CORRESPONDENCE ADDRESS CHANGE			
14	01/13/2005	CASE DOCKETED TO EXAMINER IN GAU			
13.7	09/08/2003	INFORMATION DISCLOSURE STATEMENT (IDS)			

		FILED			
13	09/08/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	07/22/2003	NEW OR ADDITIONAL DRAWING FILED			
11	09/07/2003	CASE DOCKETED TO EXAMINER IN GAU			
10.7	05/01/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	05/01/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	06/27/2003	APPLICATION RETURN FROM OIPE			
8	06/30/2003	APPLICATION IS NOW COMPLETE			
7	06/27/2003	PRE-EXAM OFFICE ACTION WITHDRAWN			
6	06/27/2003	APPLICATION RETURN TO OIPE			
5	06/27/2003	APPLICATION DISPATCHED FROM OIPE			
4	06/27/2003	APPLICATION IS NOW COMPLETE			
3	05/27/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/16/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/01/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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Alcor Micro, Corp.
P. O. Box No. 6-57
Junghe
Taipei 235 TW TAIWAN

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SEP 29 2006

OFFICE OF PETITIONS

In re Application of	:	
Cheng et al.	:	
Application No. 10/428,772	:	
Filed: May 5, 2003	:	DECISION ON
Title of Invention:	:	PETITION
INTEGRATED CIRCUIT ANTI-INTERFERENCE	:	
OUTLINE STRUCTURE	:	

This is a decision in response to the Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action Under MPEP 711.03(c)II and 37 CFR 1.181, filed June 22, 2005. The petition is properly treated under 37 CFR 1.181.

This Petition is hereby **dismissed**.

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

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and issue Fee Due, mailed March 8, 2004. The Notice set a non-extendable three (3) month period for reply. No response having been received, the application became abandoned on June 9, 2004. A Notice of Abandonment was mailed July 30, 2004.

Applicant files the instant petition wherein Applicant avers that he did not receive the Office action, and that according to his local agent handling incoming mail delivery from this Office, no Office communication for this application has been received except for the Filing Receipt.

Applicant is advised that the only Office communications mailed in this application were the Notice of Allowance and issue Fee Due and Notice of Allowability, and a Notice of Abandonment.

Applicant is further advised that it has recently come to the attention of this Office that the local agent, whose correspondence address is P.O. Box No. 6-57, Chung-Ho (or Junghe), Taipei 235 TW TAIWAN, has a history of not receiving office communications.

Office records indicate that the "local agent," presently has, at a minimum, eleven other petitions pending before the Office, where an Office communication was not received.

As provided in the MPEP, the Delgar showing, described in the decision on original petition, may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

It is clear that Petitioner has a history of not receiving Office actions, and as such, the establishment of the failure to receive the Office communication is insufficient to justify the holding of abandonment as it is clear that practitioner has a history of not receiving Office actions. Consequently, the present petition cannot be granted.

Alternative 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, 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: Mail Stop PETITIONS
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

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Taipei 235 TW TAIWAN

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OFFICE OF PETITIONS

In re Application of	:	
Cheng et al.	:	
Application No 10/428772	:	
Filing or 371(c) Date: 05/05/2003	:	
For: INTEGRATED CIRCUIT	:	
ANTI-INTERFERENCE OUTLINE	:	DECISION
STRUCTURE	:	ON PETITION

This is a decision in response to the Renewed Petition Reinstate Application Due to Failure to Receive Notice of Allowance and Fee(s) Due Under 37 CFR 1.137, filed November 28, 2006. The petition is properly treated as a renewed petition to withdraw the holding of abandonment under 37 C.F.R. 1.181. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

Background

The above-identified application became abandoned for failure to timely/properly reply to the Notice of Allowance and Issue Fee Due, mailed March 8, 2004. The Notice set a non-extendable three (3) month period for reply. No response having been received, the application became abandoned on June 9, 2004. A Notice of Abandonment was mailed July 30, 2004.

Applicant filed a petition to withdraw the holding of abandonment on June 22, 2005, which was dismissed in a Decision mailed September 29, 2006, for failing to meet the requirements of a grantable petition under 37 CFR 1.181.

The present petition

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

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

No petition fee has been charged and none is due.

The application will be referred to Technology Center Art Unit 2815 for re-mailing of the Notice of Allowance and Issue Fee Due and Notice of Allowability.

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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JUNGHE
TAIPEI 235 TAIWAN AIRMAIL

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SEP 2 9 2005

OFFICE OF PETITIONS

In re Patent No. 6,724,633 :
Issue Date: April 20, 2004 :
Application No. 10/428,774 : ON PETITION
Filed: May 5, 2003 :
Patentee(s) James Wu :

This is a decision on the petition, filed September 7, 2005, requesting issuance of duplicate Letters Patent for the above-identified patent.

The petition is granted.

The file record discloses that the instant application matured into U.S. Patent No. 6,724,633 on April 20, 2004. However, petitioner contends that the patent was never received and it is presumed lost in the mail.

In view of the facts set forth in the petition, it is concluded that the patent was never received.

The $130.00 petition fee submitted is unnecessary. Petitioner may request a refund of this fee by writing to: Mail Stop 16, Director of the US Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

The Publishing Division is directed to issue duplicate Letters Patent.

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

A copy of this decision is being forwarded to Publishing Division for issuance of a duplicate Letters Patent. This matter is being referred to the Files Repository.

Wan Laymon
Petitions Examiner
Office of Petitions

cc: Krystal Paige, South Tower C-32 (FAX 746-4642)

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901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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SEP 20 2005

OFFICE OF PETITIONS

Applicant: Pugsley et al.
Appl. No.: 10/428,801
Filing Date: May 5, 2003
Title: TISSUE PATCHES AND RELATED DELIVERY SYSTEMS AND METHODS
Attorney Docket No.: 06530.0288
Pub. No.: US 2004/0225373 A1
Pub. Date: November 11, 2004

This is a decision on the request for corrected of patent application publication under 37 CFR 1.221(b), filed on December 21, 2004, for the above-identified application

The request is DISMISSED.

Applicant requests that the application be republished because the patent application publication contains numerous material errors such as the phrase "Street, NW" improperly appears in paragraphs [0047], [0051] and [0063] and improper paragraph breaks in paragraphs [0047]-[0061].

37 CFR 1.221 (b) is applicable "only when the Office makes a material mistake which is apparent from Office records." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent. [1]

The errors noted by requestor wherein the phrase "Street, NW" is improperly inserted into three paragraphs and the paragraph breaks are printed incorrectly in several paragraphs are Office errors but the mistakes are minor typographical errors, which are clearly understandable to one of ordinary skill in reading the specification and the claims. The mistakes are minor typographical errors, which are clearly understandable from reading the specification in which the phrases are used, as terms are not read in a vacuum. The mistakes do not affect the public's ability to appreciate the technical disclosure of the patent application publication, or determine the scope of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

[1] Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239, Off. Gaz. Pat. Office Notices 63, 75 (Oct 10, 2000) (final rule).

The errors in this published application may be due in part to the poor quality of the text in the application. While the text is legible, the text is not clear, as there are many stray marking on the pages. Applicant is advised that he or she may want to file application papers that are clearer, as the error may be due to the quality of the text.

Applicant should file applications having larger text, which is cleaner and with sufficient clarity and contrast to permit reproduction to avoid errors in the patent application publication process. See 37 CFR 1.52.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221 (a). Such a request for republication "must include a copy of the application compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18 (d) and the processing fee set forth in § 1.17 (i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18 (d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system and questions or request for reconsideration of the decision, should be addressed as follows:

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

By facsimile: 571-273-8300

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709 (voice).

Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 6

Vincent P. Bailey
Suite 0-157
30100 Town Ctr Drive
Laguna Niquel CA 92677

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OCT 1 0 2003

OFFICE OF PETITIONS

In re Application of
Donnelly, et al.
Application No. 10/428,805
Filed: July 24, 2003
Attorney Docket No. ACS-EFM1
For: METHOD OF THERMOFORMING FIBER REINFORCED THERMOPLASTIC SANDWICH PANELS,THERMOFORMED ARTICLES, AND MODULAR CONTAINER STRUCTURE

: DECISION DISMISSING PETITION

This is a decision on the petition, filed August 27, 2003, under 37 CFR 1.183 requesting waiver of 37 CFR 1.53(b), so that the above-identified application may be accorded a filing date of April 30, 2002.

The petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.53(b) is **DISMISSED**.

Provisional application No. 60/376,998 was filed on April 30, 2002.

On April 30, 2003, petitioner deposited nonprovisional application papers. These papers were assigned nonprovisional application no. 10/428,805. The papers filed on April 30, 2003 included a preliminary amendment claiming benefit under 35 USC 199(e) of earlier filed provisional application no. 60/376,998 and adding patent claims. It is noted that a specification was not filed on April 30, 2003.

Petitioner argues that application no. 10/428,805 should be accorded an April 30, 2002 filing date, because that is the filing date of petitioner's provisional application No. 60/376,998.

Petitioner is informed that an application receives its own filing date based on when all the necessary components to receive a filing date for that specific type of application have been filed. 35 USC 111 (a)(4). Nonprovisonal applications and provisonal applications have different filing date requirements. An application may claim benefit of a previously filed, related application's filing date for priority purposes. However, claiming benefit of an earlier filed application will not change the filing date of the later filed application, which is determined independently of any priority claims.

Provisional application no.60/376,998 has a filing date of April 30, 2002. That is the date petitioner filed a specification and a drawing, which comprise the requirements for accordation of a filing date in a provisional application. 35 USC 111 (b)(1)(A) and (B).

The filing date of a nonprovisional application, such as application No.10/428,805, is set forth in 35 U.S.C. 111(a),as the date a specification in compliance with 35 U.S.C. 112 and any drawings required under 35 U.S.C. 113 are received in the Office. A specification under 35 USC 112, at bare minimum, is a written description and a claim.

A review of the papers filed on April 30, 2003 reveals that there was no written description present on that date. While it is true that petitioner claimed benefit of the prior provisional application, there is no incorporation by reference statement found in the transmittal letter or in the specification. The mere reference in an application to another application is not an incorporation of anything contained in the other application into the referencing application. See In re Seversky, 177 USPQ 144, 146 (C.C.P.A. 1973) and Dart Industries, Inc. v. Banner, 207 USPQ 273, 276 (D.C. Cir. 1980). Therefore, the fact that applicant claimed benefit in the papers filed on April 30, 2003, based on the prior application does not mean that applicant incorporated-by-reference into the papers filed in the present application on April 30, 2003, anything disclosed in the prior application.

In addition, petitioner explicitly states in the instant petition that conversion of the provisional application to a non-provisional application was not pursued due to adverse patent term impact.

A written description was not submitted until July 24, 2003. Thus, July 24, 2003 is the filing date of application no. 10/428,805.

Petitioner desires waiver of 37 CFR 1.53(b). For grant of the relief sought in a petition under 37 CFR 1.183, petitioners 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 is advised that the statutory basis for 37 CFR 1.53(b) is 35 USC 111. 35 USC 111(a)(4) states in pertinent part, "...The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office." The word "shall" appears in 35 USC 111(a)(4). It is well settled that the use of "shall" in a statute is the language of command, and where the directions of a statute are mandatory, then strict compliance with the statutory terms is essential. Farrel Corp. V. U.S. Int'l Trade Comm'n, 942 F.2d 1147, 20 USPQ2d 1912 (Fed. Cir. 1991). The Office has no discretion in this situation.

Furthermore, even if it were possible to waive the rule in question, justice does not require waiver of the rule. Petitioner is entitled to claim benefit under 35 USC 119(e)(1). The statute states that a nonprovisional application claiming benefit to a provisional application shall have the same effect, as to such invention, as though filed on the date of the provisional application.

This passage is not interpreted to mean that the nonprovisional application will be accorded the

same filing date as the provisional application. Rather, the nonprovisional application will receive priority/benefit of the provisional application's filing date. Filing dates are determined independently of priority/benefit claims. An application receives its own filing date based on when all the necessary components to receive a filing date for that specific type of application have been filed. 35 USC 111 (a)(4). While application No. 10/428,805 has a filing date of July 24, 2003, it will be given priority/benefit over all applications filed after April 30, 2002, which is the date the provisional application was filed.

The petition under 37 CFR 1.183 to accord an April 30, 2002 filing date to application no. 10/428,805 is **dismissed**. The filing date of application no. 10/428,805 remains July 24, 2003.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **July 24, 2003.** Petitioner is reminded that the extendable two month time period set for reply to the August 12, 2003 Notice of Omitted Item(s) in a Nonprovisional Application continues to run.

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

E Shirene Willis

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

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ROBERT J. HARTER
4233 CLIFFSIDE DRIVE
LA CROSSE, WI 54601

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OFFICE OF PETITIONS

In re Application of
HARTER
Application No. 10/428,811
Filed: May 2, 2003
Attorney Docket No. BALL/STENT

DECISION
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 7, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to a Notice of Non-Compliant Amendment mailed March 11, 2005, 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 application became abandoned on April 12, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Amendment and Request for Reconsideration in compliance with 37 CFR 1.121; (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Non-Compliant Amendment mailed March 11, 2005 is accepted as having been unintentionally delayed.

Petitioner states in the petition that he has not seen the Notice of Non-Compliant Amendment. As a courtesy, a copy of this Notice is included with this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4787.

The application matter is being forwarded to Technology Center Art Unit 3732 for further processing.

Denise Pothier

Denise Pothier
Petitions Examiner
Office of Petitions

enc: Notice of Non-Compliant Amendment (37 CFR 1.121) mailed March 11, 2005

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PORTLAND OR 97204

MAIL

AUG 04 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
G. Eric Engstrom, et al. :
Application No. 10/428,815 :
Filed: May 2, 2003 :
For: **PERSONALIZATION OF MOBILE ELECTRONIC DEVICES USING SMART ACCESSORY COVERS**

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed December 3, 2003 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 petition fails to meet requirement (4) above. It is insufficient to state that a search was performed for a parent application. The pre-examination search must be made in relation to the current application and the current claimed invention.

For the above stated reasons, the petition is **DENIED**.

Petitioner may submit a request for reconsideration within **TWO MONTHS** of the date of this decision. Any request for reconsideration should include a complete description of the search method employed for the current application, such as classes and subclasses searched, text keyword search, etc. Although not written as a proactive statement in MPEP §708.02 section (VIII) it is preferred that Applicant acknowledge that the claimed invention is directed to a single invention and if it is found otherwise by the examiner, then an election without traverse will be made.

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4778

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TECHNOLOGY CENTER 2600

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PORTLAND OR 97204

In re Application of
G. Eric Engstrom, et al.
Application No. 10/428,815
Filed: May 2, 2003
For: **PERSONALIZATION OF MOBILE ELECTRONIC DEVICES USING SMART ACCESSORY COVERS**

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the request for reconsideration filed August 26, 2004, regarding the decision rendered on the original petition filed December 3, 2003 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The original petition was denied for failure to satisfy the requirement of a statement that a pre-examination search was made and said statement fully discussing the search method employed.

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.

Petitioner's request for reconsideration satisfied the outstanding requirement from the original Petition. Hence, 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. Petitioner is reminded that the claims should be directed to a single invention and if it is found otherwise by the examiner, then applicant will have to make an election without traverse or forfeit accelerated examination status.

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
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WATSONVILLE, CA 95076

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OFFICE OF PETITIONS

In re Application of :
TERMAN, David S. :
Application No. 10/428,817 : DECISION ON PETITION
Filed: May 5, 2003 :
Attorney Docket No. **38373-189118** :

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

The petition is **GRANTED.**

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed February 17, 2006 , 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 application became abandoned on March 18, 2006.

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

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

This application is being referred to Technology Center Art Unit 1643 for appropriate action by the Examiner in the normal course of business on the reply received

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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393 DARLING STREET
BALMAIN NSW 2-041 AU AUSTRALIA

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Kia Silverbrook :
Application No. 10/428,823 :
Filed: May 5, 2003 :
Title of Invention: :
SINGLE WALL CARBON NANOTUBE :
ELECTRONIC DEVICES :

This is a decision on the Petition to Withdraw Holding of Abandonment, filed September 17, 2004, and on the Petition to Revive an Application based Upon Unintentional Delay under 37 CFR 1.137(b), filed July 3, 2006. The petition to Withdraw Holding of Abandonment is properly treated under 37 CFR 1.181. The delay in treating this petition is regretted.

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

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

Background

A Notice of Allowance and notice of Allowability were mailed in the above-identified application on February 18, 2004. The Notices indicated that the drawings were acceptable. On April 23, 2004, the Office mailed a Notice of Drawing Inconsistency with Specification ("Notice"). The Notice set a non-extendable one (1) month period for reply.

Applicant submitted the issue fee on May 3, 2004.

On May 17, 2004, the Office mailed a Supplemental Notice of Allowability, again indicating that the drawings were acceptable.

Applicant failed to timely reply to the Notice of Drawing Inconsistency with Specification. Accordingly, the above-identified application became abandoned August 20, 2005. A Notice of Abandonment was mailed August 10, 2004.

The instant petitions

Applicant files the instant petition and avers that the Notice was not received until August 5, 2004, over two (2) months after the reply to the Notice was due.

Applicant filed a reply to the Notice on August 11, 2004 (one day after the Notice of Abandonment was mailed).

Applicant files the instant petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment, on September 17, 2004.

Applicant filed a petition to revive the application under 37 CFR 1.137(b) on July 3, 2006.

Applicable Law, Rules and MPEP

The MPEP 711.03(c) provides for petitions to withdraw the holding of abandonment. Two types of petitions may be filed: withdrawal of the holding of abandonment based upon the failure to receive an Office action, and withdrawal of the holding of abandonment based upon evidence that a timely reply to the Office action was filed.

In this instance, Applicant received the Office action (Notice). As such, MPEP 710.06 II applies.

The MPEP 710.06 II, Petitions to Reset a Period for Reply Due to a Postmark Date later that the Mail Date Printed on an office Action, provides:

The Office will grant a petition to restart the previously set period for reply to an Office action to run from the postmark date shown on the Office mailing envelope which contained the Office action when the following criteria are met:

(A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;

(B) the reply period was for payment of the issue fee, or the reply period set was 1 month or 30 days; and
(C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), (2) a copy of the envelope which contained the Office action showing the postmark date, and (3) a statement setting forth the date of receipt of the Office action at the correspondence address and stating that the Office action was received in the postmarked envelope.

The provisions of 37 CFR 1.8 and 1.10 apply to the filing of the above-noted petitions with regard to the requirement that the petition be filed within 2 weeks of the date of receipt of the Office action. The showings outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been delayed after receipt rather than a conclusion that the Office action was delayed in the mail or in the Office.

Analysis

Petition under 37 CFR 1.181

A petition to withdraw the holding of abandonment is based upon non-receipt of an office action. Here, Applicant received the office action, albeit late. The proper avenue for relief is a petition to reset the period for reply under MPEP 710.06 II.

A petition to reset the period for reply must be filed within two (2) weeks of the date of receipt of the office action. Here, Applicant provides that he received the Notice on August 5, 2004, but did not file the instant petition until September 17, 2004. Unlike Applicant's response to the Notice, there is no evidence that the petition under 37 CFR 1.181 was transmitted via facsimile. As such, the petition is dismissed as untimely.

Petition under 37 CFR 1.137(b)

With the instant petition, Applicant has filed an amendment in response to the Notice. The Examiner has approved the Amendment. Accordingly, the petition is granted.

The application is being referred to Publishing Division for processing into a patent.

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

Derek L. Woods
Attorney
Office of Petitions

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Paper No. 4

MCKENNA LONG & ALDRIDGE LLP
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1900 K STREET NW
WASHINGTON DC 2006

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OFFICE OF PETITIONS

In re Application of	:	
Dieter Guldenfels	:	
Application No. 10/428,858	:	DECISION DISMISSING
Filed: 5 May, 2003	:	PETITION
Atty Docket No. 4319.016.22-US	:	

This is a decision on the petition filed on 8 September, 2003, requesting that the above-identified application be accorded a filing date of 5 May, 2003, with drawing Figures 10-15 as a part of the original disclosure.

On 5 May, 2003, the application was filed.

On 10 July, 2003, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of 5 May, 2003, but that Figures 10-15 described in the specification appeared to have been omitted from the application.

In response, on 8 September, 2003, the present petition was filed, accompanied by a copy of Figures 1-15 from U.S. Patent No. 6,330,941. Petitioner concedes that Figures 10-15 were inadvertently omitted from the application, but states that the omitted drawings were present in parent Application No. 09/579,090, which was incorporated by reference into the present application.

The petition is <u>dismissed</u>.

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the

PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

In this case, however, petitioner neither asserts that the missing drawings were deposited on 5 May, 2003, nor request the 8 September, 2003 (the date the drawings were supplied), filing date.

MPEP 201.06(c) states that:

> . . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), <u>without the need for a petition</u>. (emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, the drawings of Figures 10-15 are not new matter if they were a part of the disclosure of the prior application.

Petitioner should file the drawings of Figures 10-15 as a preliminary amendment. If Figures 10-15 are filed as a preliminary amendment, they will be reviewed by the examiner for new matter.

The application will be processed using only the application papers present on filing. The eight (8) sheets of drawings containing Figures 1-15 supplied with the present petition will not be processed for examination, but will be retained in the application file.

As this petition was necessitated by applicants' filing error rather than an error on the part of the Office, the petition fee

will not be refunded.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 5 May, 2003, using only the application papers filed on that date.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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

Mail Date: 06/02/2010

Applicant	: Alon Bernstein	: DECISION ON REQUEST FOR
Patent Number	: 7627675	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/428,865	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/01/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **489** 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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SUITE 200
AUSTIN, TX 78730

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OFFICE OF PETITIONS

In re Application of	:	
Faulkner et al.	:	DECISION ON PETITION
Application No. 10/428,874	:	TO WITHDRAW
Filed: May 2, 2003	:	FROM RECORD
Attorney Docket No. 1017-0031	:	

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 28, 2005.

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

A review of the file record indicates that the power of attorney to John R. Schell and the attorneys associated with Customer Number 34456 has been revoked by the assignee of the entire interest 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 continue to be directed to the first below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Petitions Examiner Liana Chase at 571-272- 3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

David Bucci
Petitions Examiner
Office of Petitions

cc:

TOLER SCHAFFER, LLP
5000 PLAZA ON THE LAKES
SUITE 265
AUSTIN TX 78746

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.
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Paper No. 7

Licata & Tyrrell P.C.
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Marlton NJ 08053

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OCT 2 7 2003

OFFICE OF PETITIONS

In re Application of
Saghbini & Rehan
Application No. 10/428,887
Filed: May 2, 2003
Attorney Docket No. TI-0023
For: SAMPLE PREPARATION METHOD AND DEVICE

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed September 22, 2003 (certificate of mailing date September 14, 2003).

The petition is granted.

Petitioner has shown that the non-signing inventor, Syed F. H. Rehan, has constructively refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration/statement of facts of Attorney Licata and accompanying exhibits establish that the inventor was successfully mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that he sign the declaration. Petitioner has 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.

After this decision is mailed, the above-identified 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
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of
Saghbini & Rehan
Application No. 10/428,887
Filed: May 2, 2003
Attorney Docket No. TI-0023
For: SAMPLE PREPARATION METHOD AND DEVICE

LETTER

Dear Dr. Rehan:

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: Licata & Tyrrell P.C.
66 E. Main Street
Marlton NJ 08053

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OFFICE OF PETITIONS

In re Patent No. 7,103,772 :
Issued: September 5, 2006 :
Application No. 10/428,895 : PATENT TERM ADJUSTMENT
Filed: May 2, 2003 :
Dkt. No.: 04518.0011.NPUS01 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)," filed November 6, 2006.

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

The above-identified application matured into U.S. Patent No. 7,103,772 on September 5, 2006. The instant request for reconsideration was timely filed November 6, 2006 in accordance with 37 C.F.R. § 1.705(d). The patent issued with a PTA of 37 days. Patentees argue that the application is entitled to an adjustment of 157 days, indicating that the reduction of 120 days in connection with the request for refund filed December 22, 2005 is in error.

At the time of issuance of the instant patent, an adjustment of 206 days could be attributed to the Office. The reduction of 206 days was properly reduced 169 days for applicants' failure to engage in reasonable efforts to conclude prosecution.

Patentees argue that the reduction of 120 days in connection with the request for refund submitted December 22, 2005 is in error. Patentees further argue that the request was necessitated due to USPTO error.

Patentees' arguments have been carefully considered, but found unconvincing. In accordance with 37 CFR 1.704(c)(10), submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed is deemed a failure to engage in reasonable efforts to conclude prosecution and thus constitute a reduction of any patent term adjustment.

Specifically, requests for refunds have been deemed an "other paper" within the meaning of 37 CFR 1.704(c)(10). *See*, MPEP 2732. *See, also, Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001).

In view thereof, at the time of issuance, the patent was entitled to a patent term adjustment of 37 days, as indicated on the patent.

The required fee of $200.00 for an application for patent term adjustment has been submitted.

Any request for reconsideration of this decision must be submitted within TWO MONTHS of the mail date of this decision. Extensions of time under 37 CFR 1.136 are not available.

This application is being directed to the Finance Office, Refund Section for consideration the request for refund filed December 22, 2005.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A. Fries

Kery Fries
Senior 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. 7,174,895	:	
Issued: February 13, 2007	:	
Application No. 10/428,904	:	PATENT TERM ADJUSTMENT
Filed: May 1, 2003	:	
Dkt. No.: 019651.0225	:	

This is a decision on the "PETITION FOR REINSTATEMENT OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)," filed March 22, 2007.

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

The above-identified application matured into U.S. Patent No. 7,174,895 on February 13, 2007. The instant request for reconsideration was timely filed March 22, 2007 in accordance with 37 C.F.R. § 1.705(d). The patent issued with a PTA of 65 days. Patentees argue that the application is entitled to an adjustment of 107 days, the adjustment having been improperly reduced 42 days.

At the time of issuance of the instant patent, an adjustment of 194 days could be attributed to the Office. The adjustment was properly reduced 87 days at the time of allowance in accordance with 37 CFR 1.704(b). A post-allowance reduction of 42 days was accorded.

Patentees contest the post-allowance reduction totaling 42 days. Patentees argue that the status request submitted October 10, 2006 was necessitated by the Office's failure render a decision on the petition for correction of inventorship under 37 CFR 1.48 filed January 30, 2004.

Patentees' arguments have been carefully considered, but found unconvincing. In accordance with 37 CFR 1.704(c)(10), submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed is deemed a failure to engage in reasonable efforts to conclude prosecution and thus constitute a reduction of any patent term adjustment.

Specifically, status requests have been deemed an "other paper" within the meaning of 37 CFR 1.704(c)(10). *See*, MPEP 2732. *See, also, Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001).

Moreover, a review of the record reveals that the examiner entered the requested change in inventorship prior to the mailing of the Notice of Allowance and that this is reflected in the non-final Office action mailed March 9, 2006 wherein it states, "[i]n view of the papers filed 5/1/03, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by the addition of Michael J. Zalta."

In view thereof, the status request submitted October 10, 2006 is deemed a failure to engage in reasonable efforts to conclude prosecution within the meaning of 37 CFR 1.704.

However, the previous calculation regarding this reduction contains an error. In accordance with 37 CFR 1.704(c)(10), the period of reduction began October 10, 2006, the date that the status request was filed, and ended October 17, 2006, the date a reply thereto was mailed. Hence, the actual period of reduction is eight days, and not 42 days as previously held.

In view thereof, at the time of issuance, the patent was entitled to a patent term adjustment of 99 days (overall adjustment of 194 days less overall reduction of 95 days).

The required fee of $200.00 for an application for patent term adjustment has been submitted.

Any request for reconsideration of this decision must be submitted within TWO MONTHS of the mail date of this decision. Extensions of time under 37 CFR 1.136 are not available.

Receipt is hereby acknowledged of the required PTA application fee of $200.00.

This application file will be forwarded to the Certificate of Corrections branch for issuance of a certificate of correction

to indicate that the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 99 days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A. Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	7,174,895 B2
DATED	:	February 13, 2007
INVENTOR(S)	:	Thornton, 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 65 days

Delete the phrase "by 65 days" and insert – by 99 days--

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Paper No. 5

John S. Beulick
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Suite 2600
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SEP 3 0 2003

OFFICE OF PETITIONS

In re Application of
Lonn et al.
Application No. 10/428,906
Filed: May 2, 2003
Attorney Docket No. 132808

DECISION ON PETITION

This is a decision on the "PETITION TO CORRECT FILING DATE OF FILED APPLICATION," filed August 21, 2003, requesting that the above-identified application be accorded a filing date of May 2, 2003, rather than the presently accorded filing date of May 3, 2003.

Petitioner maintains that on May 2, 2003, the application was deposited as "Express Mail" in the U.S. Postal Service. In support thereof, applicant submits the following documents:

- a photocopy of the Certificate of Mailing by Express Mail itemizing the application papers transmitted to the Office under cover of Express Mail and noting thereon the Express Mail mailing label No. "EV339986199US";
- a copy of the relevant Express Mail mailing label, bearing both a handwritten date-in of May 3, 2003 and a postmark of May 2, 2003; and
- the official United States Postal Service (USPS) Track and Confirm record for the relevant Express Mail mailing, confirming acceptance of the Express Mail shipment by the USPS at 6:16 pm on May 2, 2003.

Paragraph (a) of 37 CFR 1.10 states that:

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

Paragraph (c) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
>
> (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition was filed promptly within the meaning of § 1.10(c)(1). The Certificate of Express Mailing, to the extend that it also serves by its itemization as an application transmittal <u>and</u> was in fact received with the application papers, shows that the "Express Mail" mailing label number "EV339986199US" was placed on the papers prior to the original mailing. In addition, the "Express Mail" mailing label number is present on the application transmittal received on filing.

Furthermore, the petition includes a true copy of the "Express Mail" mailing label. The label shows a handwritten "date-in" of May 3, 2003; however, this is contradicted by the postmark of May 2, 2003 also present on the mailing label. Moreover, petitioner's assertions are corroborated by the USPS Track and Confirm record. The "Shipment History" submitted notes ACCEPTANCE of the relevant Express Mail mailing at 6:16 pm on May 2, 2003 and that the package was "EN ROUTE, May 2, 2003."

In view thereof, the petition is <u>GRANTED</u>.

No petition fee is required.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for **<u>correction of the filing date to May 2, 2003</u>**.

Telephone inquires related to this decision may be directed to the undersigned at (703) 305-0309.

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Paper No. 5

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SEP 3 0 2003

OFFICE OF PETITIONS

In re Application of
Lonn et al.
Application No. 10/428,906
Filed: May 2, 2003
Attorney Docket No. 132808

DECISION ON PETITION

This is a decision on the "PETITION TO CORRECT FILING DATE OF FILED APPLICATION," filed August 21, 2003, requesting that the above-identified application be accorded a filing date of May 2, 2003, rather than the presently accorded filing date of May 3, 2003.

Petitioner maintains that on May 2, 2003, the application was deposited as "Express Mail" in the U.S. Postal Service. In support thereof, applicant submits the following documents:

- a photocopy of the Certificate of Mailing by Express Mail itemizing the application papers transmitted to the Office under cover of Express Mail and noting thereon the Express Mail mailing label No. "EV339986199US";
- a copy of the relevant Express Mail mailing label, bearing both a handwritten date-in of May 3, 2003 and a postmark of May 2, 2003; and
- the official United States Postal Service (USPS) Track and Confirm record for the relevant Express Mail mailing, confirming acceptance of the Express Mail shipment by the USPS at 6:16 pm on May 2, 2003.

Paragraph (a) of 37 CFR 1.10 states that:

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

Paragraph (c) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
>
> (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition was filed promptly within the meaning of § 1.10(c)(1). The Certificate of Express Mailing, to the extend that it also serves by its itemization as an application transmittal <u>and</u> was in fact received with the application papers, shows that the "Express Mail" mailing label number "EV339986199US" was placed on the papers prior to the original mailing. In addition, the "Express Mail" mailing label number is present on the application transmittal received on filing.

Furthermore, the petition includes a true copy of the "Express Mail" mailing label. The label shows a handwritten "date-in" of May 3, 2003; however, this is contradicted by the postmark of May 2, 2003 also present on the mailing label. Moreover, petitioner's assertions are corroborated by the USPS Track and Confirm record. The "Shipment History" submitted notes ACCEPTANCE of the relevant Express Mail mailing at 6:16 pm on May 2, 2003 and that the package was "EN ROUTE, May 2, 2003."

In view thereof, the petition is <u>GRANTED</u>.

No petition fee is required.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for **<u>correction of the filing date to May 2, 2003</u>**.

Telephone inquires related to this decision may be directed to the undersigned at (703) 305-0309.

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
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In re Application of	:	
Trnovsky, et al.	:	
Application No. 10/428,912	:	ON PETITION
Filed: May 2, 2003	:	
Attorney Docket No. 019168-000120US	:	

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

The petition is **GRANTED**.

This application became abandoned for failure to timely file a proper reply to the non-final Office action mailed October 4, 2005. Accordingly, this application became abandoned on January 5, 2006. A Notice of Abandonment was mailed on May 31, 2006.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 11/278,659.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $510.00 extension of time submitted with the petition on June 30, 2006 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The file is being forwarded to files repository.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
Office of the Deputy Commissioner
for Patent Examination Policy

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JUN 21 2005

EDWARD D. GRIEFF
WILMER CUTLER PICKERING HALE & DORR
1455 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004

In re Application of	:
David S. Garvey et al	:
Serial No.: 10/428,936	: PETITION DECISION
Filed: May 5, 2003	:
Attorney Docket No.: 102258.255	:

This is in response to the petition under 37 CFR 1.144, filed April 5, 2005, requesting withdrawal of an improper restriction requirement.

BACKGROUND

A review of the file history shows that this application was filed under 35 U.S.C. 111 on May 5, 2003, and contained claims 1-58, as filed. In a first Office action, mailed November 19, 2003, the examiner set forth a restriction requirement under 35 U.S.C. 121 which divided the claims into 27 different groups (some claims were assigned to more than one group). The requirement is not repeated herein.

The examiner reasoned that the groups encompassed different products that were considered distinct from and patentable over each other with corresponding method of use claims. The examiner further required an election of species from whichever group was elected and also indicated rejoinder of corresponding method claims if product claims were elected and found patentable.

Applicants replied on January 6, 2004, traversing the restriction requirement and suggesting that the claims should be grouped into two groups defined by whether the compound was claimed alone or in combination with another compound. The examiner's Group III was elected and a species identified for further prosecution.

The examiner mailed a Notice of Incomplete Response to applicants indicating that the species elected did not fall within the group elected and requiring a modified reply. Applicants replied on March 23, 2004, noting that the elected species, although not specifically identified within the specification, was encompassed by the generic claim group elected.

The examiner mailed a new Office action to applicants on April 19, 2004, confirming applicants' election and responding to applicants' traverse and affirming the restriction requirement and making it Final due to undue search burden. The examiner noted several objections to the elected claims and lack of clarity with respect to some variables, but made no rejections of record.

Applicants replied on June 18, 2004, amending several claims in response to the objections of record and adding two new claims. The traversal of the restriction requirement was maintained.

The examiner mailed a Final Office action to applicants on September 9, 2004, setting forth a new rejection of claims 3 and 38 under 35 U.S.C. 112, first paragraph for lack of written description. No comment on the restriction requirement was made. Claims 1-2, 4-7, 15-27, 35-37, 39-49 and 57-58 were indicated allowable insofar as they were limited to compounds of Formula II, as defined by claim 2. Rejoinder of the other claims was indicated to be deferred until the product claims were found allowable.

Applicants filed a response under 37 CFR 1.116 on January 10, 2005, amending several claims further and responding to applicants' rejections and objections. Concurrently a Notice of Appeal was filed. On March 15, 2005, the examiner mailed an Advisory action to applicants indicating entry of the amendment and that claims 2-7, 15-27 and 35-36 were allowable, claims 1, 37-49 and 57-60 were objected to and claims 8-14, 28-34 and 50-56 were withdrawn.

Applicants filed this petition on April 5, 2005, requesting review of the restriction requirement.

DISCUSSION

37 CFR 1.144 states as follows:

> § 1.144 Petition from requirement for restriction.
> After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Director to review the requirement. **Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal.** A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

In view of the above highlighted requirement, the petition is untimely and will not be further considered.

DECISION

The petition is **DISMISSED** as moot.

Applicants remain under obligation to file a proper Appeal Brief within two months from the date of the receipt of the Notice of Appeal or as may be extended under 37 CFR 1.136(a).

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 703-308-3824 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Bruce M. Kisliuk
Director, Technology Center 1600

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WASHINGTON, DC 20004

In re Application of	:
David S. Garvey et al	:
Serial No.: 10/428,936	: PETITION DECISION
Filed: May 5, 2003	:
Attorney Docket No.: 102258.255	:

This is in response to the renewed petition under 37 CFR 1.144, filed July 8, 2005, requesting withdrawal of an improper restriction requirement.

BACKGROUND

A review of the file history is provided in the previous petition decision, mailed June 21, 2005, and is not repeated herein. Since that decision applicants have filed RCE papers concurrently with this renewed petition. It is noted that the previous petition was dismissed as untimely inasmuch as it was filed subsequent to the filing of a Notice of Appeal. Filing of RCE papers vacates the Notice of Appeal and returns the application to pending status for additional prosecution before the examiner. This petition is now timely filed.

DISCUSSION

As noted in the previous decision and in applicants' renewed petition the examiner issued an initial 27 way restriction requirement separating the claims based on chemical structure of the composition and method of use of the composition. Applicants replied to the requirement by electing Group III and a species, as requested. The examiner rejoined Group II with Group III and examined those claims or parts of claims relevant thereto. Claims 1-7, 15-27, 35-49 and 57-58 were considered elected and examined to the extent that they read on Formula II (Claim 2).

A review of the claims shows that claim 1 is a generic claim to β-agonists having at least one NO group, at least one NO_2 group or both NO and NO_2 groups. No structure is given other than that the NO and NO_2 groups are bonded to the agonist structre via an O, N or S atom. Claim 2, dependent on claim 1, provides a structure in which the NO or NO_2 group may appear as part of any one or more of four variables, E, R_8, R_9, or R_{11}. Independent claim 16 (to a composition) and claim 35 (to a kit containing the composition) are commensurate in scope with claim 2 (but not claim 1). Claim 37 is to a composition similar in scope to claim 1.

A review of the restriction requirement shows that the examiner divided the claims into composition, compounds containing the composition and kits containing the composition as a first general group and separately identified the methods of use (treatment) as a second general group. Within the compound claims, Groups were created based on structural formula II from claim 2 and structural Formulas I and III-VIII, based on the specification disclosure. The method claims were similarly grouped as well as to the disease or condition being treated. The examiner also included three all encompassing groups for those compounds and methods not covered by any of the other groups. It is assumed that the groups directed to unclaimed structures were thought to be encompassed by generic claim 1. In this the restriction requirement is flawed as many of the Groups are based on unclaimed subject matter. That which is not claimed cannot be subject to a restriction requirement. Thus Groups 1, 4-8 and 13-27 are improper as they are based on unclaimed subject matter. Only Groups 2-3 and 9-12 are properly defined and based on claimed subject matter.

Having required an election between different compounds identified by reference to Formula II (claim 2) and the other Formulas and by presence of a NO, NO_2 or both groups, and having required an election of species within whichever group was elected, the examiner proceeded to examine the elected species and having found it allowable over the prior art proceeded to expand the examination to related species within elected Group 3 and combined it with Group 2, examining the compounds and compositions of claims 1-7, 15-27, 35-49 and 57-58. Having determined allowability of the elected compounds the examiner then required applicants to cancel the non-elected subject matter from the claims. Since the species of claim 2 was found allowable, and claim 1 is a generic claim, it must also be considered allowable in view of the determination of allowability of the species elected and other species related thereto which have been found to avoid the prior art unless other prior art is applied against it.

Claims 8-14, 28-34 and 50-56 are encompassed within Groups 9-12 and are directed to treatment of respiratory disorders or cystic fibrous. Inasmuch as the examiner has combined Groups 2 and 3, Groups 9 and 10 as well as Groups 11 and 12 should also be combined as they relate directly to and are dependent on the claims of Groups 2 and 3. Applicants propose dividing the claims into two groups – claims 1-36 to nitosated or nitrosylated compounds, compositions, kits and methods of treating respiratory diseases; and compositions combined with NO donors, kits and methods for treating respiratory diseases. Applicants' suggestions have been carefully considered. However, it is felt that the examiner's direction in separating compound/composition/kit claims from method claims is more appropriate. In view of this the restriction requirement is revised as follows:

Group I, claims 1-7, 15-27 and 35-49, directed to nitrosated and/or nitrosyalted compounds and compositions and kits containing them;

Group II – claims 8-10, 12-14, 28-30, 32-34 and 50-52, directed to treatment of respiratory disorders using the compound/composition of Group I;

Group III – claims 11-14, 31-34 and 53-56, drawn to treating cystic fibrosis using the compound/composition of Group I.

The methods are separated from the compound/composition claims as directed to different statutory classes of invention requiring different search and examination considerations. The two methods are considered distinct since respiratory diseases encompass a wide variety of treatable and curable conditions (such as pneumonia, acidosis, inflammation, etc.) whereas cystic fibrosis, although manifesting itself in respiratory and other manners, is a genetic defect condition of which only the outward symptoms can be treated and ameliorated.

In view of the previous prosecution Group I is considered to be elected for further prosecution.

Upon indication of allowance of the elected compound/composition claims, rejoinder of method claims in accordance with *in re Ochiai* which include all of the limitations of the allowed claims will be effected and such claims will be examined on the merits to determine their allowability.

DECISION

The petition is **GRANTED.**

The application will be forwarded for completion of processing of the RCE papers and then to the examiner for further consideration.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 703-308-3824 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Bruce M. Kisliuk
Director, Technology Center 1600

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OFFICE OF PETITIONS

In re Application of	:	
Kenichi Watanabe	:	
Application No. 10/428,937	:	ON PETITION
Filed: May 5, 2003	:	
Attorney Docket No. 107317-00055	:	

This is a decision on the petition under 37 CFR 1.313, filed June 9, 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 April 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.[1]

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

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 concurrently filed IDS

Wan Laymon

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

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

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Paper No. 22205

BIRCH STEWART KOLASCH & BIRCH
P.O. Box 747
Falls Church, VA 22040-0747

JAN 12 2006

In re Application of: YANG *et al.* Serial No.: 10/428,940 Filed: May 05, 2003 Attorney Docket No.: **0941-0732P**	: : : : :	DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed on February 11, 2005. The petition has been treated as a petition under 37 C.F.R. § 1.181, to withdraw the holding of abandonment of the above-identified application. No fee is required.

The petition is **GRANTED.**

The application was held abandoned for failure to timely file a response to the Election/Restriction Requirement mailed on May 04, 2004. A Notice of Abandonment was mailed on November 19, 2005.

Petitioner asserts that on June 04, 2004, a response was filed. To support this assertion, petitioner has submitted a copy of the response and a copy of a return postcard receipt, which acknowledges receipt in the USPTO of a response to the Election/Restriction Requirement on June 04, 2004.

A review of the application file record reveals that the above-identified response having been acknowledged as being received in the PTO on June 04, 2004, is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states, "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely received in the PTO but lost somewhere after receipt thereof.

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 copy of the response submitted with the petition on February 11, 2005, is accepted since the response originally submitted was apparently lost.

The application file is being forwarded to the examiner of record for consideration of the response and prompt appropriate action.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

James L. Dwyer, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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TUROCY & WATSON, LLP
127 Public Square
57th Floor, Key Tower
Cleveland, OH 44114

Mail Date: 06/15/2010

Applicant	: Leonard N. Schiff	: DECISION ON REQUEST FOR
Patent Number	: 7633895	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/428,953	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/01/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **639** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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Paper No. 4

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OCT 0 8 2003

OFFICE OF PETITIONS

Carlos Nieves, Esq.
JM Huber Corporation
333 Thornall Street
Edison, NJ 08837-2220

In re Application of
Kostinko, Oltmans, and Pike
Application No. 10/428,957
Filed: May 2, 2003
Attorney Docket No.: 97-227
NOVEL GUM DELIVERY SYSTEMS

: ON PETITION

This is in response to the petition filed under 37 CFR 1.47(a) on May 2, 2003.

The petition is **granted**.

The above-cited application was filed on May 2, 2003, without a declaration executed by all joint inventors. The application papers were accompanied by the instant petition under 37 CFR 1.47(a). A Notice to File Missing Parts of Nonprovisional Application was mailed on July 22, 2003, indicating that applicant must file a proper declaration and remit the surcharge within two months of the mailing date of the notice. A communication withdrawing the notice of July 22, 2003, was mailed on October 2, 2003.

The instant petition establishes that inventor Oltmans is expressly refusing to join the prosecution of the above-cited application. The application will, therefore, be accorded status under 37 CFR 1.47(a).

Notification of the application's status under 37 CFR 1.47(a) will be sent to the non-signing inventor and a posting will made in the Official Gazette pursuant to 37 CFR 1.47(c).

The application file 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 (703)305-0010

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

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OCT 08 2003

OFFICE OF PETITIONS

Andrew L. Oltmans
6556 Old Carriage Drive
Alexandria, VA 22315

In re Application of
Kostinko. Oltmans, and Pike
Application No. 10/428,957
Filed: May 2, 2003
Attorney Docket No. 97-227
For: NOVEL GUM DELIVERY SYSTEMS

LETTER

Dear Mr. Oltmans:

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 703/305-0010. Requests for information regarding your application should be directed to the File Information Unit at 703/308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 703/308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

Carlos Nieces, Esq.
JM Huber Corporation
333 Thornall Street
Edison, NJ 08837-2220

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CARLOS NIEVES, ESQ.
J.M. HUBER CORPORATION
333 THORNALL STREET
EDISON NJ 08837-2220

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MAY 1 3 2008

OFFICE OF PETITIONS

In re Application of :
John A. KOSTINKO et al. :
Application No. 10/428,957 : DECISION ON PETITION
Filed: May 02, 2003 :
Attorney Docket No. **97-227** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 19, 2008, 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 29, 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 02, 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 $810.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,540.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the final Office Action of June 29, 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.

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

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

This application is being referred to Technology Center AU 1614 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.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **WILLIAM PARKS**
WYATT, TARRANT & COMBS, LLP
1715 AARON BRENNER DRIVE
SUITE 800
MEMPHIS, TN 38120--4367

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R. SCOTT RHOADES
STRASBURGER & PRICE
SUITE 4300
901 MAIN STREET
DALLAS, TX 75202-3794

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OFFICE OF PETITIONS

In re Application of	:	
Giovanni Cipolla et al	:	
Application No. 10/428,971	:	ON PETITION
Filed: May 2, 2003	:	
Attorney Docket No. 31578.0103	:	

This is a decision on the petition under 37 CFR 1.173(b), filed May 17, 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 February 3, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on May 4, 2005.

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

This matter is being referred to Publishing Division.

Wan Laymon

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

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OFFICE OF PETITIONS

BRINKS, HOFER, GILSON & LIONE
P.O. BOX 1340
MORRISVILLE NC 27560

In re Application of
HEDGPETH, Daniel L. et al.
Application No. 10/428,984
Filed: May 05, 2003
Attorney Docket No. **CMED.10164**

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 April 29, 2009.

The request is **APPROVED**.

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

The request was signed by Allen Baum on behalf of all attorneys of record who are associated with customer No. 45473. All attorneys/agents associated with the Customer Number 45473 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

The application became abandoned for failure to respond to an Office action mailed March 09, 2007.

There is an outstanding Office action mailed March 09, 2007 that requires a reply from the applicant.

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

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

cc: **DANIEL L. HEDGPETH**
7308 RAY ROAD
RALEIGH NC 27613

cc: **CLOSURE MEDICAL CORPORATION**
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

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PATENT COUNSEL, M/S 2061
APPLIED MATERIALS, INC.
LEGAL AFFAIRS DEPARTMENT
P O BOX 450A
SANTA CLARA, CA 95052

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OFFICE OF PETITIONS

In re Application of
Karthik Janakiraman et al
Application No. 10/429,022
Filed: May 2, 2003
Attorney Docket No. A6028/T50100

DECISION GRANTING PETITION
UNDER 37 CFR 313(c)(2)

This is a decision on the petition, filed April 22, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 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 (703) 305-8680.

This matter is being referred to Technology Center AU 2812 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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Paper No. 4

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MAY 21 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street NW
Washington, DC 20037-1526

In re Application of: G. Elumalai	)	**DECISION ON PETITION**
Application No.: 10/429,048	)	**FOR ACCELERATED**
Filed: May 5, 2003	)	**EXAMINATION UNDER**
For: SYSTEM AND METHOD OF	)	**M.P.E.P. §708.02(VIII)**
SCALABLE TRANSACTION	)	
PROCESSING	)	

This is a decision on the petition, filed August 29, 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.

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.

In those instances where the request for this special status does not meet all the prerequisites set

> forth above, ***applicant will be notified and the defects in the request will be stated.*** The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Group Special Program Examiner.

Applicant's submission is deficient in that there is no detailed discussion of the reference as required by section (e) to the extent required by 37 CFR 1.111(b) and (c). That is, the submission does not satisfy the requirement, as it does not provide a ***detailed discussion*** of the references and it does not point out how the ***claimed subject matter is patentable over the references***

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.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

STEPHEN A. SOFFEN
DICKSTEIN, SHAPIRO, MORIN & OSHINSKY LLP
2101 L STREET, NW
WASHINGTON, DC 20037

In re Application of: Horn, et al.
Application No. 10/429,048
Filed: May 5, 2003
For: SYSTEM AND METHOD OF SCALABLE TRANSACTION PROCESSING

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a decision on the Request for Reconsideration filed June 18, 2004 on the petition to make special under 37 C.F.R. §102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination, originally filed on August 29, 2003.

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. § 102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Petition to Make Special **GRANTED** since all of the requirements for special status under MPEP § 708.02(VIII) have been met.

The application is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. §708.02, Section VIII. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
703-308-0885

BLJ: 11/12/04

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BRINKS HOFER GILSON & LIONE
299 SOUTH MAIN STREET, SUITE 1300
SALT LAKE CITY, UT 84111-2241

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OFFICE OF PETITIONS

In re Application of	:
Manual F. Balandrin et al	:
Application No. 10/429,060	: DECISION GRANTING PETITION
Filed: May 2, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 072827-1713	:

This is a decision on the petition, filed December 18, 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 18, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 1621 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\429060.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.*

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Paper No. 6

PHILIP H. BURRUS, IV
MOTOROLA INC - LAW DEPARTMENT
1700 BELLE MEADE COURT
LAWRENCEVILLE, GA 30043

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MAR 0 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Seng P. Xiong et al	:	
Application No. 10/429,070	:	ON PETITION
Filed: May 3, 2003	:	
Attorney Docket No. IS01206ESG	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 29, 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)." No additional fee is required with any renewed petition. 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 Corrected Application Papers (Notice) mailed July 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 September 24, 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)). This petition lacks item (2) above.
As to item (2), applicants must pay a petition fee of $1,330.00 in order for the petition to be granted.

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

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

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

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

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

Wan Laymon

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

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Paper No. 8

PHILIP H. BURRUS, IV
MOTOROLA INC - LAW DEPARTMENT
1700 BELLE MEADE COURT
LAWRENCEVILLE, GA 30043

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MAR 2 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Seng P. Xiong et al	:	
Application No. 10/429,070	:	ON PETITION
Filed: May 3, 2003	:	
Attorney Docket No. ISO1206ESG	:	

This is a decision on the petition filed September 29, 2004 and the renewed petition filed March 8, 2005, under 37 CFR 1.137(b), to revive the above-identified application. The decision mailed March 2, 2005 is vacated.

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 July 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 September 24, 2003.

Pursuant to petitioner's authorization, Deposit Account No. 50-2117 was charged -- $1,330.00 for the petition to revive an unintentionally abandoned application.

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

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

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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Paper No. 6

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PO BOX 37428
RALEIGH, NC 27627

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JUL 2 4 2003

OFFICE OF PETITIONS

In re Application of
Seo-Kyu Kim
Application No. 10/429,084
Filed: May 2, 2003
Attorney Docket No. 5649-1101

DECISION ON PETITION

This is a decision on the petition filed July 10, 2003, requesting that the above-identified application be accorded a filing date of May 2, 2003, rather than the presently accorded filing date of May 5, 2003.

Petitioner maintains that the above-identified application was deposited in the United States Postal Service (USPS) Express Mail Service on May 2, 2003, pursuant to the requirements of 37 C.F.R. § 1.10; however, the USPTO failed to accord the application a filing date as of the "date-in" or deposit date with the USPS. In support, petitioner submitted *inter alia*:

- a true and accurate copy of the Cover Sheet for the Application, showing the Express Mail number on Page 2;
- a true and accurate copy of the Post Office to Addressee Express Mail mailing label number EV193585101US; and
- a true and accurate copy of the Track and Confirm record for the Express Mail mailing from the USPS's website.

The petition includes an adequate showing that the instant petition was filed promptly. A review of the evidence further reveals that: The true copy of the Cover Sheet bears Express Mail mailing label number EV193585101US. This Cover Sheet identifies all of the papers present in the application and currently accorded a filing date of May 5, 2003. Thus, petitioner has shown that the Express Mail mailing label number was placed on the correspondence prior to the original mailing. Furthermore, although the date-in portion of the Express Mail mailing label is blank, the label also bears an official USPS postmark dated May 2, 2003. In addition, the Track and Confirm record states that the relevant Express Mail mailing was accepted by the USPS at 5:33 pm on May 2, 2003.

In view thereof, the petition is **GRANTED**.

No petition fee is required.

The application is being forwarded to the Office of Initial Patent Examination for **correction of the filing date to May 2, 2003** and mailing of a corrected filing receipt.

Telephone inquiries regarding this matter should be directed to the undersigned at (703) 305-0309.

Nancy Johnson

Nancy Johnson
Petitions Attorney
Office of Petitions

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Paper No.

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

MAILED
JUN 23 2010
OFFICE OF PETITIONS

In re Application of	:	
Flugelman et al.	:	
Application No. 10/429,093	:	LETTER REGARDING
Filed: May 2, 2003	:	PATENT TERM ADJUSTMENT
Docket No. 24558-502 CIP	:	
Title: VASCULAR CELLS GENETICALLY	:	
ALTERED TO OVER-EXPRESS ANGIOGENIC	:	
PROLIFERATION AND MATURATION	:	
FACTORS; TREATMENT OF	:	
ATHEROSCLEROSIS USING SAME	:	

This is in response to the "APPLICATION FOR ADJUSTMENT OF PATNET TERM INDICATED IN NOTICE OF ALLOWANCE UNDER 37 CFR § 1.705(b)," filed January 29, 2010. Applicants request that the determination of patent term adjustment be increased by two hundred and thirty-two (232) days to five hundred and thirteen (513) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction partly on the basis that the Office will take in excess of three years to issue this patent. In addition, applicants contend that one period of applicant delay was incorrectly calculated.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not

undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, Applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

To the extent that Applicants otherwise request reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the request is **GRANTED**.

Applicants dispute the reduction of 41 days, pursuant to 37 CFR 1.704(c)(8) for applicant delay in filing a supplemental response: a response to a non-final Office action was filed on February 25, 2009, and 41 days later, a supplemental Information Disclosure Statement (IDS) was submitted on April 7, 2009.[2]

Applicants maintain that the supplemental IDS was filed not on April 7, 2009, but rather on April 6, 2009 (which is 40 days after the filing of the response to the non-final Office action). Consequently, Applicants maintain that the proper period of applicant delay associated with this response is not 41 day, but rather 40 days.

Applicants state that any patent issuing from the application is not subject to a terminal disclaimer.[3]

The application history has been reviewed and it has been determined that Applicants are correct. With the present request, Applicants have included a copy of an Express Mail label which evinces that the response to the Office communication was deposited with the USPS in compliance with 37 C.F.R § 1.10 on April 6, 2009.[4] Accordingly, April 6, 2009 is the proper date to use in calculating any applicant delay pursuant to 37 CFR 1.704(c)(8). Using this date, the proper period of reduction is 40 days.

The reduction of 41 day has been removed, and a reduction of 40 days has been entered.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is two hundred and eighty-two (282) days (594 days of Office delay minus 312 days of Applicant delay).

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[2] The Supplemental IDS has been reviewed, and it does not contain the statement contained within 37 C.F.R. § 1.704(d). As such, the submission of the Supplemental IDS constitutes a failure to engage in reasonable efforts to conclude prosecution.

[3] Petition, page 2.

[4] The supplemental IDS has been reviewed, and it is noted that it contains the Express Mail label number.

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

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

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

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of updated PAIR screen

Day : Wednesday

PALM INTRANET

Date: 6/23/2010
Time: 07:52:18

PTA Calculations for Application: 10/429093			
Application Filing Date:	05/02/2003	PTO Delay (PTO):	594
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	313
Post-Issue Petitions:	0	Total PTA (days):	282
PTO Delay Adjustment:	1		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
147	06/23/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	1		
139	01/08/2010	MAIL NOTICE OF ALLOWANCE			
138	01/05/2010	ISSUE REVISION COMPLETED			
137	01/05/2010	DOCUMENT VERIFICATION			
136	01/05/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
135	01/04/2010	NOTICE OF ALLOWABILITY			
108	04/07/2009	REFERENCE CAPTURE ON IDS			
107	04/07/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		41	92
106	10/22/2009	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
105	10/28/2009	DATE FORWARDED TO EXAMINER			
104	10/22/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
103	10/28/2009	DATE FORWARDED TO EXAMINER			
102	10/22/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)		29	98
101	10/28/2009	DISPOSAL FOR A RCE / CPA / R129			
100	10/22/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
99	10/22/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
98	06/23/2009	MAIL FINAL REJECTION (PTOL - 326)			
97	06/22/2009	FINAL REJECTION			
96	04/07/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
94	04/07/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

93	04/09/2009	DATE FORWARDED TO EXAMINER			
92	02/25/2009	RESPONSE AFTER NON-FINAL ACTION			
91	11/25/2008	MAIL NON-FINAL REJECTION			
90	11/24/2008	NON-FINAL REJECTION			
85	08/27/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
84	09/10/2008	DATE FORWARDED TO EXAMINER			
83	08/27/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
82	09/10/2008	DATE FORWARDED TO EXAMINER			
81	08/27/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
80	09/10/2008	DISPOSAL FOR A RCE / CPA / R129			
79	08/27/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
78	08/14/2008	MAIL ADVISORY ACTION (PTOL - 303)			
77	08/12/2008	ADVISORY ACTION (PTOL-303)			
76	07/23/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
75	08/05/2008	DATE FORWARDED TO EXAMINER			
74	07/23/2008	AMENDMENT AFTER FINAL REJECTION			
73	06/11/2008	MAIL FINAL REJECTION (PTOL - 326)			
72	06/09/2008	FINAL REJECTION			
68	04/01/2008	DATE FORWARDED TO EXAMINER			
67	02/27/2008	RESPONSE AFTER NON-FINAL ACTION			
66	02/27/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
65	11/27/2007	MAIL NON-FINAL REJECTION			
64	11/26/2007	NON-FINAL REJECTION			
52	09/19/2007	DATE FORWARDED TO EXAMINER			
51	09/07/2007	RESPONSE AFTER NON-FINAL ACTION		78	48
50	09/07/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
49	09/07/2007	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
48	03/21/2007	MAIL NON-FINAL REJECTION			
47	03/17/2007	NON-FINAL REJECTION			
46	12/20/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
45	01/10/2007	DATE FORWARDED TO EXAMINER			

44	12/20/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		26	32
43	01/10/2007	DISPOSAL FOR A RCE / CPA / R129			
42	12/20/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
35	01/10/2007	DATE FORWARDED TO EXAMINER			
34	12/20/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
33	12/20/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
32	08/24/2006	MAIL FINAL REJECTION (PTOL - 326)			
31	08/21/2006	FINAL REJECTION			
30	06/13/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	06/13/2006	REFERENCE CAPTURE ON IDS			
28.7	06/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	26
28	06/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	06/22/2006	DATE FORWARDED TO EXAMINER			
26	06/13/2006	RESPONSE AFTER NON-FINAL ACTION		28	24
25	06/13/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
24	02/16/2006	MAIL NON-FINAL REJECTION	594		-1
23	02/06/2006	NON-FINAL REJECTION			
22	01/17/2006	CASE DOCKETED TO EXAMINER IN GAU			
21	12/10/2004	CORRESPONDENCE ADDRESS CHANGE			
20	12/13/2004	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
19	12/13/2004	MAIL-RECORD PETITION DECISION OF GRANTED RELATED TO ATTORNEY			
18	10/21/2004	PETITION ENTERED			
17	04/27/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	04/25/2004	CASE DOCKETED TO EXAMINER IN GAU			
15	04/23/2004	APPLICATION RETURN FROM OIPE			
14	04/23/2004	APPLICATION RETURN TO OIPE			
13	04/23/2004	APPLICATION DISPATCHED FROM OIPE			
12	04/23/2004	APPLICATION IS NOW COMPLETE			
11	03/18/2004	ADDITIONAL APPLICATION FILING FEES		111	7
		A SET OF SYMBOLS AND PROCEDURES,			

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Chicago, IL 60606

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OFFICE OF PETITIONS

In re Application of Cai et al.	:	
Application No. 10/429,107	:	Decision on Petition
Filing Date: May 2, 2003	:	
Attorney Docket No. 00-577-H	:	

In re Application of Cai et al.	:	
Application No. **TBD**	:	Decision on Petition
Filing Date: June 26, 2006	:	
Attorney Docket No. 00-577-H	:	

This is a decision in response to the petition under 37 CFR 1.181 filed October 3, 2006, to accord a continuation application a filing date.

The petition is **granted** and the continuation application will be accorded a filing date of **June 26, 2006**.

Facts:

A final Office action was mailed in application no. 10/429,107, on December 27, 2005.

Petitioner filed a continuation application on June 26, 2006. Unfortunately, a clerical error resulted in the continuation application papers being placed in the file wrapper for application no. 10/429,107, and not being assigned an application number or filing date.

A request and payment for a three-month extension of time were filed June 27, 2006.

Application no. 10/429,107 became abandoned as of midnight on June 27, 2006.

Petitioner requests the continuation application papers be assigned an application number and filing date.

Discussion:

A review of the papers filed June 26, 2006, clearly and unambiguously indicates the papers were intended to be a continuation application. Therefore, the petition is granted. The Office notes a filing date of June 26, 2006, is proper since the application was filed on June 26, 2006.

The Office of Initial Patent Examination will be informed of the instant decision and will take the following steps:

(1) Remove all the papers filed June 26, 2006, from the file folder for application no. 10/429,107,

(2) Assign the papers filed June 26, 2006, an application number and filing date of June 26, 2006,

(3) Place of the copy of the petition filed October 3, 2006, in the new file wrapper, and

(4) Place a copy of the instant decision in the new file wrapper.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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HUNTINGTON BEACH CA 92649

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MAR 13 2009

OFFICE OF PETITIONS

In re Application of

KEITH SCHOFIELD
Application No. 10/429,114
Filed: May 01, 2003
Attorney Docket No. **UC1.PAU.29**

DECISION ON PETITION
TO MAKE SPECIAL UNDER
37 CFR 1.102(c)(1)

This is a decision on the petition under 37 CFR 1.102(c)(1), filed February 09, 2009, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required

The instant petition includes a statement by Keith Schofield, attesting to his age. Accordingly, the above-identified application has been accorded "special" status.

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

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 1793 for action on the merits commensurate with this decision.

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
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Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Mail Date: 04/21/2010

Applicant	: Oren Rosenbloom	: DECISION ON REQUEST FOR
Patent Number	: 7673020	: RECALCULATION of PATENT
Issue Date	: 03/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/429,116	: OF WYETH
Filed	: 05/02/2003	:
		:

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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06092006

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

In re Application of HOOG et al Application No. 10/429,119 Filed: May 2, 2003 Attorney Docket No. TI-33918	: : : : : :	DECISION ON PETITION

This is a decision on the petition filed February 8, 2005, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is GRANTED.

A non-final Office action was mailed January 12, 2004, setting a three-month shortened statutory period for filing a response. In the absence of a response, the application was held abandoned and a Notice of Abandonment was mailed November 17, 2004.

Petitioner asserts that a response titled, "Amendment Under 37 CFR 1.111," and a Petition for Extension of Time with the appropriate fee was timely filed by facsimile transmission on July 7, 2004. To support the assertion, petitioner submitted 1) a copy of the response titled, "Amendment Under 37 C.F.R. 1.111," 2) a copy of the certificate of transmission under 37 C.F.R. § 1.8(a) dated July 7, 2004, 3) a copy of the Petition for Extension of Time, 4) a copy of the Auto-Reply Facsimile Transmission Report from the USPTO, and 5) a copy of the sending unit's report confirming successful transmission of fourteen pages.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, 37 CFR § 1.8(b) provides for accepting a correspondence as being timely filed if it is transmitted in accordance with 37 CFR § 1.8(a), and is reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered

> timely if the party who forwarded such correspondence: (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence; (2) supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition meets the conditions of 37 CFR § 1.8(b) to establish the previous timely filing of the response.

The application file is being forwarded to the technical support staff for processing the response titled, "Amendment Under 37 CFR1.111." From there, it will be returned to the examiner for further prosecution.

Questions regarding this decision should be directed to Jose' G. Dees at (571) 272-1569.

Robert Oberleitner, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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FROM DIRECTORS OFFICE

JAN 12 2006

TECHNOLOGY CENTER 3600

Roger L. Belfay
829 Tuscarora Avenue
Saint Paul MN 55102

In re Application of
Ronald D. Nelson
Application No. 10/429,139
Filed: May 2, 2003
For: INTERACTIVE ANIMAL

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicant's petition to withdrawal the holding of abandonment filed on July 11, 2005.

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

☒ Postcard receipt being dated by the OIPE on December 13, 2004.

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

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

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

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

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

The application will be forwarded to the Supervisory Legal Instruments Examiner to withdraw the abandonment and restore the application to pending status, before being returned to the examiner for an expeditious Action.

KJD/rjc/12/29/05

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

In re Application of
Sawyer, et al.
Application No. 10/429,152
Filed: May 2, 2003
Attorney Docket No. 9400-12

DECISION GRANTING PETITION

This is a decision on the petition filed July 18, 2003, under 37 CFR 1.10(c) requesting that the above-cited application be accorded a filing date of May 2, 2003, rather than the presently accorded filing date of May 5, 2003.

Petitioner alleges that the application was deposited with the Express Mail Service on May 2, 2003. In support of the allegation, the petition is accompanied by a copy of Express Mail label No. EV353591736US (the same Express Mail label number was placed on the original application papers located in the official file) showing a "date-in" of May 2, 2003.

In view of the above, the petition is granted.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 2, 2003.

Any inquiries related to 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

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.
10/429,156	05/02/2003	Gardner T. Baldwin	03 PAT 188	1750

27645 7590 11/09/2007
ALWORTH LAW & ENGINEERING
505 CUMBERLAND ROAD
TYLER, TX 75703-9324

EXAMINER
DUNWOODY, AARON M

ART UNIT	PAPER NUMBER
3679	

MAIL DATE	DELIVERY MODE
11/09/2007	PAPER

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

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

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C. W. Alworth
Alworth Law & Engineering
505 Cumberland Road
Tyler, TX 75703-9324

In re Application of Gardner T. Baldwin et al Application No. 10/429,156 Filed: May 2, 2003 Attorney Docket No.: 03 PAT 188 For: HIGH PRESSURE REINFORCED RUBBER HOSE SWAGE OR CRIMPED COUPLING AND METHOD OF ATTACHMENT	DECISION ON PETITION REGARDING REQUEST TO MAIL ALLOWANCE UNDER 37 CFR 1.181

This is in response to applicants' petition under 37 CFR 1.181 filed June 1, 2007 requesting that the Allowance action counted on March 28, 2006 be mailed.

The petition is **DISMISSED AS MOOT**.

A review of the file reveals that Notice of Allowance data verification was completed on November 6, 2007 and the Notice of Allowance in question was mailed on November 7, 2007.

In view of the above, applicants' petition is moot and is hereby dismissed.

With respect to applicants' request for extension of the patent term, an application for patent term adjustment in accordance with 37 CFR 1.705(b) must be must be filed no later than the payment of the issue fee.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Daniel P. Stodola at (571) 272-7087.

Any questions regarding patent term adjustment should be directed to the Office of Patent Legal Administration (OPLA) at (571) 272-7702.

Donald T. Hajec, Director
Technology Center 3600
(571) 272-5150
Facsimile No.: (571) 273-8300

SNM/DS: 11/08/07

SM

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FROM DIRECTOR'S OFFICE

JUN 19 2007

TECHNOLOGY CENTER 3600

Gregory Smith & Associates
3900 Newpark Mall Road, 3rd Floor
Newark, CA 94560

In re application of	:	**DECISION ON PETITION**
Russell W. McDonald et al.	:	**TO MAKE SPECIAL FOR**
Application No. 10/429,157	:	**NEW APPLICATION**
Filed: May 1, 2003	:	**UNDER 37 CFR 1.102**
For: MORTGAGE LOAN DATA PROCESSING SYSTEM AND METHOD FOR A LOAN BROKER		

This is a decision on the petition filed on May 25, 2007 to make the above-identified application special for accelerated examination procedure under 37 C.F.R. § 1.102(d).

The petition to make the application special is **DISMISSED**.

REGULATION AND PRACTICE

To be eligible for accelerated examination under 37 C.F.R. § 1.102(d) and pursuant to the "Change to Practice for Petitions in Patent Applications to Make Special and for Accelerated Examination" published in the Federal Register on June 26, 2006 (71 Fed. Reg. 36323), the following conditions must be satisfied:

1. The application must be a non-reissue utility or design application filed under 37 CFR 1.111(a);
2. The application, the petition and the required fees must be filed electronically using the USPTO's electronic filing system (EFS), or EFS-web; if not filed electronically, a statement asserting that EFS and EFS-web were not available during the normal business hours;
3. The application, at the time of filing, must be complete under 37 CFR 1.51 and in condition for examination;
4. The application must contain three or fewer independent claims and twenty or fewer total claims and the claims must be directed to a single invention.

The petition to make special for infringement under 37 C.F.R. § 1.102(d) is not acceptable at least because it was not filed with the application as required in the above Federal Register Notice of June 26, 2006. It appears that the petition was filed under the guidelines for making an application special that were in effect prior to August 25, 2006. As of August 25, 2006 the new guidelines replaced the old guidelines. Since applicant's petition was received on May 25, 2007 the petition must be considered under the new guidelines and thus is properly **DISMISSED**. It is recognized that the petition was filed with a Certificate of Mail on October 16, 2003, however, because a Certificate of Mail under 1.8 only applies to "correspondence required to be filed in the USPTO within a set period of time" without evidence of receipt (such as a date stamped post card receipt), the Certificate of Mail would not apply here since there was no set period of time to file the petition.

Any inquiry regarding this decision should be directed to Steven N. Meyers, Quality Assurance Specialist, at (571) 272-6611.

Steven N. Meyers,
Quality Assurance Specialist
Technology Center 3600

Sm/sm: 6/17/07

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GREGORY SMITH & ASSOCIATES
3900 Newpark Mall Road, 3rd Floor
Newark, CA. 94560

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OFFICE OF PETITIONS

In re Application of	:	
Russell W. McDonald	:	
Application No. 10/429,157	:	DECISION ON PETITION
Filed: May 1, 2003	:	TO MAKE SPECIAL UNDER
Attorney Docket No. R250-001C1	:	37 CFR 1.102(d)
	:	

This is a decision on the renewed petition under 37 CFR §1.102(d), filed August 3, 2007, to make the above-identified application special based on actual infringement as set forth in M.P.E.P. § 708.02, Section II.

The petition is **GRANTED.**

A grantable petition to make an application special under 37 CFR §1.102(d) and MPEP §708.02, Section II: Infringement, must be accompanied by the required fee pursuant to 37 CFR 1.17(h) and a statement by the applicant, assignee, or attorney/agent registered to practice before the office alleging:

(A) That there is an infringing device or product actually on the market or method in use;

(B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petitioner has included a returned post card dated prior to the "Change to Practice for Petitions in Patent Applications to Make Special and for Accelerated Examination", published in the Federal Register on June 26, 2006(71 Fed. Reg. 36323). Petitioner, in view of an enclosed copy of a post card, submits that the effective date of the petition should be October 15, 2003. Upon reconsideration, the effective date of the petition is October 15, 2003.

A review of the petitions filed October 15, 2003 as well as the renewed petition filed August 8, 2007 indicates that the petition meets the requirements of 37 CFR 1.102(d), and the request for special status is granted.

As authorized, the overpayment fee for the petition under 37 CFR 1.102(d) has been deposited to petitioner's deposit account 60-2276.

Telephone inquiries concerning this decision should be directed to Thurman K. Page at 571-272-0602.

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 3694 for action on the merits commensurate with this decision.

David Bucci
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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MARC S. HANISH
THELEN REID & PRIEST LLP
P.O. BOX 640640
SAN JOSE CA 95164-0640

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OFFICE OF PETITIONS

In re Application of
Michael D. GREENSLADE et al
Application No. 10/429,161
Filed: May 2, 2003
Attorney Docket No. FOUND-0045

DECISION ON PETITION
UNDER 37 CFR 1.137(b)
and 37 CFR 1.183

This is a decision on the petition under 37 CFR 1.183, filed April 19, 2004 and again on June 16, 2005, for Suspension of Rules and 37 CFR 1.137(b), filed June 16, 2005, to revive the above-identified application.

The petition under 37 CFR 1.183 is **DISMISSED**.

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

Any petition under 37 CFR 1.183 must be accompanied by the petition fee set forth in §1.17(h). A petition fee of $130 has been charged to petitioner's deposit account as authorized in the petition dated April 19, 2004. The conditional petition under 37 CFR 1.183 is considered to be a regular petition before the Director.

Petitioner requests under 37 CFR 1.183 to waive the requirements under 37 CFR 1.146 for an election of species in response to the restriction requirement of March 22, 2004 on the basis that the restriction requirement is without merit.

The Director cannot suspend or waive any requirement pursuant to 37 CFR 1.183 where the Rules of Practice already provide the procedure for relief. Specifically, 37 CFR 1.143 sets forth the remedy if the applicant disagrees with the requirement for restriction and may request reconsideration and withdrawal or modification of the restriction requirement under this rule. Accordingly, the petition under 37 CFR 1.183 is dismissed.

The application was held abandoned for failure to respond in a timely manner to the Restriction Requirement mailed March 22, 2004 which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. The reply dated April 20, 2004 did not constitute a proper reply to the restriction requirement because applicant declined to elect. Accordingly, the application became abandoned on July 23, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137 (b) in that (1) the reply in the form of an election and amendment; (2) the petition fee of $1,500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the restriction requirement of March 22, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Amelia Au at (571) 272-7414. All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application file is being referred to Technology Center Art Unit 3749 for appropriate action on the concurrently filed amendment.

Brian Hearn
Lead Petitions Examiner
Office of Petitions

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Paper No. 8

GRAYWIRE LLC
ATTN: MICHAEL L. WACH
4425 MARINERS RIDGE
ALPHARETTA GA 30005

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OFFICE OF PETITIONS

In re Application of	:	
Wach et al.	:	ON PETITION
Application No. 10/429,166	:	
Filed: 2 May, 2003	:	
Attorney Docket No.	:	
10222.105001 (06948.10502	:	

This is a decision on the petition filed on 25 May, 2006, under 37 CFR 1.137(b).[1]

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)"

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

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

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

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

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

The application became abandoned on 25 September, 2003, for failure to timely file a response to the Notice to File Missing Parts of Nonprovisional Application mailed on 24 July, 2003, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 20 March, 2006.

The petition lacks item (1). A review of Office financial records reveals that petitioners did not include sufficient funds for the independent claims in excess of three (3). Specifically, an additional $87.00 is due. As patent and trademark fees are required to be paid in advance, the petition as filed does not include a complete and proper reply. Any renewed petition filed must be accompanied by the proper fee.

Petitioners should verify the proper fees due by checking the USPTO website prior to filing a renewed petition, as fees are subject to change without further notice.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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Hamilton, Brook, Smith & Reynolds, P.C.
5530 Virginia Road
P.O. Box 9133
Concord, MA 01742-9133

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OFFICE OF PETITIONS

In re Application of	:	
Kenneth m. Gainey et al.	:	
Application No. 10/429,183	:	DECISION ON PETITION
Filed: October 2, 2003	:	TO WITHDRAW
Attorney Docket No. 2479-2095-001	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 22, 2006.

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

A review of the file record indicates that the power of attorney to the attorneys/agents associated with Hamilton, Brook, Smith & Reynolds, P.C. has been revoked by the assignee of the patent application on January 4, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Volpe and Koenig, P.C.**
Dept. ICC
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

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DALLAS, TX 75225

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AUG 25 2006

OFFICE OF PETITIONS

In re Application of	:	
George Bernhart, et al.	:	DECISION ON REQUEST
Application No. 10/429,192	:	TO WITHDRAW
Filed: May 2, 2003	:	FROM RECORD
Attorney Docket No. NC25721 9023.001	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed March 23, 2006.

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

The request was signed by Robert H. Kelly on behalf of himself and all the other attorneys/agents of record associated with Customer No. 30973. However, a review of the file record indicates that the assignee of the patent application revoked all previous powers of attorney on April 7, 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.

There is no outstanding Office action that requires a reply from the applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON DC 20001

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MCHALE & SLAVIN, P.A.
2855 PGA BLVD
PALM BEACH GARDENS, FL 33410

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OFFICE OF PETITIONS

In re Application of	:	
Robert L. Diaz et al	:	
Application No. 10/429,201	:	DECISION ON PETITION
Filed: May 1, 2003	:	TO MAKE SPECIAL UNDER
Attorney Docket No. 2385.003	:	37 CFR 1.102(c)(1)
	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed October 19, 2005, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **DISMISSED** due to the face that applicant Robert L. Diaz is only 64 years of age.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age, must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required.

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 Wan Laymon at 571-272-3220.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 3733 for action in its regular turn.

David Buiei
Petitions Examiner
Office of Petitions

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Paper No. 7

FOLEY & LARDNER LLP
THREE PALO ALTO SQUARE
3000 EL CAMINO REAL
SUITE 100
PALO ALTO CA 94306

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OFFICE OF PETITIONS

In re Application of
Francine S. Grant et al.
Application No. 10/429,203
Filed: May 2, 2003
Attorney Docket No. 428372003400

ON PETITION

This is a decision on the petition filed April 19, 2004, requesting under 37 CFR 1.183 that the rules be suspended to accept a response to an Office communication after the maximum extendable time for reply.

The petition regarding suspension of the rules 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 1.183."

BACKGROUND

On July 24, 2003, a Notice to File Missing Parts was mailed requiring, *inter alia*, fees not paid upon application. A two month period of reply was set although extensions of time to file the response were allowable. Pursuant to 37 CFR 1.136(a), the applicant requested the maximum extension of time obtainable, five months, and filed a response on February 23, 2004.

The response included filing fees, and excess claim fees. However, in the interim from the time the Notice to File Missing Parts was mailed and the time the response was filed, effectively October 1, 2003, the United States Patent and Trademark Office amended the rules of practice to adjust certain patent fee amounts. A Notice was published in the Federal Register on July 14, 2003 and in the Official Gazette of the United States Patent and Trademark Office on August 5, 2003.

The fees due and payable when the response was due were subject to the new fee schedule.

Subsequent to the filing of the response to the Notice to File Missing Parts and the payment of the fees, on April 12, 2004, a Notice of Incomplete Reply was mailed. The Notice was mailed because the fees paid in response to the Notice to File Missing Parts were deficient in the amount of $198. The fees paid in response to the Notice to File Missing Parts totaled $4150 plus $2 was charged to petitioner's deposit account. The fees paid were applied as follows; $770 for the statutory basic filing fee, $130 late filing fee surcharge, $430 for 5 independent claims over 3 at a rate of $86 per independent claim, $290 for multiple dependent claims, $2010 for a five month extension of time pursuant to 37 CFR 1.136(a) and $522 applied towards the fees due for 40 total claims over 20, at a rate of $18 per claim.

Petitioner argues that they relied on the total extra claim fees due as provided by the USPTO in the Notice to File Missing Part mailed July 24, 2003 and that as a result, the response was deficient. As a remedy, petitioner seeks a waiver of the regulations to allow the deficiency to be satisfied after the maximum extension term as set out in 37 CFR 1.136(a).

OPINION

With respect to petitioners' request that the maximum extension term (five months) for reply to the Notice to File Missing Parts be waived, suspension of the rules under 37 CFR 1.183 may only be granted in an "extraordinary situation, when justice requires". The facts presented on the record do not establish an extraordinary situation. Petitioners have not currently established any special circumstances or equities that would require suspension of the rules in the interests of justice.

Petitioners' delay in submitting the fees due for claims in excess of 20 is not because the USPTO incorrectly advised that the amount due was $540. In fact, at the time the Notice to File Missing Parts was due, the rate for claims in excess of 20 was set at $18 per claim. $18 per claim over 20 was the rate at the time the Notice to File Missing Parts was mailed in July and the rate at the time the fees were paid. The rate for claims in excess of 20 was not increased due to the rate change.

The problem appears to be that the increase in the multiple dependent claim fees and the increase in the independent claim fees was not taken into account by the petitioners in that $280, instead of $290, was paid for the multiple dependent claims and $420, instead of $430, was paid for the independent claims and that when the proper amounts were applied from the total amount remitted ($2140) it only left a balance of $520. Even if the total number of claims in excess of 20 was 30 as indicated in the Notice to File Missing Parts mailed July 24, 2003, the total fees submitted, $2140 plus

$2010 for the extension of time, would have been deficient. At $18 per claim in excess of 20 the fees that should have been submitted would have been $540 for 30 claims.

The Notice of Incomplete Reply indicated that the total claims over 20 was 40, not 30 as was indicated in the Notice to File Missing Parts. At $18 per claim in excess of 20 the fees that should have been submitted would have been $720 for 40 claims.

Irrespective of the number of claims in excess of 20 (30 or 40), even at the lower number, sufficient fees had not been submitted in response to the Notice to File Missing Parts and any extension of time beyond the maximum extension obtainable, is not seen as equitable.

There is no adequate showing that the failure to submit a proper response to the office communication was caused by information relayed by the USPTO. Instead it appears that reasonable care was not taken by the applicant in adhering to the fee increase effective October 1, 2003. Waiver of the regulations set out in 37 CFR 1.136(a) in this situation is not justified. 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.[1] Even assuming, *arguendo*, that clerical inadvertence or error caused or contributed to the delay in submitting the proper fees in response to the Notice mailed July 24, 2003, is not a ground for requesting waiver of the regulations.[2]

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 errors.[3] Thus, there is no adequate showing of "an extraordinary situation" in which "justice requires" waiver of the rules to pay the fees withing the time allowable or extendable. Circumstances resulting from petitioners' 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.[4] Accordingly, the petition under 37 CFR 1.183 is dismissed.

As a result of the fees not having been submitted within the maximum extension term, this application became abandoned September 25, 2003. Since a complete reply to the

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[1] United States v. Lockheed Petroleum Svcs., 709 F.2d 1472, 1475 (Fed. Cir. 1983); Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

[2] See In re Kabushiki Kaisha Hitachi Seisakusho, 39 USPQ2d 1319, 1320 (Comm'r Pat. 1994).

[3] 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).

[4] See In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pat. 1990); In re Bird & Son, Inc., 195 USPQ 586, 588 (Comm'r Pat. 1977).

Notice to File Missing Parts was not filed, the five month extension of time request, pursuant to 37 CFR 1.136 did not save the application from abandonment. An extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $2010 extension of time fee submitted with the response (albeit an incomplete response) on February 23, 2004 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be refunded to deposit account no. 50-0872.

Petitioner may wish to consider filing a petition under 37 CFR 1.137(a)[5] or 37 CFR 1.137(b),[6] 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

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[5]A grantable petition under 37 CFR 1.137(a) must be accompanied by:

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

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

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

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

[6]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)).

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

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

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 7/15/04

2 Serial/Patent # 10/429,203

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
X	Extension of Time	3	2/23/04	$ 2010.00
	Notice of Appeal/Appeal			$
	Petition			$
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 2010.00

8 TO BE REFUNDED BY:

- [ ] Treasury Check
- [ ] Credit Deposit A/C #:

9 50--2859

10 REASON:

- [ ] Overpayment
- [ ] Duplicate Payment
- [ ] No Fee Due (Explanation):

application abandoned

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: _____ TITLE: _____

SIGNATURE: _____ PHONE: _____

OFFICE: _____

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: [signature] DATE: 7/16/04

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

Office of Finance
Refund Branch
Crystal Park One, Room 802B

FORM PTO 1577
(01/90)

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

Paper No. 9

FOLEY & LARDNER LLP
THREE PALO ALTO SQUARE
3000 EL CAMINO REAL
SUITE 100
PALO ALTO CA 94306

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JUL. 2 0 2004
OFFICE OF PETITIONS

In re Application of
Francine S. Grant et al.
Application No. 10/429,203
Filed: May 2, 2003
Attorney Docket No. 428372003400

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b),[1] filed April 19, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned September 25, 2003, for failure to timely reply to the Notice to File Missing Parts mailed on July 24, 2003, which set a two (2) month shortened period for reply. A response with a five month extension of the time for reply

---

[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)).

in accordance with 37 CFR 1.136(a) was requested on February 23, 2004 but the response was not complete and thus the application became abandoned.[2] The instant petition and decision precedes the Notice of Abandonment .

The reply in the form of an authorization to charge fees in the amount of $198 for 40 total claims over 20 was submitted with the petition. The claim fees in the amount of $198 and the petition fee in the amount of $1330.00 will be charged to deposit account no. 50-0872.

All other requirements of 37 CFR 1.137(b) have been properly remitted, this application is being forwarded to the Office of Initial Patent Examination for further pre-exam processing.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[2]A Notice of Incomplete Reply was mailed April 12, 2004.

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

9/24/03

Darby and Darby P C
Post Office Box 5257
New York NY 10150-5257

Dear Applicant:

The Box PGPub replacement drawings for application number 10/429,213 received on 6/20/03 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Customer Service, Office of Initial Patent Examination, at 703-308-1202.

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

Signature of Reviewer, Office of Initial Patent Examination

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

KLAUBER & JACKSON
411 HACKENSACK AVENUE
HACKENSACK, NJ 07601

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JUN 16 2006

OFFICE OF PETITIONS

In re Application of	:	DECISION ON PETITION
Stephen F. Vatner	:	
Application No. 10/429,214	:	
Filed: May 2, 2003	:	
Atty Docket No.:	:	
601-1-129N	:	

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed November 17, 2005. 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 Notice to File Missing Parts of Provisional Application (hereinafter "Notice"), mailed July 21, 2003. The Notice set a two (2) month period for reply from the mail date of the Notice, and also provided for extensions of time under 37 CFR 1.136(a). Petitioner filed a reply on January 21, 2005; however, the reply was incomplete. Petitioner was so notified in a Notice of Incomplete Reply (Nonprovisional), mailed February 23, 2004. No complete and proper reply having been received, the application became abandoned September 22, 2003. A Notice of Abandonment was mailed September 26, 2005.

With the instant petition, Applicant has responded to the Notice and completed the requirements of a grantable petition under 37 CFR 1.137(b).

This application is being forwarded to the Office of Initial Patent Examination for continued processing in due course.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

Caroline M. Fleming
HAMILTON, BROOK, SMITH &
REYNOLDS, P.C.
530 Virginia Road
P.O. Box 9133
Concord, MA 01742-9133

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DEC 21 2004

Technology Center 2100

In re Application of: Michael O. Rabin
Application No. 10/429,218
Filed: May 2, 2003
For: METHOD AND APPARATUS FOR PROTECTING INFORMATION AND PRIVACY

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition under 37 C.F.R. § 1.102(c) and M.P.E.P. § 708.02, Section IV: Applicant's Age, November 24, 2004, to make the above-identified application special.

A grantable petition to make special under 37 C.F.R. § 1.102(c) 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 copy of the relevant pages of Michael O. Rabin's passport that the applicant, is over sixty five (65) years of age.

Accordingly, the petition is GRANTED. The application is being forwarded to the examiner for expedite prosecution.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL RD
PALO ALTO CA 94304-1050

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FEB 08 2006

OFFICE OF PETITIONS

In re Application of	:	
Alferness, et al.	:	
Application No. 10/429,225	:	ON PETITION
Filed: May 2, 2003	:	
Attorney Docket No. 29912-705.502	:	

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT", filed January 23, 2006, to withdraw the holding of abandonment of the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, mailed July 9, 2003. This Office action set a shortened period for reply of two (2) months. No reply having been received, the above identified application became abandoned on September 10, 2003. A Notice of Abandonment was mailed on December 27, 2005.

Petitioner contends that he did timely file a reply to the Notice to File Missing Parts. In support, petitioner has included a copy of a properly itemized, USPTO date-stamped postcard receipt, itemizing that a complete reply was filed on September 8, 2003. Furthermore, a review of Office financial records reveals that the necessary fees were timely received on September 8, 2003.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

In view thereof, **THE HOLDING OF ABANDONMENT IS WITHDRAWN.**

Given the basis for granting this petition, no petition fee was required and none has been charged.

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

Telephone inquiries regarding this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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650 PAGE MILL ROAD
PALO ALTO CA 94304-1050

JUN 04 2007

In re Application of:
ALFERNESS, CLIFTON A., et al.
Serial No. 10/429,225
Filed: May 02, 20003
Docket: CDIM121014
Title: DEVICE AND METHOD FOR MODIFYING THE SHAPE OF A BODY ORGAN

DECISION ON PETITION UNDER 37 CFR § 1.181

This is a decision on the petition filed November 20, 2006 petitioning the Director under 37 CFR § 1.181 for withdrawal of a requirement for information or, alternatively, acceptance of submitted information as a complete response satisfying the requirement under 37 CFR § 1.105.

The petition is dismissed.

Background

The examiner assigned the application mailed a 37 CFR § 1.105 requirement to applicants on September 21, 2006 requiring applicants to disclose all co-pending applications and related patents to the application being examined and identify the specific claims of those applications and/or patents which may present double patenting issues with the instant application claims. The examiner cites no less than fifty-three applications and nine patents that the examiner presently is aware of and believes may be related and have overlapping subject matter. The examiner makes the requirement on the basis that applicants or the assignee are presumably far more cognizant of the contents of the claims in these applications than any Office staff, and has access to the source documents by which comparisons could be done better than within the Office for the examiner to thereby determine the commonality among the claims by this information.

Petitioner submits that the examiner's requirement is beyond the scope 37 CFR § 1.105. It is petitioner's position that the Examiner is requiring more than facts or factual information as intended by 37 CFR § 1.105 but is instead requiring an opinion by requiring an evaluation of the claims of any of the listed and to be listed applications and patents that may be related with respect to statutory or obviousness-type double patenting.

Discussion

MPEP 704.11 states "[T]he terms "factual" and "facts" are included in 37 CFR § 1.105 to make it clear that it is facts and factual information, that are known to applicant, or readily obtained after reasonable inquiry by applicant, that are sought, and that requirements under 37 CFR § 1.105 are not requesting opinions that may be held or would be required to be formulated by applicant." This section further states "[T]he purpose of 37 CFR § 1.105 is to improve patent quality, and render better decisions, and not to put applicants in jeopardy of meeting their duties of candor and good faith in their replies to a requirement for information."

From a recent Federal Circuit decision:

> Scope of information that may be required from applicant by patent examiner pursuant to 37 C.F.R. §1.105 encompasses information relevant to patent examination either procedurally or substantively, and includes zone of information beyond that defined by 37 C.F.R. §1.56 as material to patentability, and beyond that which is directly useful to support rejection or conclusively decide issue of patentability, since Section 1.105(a)(1) states that PTO may "require the submission ... of such information as may be reasonably necessary to properly examine or treat the matter"[.] Star Fruits S.N.C. v. United States, 73 USPQ2d 1409 (Fed. Cir. 2005).
>
> Duty of candor embodied in 37 C.F.R. §1.56 does not give patent applicant power to refuse requirement for information under 37 C.F.R. §1.105, since neither regulation states that response to such requirement may be limited, at applicant's discretion, to whatever applicant believes it might be affirmatively required to submit under Section 1.56, since language in Section 1.105(a)(1), which permits PTO to "require the submission ... of such information as may be reasonably necessary to properly examine or treat the matter," expressly states that PTO, not applicant, controls scope of requirement for information, and since scope of information that may be required under Section 1.105 is broader than information that applicant is duty bound to provide under Section 1.56. Star Fruits S.N.C. v. United States, 73 USPQ2d 1409 (Fed. Cir. 2005).
>
> United States Patent and Trademark Office can use requirement for information under 37 C.F.R. §1.105 to compel disclosure of information that patent examiner deems pertinent to patentability, even if applicant disagrees with examiner concerning significance of information to ultimate question of whether application discloses patentable subject matter, since PTO is clearly entitled to use Section 1.105 to seek information that may support rejection, and since examiner is charged with duty of deciding whether patent should issue from application, and so long as examiner's request for information is not arbitrary or capricious, applicant cannot impede examiner's performance of that duty by refusing to comply with information requirement that proceeds from examiner's view of scope of law to be applied to application. Star Fruits S.N.C. v. United States, 73 USPQ2d 1409 (Fed. Cir. 2005).

If an applicant were required to make an admission that the claims of one application or patent read on the claims of another, it would appear that this would be beyond the scope of 37 CFR § 1.105. However, in the present situation, applicants are not being asked this but to identify claims that *may* present double patenting issues. Applicants would be making comparisons to identify similarities in the claims. This is not an admission that the claims conflict. The Examiner still will determine this. The applicants would be identifying observed facts and then the Examiner would render an opinion from these facts. Thus, an opinion is not being required. Nevertheless, it appears that the court considers forms of opinion relevant and within the authority of the Examiner to require.

> ...Other requirements for information are also foreseeable under the "reasonably necessary to properly examine or treat the matter" standard. For instance, it might be reasonably necessary for the Office to require an explanation of technical material in a publication, such as one of the inventor's publications, or require the applicant's comments on a recent Federal Circuit opinion and how that opinion affects examination. ... The final rule permits that "the examiner or other Office employee may *require the submission* ... of such information as may be reasonably necessary to properly examine or treat the matter." 37 C.F.R. 1.105(a)(1) (emphasis added) Star Fruits S.N.C. v. United States, 73 USPQ2d 1409 (Fed. Cir. 2005).
>
> Through notice and comment rulemaking the Office made explicit the inherent authority of Office employees to require information from an applicant. The goal is to "encourage" employees to use that power to "perform the best quality examination possible." Star Fruits S.N.C. v. United States, 73 USPQ2d 1409 (Fed. Cir. 2005).

Opinion is clearly permitted. For that matter, when an applicant cites any reference for consideration before the examiner, is that not opinion as to what is believed material to patentability under 37 CFR § 1.56? When the examiner requires submission of information under 37 CFR § 1.105 that may be material to patentability, isn't an applicant making an opinion of judgment for factual information that may be material to patentability? The information "improve[s] patent quality, and render[s] better decisions" (MPEP 704.11) but does not put applicants in jeopardy of meeting their duties of candor and good faith under 37 CFR § 1.56 in their replies to a requirement for information under 37 CFR § 1.105.

Conclusion

Ultimately, the purpose in requiring applicants to identify claims in the identified and yet to be identified related applications and patents is to improve the quality of examination by the examiner with respect to statutory and obviousness-type double patenting particularly in view of the significant number of applications and patents involved. In view thereof, the examiner's requirement is not seen as unreasonable and is seen as within the scope of 37 CFR § 1.105.

PETITION DISMISSED.

Petitioner may file a request for reconsideration of this decision, without fee. However, such request must be filed within two months of the date of this decision. Petitioner is reminded that

the mere filing of the request will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. See 37 CFR § 1.181(f).

Any inquiry regarding this decision should be directed to Allan N. Shoap, Special Program Examiner, at (571) 272-4514.

Karen M. Young

for Frederick R. Schmidt, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Mailed: NOV 29 2004

In re application of
Karl E. Wiedermann et al.
Serial No. 10/429,238
Filed: May 5, 2003
For: EROSION-RESISTANT SILICONE COATINGS

WK
Paper Number __

DECISION ON PETITION

This is a decision on PETITION TO EXPUNGE UNDER 37 C.F.R. 1.59(b), filed April 16, 2004, which has been accepted as a timely petition under 1.59(b) and MPEP 724.02 and is before the Group Director of Technology Center for consideration.

DECISION

Petitioner requests that the document entitled "Cavitation/Erosion-Resistant Coating for Leading Edges of Composite Rotor Blades", which was submitted as part of an Information Disclosure Statement on August 5, 2003 be expunged from the application file and returned to the applicants' attorneys. Petitioner further requests that the listing of this document be struck from the PTO Form 1149, submitted with August 5, 2003 Information Disclosure Statement. Petitioner has recently realized that the document was submitted as a report to the U.S. Navy under an understanding of confidentiality and hence was not described in a printed publication within the meaning of 35 USC 102(a) or 102(b). Each of the criteria for granting the request has been satisfied, see the MPEP 724.05.

The petition is **GRANTED.**

Section 1.59 has been amended to eliminate references to returning documents that have been expunged to recognize that, with electronic Official files, there will be nothing to return when a paper is expunged.

The Office is capturing electronic images of all documents that form the Official file. Where the image is generated from a physical source document, the originating document may be disposed of once the electronic image accuracy is verified. The paper source document will eventually be destroyed under a United States National Archives and Records Administration (NARA) approved schedule. Therefore, if a document is to be expunged from the record, the only operation that will be required will be removal of the image from the Official file.

10/429,238

Paragraph (a)(1) of §1.59 has been amended by deleting the phrase ''and returned '' from the first sentence, and deleting the second sentence. Paragraph (b) of §1.59 has been amended by deleting the phrase ''and return '' from each of the first and second sentences. The Office will continue to provide notice in the Official file that a paper has been expunged and the Office will send a decision to the applicant notifying the applicant that the paper has been expunged.

The paper has been expunged.
The listing submitted as part of the Information Disclosure Statement has been lined through.

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

Clifton E. McCann
Venable LLP
P.O. Box 34385
Washington, D.C. 20043-9998

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1/30/06

TO SPE OF : ART UNIT 2834

SUBJECT : Request for Certificate of Correction on Patent No.: 6,958,567

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:

DARREN SCHUBERG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

SPE

2834
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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GUY McCLUNG
PMB 347
16690 CHAMPION FOREST DRIVE
SPRING, TX 77379-7023

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OFFICE OF PETITIONS

In re Application of
Kenneth Wayne Seffert et al
Application No. 10/429,263
Filed: May 2, 2003
Attorney Docket No. SC 061 CIP

DECISION GRANTING PETITION
UNDER 37 CFR 1.55(c)

This is a decision on the petition, filed November 29, 2004, which is being treated as a petition under 37 CFR 1.55(c), for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign British Application No. 03 015 09.6, filed January 23, 2003.

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 above-noted 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).

Intermediate Application No. 10/418,743, to which priority was previously claimed, was filed on April 21, 2003, and was filed within 12 months of January 23, 2003 (the filing date of the foreign application to which benefit is now being claimed). On November 29, 2004, an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of $1,370 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

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

A Corrected Filing Receipt which reflects the above-noted foreign application accompanies this decision on petition.

This application is being forwarded to Technology Center AU 3653 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3218.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

VAN PELT, YI & JAMES LLP
10050 N. FOOTHILL BOULEVARD #200
CUPERTINO, CA 95014

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FEB 20 2008

OFFICE OF PETITIONS

In re Application of	:	
Roy G. Batruni	:	
Application No. 10/429,271	:	DECISION ON PETITION
Filed: May 2, 2003	:	
Attorney Docket No. OPTIP003	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 14, 2008, 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 January 9, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed October 9, 2007. Accordingly, the date of abandonment of this application is January 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 payment of the issue fee of $1440.00 and the publication fee of $300, (2) the petition fee of $1540.00, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

In accordance with 37 CFR 1.34, the signature of Mr. Terrance L. Wong 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.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to the office of Data Management to be processed into a patent.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CONLEY ROSE, P.C.
David A. Rose
P. O. BOX 3267
HOUSTON TX 77253-3267

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SEP 29 2008
OFFICE OF PETITIONS

In re Application of
Fauver
Application No. 10/429,324
Filed: May 5, 2003
Docket No.: 2220-00100

: DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed June 13, 2008.

The Notice of Abandonment mailed April 17, 2008 indicates that the application was held abandoned following the decision by the Board of Patent Appeals and Interferences mailed February 11, 2008 because the period for seeking court review of the decision had expired and there were no allowed claims

Petitioner argues that at the time that the Notice of Abandonment was mailed, there were allowable claims in the application. Petitioner further states that "[i]n accordance with MPEP § 1214.06, if there are claims which stand allowed, the Examiner should issue the application on the allowed claims. Accordingly, the Examiner improperly abandoned this case and should have issued the application with allowed claims 6 and 16."

Petitioner's arguments have been carefully considered and found convincing. In accordance with MPEP 1416.01, "[w]here the case includes one or more allowed claims, including claims allowed by the examiner prior to appeal and claims whose rejections were reversed by either the Board or the court, the proceedings are considered terminated only as to any claims which still stand rejected. It is not necessary for the applicant or patent owner to cancel the rejected claims, since they may be canceled by the examiner in an examiner's amendment Thus, if no formal matters remain to be attended to, the examiner will pass the application to issue forthwith on the allowed claims."

In view of the evidence presented, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

The application file is being forwarded to Technology Center 3700 for further processing.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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

SONNENSCHEIN NATH & ROSENTHAL
P.O. BOX #061080
WACKER DRIVE STATION
SEARS TOWER
CHICAGO, IL 60606-1080

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JUL 0 7 2003

OFFICE OF PETITIONS

LETTER

In re Application of :
Chang Liu et al :
Application No. 10/429,333 :
Filed: May 5, 2003 :
Attorney Docket No. 09800240-0025 :

This is in response to the paper filed May 27, 2003 under 37 CFR 1.27(c) seeking status as a Small Entity. This is also a decision on the request for refund.

The assertion to Claiming Small Entity Status of May 27, 20033 has been made of record and small entity status has been accorded.

The request for refund of the $543.00 basic filing fee is granted.

This file is being forwarded to Technology Center AU 2812.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : December 12, 2005

TO SPE OF : ART UNIT 2872

SUBJECT : Request for Certificate of Correction on Patent No.: 6,950,567

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. Because of the number of changes, you may consider issuance of corrected Patent.

Leo Boutsikaris

DREW A. DUNN
SUPERVISORY PATENT EXAMINER

2872

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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GREGORY SMITH & ASSOCIATES
3900 NEWPARK MALL ROAD, 3RD FLOOR
NEWARK CA 94560

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MAR 1 5 2007

OFFICE OF PETITIONS

In re Application of	:	
McDonald et al.	:	
Application No. 10/429,383	:	ON PETITION
Filed: May 5, 2003	:	
Attorney Docket No. R250-001C2	:	

This is a decision on the petition under 37 CFR §1.102(d), filed October 20, 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 M.P.E.P. § 708.02, Section II: Infringement.

The petition is **GRANTED.**

A grantable petition to make an application special under 37 CFR §1.102(d) and MPEP §708.02, Section II: Infringement, must be accompanied by the required fee pursuant to 37 CFR 1.17(h) and a statement by the applicant, assignee, or attorney/agent registered to practice before the office alleging:

(A) That there is an infringing device or product actually on the market or method in use;

(B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petition complies with all the above stated requirements. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

This matter is being referred to the Technology Center Art Unit 3694 for expedited prosecution.

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

Paper No. 6

Fraser Martin Buchanan Miller, LLC
132C West Second Street
Perrysburg, OH 43551-1401

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OFFICE OF PETITIONS

In re Application of	:	
Dean M. Giolando, et. al.	:	
Application No. 10/429,384	:	ON PETITION
Filed: May 2, 2003	:	
Attorney Docket No. 1-37324	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 9, 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 Missing Parts of Application (Notice) mailed June 26, 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 August 26, 2003.

In response, petitioner submitted with the instant petition an authorization to charge the listed deposit account $665 for the petition to revive fee, and $65 for the late filing of the Oath/Declaration. Petitioner also submitted an executed Oath/Declaration and a Specification along with an Abstract.

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 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LEARY & ASSOCIATES
3900 NEWPARK MALL RD.
THIRD FLOOR, SUITE 317
NEWARK CA 94560

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MAR 10 2008

OFFICE OF PETITIONS

In re Application of
Cara L. Thorton et al.
Application No. 10/429,394
Filed: May 5, 2003
Attorney Docket No. LBL1095U

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 16, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 11, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 12, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either

the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (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 (almost 3 years) in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on August 12, 2004. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, as Leary & Associates was counsel of record at the time of abandonment, Leary & Associates should explain why this application became abandoned while it was under their control and what efforts Leary & Associates made to further reply of itself and with whom this matter was discussed outside of Leary & Associates. 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), Leary & Associates and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons then at Leary & Associates, 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 and ½ 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 Leary & Associates and the responsible person(s) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

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

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

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

Any renewed petition may be addressed as follows:

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

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

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

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

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

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

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LEARY & ASSOCIATES
3900 NEWPARK MALL RD.
THIRD FLOOR, SUITE 317
NEWARK CA 94560

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DEC 05 2008

In re Application of
Cara L. Thorton et al.
Application No. 10/429,394
Filed: May 5, 2003
Attorney Docket No. LBL1095U

DECISION ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed May 12, 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 May 11, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 12, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either

the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (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 still has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

<u>As to Period (1):</u>

According to the declaration signed by Carol D. Titus, the attorney responsible for filing a response to the Office action mailed by USPTO dated May 11, 2004, believed that the response she prepared was mailed to USPTO on November 12, 2004. Unfortunately, the USPTO never received this response therefore Carol Titus's belief that it was mailed is not certain.

Also, it is still not fully explained as to why Carol D. Titus took 2.5 years to follow up on the November 12, 2004 response that she believed was filed herewith the USPTO. It wasn't until May of 2007 Carol D. Titus checked PAIR to follow up on the status of the application.

<u>As to Period (2):</u>

The delay in filing a grantable petition under 1.137(b) needs to be fully explained. The explanation was not to the satisfaction of the Director. Carol D. Titus was the responsible person at the time the application went abandoned and there is no evidence that she properly followed up. The explanation given does not clearly how the belief of applicant that a long delay was reasonable supersedes the knowledge and experience of Carol D. Titus (a registered practitioner).

Also, it is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct

knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

Any renewed petition may be addressed as follows:

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

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

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

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

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

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

Chris Bottorff
Petitions Examiner
Office of Petitions

cc: **Timothy J. Zarley**
Zarley Law Firm
Capital Square
400 Locust Street, Suite 200
Des Moines, IA 50309-2350

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ZARLEY LAW FIRM P.L.C.
CAPITAL SQUARE
400 LOCUST, SUITE 200
DES MOINES IA 50309-2350

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APR 2 3 2009

OFFICE OF PETITIONS

In re Application of	:	
Cara L. Thornton, et al.	:	
Application No. 10/429,394	:	DECISION ON PETITION
Filed: May 5, 2003	:	
Attorney Docket No. P07173US0-LBL1095U	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed February 4, 2009, 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, May 11, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 12, 2004. The Notice of Abandonment was mailed January 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 an amendment previously filed on July 16, 2007, (2) the petition fee of $750, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

This application is being referred to Technology Center AU 3731 for appropriate action by the Examiner in the normal course of business on the reply received.

Chris Bottorff
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Kevin T Connelly
Sunguard Shade Structures, Inc
4487-A-B Ashton Rd.
Sarasota FL 34233

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FEB 09 2005

OFFICE OF PETITIONS

In re Application of :
Connelly : DECISION ON PETITION
Application No. 10/429,403 :
Filed: May 6, 2003 :
For: FITTING FOR A SHADE CANOPY :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 28, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned May 10, 2004 for failure to timely reply to the non-final Office action mailed February 9, 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 C.F.R. § 1.136 were timely requested. Notice of Abandonment was mailed December 7, 2004.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 C.F.R. § 1.137(b). Accordingly, the failure to timely submit a proper reply to the non-final Office action is accepted as having been unintentionally delayed.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $410.00 extension of time fee submitted herewith was subsequent to the maximum period

obtainable for reply, this fee is unnecessary. Petitioner may request a refund of this fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

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.

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 will be forwarded to Technology Center 3600 for further processing.

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

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

CC: WERNER SCHROEDER
Sunguard Shade Structures, Inc
4487-A-B Ashton Rd.
Sarasota FL 34233

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

MAY - 5 2005

MacMillan, Sobanski & Todd, LLC
One Maritime Plaza, Fourth Floor
720 Water Street
Toledo, OH 43604

In re Application of	:	
Todd DePue	:	DECISION ON PETITION
Application No. 10/429,411	:	TO WITHDRAW THE
Filed: May 5, 2003	:	HOLDING OF ABANDONMENT
For: INTERIOR VEHICLE TRIM PANEL		

This is in reply to applicants' Status Inquiry/Request which has been treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on February 4, 2005.

The petition is **DISMISSED**.

A review of the file record reveals that a Notice of Abandonment was mailed January 25, 2005 because of applicants' failure to reply to the non-final Office action of July 2, 2004.

Petitioner states that a reply was filed on January 3, 2005. In support thereof, petitioner submits copies of a response, and a request for a three-month extension of time extending the period for response to January 3, 2005. The copy of the response submitted with the petition includes a Certificate of Mailing dated January 3, 2005, and apparently signed by Scott A. Blake. Petitioner further includes a copy of a postcard receipt that does not include a date stamp. Since the postcard receipt does not have a date stamp, petitioner cannot rely on the postcard receipt, and must rely on the Certificate of Mailing to show that the response was timely filed.

Any petition to withdraw the holding of abandonment based upon a Certificate of Mailing must provide the following:

(1) A copy of the original response bearing a signed Certificate of Mailing which includes the date of signing; and

(2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of mailing the original response on the date indicated on the Certificate of Mailing (see 37 CFR 1.8 and MPEP 512).

While meeting requirement (1) above, the petition fails under requirement (2) to provide a proper statement under 37 CFR 1.8(b)(3) attesting to personal knowledge of sending the

original response by mail on the date indicated on the certificate, by the person who signed the certificate, apparently in this instance Scott A. Blake.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181."

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(571) 272-6587

KJD/dgd: 4/20/05

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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NOV - 9 2005

MACMILLAN, SOBANSKI & TODD, LLC
ONE MARITIME PLAZA-FOURTH FLOOR
720 WATER STREET
TOLEDO OH 43604

In re Application of	:	
Todd DePue, et al	:	**DECISION ON PETITION**
Application No. 10/429,411	:	**TO WITHDRAW THE**
Filed: May 5, 2003	:	**HOLDING OF ABANDONMENT**
For: INTERIOR VEHICLE TRIM PANEL	:	

This is a decision on applicants' renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181 filed in the United States Patent and Trademark Office on June 6, 2005. The renewed petition is responsive to the decision mailed May 5, 2005, on the original petition filed February 4, 2005.

The petition is **GRANTED**.

A review of the file record indicates that the application was held abandoned for failure to timely file a response to the Office action mailed July 2, 2004, which set a three-month shortened statutory period. A Notice of Abandonment was mailed January 25, 2005 stating that no reply had been received.

Petitioner contends that a response was filed on January 3, 2005 by first class mail. In support thereof, petitioner submits a copy of a response bearing a Certificate of Mailing signed by Scott Blake and dated January 3, 2005.

Any petition to withdraw the holding of abandonment based upon a Certificate of Transmission by facsimile must include the following requirements:

(1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and

(2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512), <u>by the person who signed the certificate</u>.

While the petition filed February 4, 2005, met requirement (1) above it failed under requirement (2), to also include a statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of sending the original response by facsimile transmission on the date indicated on the certificate, <u>by the person who signed the certificate</u>, in this instance Scott Blake.

As the renewed petition has provided a proper statement under 37 CFR 1.8(b)(3), the petition is **GRANTED**.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the holding of abandonment and restore the application to pending status. The application will then be forwarded to the examiner for consideration of the January 3, 2005 amendment

Randolph A. Reese

Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6619

RAR/rjc: 08/25/05

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GAUTHIER & CONNORS, LLP
225 FRANKLIN STREET, SUITE 2300
BOSTON MA 02110

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JUL 20 2007

OFFICE OF PETITIONS

In re Application of
EDELMAN, et al.
Application No. 10/429,418
Filed: May 5, 2003
Attorney Docket No. **MIT7618DIV**

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 14, 2006, 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 of May 4, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 5, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $395, and the submission required by 37 CFR 1.114; (2) the petition fee of $750; and (3) a proper statement of unintentional delay.

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

The application file is being referred to Technology Center Art Unit 3738 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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Paper No. 5

Caroline Nash
Nash & Titus, LLC
3415 Brookeville Road
Brookeville MD 20833

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JUL 28 2003

OFFICE OF PETITIONS

In re Application of
Braue, Hobson, Boecker & Smith
Application No. 10/429,431
Filed: May 5, 2003
Attorney Docket No. Army 173
For: ACTIVE TOPICAL SKIN PROTECTANTS CONTAINING AMINES, POLYALKENIMINES AND /OR DERIVATIVES

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed July 9, 2003 (certificate of mailing date July 8, 2003).

The petition is granted.

Petitioners have shown that the non-signing inventor, Bryan Smith, has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, Attorney Caroline Smith states that she mailed the application papers, including the specification, claims and drawings to Mr. Smith and Mr. Smith informed her during the week of April 14, 2003 that he could not sign the declaration for this application. 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.

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

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
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BRYAN SMITH
12345 W. 52ND AVENUE
WHEAT RIDGE CO 80033

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JUL 28 2003
OFFICE OF PETITIONS

In re Application of
Braue, Hobson, Boecker & Smith
Application No. 10/429,431
Filed: May 5, 2003
Attorney Docket No. Army 173
For: ACTIVE TOPICAL SKIN PROTECTANTS CONTAINING AMINES, POLYALKENIMINES AND /OR DERIVATIVES

LETTER

Dear Mr. Smith:

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
Senior Petitions Attorney
Office of Petitions

ATTORNEY OF RECORD: Caroline Nash
Nash & Titus, LLC
3415 Brookeville Road
Brookeville MD 20833

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GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK NY 10016-0601

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JAN 29 2007

OFFICE OF PETITIONS

In re Application of	:
Christopher J. Cookson et al	:
Application No. 10/429,445	: DECISION GRANTING PETITION
Filed: May 5, 2003	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 3053-053	:

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

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue fee and publication fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance of June 15, 2006, is accepted as having been unintentionally delayed.

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

This matter is being referred to Patent Publication.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

HARD FILES

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/17/06

TO SPE OF : ART UNIT 3744

SUBJECT : Request for Certificate of Correction for Appl. No.: 10429453 Patent No.: 6943619

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

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

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

HENRY RANDALL
Certificates of Correction Branch
703-308-9390 ext.

Thank You For Your Assistance

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

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

Comments: _____

Cheryl J. [signature]
SPE

3744
Art Unit

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MOTOROLA, INC.
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG, IL 60196

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MAY 03 2007

OFFICE OF PETITIONS

In re Application of	:	
John M. Harris et al	:	
Application No. 10/429,458	:	DECISION ON PETITION
Filed: May 5, 2003	:	
Atty Docket No. CE08946R D01	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 27, 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 March 23, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on June 24, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the non-final Office action of March 23, 2006 is accepted as being unintentionally delayed.

This application is being referred to Technology Center AU 2618 for appropriate action in the normal course of business on the reply received September 27, 2006.

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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VERNON R. YANCY & ASSOCIATES
5514 OVERDALE DRIVE
LOS ANGELES, CA 90043

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FEB 14 2006

OFFICE OF PETITIONS

In re Application of	:	
DE ANFRASIO	:	
Application No. 10/429,471	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. (None)	:	

This is a decision on the petition under 37 CFR 1.137(a), filed November 23, 2005, to revive the above-identified application.

The petition is **DISMISSED.**

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

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 18, 2005, which set a shortened period for reply of 3 months. As no reply was filed, and no extensions of time were received, this application became abandoned at midnight on June 18, 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(d). The instant petition lacks item (1).

As to requirement (1), the petition explains that Applicant's attorney died in June 2005 and "Applicant has not received the Attorney case file for this matter." Due to non-receipt of the file and his inability to access private PAIR access, the petitioner was unable to submit a formal response. Despite this explanation, a grantable petition must include a required reply. A

courtesy copy of the Office Action mailed March 18, 2005 has been enclosed with this decision to assist Applicant. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2)(a). The petition is not accompanied by the required reply.

As for requirement (3), Petitioner contends the delay was unavoidable in that petitioner's former counsel died suddenly on June 19, 2005.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

It is noted that this application actually became abandoned before former counsel's unfortunate demise. Accordingly, as there is no evidence of any causal relationship between counsel's death and the abandonment of this application, the delay has not been shown to be unavoidable. See Douglas v. Manbeck, 21 U.S. Dist. LEXIS 16404, 21 USPQ2d 1697, 1700 (E.D. Pa. 1991), aff'd, 975 F.2d 869, 24 USPQ2d 1318 (Fed. Cir. 1992)(delay not unavoidable where counsel's death occurred after date of abandonment). There is simply no showing that former counsel had docketed the reply, or made any effort to prepare a reply or even an extension of time, such that his death precluded filing a timely communication with the USPTO.

In the alternative, Petitioner should consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $ 750 petition fee.

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

The revocation and power attorney filed on November 23, 2005 has been accepted.

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

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

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

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

Telephone inquiries concerning this decision should be directed to Denise Pothier at (571) 272-4787

Frances Hicks
Petitions Examiner
Office of Petitions

enc: Copy of the Office Action of March 18, 2005

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A

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/429,471	05/06/2003	Michael De Anfrasio		1851

7590 03/18/2005

ROGER A. MARRS
SUITE 1220
15233 VENTURA BLVD.
SHERMAN OAKS, CA 91403

EXAMINER
ABDELWAHED, ALI F

ART UNIT	PAPER NUMBER
3722	

DATE MAILED: 03/18/2005

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

SW

Office Action Summary	Application No.	Applicant(s)	
	10/429,471	ANFRASIO, MICHAEL DE	
	Examiner	Art Unit	
	Ali Abdelwahed	3722	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7 and 13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7 and 13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,682,801 to Waechter in view of U.S. Patent No. 4,663,998 to Parsons et al. and U.S. Patent No. 6,006,630 to Vasichek et al.

Waechter discloses a wrench socket (20) comprising: a cylindrical body (see column 3, lines 50-51) having at least one elongated central receptacle (23) defined by an inner continuous sidewall (24); the inner sidewall having one open end (see fig. 4); the body having a bottom (see fig. 4) separated by the sidewall in fixed, spaced-apart relationship with respect to the open end which defines a depth thereof (see fig. 4); and the sidewall includes a tapered portion inwardly extending from the open end to the bottom (see fig. 4); the tapered portion of the sidewall includes an angle of taper or slope adapted to accommodate a selected size range to accept a mating size range of a fastener (see figs. 5, 6); the bottom includes an aperture (22) for inserting a tool (40) for dislodging the fastener from the receptacle of the body (see fig. 3); wherein the inner surface of the sidewall is in a flat, tapered plane (see fig. 4); and the body receptacle is divided in half to provide a first tapered receptacle portion extending from the top end to a body midsection (defined by the top half of the tapered portion) and a second tapered

receptacle extending from the bottom end to the midsection (defined by the bottom half of the tapered portion).

However, Waechter fails to teach the body including means carried on the sidewall projecting into the receptacle for yieldably holding the fastener with the body; wherein the holding means is selected from a resilient seal, a coil spring, or a snap-lock means; and the sidewall having a straight portion leading from the open end to the tapered portion.

Nevertheless, Parsons et al. teaches a wrench socket (10) comprising a body (20) including means (36) carried on the sidewall (21) projecting into the receptacle (see fig. 3) for yieldably holding the fastener (14) with the body (see fig.1); and the holding means is selected from a resilient seal, a coil spring, or a snap-lock means (see fig. 5); and Vasichek et al. teaches a wrench socket (12) with the sidewall having a straight portion leading from the open end to the tapered portion (see fig.1).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wrench socket of Waechter, in view of Parsons et al. and Vasichek et al., such that it would provide the wrench socket of Waechter with the aforementioned limitations for the purpose of enhancing the gripping of the fastener with the socket body, and for accommodating a wider range of size of fasteners.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Additionally, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali Abdelwahed whose telephone number is (571) 272-4417. The examiner can normally be reached Monday through Friday from 10:00 A.M. to 6:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the examiner or the examiner's supervisor.

AA
03/14/2005

DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

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VERNON R. YANCY, ESQ.
5514 OVERDALE DRIVE
LOS ANGELES CA 90043

In re Application of
ANFRASIO et al.
Application No. 10/429,471
Filed: May 6, 2003
Attorney Docket No. 1851

DECISION
ON PETITION

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

The application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed March 18, 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 June 19, 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 Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

The instant petition does not satisfy requirements (1) and (3).

Regarding requirement (1), MPEP 711.03(c)(II)(A)(2)(b) states that the reply required for consideration of a petition to revive must be: (A) a Notice of Appeal and appeal fee; (B) an amendment under 37 CFR 1.116 that cancels all the rejected claims or otherwise prima facie places the application in condition for allowance; (C) the filing of an RCE (accompanied by a submission that meets the reply requirements of 37 CFR 1.111 and the requisite fee) under 37 CFR 1.114 for utility or plant applications filed on or after June 8, 1995 (see paragraph (d)

below); or (D) the filing of a continuing application under 37 CFR 1.53(b) (or a CPA under 37 CFR 1.53(d) if the application is a design application). Petitioner filed an amendment under 37 CFR 1.116. However, the amendment neither cancels all the rejected claims nor otherwise prima facie places the application in condition for allowance. See the enclosed Advisory Action Before the Filing of an Appeal Brief (PTOL-303). The required reply, therefore, has not been filed.

With respect to requirement (3) while Vernon R. Yancy has signed the certificate of mailing or transmission statement, he has not signed and, therefore, not included a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

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

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

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4787.

Denise Pothier
Petitions Examiner
Office of Petitions

enc: PTOL-303

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Alexandria, VA 22313-1450
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VERNON R. YANCY, ESQ.
5514 OVERDALE DRIVE
LOS ANGELES CA 90043

In re Application of	:	
ANFRASIO	:	DECISION
Application No. 10/429,471	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. 1851	:	

This is a decision on a renewed petition under 37 CFR 1.137(b), filed July 27, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed March 18, 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 June 21, 2005 (June 18 being a Saturday).[1]

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137 (b) in that (1) the reply in the form of a Request for Continued Examination (RCE), an amendment, and the requisite fee of $395; (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final action of March 18, 2005 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4787.

The application file is being forwarded to Group Art Unit 3722 for further processing.

Denise Pothier
Petitions Examiner
Office of Petitions

[1] See 37 CFR 1.7(a).

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Alicia Griffin Mills
Fredrikson & Byron, P.A.
4000 Pillsbury Center
200 South Sixth Street
Minneapolis MN 55402-1425

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OFFICE OF PETITIONS

In re Application of	:	
Kroll, et al.	:	
Application No. 10/429,509	:	DECISION ON PETITION
Filed: May 5, 2003	:	TO WITHDRAW
Attorney Docket No. 43169.64.2	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 11, 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 Natalie Kadievitch on behalf of all attorneys of record.

All attorneys/agents associated with this application.

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

All future correspondence will be directed to the first named inventor Kai Kroll at the address indicated below.

There is an outstanding Office action mailed April 7, 2006 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to April Wise at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: Kai Kroll
c/o Galvani Ltd.
3636 – 42nd Avenue South
Minneapolis, MN 55406-2815

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KAI KROLL
GALVANI, SUITE 190
6901 EAST FISH LAKE ROAD
MAPLE GROVE MN 55369

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MAY 1 3 2008

OFFICE OF PETITIONS

In re Application of Kai Kroll and Mark Kroll :
Application No. 10/429,509 : Decision on Petition
Filing Date: May 5, 2003 :
Attorney Docket No. 3230.03US08 :

This is a decision on the petition under 37 CFR 1.137(a), filed December 7, 2007, to revive the above-identified application. The petition is also being treated under 37 CFR 1.181 (no fee) as a petition to withdraw the holding of abandonment.

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

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

The application was filed May 5, 2003.

A declaration filed October 9, 2003, indicated correspondence should be sent to an address for the law firm of Fredrikson & Byron, P.A.

On February 6, 2004, the Office received one "Power of Attorney and Correspondence Address Indication Form" signed by Kai Kroll and a second identical form signed by Mark Kroll. The forms indicated correspondence should be mailed to:

KAI KROLL
GALVANI, SUITE 190
6901 EAST FISH LAKE ROAD
MAPLE GROVE MN 55369

Since both inventors signed the request to change the address of record, the Office should have changed the address of record.

The Office mailed a non-final Office action on April 7, 2006. The Office action was sent to the address for the law firm of Fredrickson & Byron, P.A.

A reply was not filed in response to the April 7, 2006 non-final Office action. As a result, a Notice of Abandonment was mailed October 18, 2006.

The Office need not determine if the delay in responding to the April 7, 2006 Office action was unavoidable because the Office failed to send the Office action to the correct address identified in the February 6, 2004 papers. In other words, the Office failed to provide the inventors with proper notice of the Office action. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Since the petition has been granted under 37 CFR 1.181, petitioner's request to have the petition considered under 37 CFR 1.137(a) is dismissed as moot. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, the petition fee of $130 and the petition fee of $255 charged to deposit account no. 16-0631 on December 10, 2007, have been credited back to the deposit account.

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 who signed the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

Technology Center Art Unit 3762 will be informed of the instant decision and the application, including the amendment filed December 7, 2007, will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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

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OFFICE OF PETITIONS

LEONARD TACHNER, A PROFESSIONAL LAW CORPORATION
17961 SKY PARK CIRCLE, SUITE 38-E
IRVINE, CA 92614

In re Application of
Kenny A. Gallagher, et al.
Application No. 10/429,523
Filed: May 2, 2003
Attorney Docket No. GALLAGHER-6

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed May 27, 2005.

The application became abandoned for failure to pay the issue/publication fee on or before December 21, 2004. Receipt is acknowledged of the requisite publication fee on May 27, 2005.

The petition is **GRANTED**.

The application is being forwarded to Publishing Division.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (703) 305-8283.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6-6-07

TO SPE OF : ART UNIT 2114

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/429576 Patent No.: 7159152

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 figs.

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

Certificates of Correction Branch

703-308-9390 ext. _____

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: New drawing are good

SCOTT BADERMAN

~~SUPERVISORY PATENT EXAMINER~~ SPE

2114

Art Unit

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McNair Law Firm, P.A.
*Intrusion Of Secured Locations
P.O. Box 10827
Greenville SC 29603

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OFFICE OF PETITIONS

In re Application of
Browning, et al.
Application No. 10/429,602
Filed: May 5, 2003
Attorney Docket No. Woven.00058

ON PETITION

This is a decision on the petition, filed November 7, 2005 (certificate of mailing date November 4, 2005), under 37 CFR 1.137(f), which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application.

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

Petitioner states that the above-identified nonprovisional application is the subject of an application filed in a foreign country or under a multinational international treaty that requires publication of applications eighteen months after the filing. This satisfies the rescission requirement. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

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

A petition under 37 CFR 1.137(b) to revive for failure to timely notify the Office of the filing of an application in a foreign 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 Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date will be mailed to petitioner in a separate correspondence.

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

This application is being returned to the Office of Initial Patent Examination so that a notice regarding the projected publication date can be generated and mailed to petitioner.

E. Shirene Willis

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

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Douglas B. McKnight
CALFEE, HALTER & GRISWOLD LLP
800 Superior Avenue
Cleveland, OH 44114-2688

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JUN 2 5

Office of the Director
Group 3600

In re application of
Michael E. Hay et al
Application No. 10/429,606
Filed: May 5, 2003
For: TOOL STORAGE PROJECT CENTER WITH POWER STRIP

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on December 15, 2003, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED 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 mailed March 22, 2004. As a result of this Notice, the attorney of record is Mr. Douglas B. McKnight and all of the attorneys associated with customer #24024. The correspondence address is the following:

Douglas B. McKnight
Calfee, Halter & Griswold LLP
800 Superior Avenue
Cleveland, OH 44114-2688

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

KJD/pav: 6/17/04

cc: BANNER & WITCOFF, LTD.
Ten South Wacker Drive
Suite 3000
Chicago, IL 60606

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MOSER PATTERSON & SHERIDAN LLP
SRI INTERNATIONAL
595 SHREWSBURY AVENUE, SUITE 100
SHREWSBURY, NJ 07702

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OFFICE OF PETITIONS

In re Application of	:
Phillip Andrew Porras et al	:
Application No. 10/429,611	: DECISION GRANTING PETITION
Filed: May 5, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SRI/3928-7	:

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 25, 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 2116 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

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

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

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SRI INTERNATIONAL
333 RAVENSWOOD AVENUE
MENLO PARK CA 94025

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OFFICE OF PETITIONS

In re Application of	:	
PORRAS, et al.	:	
Application No. 10/429,611	:	DECISION GRANTING PETITION
Filed: May 5, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SRI/3928-7	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 18, 2006, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 19, 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]

The file indicates a change of address has been submitted on July 19, 2006, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

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

This application is being referred to Technology Center AU 2116 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Request for Continued Examination and Information Disclosure Statement.

Karen Creasy for
Frances Hicks
Petitions Examiner
Office of Petitions

Cc: **Patterson & Sheridan LLP**
595 Shrewsbury Avenue
Shrewsbury, New Jersey 07702

---

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

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OFFICE OF PETITIONS

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

In re Application of	:	
PORRAS et al.	:	
Application No. 10/429,611	:	DECISION ON PETITION
Filed: 05/05/2003	:	
Attorney Docket No. 18033-0006004	:	

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

On October 15, 2008, the Office mailed a Notice of Allowance and Fee(s) Due, which set a three (3) month statutory period to pay the issue fee. As no timely issue fee payment was received, the application became abandoned on January 16, 2009. On February 20, 2009, the Office mailed a Notice of Abandonment.

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, (2) the petition fee, and (3) a proper statement of unintentional delay.

This matter is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries concerning the issuance of the application into a patent should be directed to the Office of Data Management, Customer Service at (571) 272-4200.

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

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Paper No. None

Sean D. Solberg
DORSEY & WHITNEY LLP
Suite 1500
50 South Sixth Street
Minneapolis MN 55402-1498

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OFFICE OF PETITIONS

In re Application of
Daniel T. Johnson et al.
Application No. 10/429,619
Filed: May 5, 2003
Attorney Docket No. 14567.01
Title: REFRIGERANT LOSS TRACKING AND REPAIR

DECISION ON PETITION

This is a decision on the petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6), filed July 21, 2004, to accept an unintentionally delayed claim for domestic priority under 35 U.S.C. §§ 119(e) and 120 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 information 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. 10/123,456, filed December 9, 2004." A benefit claim that merely states: "This application claims the benefit of Application No. 10/123,456, filed December 9, 2004," 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[1]. The amendment filed July 21, 2004 does not state the relationship of the prior-filed nonprovisional application number 09/883,779.

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, both a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) and a substitute amendment[2] which sets forth the relationship of the prior-filed applications are required.

Any renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski.

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[3], hand-delivery[4], or facsimile[5].

After the mailing of this decision, the application will be forwarded to Technology Center 2100 for further processing.

The general phone number for the Office of Petitions which should be used for status requests is

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1 See MPEP § 201.11

2 See 37 C.F.R. 1.121.

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

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

5 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.

(571) 272-3282. Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. None

Sean D. Solberg
DORSEY & WHITNEY LLP
Suite 1500
50 South Sixth Street
Minneapolis MN 55402-1498

COPY MAILED

APR 14 2005

OFFICE OF PETITIONS

In re Application of :
Daniel T. Johnson et al. :
Application No. 10/429,619 :
Filed: May 5, 2003 :
Attorney Docket No. 14567.01 :
Title: REFRIGERANT LOSS TRACKING :
AND REPAIR :

DECISION ON RENEWED PETITION

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed February 11, 2005, 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 original petition was submitted on July 21, 2004 and was dismissed via the mailing of a decision on January 14, 2005 for failure to identify the relationship of the applications.

With this renewed petition, Petitioner has set forth that this application is a continuation-in-part of application 09/883,779.

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 information where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

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

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

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c). The specification of the present file has been located in the electronic record, and it is cleat that the reference statement was not included in the specification-as-filed.

Accordingly, before a petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a second renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) and a substitute amendment[1] deleting the improper incorporation by reference statement is required.

Finally, it is not clear whether Petitioner wishes to claim priority to provisional applications 60/212,234 and 60/288,827, as each appears in the amendment submitted with the original petition, but neither appears with the amendment associated with this renewed petition.

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at

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[1] *Note* 37 C..F.R §1.121

(571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
United States Patent and Trademark Office

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COMMISSIONER FOR PATENTS
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Paper No.

Sean D. Solberg
DORSEY & WHITNEY LLP
Suite 1500
50 South Sixth Street
Minneapolis MN 55402-1498

COPY MAILED

AUG 16 2007

OFFICE OF PETITIONS

In re Application of	:	
Daniel T. Johnson et al.	:	
Application No. 10/429,619	:	DECISION ON SECOND RENEWED
Filed: May 5, 2003	:	PETITION UNDER 37 C.F.R.
Attorney Docket No. 14567.01	:	§ 1.78(A)(3)
Title: REFRIGERANT LOSS TRACKING	:	
AND REPAIR	:	

This is a decision on the second renewed petition under 37 C.F.R. §§ 1.78(a)(3) and 1.78(a)(6), filed June 15, 2007, 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 Supplemental Application Data Sheet (ADS).

An original petition was submitted on July 21, 2004 and was dismissed via the mailing of a decision on January 14, 2005 for failure to identify the relationship of the applications.

A renewed petition was filed on February 11, 2005, and was dismissed via the mailing of a decision on April 14, 2005, for the inclusion of new matter.

The second renewed 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 Commissioner may require additional information where there is a question whether the delay was unintentional.

Pursuant to Rule § 1.78(a)(2)(iii), the required reference must be included in an application data sheet, or the specification must contain or be amended to contain such reference in the first sentence(s) following the title. Consequently, on July 25, 2007, Petitioner submitted an amendment to the specification that contains the required reference.

This 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)(ii). Additionally, this application was filed within twelve months of the filing date of the prior-filed provisional application, Application No. 60/432,120, which was filed on December 9, 2002, for which priority is claimed.

All the above requirements having been satisfied, the late claim for priority 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 C.F.R. §§ 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 C.F.R. 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.

It is noted in passing that the Office cannot enter either of the two Application Data Sheets that were filed on June 15, 2007 and July 25, 2007, as neither has been signed. An ADS filed with the application is not required to be signed unless the ADS includes a nonpublication request. 37 C.F.R. §1.33(b) requires that amendments and other papers, except for written assertions pursuant to 37 C.F.R. §1.27(c)(2)(ii), filed in the application must be signed by an appropriate party. Therefore, an ADS or a supplemental ADS filed after the filing of an application must be signed in accordance with 37 C.F.R. § 1.33(b).

Telephone inquiries regarding *this decision* should be directed to Senior Attorney Paul Shanoski at (571) 272-3225[1]. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 2857 for appropriate action on the Request for Continued Examination submitted on July 24, 2007, including consideration by the examiner of the claim under 35 U.S.C. § §120 and 119(e) of the prior-filed nonprovisional and provisional applications.

Nancy Johnson
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

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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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/429,619	05/05/2003	2857	449	14567.01	21	2

CONFIRMATION NO. 1679

CORRECTED FILING RECEIPT

OC000000025389233

25763
DORSEY & WHITNEY LLP
INTELLECTUAL PROPERTY DEPARTMENT
SUITE 1500
50 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402-1498

Date Mailed: 08/15/2007

Receipt is acknowledged of this nonprovisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Daniel T. Johnson, Wayzata, MN;
James W. Peterson, Lake Elmo, MN;
Robert S. McConnell, Woodbury, MN;

Power of Attorney: The patent practitioners associated with Customer Number **25763**.

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/432,120 12/09/2002
and is a CIP of 09/883,779 06/18/2001
which claims benefit of 60/288,827 05/05/2001
and claims benefit of 60/212,234 06/16/2000

Foreign Applications

If Required, Foreign Filing License Granted: 06/27/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/429,619

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

REFRIGERANT LOSS TRACKING AND REPAIR

Preliminary Class

702

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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CINCINNATI OH 45202

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OCT 01 2009

OFFICE OF PETITIONS

In re Application of	:	
Mark William HAMERSKY et al.	:	
Application No. 10/429,633	:	DECISION ON PETITION
Filed: May 05, 2003	:	
Attorney Docket No. 9006M	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 25, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, October 07, 2008 which set a shortened statutory period for reply of three (3) month. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 08, 2009.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment (2) the petition fee of $1,620.00 and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the restriction requirement of October 07, 2008 has been accepted as having been unintentionally delayed.

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

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the

required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

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

The application is being referred to the Technology Center AU 1796 for appropriate action on the concurrently filed election.

Michelle R. Eason

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **MICHAEL E. DUKES**
K&L GATES LLP
HENRY W. OLIVER BUILDING
535 SMITHFIELD STREET
PITTSBURGH, PA 15222-2312

UNITED STATES PATENT AND TRADEMARK OFFICE

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AUG 13 2003

Office of the Director
Group 3600

Paper No. 3

David A. Lundy
Kreig DeValult Lundy LLP
825 Anthony Wayne Bldg.
203 E. Berry St.
Fort Wayne, IN. 46802

In re application of
Noel C. Calkins
Application No.10/429644
Filed: May 5, 2003
For: Composite Steel and Ceramic Gun Barrels

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on May 27, 2003 under 37 CFR 1.102 (c) to make the above-identified application special under the procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted is the inventor's statement that Applicant is over 65 years of age.

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

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

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

Randolph A. Reese

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121
(703) 605-0586 (fax)

RAR/ekn: 7/15/03

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MEREK BLACKMON & VOORHEES
673 S. WASHINGTON ST
ALEXANDRIA, VA 22202

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JAN 0 5 2005

OFFICE OF PETITIONS

In re Application of	:	
Donald W. Tinker	:	
Application No. 10/429,670	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. B5TIN008.14	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 7, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 8, 2004.

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

This matter is being referred to Technology Center AU 3672.

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

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032006

APR 7 2006

BINGHAM MCCUTCHEN LLP
THREE EMBARCADERO CENTER, STE 1800
SAN FRANCISCO, CA 94111

In re Application of:
Steven Lee
Serial No.: 10/429,671
Filed: May 6, 2003
For: INDUSTRIAL COMPUTER HINGE ASSEMBLY

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed on July 23, 2004, to withdraw the holding of abandonment of the above-identified application. No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely pay the fees required in the Notice of Allowance and Fee(s) Due (hereinafter "Notice") mailed on February 5, 2004. A Notice of Abandonment was mailed on June 30, 2004.

Petitioner asserts that the Notice was not received. In support of the assertion, petitioner submitted the following items as evidence of lack of receipt of the Notice: 1) a statement from the practitioner stating that the Notice was not received by the practitioner and attesting to the fact that a search of the file jackets and docket records indicates that the Notice was not received, and 2) a copy of the docket record for the application where the Notice would have been recorded had it been received.

A review of the file record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Notice 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 non-received Notice 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 satisfies the showing required to establish non-receipt of the Notice.

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

A new Notice of Allowance and Fee(s) Due and a new Notice of Allowability will be mailed in due course.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 19 2006
OFFICE OF PETITIONS

PATTERSON & SHERIDAN, LLP
3040 POST OAK BOULEVARD, SUITE 1500
HOUSTON, TX 77056

In re Application of	:	
Donald J.K. Olgado	:	
Application No. 10/429,684	:	DECISION DISMISSING PETITIONS
Filed: May 5, 2003	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No.	:	
AMAT/2601.C9/CMP/ECP/RKK	:	

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed by facsimile transmission on July 5, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed 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 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item (1).

The amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and either an Application Data Sheet or a substitute amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

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

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

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

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

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

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/429,684	05/05/2003	1742	858	AMAT/2601.C9/CMP/ECP/RKK	26	3

CONFIRMATION NO. 3293

CORRECTED FILING RECEIPT

OC000000023862528

44257
PATTERSON & SHERIDAN, LLP
3040 POST OAK BOULEVARD, SUITE 1500
HOUSTON, TX 77056

Date Mailed: 05/14/2007

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

Applicant(s)

Donald J. K. Olgado, Palo Alto, CA;

Assignment For Published Patent Application

APPLIED MATERIALS, INC.

Power of Attorney:

Lawrence Edelman--25226
Robert Mulcahy--25436
Peter Sgarbossa--25610
Michael Sherrard--28041
Michael Einschlag--29301
Keith Tackett--32008
Donald Verplancken--33217
Raymond Moser Jr--34682
James Wilson--35412
Raymond Kwong--37165

Domestic Priority data as claimed by applicant

This application is a CON of 09/663,814 09/15/2000 PAT 6,557,237
which is a CIP of 09/289,074 04/08/1999 PAT 6,258,220
which claims benefit of 60/110,209 11/30/1998

Foreign Applications

If Required, Foreign Filing License Granted: 07/28/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/429,684

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Removable modular cell for electro-chemical plating

Preliminary Class

029

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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MAY 15 2007

OFFICE OF PETITIONS

In re Application of	:	
Donald J.K. Olgado	:	
Application No. 10/429,684	:	DECISION ON PETITION
Filed: May 5, 2003	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No.	:	
AMAT/2601.C9/CMP/ECP/RKK	:	

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed November 2, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petition is **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 information where there is a question whether the delay was unintentional.

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

All the above requirements having been satisfied, the late claim for benefit of priority 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 the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 1742 for consideration by the examiner of the claim under 35 U.S.C. § §120 and 119(e) of the prior-filed nonprovisional and provisional applications.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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Serle Mosoff
PERMAN & GREEN, LLP
425 Post Road
Fairfield, CT 06824

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JUL 09 2007

OFFICE OF PETITIONS

In re Application of	:	
John Douglas Weir, et. al.	:	
Application No. 10/429,687	:	ON PETITION
Filed: May 5, 2003	:	
Attorney Docket No. 044-010803-US (PAR)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed on August 4, 2006, to revive the above-identified application.

The application became abandoned for failure to timely submit a proper reply to the final Office action mailed January 24, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b), in that, petitioner has supplied (1) the reply in the form of a Notice of Appeal with the $500 fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay. Therefore, 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 file is being forwarded to Technology Center Art Unit 1773.

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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JUL 15 2005

PATTON BOGGS LLP
2550 M STREET, NW
WASHINGTON, DC 20037-1350

In re application of Bernard M. Snyder, et al Application No. 10/429,736 Filed: May 6, 2003 For: METHOD AND APPARATUS FOR MONITORING AND TREATING MEDICAL SIGNS AND SYMPTOMS	: : : :	**DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)**

This is a decision on the petition submitted on June 20, 2005, under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a birth certificate for Bernard M. Snyder indicating that he is at least 65 years of age.

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

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

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

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(571) 272-6619

RAR/dcg: 7/6/05

SPE: D. Gray

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/7/06

TO SPE OF : ART UNIT 2852

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/429,741 Patent No.: 6990301

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: _____

Susan S Lee for Dave Gray (SPE)
SPE

2852
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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LEON KUSSICK
3884 CLIPPER COVE DR
NAPLES FL 34112

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AUG 1 8 2006
OFFICE OF PETITIONS

In re Application of
Leon Kussick :
Application No. 10/429,743 : DECISION ON
Filed: May 6, 2003 : PETITION
Title: Kussick Mandibular :
Advancement Applicance

This is in response to the petition to revive under 37 CFR 1.137(b), filed December 30, 2005.

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

The above-identified application became abandoned for failure to pay the issue fee in response to the Notice of Allowance mailed January 12, 2005. This notice set a statutory period for fee transmittal of three months. No issue fee having been received, the application became abandoned on April 13, 2005. A Notice of Abandonment was mailed on May 16, 2005.

With the instant petition, petitioner paid the petition and issue fees, and made the proper statement of unintentional delay.

The application 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
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JOHN C. SMITH, ESQ.
2499 GLADES ROAD
SUITE 113
BOCA RATON FL 33431

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NOV 20 2006

OFFICE OF PETITIONS

In re Application of
Estape et al.
Application No.10/429,807
Filed: May 5, 2003
Title of Invention: Elastic Grip Handle For A Baseball/Softball Bat

ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), filed August 22, 2006.

This above-identified application became abandoned for failure to file a proper reply to the final Office Action of February 14, 2006. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on May 15, 2006. This decision precedes the mailing of a Notice of Abandonment.

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

The Request for Continued Examination (RCE), and amendment will be forwarded to Technology Center 3700 for further processing.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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JUN 09 2009

OFFICE OF PETITIONS

BUSKOP LAW GROUP, P.C.
4511 Dacoma Street
HOUSTON TX 77092

In re Application of	:	
Anne Klaas De Groot et al.	:	
Application No. 10/429,820	:	DECISION ON PETITION
Filed: May 5, 2003	:	PURSUANT TO
Patent No. 6,926,260	:	37 C.F.R. § 1.28(c)
Issued: August 9, 2005	:	
Attorney Docket No. 1141.18	:	
Title: COMPENSATION AND	:	
HOISTING APPARATUS	:	

This is a notice regarding your submission of March 16, 2009, which is properly treated as a request for acceptance of a fee deficiency submission under 37 C.F.R § 1.28(c). 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 C.F.R. § 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.

37 C.F.R. § 1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

(a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
(b) The small entity fee actually paid, and when;
(c) The deficiency owed amount (for each fee

erroneously paid); and

(d) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, and the date on which the erroneous payment was made.

It does not appear that Petitioner has identified the small entity fee that was actually paid, the current fee amount, the deficiency owed amount, or the total deficiency payment owed. However, Office records indicate that on March 16, 2009, $555 was submitted to the Office. As such, the requirement that Petitioner must provide the Office with the small entity fee that was actually paid, the current fee amount, the deficiency owed amount, and the total deficiency payment owed is waived, *sua sponte*.

If this is not the correct amount, Petitioner must notify the Office.

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

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 patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at http://www.uspto.gov/web/forms/sb0123.pdf.

A blank fee address form may be found at http://www.uspto.gov/web/forms/sb0047.pdf.

It is not apparent whether the person signing this petition was in a position to have firsthand or direct knowledge of the facts

and circumstances of the insufficient payment 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 the insufficient payment. **In the event that such an inquiry has not been made, Petitioner must make such an inquiry. If such inquiry results in the discovery that the insufficient payment was not made in good faith, Petitioner must notify the Office.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[1]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Computer Packages Inc.
414 Hungerford Drive
Third Floor
Rockville, MD 20850

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

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BURNS DOANE SWECKER & MATHIS LLP
PO BOX 1404
ALEXANDRIA VA 22313-1404

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MAY 23 2007

OFFICE OF PETITIONS

In re Application of	:	
Lynch, et al.	:	
Application No. 10/429,832	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. 001580-932	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed April 6, 2007.

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

The holding of abandonment is **WITHDRAWN**.

The above-identified application became abandoned for failure to timely file a reply in response to the non-final Office action, mailed December 8, 2005. This Office action set an extendable period for reply of three (3) months. Applicant filed a reply on March 8, 2006, pointing out that a Preliminary Amendment filed on June 12, 2003 obviated the basis for the double-patenting rejection set forth in the Office action. While applicant did not include a copy of the Preliminary Amendment, applicant invited the Examiner to contact him if it could not be located. On May 16, 2006, applicant filed a copy of the Preliminary Amendment, together with a postcard receipt showing that it had been previously filed on June 12, 2003. A Notice of Abandonment was mailed on March 13, 2007.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

In view thereof, the holding of abandonment is withdrawn.

The matter is being forwarded to Group Art Unit 2611 for consideration of the Preliminary Amendment filed June 12, 2003 (copies of which were supplied on May 16, 2006 and with the instant petition).

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

OIPE JC106
FEB 28 2005
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Don C. Atkins	
Application No.: 10/429,842	
Filed: 5/6/2003	Examiner: A. Kuhar
Title: PROCESS FOR DISPOSING OF SOLVENT-CONTAINING LIQUIDS	Art Unit: 1754
Attorney Docket No.: 134/107	

PETITION TO MAKE SPECIAL UNDER 37 C.F.R. 1.102(c)

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

Dear Sir:

This is a Petition to Make Special the above-identified patent application. The basis for this petition is that the Applicant is over sixty-five years of age.

In accordance with MPEP 708.02 IV, an affidavit by Applicant, showing Applicant's age to be over sixty-five years, is attached hereto.

In view of the above, Applicant requests that the Petition to Make Special be granted and the examination of the application be advanced.

Respectfully Submitted,

February 9, 2005
Date

EDGAR W. AVERILL, JR.
Reg. No. 44724

Edgar W. Averill, Jr.
Averill & Varn
8244 Painter Ave.
Whittier, California 90602
Tel. 562-698-8039

PETITION GRANTED

Richard Crispino
Special Program Examiner
TC 1700 MAR 16 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OCT 30 2008

OFFICE OF PETITIONS

In re Application of :
Seiji Ishii et al :
Application No. 10/429,852 : ON PETITION
Filed: May 6, 2003 :
Attorney Docket No. 116692003800

This is a decision on the petition, filed October 29, 2008 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 7, 2008 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 2887 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/
Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

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BINGHAM MCCUTCHEN LLP
2020 K Street, N.W.
Intellectual Property Department
WASHINGTON, DC 20006

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JUN 23 2008

OFFICE OF PETITIONS

In re Application of	:	
Joe TEIXEIRA	:	
Application No. 10/429,861	:	DECISION ON PETITION
Filed: May 06, 2003	:	
Attorney Docket No. **7059512001**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 28, 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 March 21, 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 June 22, 2007.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an terminal disclaimer; (2) the petition fee of $770.00; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of March 21, 2007, is accepted as having been unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $525.00 extension of time fee submitted with the petition on February 28, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

The application file is being referred to Technology Center AU 2614 for appropriate action on the concurrently filed terminal disclaimer.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of :
Mitsuro Atobe, et al. :
Application No. 10/429,878 : ON PETITION
Filed: May 6, 2003 :
Atty Docket No. 111789.01 :

This is a decision on the petition, filed November 5, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

The application is being referred to Technology Center AU 2822 for further processing of the request for continued examination under 37 CFR 1.114 filed November 5, 2004.

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

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

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ALEXANDRIA, VA 22313-1450
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Paper No. 6

NIKOLAI & MERSEREAU, P.A.
900 SECOND AVENUE SOUTH
SUITE 820
MINNEAPOLIS MN 55402

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AUG 2 0 2003
OFFICE OF PETITIONS

In re Application of	:	
Stuart Knutton and Gad Meir	:	
Frankel	:	
Application No. 10/429,892	:	DECISION GRANTING PETITION
Filed: April 25, 2003	:	
Attorney Docket No.	:	
20030171.ORI	:	
Title: SCREENING ASSAYS	:	

This is a decision on the petition filed June 17, 2003, requesting that application number 10/429,892 be accorded a filing date of April 25, 2003.

Petitioner states that a Filing Receipt was not received from the Office, and that a check on PAIR showed that the application papers were not received from the Office. In response, on June 17, 2003, applicants filed the present petition. Petitioners have included a copy of the application, a preliminary amendment, a copy of a cancelled check for $2386, a postcard receipt, a statement of facts, a copy of the Express Mail Label having a number of EU348381536US, and a certificate of mailing dated April 25, 2003, bearing Express Mail label number EU348381536US. Applicants request that application be accorded a filing date of April 25, 2003.

A check of the United States Postal Service's website (http://www.usps.com/shipping/trackandconfirm.htm) shows that the

package was accepted on April 25, 2003. A check of the PTO's internal system (USPS Express Mail Information Database) reflects the same. Copies of both search results are enclosed.

Upon review of the record, the missing papers have not been located in the file. However, the evidence is convincing that the application papers were deposited on April 25, 2003, and were subsequently misplaced by the Office. Therefore, the application was entitled to a filing date of April 25, 2003.

Accordingly, the petition is **GRANTED**.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 25, 2003, as well as the mailing of a corrected filing receipt.

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

Paul Shanoski

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

Encl. Copy of USPS Express Mail Printout (Paper No. 4)
Copy of USPS Tracking Results (Paper No. 5)

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Paper No. 6

MOETTELI & ASSOCIES SARL
CASE POSTALE 486
AVE DE FRONTENEX 6
GEVEVA 12, CH-1211
SWITZERLAND

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JUL 0 7 2004

OFFICE OF PETITIONS

In re Application of :
Andre Lechot, et al. :
Application No. 10/429,897 : ON PETITION
Filed: May 5, 2003 :
Attorney Docket No. PUS-P001-014CON2 CIP :

This is a decision on the petition under 37 CFR 1.137(b), filed May 28, 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 mailed July 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 September 10, 2003.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-5594.

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

Retta Williams

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

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LAW OFFICES OF ALBERT S. MICHALIK, PLLC
SUITE 193
704 -228TH AVENUE NE
SAMMAMISH, WA 98074

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NOV 19 2004

OFFICE OF PETITIONS

In re Application of
Eric Gould Bear et al.
Application No. 10/429,905
Filed: May 5, 2003
Attorney Docket No: 3820

: DECISION DISMISSING PETITION

This is a decision on the petition filed December 11, 2003 under 37 CFR 1.53, in response to the "Notice to File Missing Parts" mailed July 1, 2003.[1]

The instant application was filed May 5, 2003 and a filing date was accorded. However, according to the "Notice" mailed, Figures 1-3 as described in the specification appeared to have been omitted.

Petitioner asserts that 12 sheets of drawings were filed upon application, that the papers containing Figures 1-3 were among the 12 sheets of drawings filed on May 5, 2003, and submits a "legible" postcard receipt in evidence thereof. While the official file reveals that only nine sheets of drawings were filed, the postcard receipt, identifies the application and acknowledges, inter alia, the number of drawing sheets to be 12 and bears a United States Patent and Trademark Office date-stamp of May 5, 2003. Further, the postcard receipt lacks any notation of non-receipt of any item listed.

Based on petitioners' representations it appears that the 12 sheets of drawings including the three sheets containing Figures 1-3 were present in the Office on May 3, 2003. However, as required, copies of the three sheets are not filed with the instant petition. Thus, the petition is **DISMISSED** without prejudice to reconsideration because petitioners have not supplied a copy of the three sheets of drawings containing Figures 1-3 filed on May 3, 2003. Petitioners must supply copies of the drawing figures with a renewed petition.

---

[1]The petition bears a receipt date of December 11, 2003 but also bears a mail date of July 15, 2003 and a certificate of mail pursuant to 37 CFR 1.8 thus making the petition timely and not subject to abandonment.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely. This time period may not be extended pursuant to 37 CFR 1.136. The application will be retained in the Office of Petitions for **TWO (2) MONTHS** to await petitioner's reply to this decision. If no response is received within two (2) months, the application will be forwarded to the Office of Initial Patent Examination for further processing without the three sheets of drawings containing Figures 1-3.

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

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

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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LAW OFFICES OF ALBERT S. MICHALIK, PLLC
SUITE 193
704 -228TH AVENUE NE
SAMMAMISH WA 98074

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DEC 23 2004

OFFICE OF PETITIONS

In re Application of	:	
Eric Gould Bear et al.	:	
Application No. 10/429,905	:	DECISION ON
Filed: May 5, 2003	:	PETITION
Attorney Docket No. 3820	:	

This is a decision on the renewed petition filed December 6, 2004 under 37 CFR 1.53 to accord a filing date.

Application papers in the above-identified application were deposited May 5, 2003. However, on July 1, 2003, the Office of Initial Patent Examination mailed a "Notice To File Missing Parts," notifying applicant that the application had been accorded a filing date but that it appeared that Figures 1-3 as described in the specification appeared to have been omitted.

In response to the Notice mailed July 1, 2003, petitioner properly proffered a copy of a date stamped return receipt which corroborated petitioners assertion that the application had been filed with Figures 1-3, and based on petitioners' representations it appears that as the drawings, the application was complete on May 5, 2003. However, the petition was dismissed in a decision mailed November 19, 2004 because a copy of Figures 1-3 were not included with the petition

Copies of the three sheets of drawings have now been submitted thus satisfying the requirements as set out in the Notice mailed July 1, 2003 and thus completing the application.

In view of the foregoing, the petition is **GRANTED**.

Given the basis for granting the petition, the petition fee will be refunded to deposit account no. 50-1618.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of May 5, 2003, using the application papers received in the Office on that date and the specification resubmitted on petition.

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

Patricia Faison-Ball
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)
6790349	2004-09-14	10429907	2003-05-05	

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

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	/Daniel A. Rosenberg/	Date (YYYY-MM-DD)	2008-11-17
Name	Daniel A. Rosenberg	Registration Number	44308

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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In re Patent No. 6790349
Issue Date: September 14,2004
Application No. 10429907
Filed: May 5,2003
Attorney Docket No. 3213360/13020

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

This is a decision on the electronic petition, filed November 17,2008 ,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 November 17,2008 . 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 the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6-30-2005

TO SPE OF : ART UNIT 2829

SUBJECT : Request for Certificate of Correction on Patent No.: 6,852,993

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

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

MAGDALENE TALLEY

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

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

Comments:

The changes do not affect the scope of the invention.

NESTOR RAMIREZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800
SPE

2891
Art Unit

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

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SEP 25 2006
OFFICE OF PETITIONS

In re Patent No. 7,045,956 :

Issue Date: May 16, 2006 :

Application No. 10/429,916 : ON PETITION

Filed: May 5, 2003 :

Attorney Docket No. 12406-024001/P2002,0356 U

This is a decision on the petition filed June 5, 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 request is **granted**.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

The file is being forwarded to the Certificate of Correction Branch for issuance of the requested Certificate of Correction.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

[1] See *Official Gazette* of June 22, 2004.

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No. 9

FOLEY & LARDNER LLP
THREE PALO ALTO SQUARE
3000 EL CAMINO REAL
SUITE 100
PALO ALTO, CA 94306

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JUL 14 2004
OFFICE OF PETITIONS

In re Application of
Grant et al.
Application No. 10/429,917
Filed: May 2, 2003
Attorney Docket No. 342837-2302

ON PETITIONS

This decision concerns the May 19, 2004 "Conditional Petition under 37 CFR 1.183 to Suspend the Rules" which is in fact a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-referenced application; and the concurrently filed "Conditional Petition to Revive Unintentionally Abandoned Patent Application" which is being properly treated as an alternative petition under 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **GRANTED.**
The alternative petition under 37 CFR 1.137(b) is **DISMISSED as moot.**

On July 21, 2003, a "Notice to File Missing Parts of Nonprovisional Application" was mailed ("7/21/03 Notice"), stating that the application was missing, *inter alia*,[1] the $750 basic filing fee and the $1,336 extra claims fees, and setting forth an extendable, non-statutory, 2-month period for submitting the missing items.

On February 23, 2004 (Monday), Applicant filed a request for a 5-month extension of time along with a $4,246 check to cover the $$2,010 extension-of-time fee, as well as the $770 application basic filing fee,[2] the $130 surcharge for late filing of the basic filing fee and a proper oath/declaration, and the $1,336 extra claims fees as requested in the 7/21/03 Notice, totaling $4,246.

On April 29, 2004, a "Notice of Incomplete Reply (Nonprovisional)" ("4/29/04 Notice") was mailed, requesting an additional payment of $18, and advising Applicant that the period for reply remains that set forth in the 7/21/03 Notice. The 4/29/04 Notice implies that the application had already become abandoned on February 22, 2004 for failure to timely pay the $18 fee deficiency.

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1 Also missing was a signed oath or declaration.

2 Increased effective 10/1/03.

Since the February 23, 2004 payments were made according to the exact instructions in the 7/21/03 Notice, the 4/29/04 Notice should have:[3]

-given Applicant a new time period for submitting the fee deficiency; and
-explained why Applicant is being required to submit an additional fee.

The 4/29/04 Notice did not do so. The §1.181 petition is thus **granted**, in that, the application should not be, and is not, held abandoned.[4]

Consequently, the §1.137(b) petition is **dismissed as moot**.

No petition fee is owed and none was charged to counsel's deposit account.

The application file is being returned to the Office of Initial Patent Examination for further processing, including re-calculating the fee deficiency amount and charging that amount to Deposit Account No. 50-0872 as authorized in the petition.

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

RC Tang
Petitions Attorney
Office of Petitions

---

3 MPEP 509 (Rev. 2, May 2004).

4 It is not yet indicated in the USPTO record as being abandoned.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

Helen C. Lockhart, Ph.D.
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210

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SEP 02 2003

OFFICE OF PETITIONS

In re Application of	:	
James R. Myette, et al.	:	
Application No. 10/429,921	:	DECISION GRANTING
Filed: May 5, 2003	:	PETITION
Attorney Docket No. M00656.70092.US	:	

This is a decision on the petition filed June 12, 2003, requesting that the above-identified application be accorded a filing date of May 5, 2003, rather than the presently accorded date of May 6, 2003. The petition is properly treated as a petition under 37 CFR 1.10(c).

The petition is **GRANTED**.

Applicant requests the earlier filing date on the basis that the application was purportedly deposited with Express Mail Service on May 5, 2003 pursuant to 37 CFR 1.10. While the copy of the Express Mail label receipt no. EV292543465 bears a handwritten "date-in" of May 6, 2003, it also includes a USPS receipt date stamp of May 5, 2003. Applicants are alleging that the date of mailing shown in the "date-in" is a U. S. Postal Service (USPS) error and the correct date of mailing pursuant to 37 CFR 1.10 is May 5, 2003.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "date-in" on the Express Mail label, MPEP 513. However, in view of the conflicting dates on the label, a search of the USPS' Express Mail Track and Confirm database was made and confirms that the package bearing Express Mail label No. EV292543465 was accepted on "May 5, 2003, 7:16 pm, BOSTON, MA 02205." A copy of the results is attached herewith.

This application file is being returned to the Office of Initial Patent Examination Division for **correction of the filing date to May 5, 2003** and to await the response to the Notice to File Missing Parts mailed July 22, 2003. Thereafter, the application file will be forwarded to Technology Center 1600 for examination in due course.

Telephone inquiries concerning this matter may be directed to Marianne Morgan at (703) 306-3475.

Sherry Brinkley

Sherry Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy

Attachment: Copy of USPS' Express Mail Track and Confirm database

UNITED STATES POSTAL SERVICE

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Track & Confirm

Shipment Details

You entered EV29 2543 465U S

Your item was delivered at 11:10 am on May 06, 2003 in ARLINGTON, VA 22202 to EV353257457US. The item was signed for by G TURNER.

Here is what happened earlier:

- ARRIVAL AT UNIT, May 06, 2003, 9:37 am, DULLES, VA 20102
- ACCEPTANCE, May 05, 2003, 7:16 pm, BOSTON, MA 02205

Track & Confirm

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JUN 23 2005

OFFICE OF PETITIONS

Applicant: Myette et al.
Appl. No.: 10/429,921
Filing Date: May 5, 2003
Title: DELTA 4, 5 GLYCURONIDASE AND USES THEREOF
Attorney Docket No.: M0656.70092US00
Pub. No.: US 2004/0091471 A1
Pub. Date: May13, 2004

This is a decision on the request for corrected of patent application publication under 37 CFR 1.221(b), filed on July 15, 2004 for the above-identified application.

The request is granted.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709 (voice)

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

10/429923

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1-31-06

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction on Patent No.: 6964970

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

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - ~~PK 3-922~~
Palm location 7580 - Tel. No. 305-8309

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

Check Claims

Thank You For Your Assistance

Certificates of Correction Branch

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

Note your decision on the appropriate box.

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

Comments:

SPE

1625
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070124

DATE : January 24, 2007

TO SPE OF : ART UNIT 1623

SUBJECT : Request for Certificate of Correction on Patent No.: 6,964,970

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:

The Application number has been corrected to 10/429,923

Thomas McKenzie

SPE: Thomas McKenzie, Ph.D. **Art Unit** 1625

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,964,970 B2
APPLICATION NO. : 10/429923
DATED : November 15, 2005
INVENTOR(S) : Miller 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 claim 1, column 20, Formula (I), that portion of the formula reading "SR" should read --SR'--.

In claim 5, column 21 line 19, that portion of the formula reading "[3,4b]" should read --[3,4-b]--.

In claim 5, column 21, line 26, that portion of the formula reading "[3,4b]" should read --[3,4-b]--.

In claim 5, column 21, line 28, that portion of the formula reading "[3,4b]" should read --[3,4-b]--.

In claim 5, column 21, line 30, that portion of the formula reading "[3,4b]" should read --[3,4-b]--.

In claim 5, column 21, line 34, that portion of the formula reading "[3,4b]" should read --[3,4-b]--.

In claim 5, column 21, line 39, that portion of the formula reading "methyl]1,3,4,9" should read --methyl]-1,3,4,9--.

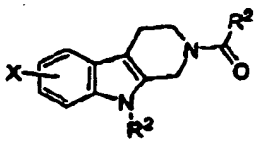
In claim 5, column 21, line 41, that portion of the formula reading "methyl]1,3,4,9" should read --methyl]-1,3,4,9--.

In claim 5, column 21, line 46, that portion of the formula reading "[3,4b]" should read --[3,4-b]--.

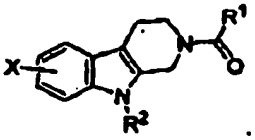
In claim 5, colum 21 line 51, that portion of the formula reading "methyl4-((2-[4-hydroxyphenyl)" should read --methyl-4-({2-[4-hydroxyphenyl)--.

In claim 5, column 21, line 52, that portion of the formula reading "tetrahydrobeta-carbolin-9-yl)methyl)" should read --tetrahydrobeta-carbolin-9-yl}methyl)--.

In claim 12, column 22 Formula (II) reading



should read



UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,964,970 B2
APPLICATION NO. : 10/429923
DATED : November 15, 2005
INVENTOR(S) : Miller 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 claim 12, column 22, line 34, that portion of the formula reading " R′ " should read --R^1--.

In claim 18, column 23, line 21, that portion of the formula reading "monocyclic ring containing one" should read --monocyclic ring, containing one--.

In claim 18, column 23, lines 29-30, that portion of the formula reading "$CF_3S(O)_r$—;" should read --$CF_3S(O)_r$;--.

In claim 18, column 24, line 6, that portion of the formula reading "—NR′C(O)R′, Cl," should read ——NR′C(O)R′, F, Cl,--.

In claim 20, column 24, line 26, which reads "*Escherichia coli* DC0, *Escherichia coli* ESS *Escherichia*" should read --*Escherichia coli* DC0, *Escherichia coli* ESS, *Escherichia*--.

Signed and Sealed this

Tenth Day of October, 2006

Jon W. Dudas

JON W. DUDAS
Director of the United States Patent and Trademark Office

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OFFICE OF PETITIONS

In re Application of
Dean L. Rhoades
Application No. 10/429,925
Filed: May 5, 2003
Attorney Docket No. 5309P013

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

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

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on April 30, 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 February 17, 2005 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (571) 272-3204.

This application is being referred to Technology Center Art Unit 1615 for examination in due course.

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

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OFFICE OF PETITIONS

In re Application of	:	
George Vincent Broady et al	:	
Application No. 10/429,929	:	DECISION GRANTING PETITION
Filed: May 5, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 1199U006US00	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 17, 2003, and supplemented on November 20, 2003, to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on July 17, 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 previously rescinded.

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

This application is being forwarded to Technology Center Art Unit 2121 for examination in due course.

Frances Hicks

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

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SALT LAKE CITY, UT 84111

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OFFICE OF PETITIONS

In re Application of :
Eric Gould Bear et al :
Application No. 10/429,931 : ON PETITION
Filed: May 5, 2003 :
Attorney Docket No. 13768.783.79

This is a decision on the petition, filed October 31, 2007, which is being treated as a petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

This matter is being referred to Technology Center AU 2612 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

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Commissioner for Patents
Washington, DC 20231
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7/11/03

Bromberg and Sunstein LLP
125 Summer Street
Boston MA 02110-1618

Dear Applicant:

The Box PGPub replacement drawings for application number 10/429,936 received on 6/10/03 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Customer Service, Office of Initial Patent Examination, at 703-308-1202.

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

Signature of Reviewer, Office of Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

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MOSER, PATTERSON & SHERIDAN
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HOUSTON TX 77056

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JAN 17 2007

OFFICE OF PETITIONS

In re Application of	:	
Thomas Wheeler et al	:	
Application No. 10/429,940	:	DECISION GRANTING PETITION
Filed: May 2, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. OLYM/0086	:	

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

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue fee and publication fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance of February 22, 2006, is accepted as having been unintentionally delayed.

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

This matter is being referred to Patent Publication.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6865490	2005-03-08	10429945	2003-05-06	03940057AA

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	/Michael E. Whitham/	Date (YYYY-MM-DD)	2010-05-05
Name	Michael E. Whitham	Registration Number	32635

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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In re Patent No. 6865490
Issue Date: March 8,2005
Application No. 10429945
Filed: May 6,2003
Attorney Docket No. 03940057AA

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

This is a decision on the electronic petition, filed May 5,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of May 5,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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OFFICE OF PETITIONS

In re Application of :
Ralph Thomas et al :
Application No. 10/429,968 : DECISION GRANTING PETITION
Filed: May 6, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 2625-116 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 15, 2005, to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on May 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 4, 2005 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3220.

This application is being forwarded to Technology Center Art Unit 3743 for examination in due course.

Wan Layman

Wan Layman
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.g

David W. Highet, VP & Chief IP Counsel
Becton, Dickinson and Company
(Alston & Bird LLP)
1 Becton Drive, MC 110
Franklin Lakes NJ 07417-1880

11/5/08

In re Application of:
PETTIS, RONALD J. et al
Appl. No.: 10/429,973
Filed: Nov. 24, 2004
Attorney's Docket # 035510/3195
For: METHOD AND DEVICE FOR CONTROLLING DRUG PHARMACOKINETICS

DECISION ON PETITION

This is a decision on the petition filed Jul. 14, 2008 under 37 CFR 1.181 requesting supervisory review of the final office action mailed May 14, 2008. Petitioner requested reconsideration and withdrawal of the finality of the Office action.

The petition is **Granted**.

Petitioner requests that the finality of the Office action mailed May 14, 2008 be withdrawn because the new ground of rejection to the amended claim 41 as suggested by the examiner was not necessitated by the amendment filed on Jan. 11, 2008 because the amendment to claim 41 was indicated allowable as suggested by the examiner.

It is noted in the amendment of Jan. 11, 2008, the applicant did amend claim 41as suggested by the examiner in her non-final Office action of Nov. 28, 2007. Subsequently, the examiner introduced new art, Prausnitz et al (US 2005/0137531) and Pettis (US 2002/0156453) to reject the amended claim 41. Therefore, the rejection of at least claim 41under 35 U.S.C. 103(a) as unpatentable over Prausnitz et al (US 2005/0137531) in view of Pettis (US 2002/0156453) was not necessitated by the amendment of Jan. 11, 2008. As such, the May 14, 2008 final Office action is premature and thus the finality of the action is hereby withdrawn. Since the finality is being withdrawn, any amendment responding to the Office action dated May 14, 2008 will be entered and treated as a 37 CFR § 1.111 amendment. The period to respond to the Office action of May 14, 2008 remains unchanged.

The application is being forwarded to the Primary Examiner Witczak of Art Unit 3767 for further processing. Any questions regarding this decision should be directed to Special Programs Examiner, Henry Yuen, at 571-272-4856.

According, the petition is GRANTED

Donald T. Hajec, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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WOODCOCK WASHBURN, LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA, PA 19104-2891

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JUN 20 2008

OFFICE OF PETITIONS

In re Application of	:	
Glenn Arthur Reitmeier, et. al.	:	
Application No. 10/429,985	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. **BR-0030	:	

This is a decision on the petition under 37 CFR 1.137(b), filed on November 15, 2007, to revive the above-identified application.

The application became abandoned for failure to timely respond to the Notice of Allowance and Fee(s) Due mailed August 2, 2007. A Notice of Abandonment was mailed on January 11, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $1,440 for payment of the issue fee and $300 for payment of the publication fee; (2) the petition fee of $1,540; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to the Office of Data Management to be processed into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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JAN 0 8 2009

OFFICE OF PETITIONS

In re Patent No. 7,403,565 :
Issue Date: July 22, 2008 :
Application No. 10/429,985 :
Filed: May 6, 2003 :
Attorney Docket No. **BR-0030 :

DECISION ON PETITION

This is a decision on the Request for Certificate of Correction of Patent for Applicant Mistake Pursuant to 37 CFR 1.323, filed November 21, 2008, which is being treated as a petition under 37 CFR 3.81.

The petition under 37 CFR 3.81 is **GRANTED**.

Petitioner requests, in effect, that the Title Page of the above-identified patent be corrected via issuance of a certificate of Correction to correct the name of the assignee identified thereon from "Akikaze Technologies, Inc., Wilmington, DE (US)" to:

-- Akikaze Technologies, LLC., Wilmington, DE (US)--.

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 petition was accompanied by a completed Certificate of Correction (PTO/SB/44) and a deposit account authorization to charge required fees. As such, the requisite $100.00 fee (Fee Code 1811), as set forth under in 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been charged as authorized in the petition. Office assignment records are consistent with the requested correction. Accordingly, as the petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the form PTO/SB/44 submitted with the present petition.

Inquiries related to this communication should be directed to Brian W. Brown at (571) 272-5338.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

The matter is being referred to the Certificate of Corrections Branch for processing of a Certificate of Correction in US Patent 7,403,565.

Brian W. Brown
Petitions Examiner
Office of Petitions

DOCKET NO.: **BR-0030 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Glenn Arthur Reitmeier **Confirmation No.: 4049**

Patent No.: 7,403,565 **Issued: July 22, 2008**

Application No.: 10/429,985 **Filing Date: May 6, 2003**

For: REGION-BASED INFORMATION COMPACTION AS FOR DIGITAL IMAGES

Commissioner for Patents
Attn: Certificate of Correction Branch
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR APPLICANT MISTAKE PURSUANT TO 37 CFR 1.323

Applicants respectfully request that a Certificate of Correction be issued for the above-identified patent. The patent has errors in it that occurred through the applicants' fault. Applicants' errors occurred in good faith and are of a clerical or typographical nature, or minor character, and are not believed to constitute new matter or require examination.

Enclosed herewith please find a completed Certificate of Correction form.

Please charge Deposit Account No. 23-3050 in the amount of **$100**, as specified by 37 CFR 1.20(a). The Commissioner is hereby authorized to charge any deficiency or credit any overpayment of the fees associated with this communication to Deposit Account No. 23-3050.

Date: November 21, 2008

/Robert A. Madayag/
Robert A. Madayag
Registration No. 57,355

Adjustment date: 01/08/2009 CKHLOK
11/24/2008 INTEFSW 00002906 233050 10429985
01 FC:1811 100.00 CR

01/08/2009 CKHLOK 00000004 233050 7403565
01 FC:1464 130.00 DA
02 FC:1811 100.00 DA

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439

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E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

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APR 1 8 2005

OFFICE OF PETITIONS

In re Application of	:	
Krizan et al.	:	
Application No. 10/429,987	:	
Filed: May 6, 2003	:	ON PETITION
Attorney Docket No.:	:	
AD6842USNA	:	

This is a decision on the petition under 37 CFR 1.137(a), filed September 27, 2004, to revive the above-identified application. The petition is properly treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment.

The petition is **granted.**

The above-identified application became abandoned for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, mailed July 23, 2003. The Notice set a two (2) month period for reply. No reply having been received, the above-identified application became abandoned April 29, 2003. A Notice of Abandonment was mailed on September 2, 2004.

Applicant's Assertion

Applicant avers non-receipt of the July 23, 2003 Notice. In support, Applicant has provided the necessary statements and copies of the docket record where the non-received Office action would have been entered had it been received and docketed. Applicant has demonstrated by a preponderance of the evidence that the Office action was not received.

The Notice of Abandonment is hereby withdrawn. The petition fee has been refunded to deposit account 04-1928.

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

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

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

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 9

RICHARD P BERG ESQ
LADAS & PARRY
5670 WILSHIRE BOULEVARD
SUITE 2100
LOS ANGELES, CA 90036-5679

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DEC 0 3 2001

OFFICE OF PETITIONS

In re Application of
Kubena et al.
Application No. 09/629,684
Filed: August 1, 2000
Attorney Docket No. B-3954 617975-0
FOR: A Single Crystal, Dual Wafer, Tunneling Sensor and a Method of Making Same

DECISION

This is a decision on the Petition filed March 23, 2001 to accord status under 37 CFR 1.47(a).

The petition is **GRANTED.**

Given the above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a), it is hereby accorded Rule 1.47(a) status.

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

The application file is being forwarded to Art Unit 2823 for further processing.

Telephone inquiries concerning this matter should be directed to Michael Sherry in the Office of Petitions at (703) 306-0028.

Charles Steven Brantley
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

MSG

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Paper No. 10

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DEC 0 3 2001

OFFICE OF PETITIONS

LETTER

Michael J. Little
4300 Gauguin Ave.
Woodland Hills, CA 91364

MSG

In re Application of
Kubena et al.
Application No. 09/629,684
Filed: August 1, 2000
Attorney Docket No. B-3954 617975-0
FOR: A Single Crystal, Dual Wafer, Tunneling Sensor and a Method of Making Same

Dear Mr. Little:

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 concerning this matter should be directed to Michael Sherry in the Office of Petitions at (703) 306-0028.

Charles Steven Brantley
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: RICHARD P BERG ESQ
LADAS & PARRY
5670 WILSHIRE BOULEVARD
SUITE 2100
LOS ANGELES, CA 90036-5679

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CARTER, DELUCA, FARRELL & SCHMIDT, LLP
445 BROAD HOLLOW ROAD
SUITE 225
MELVILLE NY 11747

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OFFICE OF PETITIONS

In re Application of	:	
ERRICO et al.	:	
Application No. 10/430,005	:	DECISION ON PETITION
Filed: 05/05/2003	:	
Attorney Docket No. F-282 (1390-36)	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 19, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 13, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 14, 2006. A Notice of Abandonment was mailed on May 1, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,500.00; and, (3) an appropriate statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that

such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

This application is being referred to Technology Center AU 3733 for appropriate action by the Examiner in the normal course of business on the reply received on July 19, 2007.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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MEDTRONIC
Attn: Noreen Johnson - IP Legal Department
2600 Sofamor Danek Drive
MEMPHIS, TN 38132

Mail Date: 04/21/2010

Applicant	: Thomas J. Errico	: DECISION ON REQUEST FOR
Patent Number	: 7621957	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/430,005	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1600** 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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STEPHEN B. DAVIS
BRISTOL-MYERS SQUIBB COMPANY
PATENT DEPARTMENT
P O BOX 4000
PRINCETON NJ 08543-4000

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MAR 1 9 2004

OFFICE OF PETITIONS

In re Application of	:	
Qiao et al.	:	
Application No. 10/430,024	:	DECISION DISMISSING
Filed: 5 May, 2003	:	PETITION
Attorney's Docket No. PH 7448 NP	:	

This is a decision on the petition filed on 8 January, 2004, which is treated as a petition to accord the above-identified application a filing date of 5 May, 2003, with Pages 536 and 537 of the specification as a part of the original disclosure.

The instant application was filed on 5 May, 2003. The application as filed, was missing Pages 536 and 537 of the specification. On 15 October, 2003, petitioners filed Pages 536 and 537 of the specification. On 9 December, 2003, Initial Patent Examination Division mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" stating that the application had been accorded a filing date of 5 May, 2003, but that Pages 536 and 537 of the specification appeared to have been omitted.

In response to the Notice, the present petition was filed on 8 January, 2004, accompanied by a postcard itemizing the filing of Pages 536 and 537 on 15 October, 2003, as well as a duplicate copy of Pages 536 and 537.

Petitioners apparently request that the application, including Pages 536 and 537, be accorded a filing date of 5 May, 2003.

The evidence is not persuasive. The record does not show that Pages 536 and 537 were received at the USPTO on 5 May, 2003. 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 MPEP 503.[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. However, due to the absence in the record of a postcard receipt itemized with respect to the drawings that bears a USPTO date stamp of 5 May, 2003, showing that Pages 536 and 537 were received in the USPTO on 5 May, 2003, the application cannot be accorded a filing date of 5 May, 2003, with Pages 536 and 537 as a part of the original disclosure.

In view of the above, the petition is **dismissed**.

As petitioners filed Pages 536 and 537 on 15 October, 2003, applicants may file a petition under 37 CFR 1.182, accompanied by a petition fee of $130.00, requesting that the application, including Pages 536 and 537, be accorded a filing date of 15 October, 2003.

The copies of Pages 536 and 537 will not be processed or examined, but will be retained in the application file.

Nevertheless, it is noted that the first page of the specification states that this application claims priority to provisional Application Nos. 60/379,357 and 60/415,367, and that the above-referenced provisional applications are "fully incorporated by herein by reference."

MPEP 201.06(c) states that:

> . . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior

[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.

> application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, Pages 536 and 537 of the specification are not new matter if they were a part of the disclosure of the prior application(s).

Petitioners may wish to consider resubmitting Pages 536 and 537 in the form of a preliminary amendment. If Pages 536 and 537 are is submitted as a preliminary amendment, they will be reviewed by the examiner for new matter.

As the petition resulted from applicant's filing error and not as a result of an error on the part of the Office, the petition fee will not be refunded.

Any request for reconsideration of this petition must be submitted within **two months** of the mailing date of this decision in order to be considered timely. See 37 CFR 1.181(f). Extensions of time under 37 CFR 1.136(a) are not permissible.

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

The application will be processed with a filing date of 5 May, 2003, using the application papers filed on that date. The copies of Pages 536 and 537 supplied on 15 October, 2003, and with the present petition, will not be processed or examined, but will be retained in the application file.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 5 May, 2003, using the application papers filed on that date.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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MCKEE, VOORHEES & SEASE, P.L.C.
801 GRAND AVENUE SUITE 3200
DES MOINES IA 50309-2721

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JUL 06 2006

OFFICE OF PETITIONS

In re Application of :
Randall J. Thiessen : DECISION ON PETITION
Application No. 10/430,030 :
Filed: May 5, 2003 :
Attorney Docket No. P05432US01 :

This is a decision on the petition under 37 CFR 1.181, filed May 17, 2006, to withdraw the holding of abandonment in the above-identified application.

On March 31, 2006, the Board of Patent Appeals and Interferences rendered a decision, sustaining the rejection of the claims and entering new grounds of rejection under 37 CFR 41.50. Applicant had two months from the date of the decision of the Board to take appropriate action. On May 2, 2006, the Office mailed a Notice of Abandonment, indicating that the above-identified application was abandoned in view of the decision by the Board of Patent Appeals and Interference rendered on March 31, 2006, and because the period for seeking court review of the decision had expired and there were no allowed claims.

In the present petition, applicant asserted that the Notice of Abandonment erroneously stated that the period for seeking court review of the decision had expired. With the petition, applicant filed a Request for Continued Examination and Amendment. Applicant requested that the Office withdraw the Notice of Abandonment because applicant filed the RCE and Amendment on May 17, 2006, with the two-month time period.

After a further review of the record, the Office concurs with applicant that the RCE and Amendment were timely filed. Accordingly, the Office mailed the Notice of Abandonment in error. The petition to withdraw the holding of abandonment is **granted**. The application is restored to pending status in view of the fact that a response was timely filed on May 17, 2006.

This matter is being referred to Technology Center Art Unit 3748.

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

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United States Patent and Trademark Office
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JOHN N. ANASTASI
C/O. LOWRIE, LANDO & ANASTASI, LLP
RIVERFRONT OFFICE PARK,
ONE MAIN STREET
CAMBRIDGE, MA 02142

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APR 22 2005

OFFICE OF PETITIONS

In re Application of
Chaffee
Application No. 10/430,040
Filed: May 5, 2003
Attorney Docket No. C00852.70035.US

: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) 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 February 7, 2005 (certificate of mailing date February 4, 2005), to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **Granted**.

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

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

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period

specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6).

The above-identified application was pending at the time the reference to the prior-filed applications was filed, as is required by 37 CFR 1.78(a)(5)(ii). Newly claimed Application No. 09/859,706, filed May 14, 2001, was filed within twelve months of the filing date of the two newly claimed prior-filed provisional applications, Application No. 60/204,836, which was filed on May 17, 2000, and Application No. 60/280,040, which was filed on March 30, 2001. The present petition requests that the Office add a benefit claim to Application Nos. 09/859,706; 60/204,836; and 60/280,040 in Application No. 10/430,040.

The petition complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed nonprovisional and provisional applications has been included in an amendment to the first sentence of the specification following the title as provided by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 119(e) to the above-noted, prior-filed nonprovisional and provisional applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

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

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

The Revocation and Power of Attorney, filed February 7, 2005 (certificate of mailing date February 4, 2005) has been entered and made of record. Please find enclosed Notices pertaining to the revocation/power of attorney.

Any questions concerning this matter 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 3753 for appropriate action on the amendment submitted February 7, 2005 (certificate of mailing date February 4, 2005), including consideration by the examiner of the claim under 35 U.S.C. § §120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed application, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional applications.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt
Notices Regarding Change of Power of Attorney

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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MARVELL/FINNEGAN HENDERSON LLP
C/O FINNEGAN, HENDERSON, FARABOW,
GARNETT ET AL
901 NEW YORK AVENUE
WASHINGTON DC 20001-4413

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OFFICE OF PETITIONS

In re Patent No. 7,133,970	:	
Issue Date: November 7, 2006	:	
Application No. 10/430,042	:	DECISION GRANTING PETITION
Filed: May 5, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. MP1471	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 9, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a substitute declaration; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowability of June 20, 2006, is accepted as having been unintentionally delayed.

The declaration submitted on May 9, 2007 has been made of record in the above file.

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

Since the above application is a patented file, no further action will be taken.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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P.O. Box 1450
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ALEX L. YIP
KAYE SCHOLER LLP
425 PARK AVENUE
NEW YORK, NY 10022

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AUG 24 2005

OFFICE OF PETITIONS

In re Application of	:	
Adam J. McGrath et al	:	
Application No. 10/430,051	:	DECISION GRANTING PETITION
Filed: May 6, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 41698.1094	:	

This is a decision on the petition, filed August 23, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 8, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

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

This matter is being referred to Technology Center AU 2642 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

NOTICE RE: CERTIFICATES OF CORRECTION

DATE : 4/14/05 Paper No.: _____

TO : Supervisor, Art Unit 3742

SUBJECT : Certificate of Correction Request in Patent No.: 10/430,080 6,851,634

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

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

PLEASE COMPLETE THIS FORM AND RETURN WITH FILE, WITHIN 7 DAYS, TO CERTIFICATES OF CORRECTION BRANCH - PK 3-915/922 PALM LOCATION 7580 - TEL. N0. 305-8309

H Green

THANK YOU FOR YOUR ASSISTANCE!

Note your decision by placing a check mark in the appropriate box below, indicating whether all changes requested in the Request for Certificate of Correction should be applied. Please specify which changes should not be applied and indicate the reason(s) for denial, in the "Comments" section below.

☒ YES ☐ NO

☐ Comments: _____

Supervisor 3742 Art Unit

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901 NEW YORK AVENUE
WASHINGTON DC 20001-4413

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MAR 19 2007

OFFICE OF PETITIONS

In re Application of	:	
Javor, et al.	:	
Application No.: 10/430,083	:	ON PETITION
Filed: May 5, 2003	:	
Attorney Docket No: MP1485	:	

This is in response to the petition under 37 CFR 1.137(b) filed October 30, 2006.

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 file a timely and proper response to the final Office action mailed April 20, 2006, which set a shortened statutory period for reply of three months from its mailing date. No response was filed within the allowable period, and the application became abandoned on July 21, 2006.

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.

As to item (1) above, Examiner Christian Hannon has determined that the response filed October 30, 2006, does not place the application in condition for allowance. The petition must be dismissed because of the lack of a proper response to the final Office action mailed April 20, 2006. The renewed petition must accompanied by a proper response to the final Office action, which may include an amendment that places the application in condition for allowance. Questions regarding the determination of the sufficiency of the reply filed October 30, 2006, should be directed to Examiner Hannon.

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

By mail:

Mail Stop Petitions
Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

Telephone inquiries concerning this 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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WASHINGTON DC 20001-4413

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OFFICE OF PETITIONS

In re Application of

Javor, et al.

Application No. 10/430,083

Filed: May 5, 2003

Attorney Docket No. MP1485

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed April 24, 2007, to revive the above-identified application.

The renewed petition is **GRANTED**.

A final Office action was mailed in the above-cited application on April 20, 2006, which set a shortened statutory period for reply of three (3) months from its mailing date. No response was filed within the allowable period. The application became abandoned on July 22, 2006.

Examiner Hannon has determined that the amendment filed October 30, 2006, places the application in condition for allowance.

The request for an extension of time within the third month is noted, however; it cannot be granted, nor is it necessary. The request was made outside the maximum statutory period set for reply to the final Office action. The amount of $1,020.00 will be refunded to deposit account 50-0221, accordingly.

The application is being forwarded to Technology Center 2600, GAU 2618 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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OFFICE OF PETITIONS

In re Application of	:	
Friedrich Wilhelmludwig Paul Vollrath et al.	:	
Application No. 10/430,093	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. 4424-P02873US1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 6, 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 August 30, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is December 1, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $395, and the submission required by 37 CFR 1.114; (2) the petition fee of $750; 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 $285 extension of time fee submitted with the petition on March 6, 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 1732 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

REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

Address to:	Application No. 10/430,093
	Filing Date: May 6, 2003
COMMISSIONER FOR PATENTS Mail Stop RCE P.O. Box 1450 Alexandria, VA 22313-1450.	First Named Inventor: Vollrath et al
	Group Art Unit: 1732
	Examiner Name: Tentoni, Leo
	Attorney Docket No. 4424-P02873US1

This is a request for a continued examination under 37 C.F.R. 1.114 of the above-identified application.

1. Submission required under 37 C.F.R. §1.114
   a. [✖] Previously filed
      i. [✖] Consider the amendment/reply previously filed on January 30, 2007.
      ii. [ ] Consider the arguments in the Appeal Brief or Reply Brief previously filed on
      iii. [ ] Other
   b. [ ] Enclosed
      i. [ ] Amendment/Reply
      ii. [ ] Affidavit(s)/Declaration(s)
      iii. [ ] Information Disclosure Statement
      iv. [ ] Other_____

2. [✖] Fee Transmittal Sheet is enclosed in duplicate.

3. [✖] Request for extension: Pursuant to 37 C.F.R.§1.136, Applicant(s) request a further one month extension of time beyond the response filed on January 30, 2007 to the outstanding Official Action.

SIGNATURE OF APPLICANT, ATTORNEY or AGENT	
Stephen H. Eland P.T.O. Regis. No.41,010	Phone (215) 563-4100 Fax (215) 563-4044

CERTIFICATE OR MAILING OR TRANSMISSION	
I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the EFS web system on:	
3/6/07	Christine Gerbach
Date	Christine Gerbach

Adjustment date: 02/04/2008 CKHLOK
03/06/2007 INTEFSW 00001687 041406 10430093
02 FC:2253 285.00 CR

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 12/14/07

2 Serial/Patent # 10/430,093

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
X	Extension of Time			$ 285.00
	Notice of Appeal/Appeal			$
	Petition			$
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 285.00

8 TO BE REFUNDED BY:

	Treasury Check
X	Credit Deposit A/C #:

9 0 4 -- 1 4 0 6

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

A petition has been filed no extension is needed after the case has been abandoned.

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Terri Williams TITLE: Paralegal Specialist

SIGNATURE: PHONE: (571) 272-2991

OFFICE: Office of Petitions

****

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APPROVED: DATE: 2/4/08

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

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FORM PTO 1577
(01/90)

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ONE WORLD TRADE CENTER, SUITE 160
121 S.W. SALMON STREET
PORTLAND, OR 97204

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OFFICE OF PETITIONS

In re Application of	:
Todd O. Bolken et al	:
Application No. 10/430,102	: DECISION GRANTING PETITION
Filed: May 5, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 6047-65775	:

This is a decision on the petition, filed April 4, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 24, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2812 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks

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

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Joseph S. Tripoli
Thomson Multimedia Licensing Inc.
2 Independence Way
P.O. Box 5312
Princeton NJ 08543-5312

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SEP 22 2005

OFFICE OF PETITIONS

In re Application of	:	
Carolynn Rae Johnson	:	
Application No. 10/430,105	:	DECISION ON PETITION
Filed: May 7, 2003	:	
Attorney Docket No. PU030029	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 2, 2005, to revive the above-identified application.

This application became abandoned for failure to reply timely to the nonfinal Office Action mailed January 7, 2005, which set a three (3) month shortened statutory period to reply. Accordingly, this application became abandoned on April 8, 2005. A Notice of Abandonment was mailed on July 27, 2005.

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

The petition is **granted**.

This matter is being referred to Technology Center Art Unit 2616.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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PRINCETON NJ 08543-5312

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OFFICE OF PETITIONS

In re Application of
Johnson
Application No. 10/430,105
Filed: May 7, 2003
Attorney Docket No. PU030029
For: USER CREATED VIDEO BOOKMARKS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 27, 2009, to revive the above-identified application.

The petition is **dismissed**.

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

This application became abandoned for failure to timely reply to the final Office action, mailed April 29, 2008, which set an extendable three month period for reply. No extensions of time being obtained and no reply being filed, the application became abandoned on July 30, 2008. A Notice of Abandonment was mailed on November 13, 2008.

A grantable petition pursuant to 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. 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 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

Petitioner is reminded that after a final Office action, there are only five possible replies: (1) a Notice of Appeal, (2) the filing of a continuing application, (3) a 37 CFR 1.129(a) submission, if appropriate, (4) an amendment after final that makes the case ready for issuance or (5) an RCE. To be a proper reply, an amendment after final must place the case in *prima facie* condition for allowance. Examiner Boccio has indicated that the reply filed February 27, 2009 fails to place the application in *prima facie* condition for allowance. Please see the enclosed Advisory Action Before the Filing of an Appeal Brief for more details.

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

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

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

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

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Advisory Action Before the Filing of an Appeal Brief for Application No. 10/430,105

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/430,105	Applicant(s) JOHNSON, CAROLYN RAE	
	Examiner Vincent F. Boccio	Art Unit 2169	

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

THE REPLY FILED 27 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

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

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

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

NOTICE OF APPEAL

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

AMENDMENTS

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

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *None*.
   Claim(s) objected to: *None*.
   Claim(s) rejected: *1-4, 7-13 and 16-18*.
   Claim(s) withdrawn from consideration: *None*.

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: _____.

/Vincent F. Boccio/
Primary Examiner, Art Unit 2169

Continuation of 3. NOTE: The proposed after final amendment raises new issue by changing the scope of claim 1 etc., by further reciting "providing the user with a capability to initially save the bookmark with the user's choice of a default name or a user generated name", narrows the scope of the claims through proposed after final amendment and therefore, will not be entered.

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)
6918139	2005-07-19	10430126	2003-05-05	005127.00303

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	/Holly L. Johnston/	Date (YYYY-MM-DD)	2009-09-17
Name	Holly L. Johnston	Registration Number	59496

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

In re Patent No. 6918139
Issue Date: July 19,2005
Application No. 10430126
Filed: May 5,2003
Attorney Docket No. 005127.00303

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

This is a decision on the electronic petition, filed September 17,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of September 17,2009 . 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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TELCORDIA TECHNOLOGIES, INC.
ONE TELCORDIA DRIVE 5G116
PISCATAWAY NJ 08854-4157

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JAN 25 2010

In re Application of	:	
Tesink et al.	:	
Application No. 10/430,140	:	DECISION ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. APP 1533	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 1, 2009, 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 April 1, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 2, 2009. A Notice of Abandonment was mailed November 10, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $1,620.00, and (3) an adequate 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 application is being referred to Technology Center AU 2456 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/430,185	05/07/2003	Yoshiki Matsuoka	Q75487	2879

7590 02/16/2005

SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, NW
Washington, DC 20037-3213

EXAMINER
KEEHAN, CHRISTOPHER M

ART UNIT	PAPER NUMBER
1712	

DATE MAILED: 02/16/2005

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

UNITED STATES PATENT AND TRADEMARK OFFICE

FEB 1 5 2005

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Application of	:	
Yoshiki Matsuoka, et al.	:	
Serial Number : 10/430,185	:	WITHDRAWAL
Filed : May 07, 2003	:	FROM
For : AROMATIC POLYSULFONE RESIN	:	
AND USE THEREOF	:	

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

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

PTO records reveal that the issue fee has not been paid. If the issue fee has been submitted, the applicant may request a refund or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee to applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a deposit account.

Telephone inquiries may be directed to Randy Gulakowski at 471-272-1302.

The application is being forwarded to the examiner for action.

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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ROHM AND HAAS COMPANY
PATENT DEPARTMENT
101 INDEPENDENCE MALL WEST
PHILADELPHIA PA 19106-2399

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OFFICE OF PETITIONS

In re Application of	:	
Troy et al.	:	
Application No. 10/430,195	:	DECISION ON PETITION
Filed: 5 May, 2003	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. A01414A	:	

This is a decision on the petition under 37 CFR § 1.78(a)(6), filed 14 March, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for benefit of priority to the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED.**

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

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

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

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

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

The petition fee will be charged to counsel's deposit account, as authorized in the present petition.

As the benefit claim was reflected on the previously-mailed Filing Receipts, no additional Filing Receipt will be mailed.

Any questions concerning this decision on petition may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231. 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 AU 1711 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 119(e) to the prior-filed application.

Frances Hicks

Frances M. Hicks
Lead Paralegal
Office of Petitions

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ALLIANCE PHARMACEUTICAL CORPORATION
6175 LUSK BLVD.
SAN DIEGO CA 92121

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JUN 09 2005

OFFICE OF PETITIONS

In re Application of	:	
Weers et al.	:	DECISION ON PETITION
Application No. 10/430,198	:	UNDER 37 CFR 1.78(a)(3)
Filed: 5 May, 2003	:	
Atty Docket No. 40,283	:	

This is a decision on the petition styled under 37 CFR § 1.78(a) which is treated as a petition under 37 CFR §§ 1.78(a)(3), filed on 23 February, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 for the benefit of the prior-filed nonprovisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

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

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

The petition fails to comply with item (1) above.

The reference to the above-noted, prior-filed application was not included in the manner specified in 37 CFR 1.78(a)(2)(*i.e.*, in an ADS or in an amendment to the first sentence following the title of the specification). Specifically, the present petition does not include an amendment to the specification contained on a separate paper (*See* 37 CFR 1.121(h), nor is the amendment in compliance with 37 CFR 1.121(b).

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and an ADS or an amendment to the first sentence of the specification complying with 37 CFR 1.121 and stating the relationship of the prior-filed application to the instant application is required.

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

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

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

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

The address listed on the petition is different than the address contained in Office records. 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.

Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Frances Hicks

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

cc: John Wurst
Alliance Pharmaceutical Corp.
4660 La Jolla Village Dr., 8th Floor
San Diego CA 92122

UNITED STATES PATENT AND TRADEMARK OFFICE

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4660 LA JOLLA VILLAGE DR.
SUITE 825
SAN DIEGO CA 92122

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OFFICE OF PETITIONS

In re Application of	:	
Weers et al.	:	DECISION ON PETITION
Application No. 10/430,198	:	UNDER 37 CFR 1.78(a)(3)
Filed: 5 May, 2003	:	
Atty Docket No. 40,283	:	

This is a decision on the renewed petition filed on 30 June, 2005, under 37 CFR §§ 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 for the benefit of the prior-filed nonprovisional application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

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

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

The present pending application was filed on 5 May, 2003, and was pending, at the time of filing, of the instant petition. A reference to the above-noted, prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, which was filed concurrently with the present petition under 37 CFR 1.78(a)(3).

The present 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). Also, the reference to the prior-filed nonprovisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the present petition satisfies the conditions of 37 CFR 1.78(a)(3) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 120, the petition to accept an unintentionally delayed claim to benefit to prior-filed Application No. 09/659,516 is granted.

It is noted that the amendment filed with the present renewed petition incorrectly states the filing date of Application No. 09/659,516 as 11 September, 2000, rather than the correct filing date of 12 September, 2000. Petitioners should file a supplemental amendment correcting this error.

The benefit claim has been entered in Office records. A corrected Filing Receipt reflecting the instant benefit claim, is enclosed for petitioners' records.

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 is enclosed which 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.

The application will be referred to Technology Center Art Unit 1712 for processing the amendment filed with the present petition, and for consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(3) for the benefit of the above-noted, prior-filed nonprovisional application.

Telephone inquiries related to this decision should be directed to Senior Petitions Attorney Douglas I. Wood at 571-272-3231.

Frances Hicks

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

Encl: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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Normand Francoeur
992 Roseline
Laval (Quebec) CANADA H7R 4V1

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OFFICE OF PETITIONS

In re Application of
Normand Francoeur
Application No. 10/430,205
Filed: May 7, 2003
Attorney Docket No. 1744

DECISION ON PETITION

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**.

This application became abandoned for failure to timely pay the issue and publication fees on or before May 2, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed February 2, 2006. Accordingly, the application became abandoned on May 3, 2006. On June 12, 2006, the Office mailed a Notice of Abandonment.

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 and the publication fee; (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) 272-3211.

This application is being referred to Office of Patent Publications for processing into a patent.

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
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JJGJR.: 10-07

Paper No: __

ELIAS C. BORGES
SUITE 406
1 EVA ROAD
TORONTO M9C 4Z5
CANADA

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OFFICE OF PETITIONS

In re Application of
Gomes, et al.
Application No.: 10/430,206
Filing Date: 7 May, 2003
Attorney Docket No. 02-1612

DECISION

This is a decision on the letters submitted *via* FAX considered as petition filed on 18 January and 15 June, 2006, and considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181, and the 1 September, 2006, petition under 37 C.F.R. §1.137(b) to revive an application abandoned due to unintentional delay.

The Office regrets the delay in addressing this matter, however, the instant petition was presented to the attorneys in the Office of Petitions only at this writing.[1]

The petition as considered under 37 C.F.R. §1.181 is **DISMISSED**, however, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

[1] **NOTE: Monitoring of the status of applications on PAIR can inform one's management of application responses and provide an indication when mailings of Office actions should be expected. Status Inquiries filed at three (3) or four (4) month intervals provide a demonstration of diligence and attention in supporting a petition seeking relief under 37 C.F.R. §1.181.**

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Restriction requirement mailed on 6 October, 2005, with reply due absent an extension of time on or before 6 November, 2005;

- the application went abandoned by operation of law after midnight 6 November, 2005;

- on 18 January and again on 15 June, 2006, Petitioner averred via FAX transmissions to the Examiner that Petitioner had not received the Office action in question, and Petitioner provided a copy of the due-date docket sheet but not of the docket sheet for the application in support of the allegation (see: generally, the discussion at §711.03(c) of the Manual of Patent Examining Procedure (and set forth below)–and for reasons that are unclear Petitioner, who is registered to practice before the Office, appears never to have expressly filed a petition under 37 C.F.R. §1.181 or otherwise seek withdrawal of the holding of abandonment (that followed thereafter);

- the Office mailed a Notice of Abandonment on 14 July, 2006;

- on 1 September, 2006, Petitioner filed the petition (with fee) to revive the application as having been abandoned due to unintentional delay, with a reply in the form of an Election and made the statement of unintentional delay.

The statutes and rules of practice provide many benefits, avenues for action and methods of protection for applicants, patentees, assignees, practitioners and others to accomplish tasks before the Office.

However, persons who fail to utilize those statutes and rules fail to succeed in their tasks or obtain those benefits and protections.

Notably, the availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner immediate and on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution; Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)); and those registered to practice *and* all others who

make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the

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[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(4) Imposing a monetary sanction;
(5) Requiring a terminal disclaimer for the period of the delay; or
(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).
[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6]

And the Petitioner must be diligent in attending to the matter.[7] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal

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[3] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

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

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

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

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

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

of a holding of abandonment.[9]

The commentary at MPEP §711.03(c) provides:

* * *

A. Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in 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.

* **

<u>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</u> 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

---

[9] <u>See</u>: <u>Delgar v. Schulyer</u>, 172 USPQ 513 (D.D.C. 1971).

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

Moreover, the regulation places upon Petitioner a diligence requirement to seek relief within two (2) months of the act complained of.

It appears that Petitioner has not satisfied the showing requirements herein.

Allegations as to
Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

Petitioner appears have satisfied the requirements under the regulation.

CONCLUSION

Because it appears that Petitioner has not satisfied the burdens herein, the petition as considered under 37 C.F.R. §1.181 is **dismissed**, however, the petition under 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to Technology Center 1700 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[10]) and

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[10] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing.The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation,or understanding in relation to which there is disagreement or doubt.

the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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

CHA & REITER, LLC
210 ROUTE 4 EAST STE 103
PARAMUS NJ 07652

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OFFICE OF PETITIONS

In re Application of	:	
Jung, Sung-Man	:	
Application No. 10/430,236	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. 5019-1-007	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 9, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to the Publishing Division for processing into a patent.

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

Liana Chase
Petitions Examiner
Office of Petitions

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.: 01-06

Paper No: __

MARK ALAN ZWEIG
1680 O'NEAL LANE #303
BATON ROUGE LA 70816

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JAN 2 0 2006

OFFICE OF PETITIONS

In re Application of	:	
Zweig	:	DECISION
Application No. 10/430,238	:	
Filing Date: 5 May, 2003	:	
Attorney Docket No. MAZ-1	:	

This is a revised decision on the petition filed on 18 April, 2005, requesting withdrawal of the holding of abandonment under 37 C.F.R. §1.181.

For the reasons set forth below, the petition as considered under 37 C.F.R. §1.181 is **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.181."

(It is noted, however, that Petitioner appears unable to present a satisfactory showing to support a petition under 37 C.F.R. §1.181, and Petitioner's only alternative will be to file a petition under 37 C.F.R. §1.137(b).)

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to a non-final Office action mailed on 14 September, 2004, with a reply due, absent extension of time, on or before 14 December, 2004;

- the application went abandoned after midnight 14 December, 2004;

- Notice of Abandonment was mailed on 6 April, 2005;

- on 13 and 18 April, 2005, Petitioner filed the instant petition and argument with copies of some computer printouts, and, further, alleged, *inter alia*, that he had been in contact with the Examiner, including "just after 4-22-05 (sic), after receipt of the Examiner's "Requirement for Restriction/Election"–notably that action was mailed on 22 April, 2004, a year earlier than Petitioner's recollection;

- moreover, Petitioner alleges that over an extended period a conflict with regard to his residence resulted, *inter alia*, in his residence changing without prior notice to the Office and the failure in delivery of his mail;

- notwithstanding the above-described conflict, Petitioner waited until the filing of the instant petition to Notice the Office as to Petitioner's change of address–such practice does not satisfy the due diligence required in the prosecution of an application.

Notably, it appears that Petitioner's substantive filings which he submits as a reply to the 14 September, 2004, Office action may not be in conformance with Office Rules of Practice as to submissions. (See: 37 C.F.R. Part I (§1.181 and the Manual of Patent Examing Procedure (MPEP) Chapter 600 (http://www.uspto.gov/web/offices/pac/mpep/documents/0600.htm).

Petitioner also should review the Commentary at the Manual of Patent Examing Procedure (MPEP) Chapter 700, §711.03.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the

satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[1]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[2]

Delays in responding properly raise the question whether delays are unavoidable.[3] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[4] And the Petitioner must be diligent in attending to the matter.[5] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[6]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[7]

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[1] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

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

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

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

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

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

[7] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

The commentary at MPEP §711.03(c) provides:

> **A. *Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action***
>
> In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. <u>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</u>. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. **
>
> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).
>
> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that

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

Petitioner has not satisfied the requirements described (and highlighted) above.

CONCLUSION

Because Petitioner has not satisfied the burdens set forth in Delgar v. Schulyer, the petition as considered under 37 C.F.R. §1.181 hereby is **dismissed**.

ALTERNATIVE VENUE

Petitioner's inability make a showing to support the instant petition leaves as Petitioner's only alternative to irretrievable abandonment a petition alleging unintentional delay under 37 C.F.R. §1.137(b).[8]

Therefore, Petitioner may wish to consider filing a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay.

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply (the amendment), the petition fee, and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form provided and available online.)

[8] The regulations at 37 C.F.R. §1.183 sets forth that waiver of the rules is "subject to such other requirements as may be imposed."

Further correspondence with respect to this matter should be addressed as follows:[9]

By mail: Commissioner for Patents[10]
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: IFW Formal Filings
(571) 273-8300
ATTN.: Office of Petitions

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

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

Encl.: 14 September, 2004, Non-final Rejection
Form PTO/SB/64: Petition under under 37 C.F.R. §1.137(b) alleging unintentional delay

[9] On July 15, 2005, the Central Facsimile (FAX) Number will change from (703) 872-9306 to (571) 273-8300. Faxes sent to the old number will be routed to the new number until September 15, 2005. After September 15, 2005, the old number will no longer be in service and (571) 273-8300 will be the only facsimile number recognized for centralized delivery. (For further information. see: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/cfax062005.pdf .)

[10] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov

KILPATRICK STOCKTON LLP
607 14TH STREET, N.W.
WASHINGTON DC 20005

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OFFICE OF PETITIONS

In re Application of :
Phillip E. YOUNG et al. :
Application No. 10/430,260 : ON PETITION
Filed: May 7, 2003 :
Attorney Docket No. SAIC0095 :

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 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 December 9, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee of $1500; and the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of September 8, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to David A. Bucci at (571) 272-7099 or in his absence, the undersigned at (571) 272-3217.

The application file is being referred to Technology Center AU 2636 for appropriate action on the concurrently filed amendment.

Brian Hearn

Brian Hearn
Petitions Examiner
Office of Petitions

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

VOLENTINE FRANCOS & WHITT, PLLC
11951 FREEDOM DRIVE, SUITE 1260
RESTON VA 20190

In re Application of:
Andrew Pozsgay
Serial No.: 10/430,282
Filed: May 7, 2003
Attorney Docket Number: **86655.1500**
Title: **NETWORK TOPOLOGY AND PACKET ROUTING METHOD USING LOW VOLTAGE POWER WIRING**

DECISION ON PETITION TO MAKE SPECIAL FOR NEW APPLICATION UNDER 37 C.F.R. § 1.102 & M.P.E.P. § 708.02

This is a decision on the petition filed on September 22, 2006 to make the above-identified application special for accelerated examination procedure under 37 C.F.R. § 1.102(d).

The petition to make the application special is **DENIED**.

REGULATION AND PRACTICE

To be eligible for accelerated examination under 37 C.F.R. § 1.102(d) and pursuant to the "Change to Practice for Petitions in Patent Applications to Make Special and for Accelerated Examination" published in the Federal Register on June 26, 2006 (71 Fed. Reg. 36323), the following conditions must be satisfied:

1. The application must be a non-reissue utility or design application filed under 37 CFR 1.111(a);
2. The application, the petition and the required fees must be filed electronically using the USPTO's electronic filing system (EFS), or EFS-web; if not filed electronically, a statement asserting that EFS and EFS-web were not available during the normal business hours;
3. The application, at the time of filing, must be complete under 37 CFR 1.51 and in condition for examination;
4. The application must contain three or fewer independent claims and twenty or fewer total claims and the claims must be directed to a single invention.

The application as filed is not eligible for the accelerated examination under 37 C.F.R. § 1.102(d) because it was not filed electronically using the USPTO's electronic filing system (EFS), or EFS-web; and because the petition was not filed together with the application on or after August 25, 2006. Furthermore, the application contains more than three independent claims. See also MPEP 708.02 .

For the above-stated reasons, the petition is denied. Therefore, the file will be taken up by the examiner in its regular turn.

Any inquiry regarding this decision should be directed to Krista Zele, Quality Assurance Specialist, at (571) 272-7288.

Krista Zele
Quality Assurance Specialist
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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FEB 26 2008

OFFICE OF PETITIONS

OLIFF & BERRIDGE, PLC
P.O. BOX 320850
ALEXANDRIA VA 22320-4850

In re Application of	:	
Masashi Kuno	:	
Application No. 10/430,310	:	DECISION GRANTING PETITION
Filed: May 7, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 115872	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 25, 2008, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 8, 2008 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2625 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070816

DATE : August 16, 2007

TO SPE OF : ART UNIT 2837

SUBJECT : Request for Certificate of Correction on Patent No.: 7154242

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:

LINCOLN DONOVAN
SUPERVISORY PATENT EXAMINER

SPE: Lincoln Donovan **Art Unit** 2837

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DEC 30 2003

Paper No. 3

In re Application of
Jim Liao
Application No. 10/430,336
Filed: May 7, 2003
Attorney Docket No. BHT-3155-19

: DECISION ON PETITION

This is a decision on the petition, filed on July 22, 2003, requesting conversion of this nonprovisional application to a provisional application pursuant to 37 CFR 1.53(c)(2). The petition fee of $50.00 has been paid.

The petition to convert the application to a provisional application is GRANTED.

A review of the application shows that the application is not abandoned, an issue fee has not been paid in the application, the application was filed less than twelve months prior to the filing of the petition, and no request for a statutory invention registration (37 CFR 1.293) has been filed in this application. Therefore, the requirements of 37 CFR § 1.53(c)(2)(i)-(iv) have been satisfied.

Accordingly, the application is being returned to Initial Patent Examination Division (IPED) for further processing 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.

The new provisional application number will be communicated to applicant by OIPE in due course.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Dougherty & Troxell
5205 Leesburg Pike
Suite 1404
Falls Church, VA 22041

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FEB 23 2004

Paper No. 6

In re Application of
Jim Liao
Application No. 10/430,336
Filed: May 7, 2003
Attorney Docket No. BHT-3155-19

DECISION ON PETITION

This is a decision on the petition filed by facsimile transmission on January 26, 2004 by which petitioner requests that the Decision on Petition dated December 30, 2003 be vacated. The petition is being treated as a request to reconsider the propriety of the December 30, 2003 Decision on Petition, and as such is being considered pursuant to 37 CFR 1.181. No fee is required.

The petition is granted.

On July 22, 2003, a petition under 37 CFR 1.53(c)(2) was filed by which petitioner requested that this application be converted to a provisional application. In addition, the petitioner requested that the correspondence address of record be changed to Customer No. 21704, i.e. in favor of Mr. Eric Karich. The petition was signed by Mr. Karich, who supplied his registration number. Although Mr. Karich was not of record in this application, the petition was accepted pursuant to 37 CFR 1.34(a). The petition was granted. However, the request to change the correspondence address was not accepted because Mr. Karich was not of record. See 37 CFR 1.33(a)(2). The decision granting the petition was mailed to Mr. Bruce H. Troxell, counsel of record, on December 30, 2003. Thereafter, Mr. Troxell contacted Stephen Marcus, Special Program Examiner in Technology Center 3700 regarding the decision. Mr. Troxell stated that no one other than counsel named in the originally filed power of attorney that accompanied this application on filing was authorized to prosecute the application. In light of the provisions of 37 CFR 1.34(a), last sentence, Mr. Troxell was asked to provide confirmation of this position. On January 26, 2004, petitioner filed the instant petition together with information supporting the Mr. Troxell's position that the only counsel authorized to take action in this application are counsel authorized in the originally filed power of attorney.

In light of the above record, it is clear that the petition to convert this application into a provisional application was not filed by a party authorized to act on behalf either the named inventive entity or any assignee of this application. Accordingly, the petition appears to be a legal nullity, and the Decision on Petition dated December 30, 2003 should not have received any action. Therefore, upon reconsideration the Decision on Petition dated December 30, 2003 is hereby vacated. As the application had not been formally processed and converted to a provisional application, no further action is required at this time. The application remains a nonprovisional application, and will be forwarded to the examiner for examination on that basis.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Dougherty & Troxell
5205 Leesburg Pike
Suite 1404
Falls Church, VA 22041

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

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OFFICE OF PETITIONS

In re Application of	:	
Roman Waupotitsch, et al.	:	
Application No. 10/430,354	:	DECISION ON PETITION
Filed: May 5, 2003	:	TO WITHDRAW
Attorney Docket No. 14873-002001/	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed September 25, 2006 and March 16, 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 Scott C. Harris on behalf of all attorneys of record who are associated with this application.

All attorneys/agents associated with this application have been withdrawn.

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

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

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

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: ROMAN WAUPOTITSCH
1643 CORTE DE ANNA
SAN JOSE, CA 95124

cc: DAVID WEST
GEOMETRIX
1590 THE ALAMEDA
SUITE 200
SAN JOSE, CA 95126

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/430,354	05/05/2003	Roman Waupotitsch	14873-002001/

CONFIRMATION NO. 2866

OC000000024247229

20985
FISH & RICHARDSON, PC
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

Date Mailed: 06/06/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/25/2006.

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

April McGuire

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

FORMER ATTORNEY/AGENT COPY

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Paper No. None

Van Dyke & Associates, P.A.
Suite 252
7200 Lake Ellenor Drive
Orlando FL 32809

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OFFICE OF PETITIONS

In re Application of
Wilfried J. Schmitz et al.
Application No. 10/430,360
Filed: May 5, 2003
Attorney Docket No.: BCR-100R
Title: REACTOR FOR PRODUCTION OF CHLORINE DIOXIDE, METHODS OF PRODUCTION OF SAME, AND RELATED SYSTEMS AND METHODS OF USING THE REACTOR

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

This is a decision on the petition under 37 CFR §1.137(b)[1], filed September 28, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed July 23, 2003, which set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on September 24, 2003. A Notice of Abandonment was mailed on September 2, 2004.

With the present petition, Petitioner has submitted the petition fee, a declaration, the surcharge associated with the late submission of the same, fees for excess claims, replacement drawings, and the proper statement of unintentional delay.

---

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.

Petitioner has met all requirements for a grantable petition under 37 C.F.R. §1.137(b). As such, the petition is **GRANTED**.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

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

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay[2]. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

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

cc: JAESCHKE,WAYNE
Morrison and Foerster LLP
1650 Tysons Blvd Ste 300
McLean, VA 22102

2 See 37 CFR 10.18(b); cf. Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

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OFFICE OF THE DIRECTOR
TC 3600

Timothy J. Klima, Esq.
HARBIN KING & KLIMA
500 Ninth Street SE
Washington, DC 20003

In re Application of
James C. Beattie
Application No. 10/430,377
Filed: May 7, 2003
For: HUB SEAL ADAPTER

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in reply to the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on December 30, 2004.

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

☐ Postcard receipt being dated _____.

☐ USPTO return facsimile receipt dated _____ which identifies the application by serial number and the type of Response that was filed on that date.

☐ Certificate of Mailing/Transmission signed on _____ 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 December 28, 2004, with a Certificate of Mailing dated December 28, 2004 has been found in the application.

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

SNM/jwk: 2/2/05

STEVEN N. MEYERS
SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 3600

UNITED STATES PATENT AND TRADEMARK OFFICE

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SAP/FINNEGAN, HENDERSON LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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OFFICE OF PETITIONS

In re Patent No. 7,406,413 :
Issue Date: July 29, 2008 :
Application No. 10/430,403 : ON PETITION
Filed: May 7, 2003 :
Attorney Docket No. 07781.0073-00 :

This is a decision on the petition filed September 4, 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 the undersigned at (571) 272-3208. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 01-07-09

TO SPE OF : ART UNIT 3742

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/430415 Patent No.: 7227097

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

A Green

Certificates of Correction Branch
703-308-9390 ext. 123

Thank You For **Your Assistance**

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

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

Comments: _____

_____

_____

_____

_____

_____ 3742
SPE **Art Unit**

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

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OFFICE OF PETITIONS

In re Application of	:	
KUMAR, et al.	:	
Application No. 10/430,416	:	DECISION ON PETITION
Filed: May 07, 2003	:	TO WITHDRAW
Attorney Docket No. BTU-A-128XX	:	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 14, 2006.

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

A review of the file record indicates that the power of attorney to FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP has been revoked by the assignee of the patent application on August 04, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b). is moot.

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

Telephone inquires concerning this decision should be directed to Patricia Volpe at (571) 272-6825.

PVolpe

Patricia Volpe
Petitions Examiner
Office of Petitions

cc: WEINGARTEN, SCHURGIN, GAGNEBIN & LEBOVICI LLP
TEN POST OFFICE SQUARE
BOSTON MA 02109

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/430,416	05/07/2003	Devendra Kumar	01837.0017

CONFIRMATION NO. 4211

OC000000021151587

22852
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

Date Mailed: 11/08/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/04/2006.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

PATRICIA A VOLPE
OP (571) 272-6825

FORMER ATTORNEY/AGENT COPY

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Paper No. 062705

JUL 1 2 2005

Foley & Lardner
Suite 500
3000 K Street NW
Washington DC 20007

In re Application of:	:	
Dinko Eduardo Gonzalez Trotter	:	
Serial No.: 10,430,430	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Filed: May 07, 2003	:	
Attorney Docket No.:	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed May 16, 2005.

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

The request meets all the above stated requirements. The request was signed by Michael D. Kaminski, on behalf of himself and all the aforementioned attorneys. There is no outstanding Office action at this time.

The request is **APPROVED**.

There are no attorneys of record at this time.

All future communications from the Office will be directed to Mary M. McNamara, at the below address, until otherwise notified by applicant.

Inquiries related to this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

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

cc: Mary M. McNamara
GE Global Research, Building K-1, Room 4A68
One Research Circle
Niskayuna, NY 12309

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11TH FLOOR
WASHINGTON, DC 20005-3500

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MAR 2 2 2005

OFFICE OF PETITIONS

In re Application of	:
Osamu Nakamura et al	:
Application No. 10/430,443	: DECISION GRANTING PETITION
Filed: May 7, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 12732-154001	:

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 19, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2823 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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NOV 03 2003

Director's Office
Group 3700

Ephraim Starr, Divisional General Counsel
Honeywell International Inc.
Suite #200
23326 Hawthorne Boulevard
Torrance, CA 90505

Paper No. 4

In re Application of
VOGIATZIS ET AL.
Application No.: 10/430,464
Filed: May 05, 2003

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed May 5, 2003 to make special under 37 CFR 1.102(c).

The petition is DISMISSED

Attention is invited to MPEP 708.02 V and VI and 37 CFR 1.102. A petition to make special for environmental quality may be granted if the petition is accompanied by a statement explaining how the invention contributes to the restoration or maintenance of one of the life-sustaining elements, i.e. air, water, and soil. A petition to make special for energy may be granted if the petition is accompanied by a statement explaining how the invention contributes to (1) the discovery or development of energy resources, or (2) the more efficient utilization and conservation of energy resources. The instant petition does not comply with the above requirements because applicant has discussed the advantages of turbochargers in general but has not pointed out how the particular invention meets these requirements.

Petitioners may file a renewed petition, without fee, addressing the points raised above. 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 1.102." The rules and MPEP sections cited may be found on the USPTO website at: www.uspto.gov.

PETITION DISMISSED

Linda J. Sholl
Special Program Examiner
Technology Center 3700
Phone: (703) 308-1288

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SEP 15 2004

In re Application of
Jose Cabrales *et al*
Application No. 10/430,467
Filed: May 5, 2003
Attorney Docket No. 90000007

: DECISION ON PETITION

This is a decision on the petition to make special filed on May 5, 2003. The petition is based upon the practice described in MPEP § 708.02(V) "Environmental Quality" and MPEP § 708.02(VI) "Energy." Therefore, no petition fee is required.

The petition is dismissed.

The petition to make special based upon the practice in the above mentioned MPEP sections is not deemed to satisfy all of the requirements thereof. Specifically, the claimed invention is a generic compressor that may be used in various applications. It is not seen that the application discloses any "material" enhancement of quality of environment or "materially" reduce the use of energy resources beyond what any given turbocharger would.

A renewed petition may be filed provided that the renewed petition is filed within two months of the date of this decision. See 37 CFR 1.181(f).

PETITION DISMISSED.

Stephen Marcus, Special Program Examiner
Technology Center 3700

EPHRAIM STARR, DIVISION GENERAL COUNSEL
HONEYWELL INTERNATIONAL INC.
23326 HAWTHORNE BOULEVARD
SUITE #200
TORRANCE, CA 90505

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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James A. Sheridan
MOSER, PATTERSON & SHERIDAN, L.L.P.
Suite 100
595 Shrewsbury Avenue
Shrewsbury, NJ 07702

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OFFICE OF PETITIONS

In re Application of	:	
Michael S. Hicken, et. al.	:	
Application No. 10/430,487	:	ON PETITION
Filed: May 5, 2003	:	
Attorney Docket No. XIO 6030	:	

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile transmission on August 21, 2006, to revive the above-identified application.

The application became abandoned for failure to timely respond to the Notice of Allowance and Fee(s) Due mailed March 8, 2006. A Notice of Abandonment was mailed on July 14, 2006.

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.

Also, there is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $1,400 for payment of the issue fee and $300 for payment of the publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

As authorized, the petition fee of $1,500 has been charged to petitioner's deposit account.

This application file is being referred to the Office of Publications to be processed into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Wesley L. Strickland
McDermott, Will & Emery, LLP
4370 La Jolla Village Drive, Suite 700
San Diego, CA 92122

#3

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Paper No. 3

David E. Mixon
BRADLEY ARANT ROSE & WHITE LLP
200 Clinton Ave. West
Suite 900
Huntsville, AL 35801-4900

In re Application of:
Dale DUNHAM
Application No.: 10/430,494
Filed: May 6, 2003
For: METHOD FOR ANALYSIS AND DESIGN OF A SECURITY SYSTEM

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition, filed May 6, 2003 under 37 C.F.R. §102(d) and M.P.E.P. §708.02(XI): Inventions For Countering Terrorism, to make the above-identified application special.

M.P.E.P. §708.02 (XI), which sets out the prerequisites for a grantable petition for Inventions For Countering Terrorism under 37 C.F.R. § 102(d), states in relevant part:

> International terrorism as defined in 18 U.S.C. 2331 includes "activities that - (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; [and] (B) appear to be intended - (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping..." The types of technology for countering terrorism could include, but are not limited to, systems for detecting/identifying explosives, aircraft sensors/security systems, and vehicular barricades/disabling systems.
>
> Applicants who desire that an application relating to inventions for countering terrorism be made special should file a petition with the petition fee under 37 CFR 1.17(h) requesting the Patent and Trademark Office to make the application special. The petition for special status should be accompanied by a statement explaining how the invention contributes to countering terrorism.

Petitioner's submission fails to meet the criteria set out with respect to countering terrorism in M.P.E.P. §708.02(XI). The specification and claims as originally filed provide no indication of an intention to counter terrorism by contributing to the method for analysis and design of a surface surveillance system. The reason supporting the petition describes steps to identify any gaps in security coverage and to re-locate the security coverage or place additional security measures on the depicted surface to cover gaps in the surveillance surface. However, the claimed invention fails to indicate countering terrorism. Further steps would be required to

actually offset or nullify terrorism, yet no suggestion of "countering terrorism" is found in the disclosure. As a result, no advancement in the technology of countering terrorism has been persuasively shown.

Accordingly, the petition is **DENIED**. 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.

It is suggested that applicant review M.P.E.P. §708.02 regarding other grounds available for filing a petition to make special. In particular, note M.P.E.P. §708.02(VIII): Accelerated Examination, which does not place limitations on the subject matter of the application.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No. 7

NICHOLAS J. SEAY
P O BOX 2113
MADISON, WI 53701-2113

FAX RECEIVED
MAY 26 2005
OFFICE OF PETITIONS

In re Application of :
James A. Thomson :
Application No. 10/430,496 :
Filed: May 6, 2003 :
Attorney Docket No. 960296.99039 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 29, 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 Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (Notice) mailed August 20, 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 October 21, 2003.

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

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

Retta Williams

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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FULBRIGHT & JAWORSKI, LLP
1301 MCKINNEY
SUITE 5100
HOUSTON TX 77010-3095

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OFFICE OF PETITIONS

In re Application of	:	
Mien-Chie Hung et al.	:	
Application No. 10/430,503	:	RESPONSE TO PETITION
Filed: May 6, 2003	:	
Attorney Docket No. AO-UTSC:797US	:	

This is a response to the petition, filed October 1, 2009, which is treated as a petition under 37 CFR 1.59(b) to expunge information from the above identified application.

The petition is **granted**.

On September 30, 2009, an amendment was filed. The amendment was intended for U.S. Application No. 11/857,547 but was matched with the above identified application. Petitioner now requests that this amendment be removed from the file of the above-identified application.

Upon a showing satisfactory to the Director, information, other than that forming part of the original disclosure, may be expunged from an application. Since the Office can determine the correct application file for which the erroneously filed papers were intended from the other identifying information on the papers and the content of the papers, the papers will be removed as requested.

In a paper file, the unintentionally submitted exhibits could, but not necessarily would, have been physically removed from the file wrapper and returned to applicant. In the Image File Wrapper (IFW) realm the corresponding action(s) is to close the document and also remove such from the listing of "Public[ly available] Documents." It is agreed that it would be appropriate in this instance to close the amendment filed September 30, 2009 in the above-identified application, and also remove such from the listing of publicly available documents.

As a condition of this favorable treatment petitioner is required to maintain the material in question during the enforceable life of any patent arising from this application, or any patent claiming benefit of this application.

Telephone inquiries concerning this communication should be directed to the undersigned at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

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Paper No. None

STALLMAN & POLLOCK LLP
SUITE 2200
353 SACRAMENTO STREET
SAN FRANCISCO CA 94111

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OFFICE OF PETITIONS

In re Application of
Lanhua Wei et al.
Application No. 10/430,510
Filed: May 6, 2003
Attorney Docket No.: TWI-11810
Title: MONITORING TEMPERATURE AND SAMPLE CHARACTERISTICS USING A ROTATING COMPENSATOR ELLIPSOMETER

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b)[1], filed August 19, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed September 23, 2003, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on December 24, 2003. A Notice of Abandonment was mailed August 17, 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 fee, an amendment, a terminal disclaimer along with the associated fee, and has made the proper statement of unintentional delay.

---

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.

The petition is **GRANTED**.

After this decision is mailed, the application will be forwarded to Technology Center 2800 for further processing.

The Change of Address and the Power of Attorney have been entered and made of record.

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
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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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OFFICE OF PETITIONS

In re Application of
Angelo Vignotto, et al.
Application No. 10/430,511
Filed: May 6, 2003
Attorney Docket No. 7587.209US01

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 Sara M. Monfeldt on behalf of herself.

Sara M. Monfeldt has been withdrawn as attorney; all other attorneys remain of record.

The correspondence address of record remains unchanged.

There is an outstanding Office action mailed April 16, 2007 that requires a reply from the applicant.

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

April M. Wise
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12-15-09

TO SPE OF : ART UNIT 1618

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/430519 Patent No.: 7128893

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

A Green

Angela Green 703-756-1541

Certificates of Correction Branch

703-756-1814

Thank You For Your Assistance

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

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

Comments: The correction should be entered.

/Michael G. Hartley/ — **SPE**

1618 — **Art Unit**

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United States Patent and Trademark Office
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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

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AUG 2 5 2004

OFFICE OF PETITIONS

In re Application of :
Dunlay et al. :
Application No. 10/430,534 :
Filed: May 6, 2003 :
Attorney Docket No. 97,022-F1-CO :

ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed July 8, 2004, requesting that a previously filed terminal disclaimer be withdrawn.

Petitioner requests that the terminal disclaimer of January 21, 2004, be withdrawn. Petitioner states that petitioner is submitting a corrected terminal disclaimer to replace the terminal disclaimer of January 21, 2004. Petitioner further states that the corrected terminal disclaimer provides the same disclaimer as in the terminal disclaimer of January 21, 2004. Lastly, petitioner asserts that the withdrawal of the terminal disclaimer of January 21, 2004, does not result in a reopening of the question of the propriety of the double patenting rejection.

As the examiner has concurred, the requested relief can be favorably considered.

Accordingly, the petition is granted.

This matter is being referred to Technology Center Art Unit 1641 for correction of the records consistent with this decision.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

7/11/03

Fay Sharpe Fagan Minnich and McKee LLP
1100 SuperiorAvenue 7th Floor
Cleveland OH 44114

Dear Applicant:

The Box PGPub replacement drawings for application number 10/430,536 received on 6/13/03 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Customer Service, Office of Initial Patent Examination, at 703-308-1202.

UNITED STATES
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TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
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Signature of Reviewer, Office of Initial Patent Examination

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Alexandria, VA 22313-1450
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DEC 20 2005

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

In re Application of GEORGE ALAIN Application No. 10/430,541 Filed: May 5, 2003 For: STRIPPED THREAD REPAIR TAPE AND METHOD OF USE	: : : : :	DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on May 1, 2005.

The petition is **DISMISSED**.

A review of the file record indicates that a Notice of Abandonment was mailed on April 11, 2005 for failure to respond to the Restriction Requirement mailed September 29, 2004. The Restriction Requirement set forth a one-month, shortened statutory period in which to respond.

Petitioner states that a response to the Restriction Requirement was mailed on October 29, 2004. Petitioner has included a Certificate of Mail as evidence of the October 29, 2004 response.

Petitioner's evidence of a timely filing based on Certificates of Mailing is considered to be insufficient. In this regard, any petition to withdraw the holding of abandonment based upon a Certificate of Mailing must include the following requirements:

(1) A copy of the original response bearing a signed Certificate of Transmission or Mailing which includes the date of signing; and

(2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date indicated on the Certificate of Mailing (see 37 CFR 1.8 and MPEP 512), by the person who signed the certificate.

The Certificates of Mail is not acceptable evidence to accord the October 29, 2004 filing date to the copy of the response as it fails to fully identify the papers of the response they accompanied and thus fail to meet requirement (1) above. When a Certificate of Mail is presented on a separate sheet, the sheet must fully identify the paper it accompanied. Without the proper identifying data, the Certificate of Mail or Transmission will not be acceptable evidence to accord the filing date of the original to the copy. MPEP 512.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay

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; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

Further correspondence with respect to a petition to revive should be addressed as follows:

By Mail: Deputy Commissioner of Patent Examination Policy
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 should be directed to the Office of Petitions Staff at (571) 272-3282.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181."

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6587

KJD/bkg 12/15/05

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

Mail Date: 04/20/2010

Applicant	: Scott Alan Isaacson	: DECISION ON REQUEST FOR
Patent Number	: 7571172	: RECALCULATION of PATENT
Issue Date	: 08/04/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/430,542	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **489** 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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GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C
PO BOX 7021
TROY MI 48007-7021

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OFFICE OF PETITIONS

In re Application of	:	
Michael A. MASINI	:	
Application No. 10/430,548	:	DECISION ON PETITION
Filed: May 06, 2003	:	
Attorney Docket No. **MED-05703/29**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 12, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice of Non-Compliant amendment mailed, November 17, 2008, which set a shortened statutory period for reply of one (1) month or thirty (30) days whichever is longer. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 18, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice of Non-Compliant amendment of November 17, 2008 is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 3738 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
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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TODD N. HATHAWAY
119 N. COMMERCIAL ST. #620
BELLINGHAM WA 98225

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MAR 18 2005
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OFFICE OF PETITIONS

In re Application of
Thorpe
Application No. 10/430,563
Filed: May 5, 2003
Attorney Docket No. P2037

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(f)

This is a decision on the petition, filed October 1, 2004 (certificate of mailing date September 28, 2004), to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of a PCT application filed on May 5, 2004. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the PCT application.

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

A petition under 37 CFR 1.137(f) must be accompanied by:

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

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

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

The instant petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of the filing of the PCT application within 45 days after the date

of filing of such 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. The application was published on January 6, 2005.

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

This application is being forwarded to Technology Center Art Unit 1724.

E. Shirene Willis

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2/6/07

TO SPE OF : ART UNIT 2813

SUBJECT : Request for Certificate of Correction on Patent No.: 6939744

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:

Paul Whitehead — SPE

2813 — Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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DUFT BORNSEN & FISHMAN, LLP
1526 SPRUCE STREET
SUITE 302
BOULDER CO 80302

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MAR 09 2009

OFFICE OF PETITIONS

In re Application of
Lahey, et al
Application No. 10/430,619
Filed: May 6, 2003
Attorney Docket No. BLD920030009US1

DECISION ON PETITION

This is a decision on the petition, filed January 30, 2009, under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before January 2, 2009, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed October 2, 2008.

Petitioner asserts that the Notice dated October 2, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at 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 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 and docketed 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).

It is noted that the first line of the petition states, "The applicants contend that the original Notice of Abandonment and Fee(s) Due (NOA) were never received." The undersigned assumes the use of the term "Notice of Abandonment and Fee(s) Due" is a typographical error and that petitioner intended to type "Notice of Allowance and Fee(s) Due". This assumption is consistent with the discussion of the issue fee due date being missing from the docket record. If the undersigned is mistaken regarding the error in the first line of the petition, petitioner must inform the Office promptly.

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 2137 technical support staff for **re-mailing** the Notice of Allowability and the Notice of Allowance and Fee(s) Due of October 2, 2008. The period for paying the issue and publication fees will be reset to expire three (3) months from the date the Notice of Allowance and Fee(s) Due is re-mailed. This period is not extendable under the provisions of 37 CFR 1.136.

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
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DUFT BORNSEN & FISHMAN, LLP
1526 SPRUCE STREET
SUITE 302
BOULDER, CO 80302

Mail Date: 05/03/2010

Applicant	: Leonard Corning Lahey	: DECISION ON REQUEST FOR
Patent Number	: 7624284	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/430,619	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **974** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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JACOBSON & JOHNSON
ONE WEST WATER STREET, SUITE 285
ST. PAUL, MN 55107

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JUL 27 2007

OFFICE OF PETITIONS

In re Application of
Richard D. Vatsaass, et al.
Application No. 10/430,624
Filed: May 6, 2003
Attorney Docket No. 5728

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed March 12, 2007.

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue fee on or before March 7, 2007. On March 12, 2007, the present petition was filed. A Notice of Abandonment was subsequently mailed on March 23, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $1,400 issue fee and the $300 publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Publications to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of	:	
Donald S. Gardner	:	
Application No. 10/430,627	:	DECISION ON PETITION
Filed: May 5, 2003	:	
Attorney Docket No. 884.G55US1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 10, 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 and to submit corrected formal drawings on or before November 10, 2005, as required by the Notice of Allowance and Fee(s) Due and the Notice of Allowability, mailed August 10, 2005. A Notice of Abandonment was mailed on January 24, 2006. On November 10, 2006, the present petition was filed.

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

The application is being referred to the Office of Publications to oversee the review of the drawing filed October 10, 2006.

Telephone inquires related to this decision may be directed to the undersigned at (571) 272-3204. Status inquires related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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Cindy S. Kaplan
P.O. BOX 2448
SARATOGA, CA 95070

Mail Date: 04/21/2010

Applicant	: Wei Luo	: DECISION ON REQUEST FOR
Patent Number	: 7596629	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/430,637	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1306** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ——

DATE : 1/31/07

TO SPE OF : ART UNIT 1714

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/430651 Patent No.: RE39207E

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: Agreed with the requested changes with the understanding that in column 3, line 49 it is the second occurrence of "PET" that needs to be changed to "PBT".

Vasu Jagannathan
SPE

1714
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : **11/2/2006**

TO SPE OF : ART UNIT **3700 (3753)**

SUBJECT : Request for Certificate of Correction on Patent No.: 7,111,638

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 – 2900 South Tower ste.9A43A
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.

***Ok to enter claims as req. in COCIN (10/24/2006) in Madras?**

Ernest C. White, LIE (703) 308-9390x122
Certificates of Correction Branch

Thank You For Your Assistance

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

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

Comments:

Approved for Entry. SMH

Gregory L. Huson — Digitally signed by Gregory L. Huson DN: cn=Gregory L. Huson, o=US, o=TC-3700, ou=Workgroup 3750, email=gregory.huson@uspto.gov Reason: I have reviewed this document Date: 2008.02.04 13:18:07 -05'00'

SPE **Art Unit**

#5

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CARL A. KUKKONEN, III
C/O WUESTHOFF & WUESTHOFF
SCHWEIGERSTRASSE 2
MUNCHEN 81541 DE GERMANY

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OCT 3 1 2003

OFFICE OF PETITIONS

Applicant: Gulati
Appl. No.: 10/430,664
Filing Date: May 5, 2003
Title: SYSTEM AND METHOD FOR CHARACTERIZING MICROARRAY OUTPUT DATA
Attorney Docket No.: VIALO-23

This is in response to the "Request to Add Assignee Information to the Published Application", which was received on October 16, 2003.

The request is DISMISSED.

The application has a projected publication date of November 20, 2003 and the assignment information will not be printed on the patent application publication, because it was not provided on the transmittal letter or on an application data sheet.[1] The Office prints the assignee information as reflected on the transmittal letter or application data sheet, if provided by applicant and does not look at the assignment records for the assignment information.

If applicant desires to add bibliographic information for a patent application (e.g., inventor names and residences, title, assignee, and other information shown on the filing receipt), applicants may add the information by submitting an application data sheet and requesting a corrected filing receipt. If the information is submitted more than fourteen weeks before the projected publication date, there should be sufficient time for the information to be corrected before the information is forwarded to the printer (about nine weeks before the projected publication date). By submitting a "Request to Add Assignee Information to the Published Application," applicant may be negatively affecting the patent term adjustment under 37 CFR 1.704(c)(10), as the paper is a miscellaneous paper.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(a), should be submitted via the EFS system and questions should be addressed as follows:

---

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

By mail to: Box PGPUB
Commissioner for Patents
Washington DC 20231

By facsimile: 703-305-8568

The application is being forwarded to Technology Center 2621 to await further examination 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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Paper No. 7

MAIL

MAR 24 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

CARL A. KUKKONEN, III
C/O WUESTHOFF & WUESTHOFF
SCHWEIGERSTRASSE 2
MUNICH 81541 DE GERMANY

In re Application of:
Gulati et al.
Application No. 10/430,664
Filed: May 5, 2003
For: SYSTEM AND METHOD FOR CHARACTERIZING MICROARRAY OUTPUT DATA

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition, filed on August 14, 2003, under M.P.E.P. § 708.02(X or XII): Inventions relating to HIV/AIDS and Cancer or relating to biotechnology field by applicants who are small entities.

The petition is **GRANTED**.

The petition meets the requirements of MPEP § 708.02 (X).

The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. § 708.02.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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Paper No. 13

MAIL

JUL 05 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

CARL A. KUKKONEN, III
C/O WUESTHOFF & WUESTHOFF
SCHWEIGERSTRASSE 2
MUNICH 81541 DE GERMANY

In re Application of:
Sandeep Gulati
Application No. 10/430,664
Filed: May 5, 2003
For: SYSTEM AND METHOD FOR CHARACTERIZING MICROARRAY OUTPUT DATA

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition, filed on March 3, 2004, under M.P.E.P. § 708.02(X or XII): Inventions relating to HIV/AIDS and Cancer or relating to biotechnology field by applicants who are small entities.

The subject application was previously granted Accelerated (i.e., Special) status. A communication to that effect was set forth in an Office communication mailed March 24, 2004 (paper No. 7). The basis for the Office communication was a result of a petition filed August 14, 2003 (paper No. 6). The contents of the earlier petition is a duplicate of the current petition.

Accordingly, the petition filed March 3, 2004 is **Dismissed as Moot**.

The application maintains its "Special" status and will be forwarded to the examiner for consideration of Applicant's recent response to the outstanding Office action mailed April 21, 2004 (paper No. 10).

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications

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AUG 0 5 2004

DIRECTOR OFFICE
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Paper No. 13

CARL A. KUKKONEN, III
C/O WUESTHOFF & WUESTHOFF
SCHWEIGERSTRASSE 2
MUNICH 81541 DE GERMANY

MAIL

JUL 0 5 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
Sandeep Gulati
Application No. 10/430,664
Filed: May 5, 2003
For: SYSTEM AND METHOD FOR CHARACTERIZING MICROARRAY OUTPUT DATA

DECISION ON PETITION TO MAKE SPECIAL

RECEIVED

AUG 0 9 2004

Technology Center 2600

This is a decision on the petition, filed on March 3, 2004, under M.P.E.P. § 708.02(X or XII): Inventions relating to HIV/AIDS and Cancer or relating to biotechnology field by applicants who are small entities.

The subject application was previously granted Accelerated (i.e., Special) status. A communication to that effect was set forth in an Office communication mailed March 24, 2004 (paper No. 7). The basis for the Office communication was a result of a petition filed August 14, 2003 (paper No. 6). The contents of the earlier petition is a duplicate of the current petition.

Accordingly, the petition filed March 3, 2004 is **Dismissed as Moot**.

The application maintains its "Special" status and will be forwarded to the examiner for consideration of Applicant's recent response to the outstanding Office action mailed April 21, 2004 (paper No. 10).

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications

Remail
incorrect mail
Date correct date
8/5/04

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MAYER, BROWN, ROWE & MAW LLP
1909 K STREET, N.W.
WASHINGTON DC 20006

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APR 0 6 2007

OFFICE OF PETITIONS

In re Application of	:
Neogi et al.	:
Application No. 10/430,677	: DECISION ON PETITION
Filed: 7 May, 2003	: UNDER 37 CFR 1.78(a)(3) & (a)(6)
Attorney Docket No. 083712-0303456	:

This is a decision on the petition filed on 10 March, 2006, which is treated as a petition filed 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 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 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

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

The petition does not comply with item (1).

The petition must be dismissed because one of the applications to which priority is claimed, Application No. 10/690,844, filed on 23 October, 2003, was filed subsequent to the instant application, which was filed on 7 May, 2003. A claim to priority may only be made to an application filed prior to the application in which priority is claimed.

Additionally, the priority claim of Application No. 10/690,844, filed on 23 October, 2003, to provisional Application No. 60/180,340, filed on 4 February, 2000, is improper because Application No. 10/690,844 was filed more than one (1) year after the filing of provisional Application No. 60/180,340. Thus, Application No. 10/690,844, filed on 23 October, 2003, may not claim benefit of provisional Application No. 60/180,340, filed on 4 February, 2000.

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and either an Application Data Sheet or a substitute amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

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

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

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

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

Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

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

MAYER, BROWN, ROWE & MAW LLP
1909 K STREET, N.W.
WASHINGTON DC 20006

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JUL 27 2007

OFFICE OF PETITIONS

In re Application of	:
Neogi et al.	:
Application No. 10/430677	: DECISION ON PETITIONS
Filed: 05/07/2003	: UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 083712- 0303456	:

This is a decision on the renewed petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed on 20 June, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **GRANTED.**

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

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

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

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

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

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

The duplicate petition fee filed with the present renewed petition will be credited to counsel's deposit account.

Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231. 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 1626 for consideration by the examiner of the claim under 35 U.S.C. § §120 and 119(e) of the prior-filed nonprovisional and provisional applications.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

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United States Patent and Trademark Office
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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/430,677	05/07/2003	1626	1120	083712- 0303456	20	5

CONFIRMATION NO. 2961

CORRECTED FILING RECEIPT

OC000000025047487

43569
MAYER, BROWN, ROWE & MAW LLP
1909 K STREET, N.W.
WASHINGTON, DC 20006

Date Mailed: 07/27/2007

Receipt is acknowledged of this nonprovisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Partha Neogi, Fremont, CA;
Debedranath Dey, Fremont, CA;
Joseph C. Fuller, South San Francisco, CA;
Liang Chen, San Bruno, CA;
Ta-Kai Li, Cupertino, CA;

Power of Attorney: The patent practitioners associated with Customer Number **00909**.

Domestic Priority data as claimed by applicant

This application is a CIP of PCT/US02/38150 11/27/2002
which claims benefit of 60/334,818 11/29/2001
This application 10/430,677
is a CIP of 09/777,551 02/05/2001 ABN
which claims benefit of 60/180,340 02/04/2000
and is a CIP of 09/642,618 08/17/2000 PAT 6,624,197
This application 10/430,677
is a CIP of 10/075,442 02/15/2002 PAT 6,855,732
which is a DIV of 09/436,047 11/08/1999 PAT 6,525,093

Foreign Applications

If Required, Foreign Filing License Granted: 07/24/2003

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

Convention, is US10/430,677

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Compounds for treatment of inflammation, diabetes and related disorders

Preliminary Class

544

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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

GRANTED

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

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

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

NOT GRANTED

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

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AUG 13 2007

OFFICE OF PETITIONS

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

In re Application of	:	
Simon Barber et al.	:	
Application No. 10/430,682	:	DECISION ON PETITION
Filed: May 5, 2003	:	TO WITHDRAW
Attorney Docket No. 021380-000330US	:	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 5, 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 Philip H. Albert on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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 at this time.

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

T. Williams
Terri Williams
Petitions Examiner
Office of Petitions

cc: **Simon Barber**
517 Mississippi Street
San Francisco, CA 94107

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

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/430,682	05/05/2003	Simon Barber	021380-000330US

CONFIRMATION NO. 2940

OC000000025237730

20350
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

Date Mailed: 08/07/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/05/2007.

- 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.

Jerri Williams

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

FORMER ATTORNEY/AGENT COPY

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BRAKE HUGHES BELLERMANN LLP
C/O INTELLEVATE
P.O. BOX 52050
MINNEAPOLIS MN 55402

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APR 29 2008

OFFICE OF PETITIONS

In re Application of	:	
Simon BARBER et al.	:	
Application No. 10/430,682	:	DECISION ON PETITION
Filed: May 05, 2003	:	
Attorney Docket No. **BU6749/0052-003001**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 26, 2008, 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 February 19, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed November 19, 2007. Accordingly, the date of abandonment of this application is February 20, 2008.

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 $1440 and the publication fee of $300, (2) the petition fee of $1540; and (3) a proper statement of unintentional delay. Accordingly, the Issue Fee and the Publication Fee are accepted as having been unintentionally delayed.

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

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

David Bucci
Petitions Examiner
Office of Petitions

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Paper No. 7

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

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JUN 20 2006

OFFICE OF PETITIONS

In re Application of	:	DECISION ON PETITION
Stupfel et al.	:	
Application No. 10/430,687	:	
Filed: May 5, 2003	:	
Atty Docket No.:	:	
STMI-126494	:	

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed October 21, 2005. 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 Notice to File Missing Parts of Provisional Application (hereinafter "Notice"), mailed July 22, 2003. The Notice set a two (2) month period for reply from the mail date of the Notice, and also provided for extensions of time under 37 CFR 1.136(a). No complete and proper reply having been received, the application became abandoned September 23, 2003. A Notice of Abandonment was mailed September 3, 2004.

With the instant petition, Applicant has responded to the Notice and completed the requirements of a grantable petition under 37 CFR 1.137(b).

This application is being forwarded to the Office of Initial Patent Examination for continued processing in due course.

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

Derek L. Woods
Attorney
Office of Petitions

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APPLE/FENWICK
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

Mail Date: 04/21/2010

Applicant	: Bruce Arthur	: DECISION ON REQUEST FOR
Patent Number	: 7640305	: RECALCULATION of PATENT
Issue Date	: 12/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/430,694	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1191** 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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APPLE/FENWICK
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

Mail Date: 05/18/2010

Applicant : Bruce Arthur
Patent Number : 7640305
Issue Date : 12/29/2009
Application No : 10/430,694
Filed : 05/05/2003

: 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 **1251** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (PTA) days determined by the recalculation.

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

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

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

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DONALD J. LENKSZUS
PO BOX 3064
CAREFREE, AZ 85377

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APR 14 2008

OFFICE OF PETITIONS

In re Application of
DRY, Joel M.
Application No. 10/430,696
Filed: May 05, 2003
Attorney Docket No. **OPTOLUM-003**

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 March 19, 2008.

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).

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).

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, (Optolum, Inc. has expressly terminated the representation), does not meet any the conditions set forth in 37 CFR 10.40.

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

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

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **OPTOLUM, INC.**
1515 W. UNIVERSITY DR.
SUITE 102
TEMPE, AZ 85281

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. 6815724
Issue Date: November 9,2004
Application No. 10430698
Filed: May 5,2003
Attorney Docket No. OPTOLUM-004

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

This is a decision on the electronic petition, filed February 10,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 10,2009 . 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.

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)
6815724	2004-11-09	10430698	2003-05-05	OPTOLUM-004

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	/Donald J Lenkszus/	Date (YYYY-MM-DD)	2009-02-10
Name	DONALD J LENKSZUS	Registration Number	28096

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:

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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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Townsend and Townsend and Crew, LLP
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Eighth Floor
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JUN 0 5 2007

OFFICE OF PETITIONS

In re Application of	
Simon Barber et al.	
Application No. 10/430,699	DECISION ON PETITION
Filed: May 5, 2003	TO WITHDRAW
Attorney Docket No. 021380-000350US	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 April 5, 2007 and April 10, 2007.

The request is **APPROVED**.

A review of the file record indicates that Philip H. Albert of the firm Townsend and Townsend: (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, all the attorneys associated with customer number 20350 have 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).

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. Accordingly, all correspondence will be mailed to the first named inventor. A courtesy copy of this decision will be mailed to the address noted on the request to withdraw. If this firm desires to receive future correspondence regarding this application, the proper power of attorney documents must be submitted.

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

A non-final Office action which set a three month shortened period for reply was mailed on January 3, 2007. Extensions of time are available under the provisions of 37 CFR 1.136(b). Failure to timely reply will result in the abandonment of this application.

Telephone inquires concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Simon Barber
517 Mississippi Street
San Francisco, CA 94107

cc: Daniel Kloke
Carr & Ferrell
2200 Geng Road
Palo Alto, CA 94303

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FRISHAUF, HOLTZ, GOODMAN &
CHICK, PC
220 Fifth Avenue
16TH Floor
NEW YORK NY 10001-7708

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SEP 08 2009

OFFICE OF PETITIONS

In re Patent No. 7,314,923
Issued: January 1, 2008
Application No. 10/430,705
Filed: May 5, 2003
Dkt. No.: 01376CIPD/HG

: ON PETITIONS under
: 37 CFR 1.183 and ON REQUEST
: FOR RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
:

This is a decision on the 1) Petition under 37 C.F.R. 1.183, requesting that the Office suspend the rules and consider on the merits an Application for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) filed more than two months from the date the above-referenced patent issued; and on the 2) Application for Patent Term Adjustment under 37 CFR 1.705(d), both filed on February 9, 2009 and supplemented February 10, 2009.

The petition under 37 CFR 1.183 is **dismissed**.

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **dismissed as untimely filed**.

Any request for reconsideration, whether directed to the decision on petition under 37 CFR 1.183 or to the decision on application for patent term adjustment under 37 CFR 1.705(d), must be filed within two months of the mailing date of this decision. Extensions of time under 37 CFR 1.136 are not permitted. See § 1.181(f).

BACKGROUND

On January 1, 2008, the above-identified application matured into U.S. Patent No. 7,314,923, with a revised patent term adjustment of 604 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months of the date the patent issued. Patentee now petitions under 37 C.F.R. § 1.183 to (i) suspend or waive the requirement of 37 C.F.R. § 1.705(d) that a Request for Reconsideration of Patent Term Adjustment be filed within two months of the date the patent issued; and (ii) consider the enclosed Request for Reconsideration of Patent Term Adjustment. Patentee references the recent decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. Sept. 30, 2008) as the basis for the petition.

ON PETITION UNDER 37 CFR 1.183
TO WAIVE THE TWO-MONTH REQUIREMENT OF 37 CFR 1.705(d)

The above-referenced patent issued on January 1, 2008. A request for reconsideration of the patent term adjustment indicated in the patent was not filed until February 9, 2009. Petitioner requests that the Office suspend the rules and consider on the merits the Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) even though it was untimely filed more than two months from the date the patent issued.

The relevant regulation, 37 CFR 1.705(d), provides that:

> If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, *any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued* and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues. (*emphasis* added).

By the express provisions of 37 CFR 1.705(d), a request for reconsideration of patent term adjustment must be filed within two months of the date the patent issued. It is undisputed that no such request for reconsideration was filed by March 1, 2008, the date two months from the date this patent issued, January 1, 2008. Rather, on February 9, 2009, after the issuance of a decision in Wyeth v. Dudas on September 30, 2008, petitioner filed the instant request for waiver of the two-month requirement.

37 CFR 1.183 provides that:

> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

35 U.S.C. 154, which requires the Office to provide the applicant one opportunity to request reconsideration of any patent term adjustment determination made by the Director, authorizes the Director to establish the procedures for requesting such reconsideration. Those procedures[1]

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[1] 35 U.S.C. § 154(b)(3) provides that the USPTO shall: (1) prescribe regulations establishing procedures for the application for and determination of patent term adjustments under 35 U.S.C. § 154(b); (2) make a determination of any patent term adjustment under 35 U.S.C. § 154(b) and transmit a notice of that determination with the notice of allowance under 35

include, pursuant to 37 CFR 1.705(d), setting a two-month period for filing a request for reconsideration of the revised patent term adjustment indicated in the patent.

Having considered petitioner's arguments, it is concluded that waiver of the two-month requirement is not warranted. The primary basis for requesting waiver set forth by petitioner is that "[i]f applicants are deprived of the relief sought herein, applicants will be discriminated against because applicants followed the USPTO interpretation set forth in 69 Fed. Reg. 34238 (June 21, 2004). It is an extraordinary situation that the aforesaid USPTO interpretation was revised in the Wyeth v. Dudas decision." Moreover, petitioner asserts that patentee "lost the right to request additional patent term adjustment for a valuable patent" due to reliance on USPTO interpretation of provisions of the Patent Rules and the Patent Statute.

Petitioner has not established that petitioner was precluded from filing a Request for Reconsideration of Patent Term Adjustment within two months of the date the above-referenced patent issued. Instead, petitioner's argument is that the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth decision, which was entered after the issuance of their patent.

The fact that any relief ultimately granted in Wyeth would benefit patentee had they timely filed a request for reconsideration does not make the situation extraordinary. Wyeth followed the procedure set forth in 37 CFR 1.705 for requesting reconsideration of the patent term adjustment determination. Then, pursuant to 35 U.S.C. 154(b)(4)(A), Wyeth timely filed a complaint in District Court seeking judicial review of the Office's decision. A Memorandum Opinion and Order, the Wyeth decision of September 30, 2008, directed to the parties involved was issued.

Petitioner chose not to challenge their revised patent term adjustment within the two-month period. Petitioner's argument that they could not have filed a Request for Reconsideration of Patent Term Adjustment within two months of the date the above-referenced patent issued because the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth

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U.S.C. § 151; and (3) provide the applicant one opportunity to request reconsideration of any patent term adjustment determination. Pursuant to the mandate and authority in 35 U.S.C. § 154(b)(3), the USPTO promulgated 37 C.F.R. § 1.705, which provides that: (1) the notice of allowance will include notification of any patent term adjustment under 35 U.S.C. § 154(b)(37 C.F.R. § 1.705(a)); (2) any request for reconsideration of the patent term adjustment indicated in the notice of allowance (except as provided in 37 C.F.R. § 1.705(d)) must be by way of an application for patent term adjustment filed no later than the payment of the issue fee and accompanied by (inter alia) the fee set forth in 37 C.F.R. § 1.18(e)(37 C.F.R. § 1.705(b)); and (3) if the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued.

decision, which was entered more than two months after the issuance of their patent, is not persuasive.

Petitioner could have filed a Request for Reconsideration of Patent Term Adjustment as Wyeth did. It is acknowledged that petitioner may have chosen not to file a request for reconsideration based on a conclusion that the Office's interpretation of 35 U.S.C. § 154(b)(2)(A) was correct. Nonetheless, the fact that the District Court has now issued an Opinion contrary to the Office's interpretation does not make the situation extraordinary. This is not unlike any other situation where a patentee (or applicant) challenges a final agency decision and the decision upon judicial review could have had applicability to another patentee (or applicant) had they taken such action. In fact, many patentees may be in the same situation as petitioner with respect to the Wyeth decision. In addition, given that the law only allows 180 days for both the filing of a petition and for the Office's consideration of that petition, petitioner's unexplained delay in filing the petition weighs against them.

Petitioner simply fails to convincingly articulate how their failure to file a request for reconsideration of patent term adjustment within two months of the issue date of the patent was due to an extraordinary situation. Petitioner cannot rely on Wyeth's actions or the Wyeth decision to establish that their situation was extraordinary.

The contention that a decision is in error is a basis for a timely request for review of the decision but does not justify a delay in seeking review of such decision.

The Office provided notice that petitions under 37 CFR 1.182 and 1.183 or requests for certificate of corrections under 35 USC 354 and Sec. 1.323 or 35 U.S.C. 255 and Sec. 1.324 are not substitute *fora* to obtain reconsideration of a patent term adjustment determination indicated in a notice of allowance if applicant fails to submit a request for reconsideration within the time period specified in Sec. 1.705(b) or to obtain reconsideration of a patent term adjustment determination indicated in a patent if a patentee fails to submit a request for reconsideration within the time period specified in Sec. 1.705. See 69 Fed. Reg. 21704, 21707 (April, 22, 2004).

In view thereof, the petition under 37 CFR 1.183 for waiver of the two-month requirement of 37 CFR 1.705(d) is **dismissed**.

Accordingly, consideration now turns to the Request for Reconsideration of Patent Term Adjustment under 37 CFR 1.705(d).

ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)

This is a decision on the "APLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)," filed February 9, 2009. Therein, patentee requests correction of the patent term adjustment (PTA) indicated in the patent to 863 days.

On January 1, 2008, the above-identified application matured into U.S. Patent No. 7,314,923 with a revised patent term adjustment of 604 days. The instant request for reconsideration was filed more than two months after the issuance of the patent, on February 9, 2009.

No error in the printing of the patent has been shown. The patent term adjustment indicated on the patent reflects the Office's determination of patent term adjustment shown in the PAIR system for this application. 37 CFR 1.705(d) provides the sole avenue before the Office for requesting reconsideration of the Office's determination of patent term adjustment indicated in the patent. Moreover, § 1.705(d) states that "any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section." Since the request was not filed within two months of the issue date of the patent, the request is properly **dismissed as untimely filed**.

CONCLUSION

It is determined that waiver of the requirement pursuant to 37 CFR 1.183 is not warranted. Accordingly, the request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) filed more than two months after the issue date of the patent is dismissed as untimely filed.

Receipt of the fees required for the petition under 37 CFR 1.183 and the application for patent term adjustment is acknowledged.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/430,707	05/06/2003	Michael A. Meffie	D-1077+21 R4	4878

28995 7590 10/14/2008
RALPH E. JOCKE
walker & jocke LPA
231 SOUTH BROADWAY
MEDINA, OH 44256

EXAMINER
MONFELDT, SARAH M

ART UNIT	PAPER NUMBER
3692	

MAIL DATE	DELIVERY MODE
10/14/2008	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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Ralph E. Joke
Walker & Joke LLP
231 South Broadway
Medina, OH 44256

In re Application of: Michael Meffie, et al.	:	DECISION ON PETITION
Application No. 10/430707	:	UNDER 37 CFR 1.181
Filed: May 6, 2003	:	
Attorney Docket No.: 4878	:	
For: AUTOMATED BANKING MACHINE	:	
SYSTEM AND METHOD	:	

This is in response to Applicants' petition under 37 CFR 1.181 filed August 19, 2008 requesting withdrawal of the finality of the Office action mailed June 24, 2008 as being premature.

The Petition is **DISMISSED**.

Applicants allege that the final rejection mailed June 24, 2008 is premature because the Office action allegedly fails to give an opportunity to the applicants to respond to the examiner's new grounds of rejection.

Applicants argue that the Office action dated June 24, 2008, should not have been made final, as that claims 1 was rejected under new prior art that the applicants did not have the opportunity to respond to.

However, a review of the application history shows that the examiner clearly acknowledged the Applicants' reference to the 102(e) rejection and that the header of the rejection contained a typographical error. The Examiner apologized for the typographical error. As such, the header contained the typographical error and not the body of the rejection itself. It is clear that the patent to Nguyen was intended as the primary reference in the 102(e) rejection based on the following fact pattern set out in the Office Action mailed October 16, 2007:

> (1) Nguyen was consistently used throughout the body of the 102(e) rejection to address each limitation, please refer to pages 3-5 including each claim header and corresponding claim limitations;

(2) the 103(a) rejection headers indicated Nguyen as the primary reference and Kosuda and Dutta as secondary references at page 6 and 7, respectively;

(3) the body of the 103(a) rejections indicated which reference(s) was/were being used for each limitation;

(4) each corresponding 103(a) claim header indicated which references were being applied within each of the 103(a) rejections, please refer to pages 6-10;

(5) the motivation statements referenced Nguyen as the primary reference and further included motivation statements as to why Nguyen would be modified in view of Kosuda and Dutta, respectively;

(6) the PTO-892 cited Nguyen, Kosuda, and Dutta, respectively; and

(7) furthermore, there has been no attempt by the applicants to challenge the relationship between the body of the rejections. Furthermore, the record shows that it was well understood by the applicant that the prior art applied is the header is a typo (see response filed on September 10, 2008, pages 12-15).

Therefore, applicants' arguments as to the matter of this petition have been considered. However, the final rejection mailed on June 24, 2008 is deemed to have been proper and the finality is sustained

Questions concerning this decision should be referred to SPE Kambiz Abdi at (571) 272-6702.

SUMMARY: The petition is **DISMISSED**.

Wynn Coggins, Director
Patent Technology Center 3600
(571) 272-5350
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SEP 23 2009

OFFICE OF PETITIONS

In re Application of :
Michael A. Meffie et al. :
Application No. 10/430,707 : ON PETITION
Filed: May 6, 2003 :
Attorney Docket No. D-1077+21 R4 :

This is a decision on the Petition to Review A Decision of A Technology Center Director, filed October 23, 2008, which is being treated as a petition under 37 CFR 1.181(a)(3) requesting that the Director exercised his supervisory authority and overturn the decision of the Director, Technology Center 3600 (Technology Center Director), dated October 14, 2008, which refuses to withdraw the finality of the Office action mailed June 24, 2008.

The petition under 37 CFR 1.181(a)(3) is **DISMISSED** as moot in view of the letter filed September 17, 2009, requesting withdrawal of the petition to overturn of decision of the Technology Center Director mailed October 14, 2008.

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

Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.

Charles Pearson
Director
Office of Petitions

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SEP 30 2009

Ralph E. Joke
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231 South Broadway
Medina, OH 44256

In re Application of:	:	
Michael Meffie et al.	:	DECISION ON PETITION
Application No. 10/430,707	:	UNDER 37 CFR 1.181
Filed: May 6, 2003	:	
For: AUTOMATED BANKING MACHINE	:	
SYSTEM AND METHOD	:	

This is in response to Applicants' petition under 37 CFR 1.181 filed October 22, 2008 to invoke supervisory review to request withdrawal of the objection to the drawings in the Office action mailed June 24, 2008.

The Petition is **GRANTED**.

Applicants allege that the rejection mailed June 24, 2008 contains the issue regarding Figures 1-24 in the drawings ("drawing issue") was made for the first time in the Office Action dated June 24, 2008, which was made final. The drawing issue is based solely on a statement in the Final Action which reads:

> "Figures 1-24 *should* be designated by a legend such as - Prior Art - because only that which is old is illustrated, please refer to WO 98/24041"

Because of the wording "should", it is unclear whether the drawing issue is actually a drawing objection requirement. Nevertheless, Applicants filed a Request for reconsideration on September 10, 2008, which traversed the Examiner's opinion regarding the Figures 1-24.

Upon review of the record, applicants have stated that Figures 1-24 of the current application are not prior art and they differ form the drawings in WO 9824041. Applicants state that a comparison of Figures 1-24 of the current application with the figures in WO984041clearly show differences that clearly indicate that the Figures 1-24 do not need to be labeled as prior art. Furthermore, the applicants state:

> "This application includes at least one process claim. It is USPTO practice that when an application includes at least one process claim, then a drawing is not required. Note MPEP § 601.01(f) and MPEP § 608.02(III). **Therefore, Applicants herein authorize the Examiner to delete Figures 1-24 by**

examiner's amendment in allowing the application. Applicants respectfully submit that this authorization renders the drawing issue moot, and thus it should be withdrawn."

Therefore, applicants' arguments as to the matter of this petition have been considered and granted. The objection to drawings presented in the Office action dated June 24, 2008 hereby is withdrawn. The application will be forwarded to the examiner for further prosecution.

Questions concerning this decision should be referred to Supervisory Patent Examiner Kambiz Abdi at (571) 272-6702.

Summary: The petition is **GRANTED**.

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

KA

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RALPH E. JOCKE
Walker & Jocke
231 SOUTH BROADWAY
MEDINA, OH 44256

Mail Date: 04/21/2010

Applicant	: Michael A. Meffie	: DECISION ON REQUEST FOR
Patent Number	: 7657473	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/430,707	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1747** 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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/430,719	05/06/2003	Ross J. Cozens	1990001 C-I-P	4857

7590 02/16/2005

T. Dean Simmons
P.O. Box 22719
Houston, TX 77227

EXAMINER
CHEUNG, WILLIAM K

ART UNIT	PAPER NUMBER
1713	

DATE MAILED: 02/16/2005

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

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FEB 15 2005

In re Application of	:	
Ross J. Cozens	:	NOTICE OF WITHDRAWAL
Serial No. 10/430,719	:	FROM ISSUE
Filed: May 06, 2003	:	UNDER 37 CFR 1.313(b)
For: METHOD FOR PRODUCING ORGANIC	:	
PEROXIDES AND THEIR USE IN THE RADICAL	:	
POLYMERIZATION OF MONOMERS	:	

The above-identified application is withdrawn from issue after payment of the issue fee due to reopening of prosecution. See 37 CFR 1.313 (b).

The above-identified application is hereby withdrawn from issue.

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to David Wu at (571) 272-1114.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

T. Dean Simmons
P.O. Box 22719
Houston, TX 77227

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 6 2004

In re Application of NELSON. Serial Number: 10/430,721 Filed: May 6, 2003 For: METHODS AND COMPOSITIONS TO SEQUESTER COMBUSTION-GAS MERCURY IN FLY ASH AND CONCRETE	:	PETITION UNDER M.P.E.P. 708.02 V

This is in response to the petition filed May 6, 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 the criteria under 37 CFR 1.102(c) have been met.

The petition is **GRANTED.**

Richard Crispino, Special Programs Examiner
Technology Center 1700
Chemical and Materials Engineering

Hahn Loeser & Parks, LLP
One GOJO Plaza
Suite 300
Akron, OH 44311-1076

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

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AUG 2 0 2007

OFFICE OF PETITIONS

In re Application of	:	
Simon Barber, et al.	:	
Application No. 10/430,731	:	DECISION ON PETITION
Filed: May 5, 2003	:	TO WITHDRAW
Attorney Docket No. 021380-000320US	:	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 5, 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 Philip H. Albert on behalf of all attorneys of record who are associated with customer No. 20350.

All attorneys/agents associated with the Customer Number 20350 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 assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

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: DEVICESCAPE SOFTWARE, INC.
1000 MARINA BLVD.
#400
BRISBANE, CA 94005

cc: DANIEL KLOKE
CARR & FERRELL
38 FOUNTAIN STREET
PALO ALTO, CA 94303

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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AUG 20 2007

OFFICE OF PETITIONS

In re Application of	:	
Simon Barber, et al.	:	
Application No. 10/430,731	:	DECISION ON PETITION
Filed: May 5, 2003	:	TO WITHDRAW
Attorney Docket No. 021380-000320US	:	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 10, 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 Philip H. Albert on behalf of all attorneys of record who are associated with customer No. 20350.

All attorneys/agents associated with the Customer Number 20350 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 assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

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: DEVICESCAPE SOFTWARE, INC.
1000 MARINA BLVD.
#400
BRISBANE, CA 94005

cc: DANIEL KLOKE
CARR & FERRELL
38 FOUNTAIN STREET
PALO ALTO, CA 94303

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/430,731	05/05/2003	Simon Barber	021380-000320US

CONFIRMATION NO. 3206

OC000000025443182

20350
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

Date Mailed: 08/17/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/05/2007.

- 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

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)
6831303	2004-12-14	10430732	2003-05-05	OPTOLUM-002

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	/Donald J Lenkszus/	Date (YYYY-MM-DD)	2009-02-10
Name	DONALD J LENKSZUS	Registration Number	28096

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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United States Patent and Trademark Office
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In re Patent No. 6831303
Issue Date: December 14,2004
Application No. 10430732
Filed: May 5,2003
Attorney Docket No. OPTOLUM-002

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

This is a decision on the electronic petition, filed February 10,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 10,2009 . 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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ALEXANDRIA, VA 22313-1450
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Paper No. 6

Brian Kelly
555 S. Center St
Reno, NV 89501

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APR 21 2004
OFFICE OF PETITIONS

In re Application of :
Wilcox :
Application No. 10/430,743 : ON PETITION
Filed: May 6, 2003 :
For: PORTABLE PHONE HOLDER :

This decision is in response to the petition under 37 C.F.R. § 1.137(b) filed March 31, 2004.

The petition is GRANTED.

This application became abandoned September 9, 2003 for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application mailed July 8, 2003. The Notice set a two month shortened statutory period of time for reply. No petition for an extension so time in accordance with 37 C.F.R. § 1.136 was timely submitted. This decision precedes Notice of Abandonment.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4)any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 CFR 1.137(b). Accordingly, the failure to timely reply to the Notice is accepted as having been unintentionally delayed.

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

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

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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JOHN W. WUSTENBERG
P O BOX 1431
DUNCAN, OK 73536

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NOV 18 2004

OFFICE OF PETITIONS

In re Application of
Jim B. Surjaatmadja
Application No. 10/430,763
Filed: May 6, 2003
Attorney Docket No. HES 99.0185U2P1

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

This is a decision on the petition, filed November 8, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 14, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

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.

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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POLSTER, LIEDER,
WOODRUFF & LUCCHESI
12412 POWERSCOURT DRIVE SUITE 200
ST. LOUIS, MO 63131-3615

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SEP 1 5 2005

OFFICE OF PETITIONS

In re Application of	:	
Hammond et al.	:	
Application No. 10/430,786	:	
Filed: May 6, 2003	:	ON PETITION
Attorney Docket No.:	:	
DCS 8604US	:	

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed August 8, 2005 (Certificate of Mailing dated August 5, 2005).

The petition is **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed April 8, 2005. The Notice set a non-extendable three (3) month period for reply. Accordingly, the application became abandoned on July 9, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

The issue fee has been previously submitted on July 29, 2005 (Certificate of Mailing dated July 29, 2005).

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

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

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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TWO EMBARCADERO CENTER, EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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AUG 09 2007

OFFICE OF PETITIONS

In re Application of

BARBER, et al.
Application No. 10/430,804
Filed: May 5, 2003
Attorney Docket No. **021380-000310US**

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 April 5, 2007 and re-submitted April 10, 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 Philip H. Albert 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: **SIMON BARBER**
900 CHERRY AVENUE, APT 600
SAN BRUNO, CA 94066

cc: **DANIEL KLOKE**
CARR & FERRELL
2200 GENG ROAD
PALO ALTO, CA 94303

UNITED STATES PATENT AND TRADEMARK OFFICE

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TWO EMBARCADERO CENTER, EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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OFFICE OF PETITIONS

In re Application of	:	
BARBER, et al.	:	
Application No. 10/430,804	:	DECISION ON PETITION
Filed: May 5, 2003	:	TO WITHDRAW
Attorney Docket No. **021380-000310US**	:	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 5, 2007 and re-submitted April 10, 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 Philip H. Albert 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.

MaGraves

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **SIMON BARBER**
900 CHERRY AVENUE, APT 600
SAN BRUNO, CA 94066

cc: **DANIEL KLOKE**
CARR & FERRELL
2200 GENG ROAD
PALO ALTO, CA 94303

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SEP 28 2005

VERTEX PHARMACEUTICALS INC.
130 WAVERLY STREET
CAMBRIDGE MA 02139-4242

In re Application of	:
Guy W. Bemis et al	:
Serial No.: 10/430,805	: PETITION DECISION
Filed: May 6, 2003	:
Attorney Docket No.: VPI/02-108	:

This is in response to the petition under 37 CFR 1.181, filed August 1, 2005, requesting withdrawal of abandonment based on timely filing of a reply.

A review of the file history shows that the examiner mailed a Notice of Allowance and Issue Fee Due and a Notice of Allowability to applicants on December 6, 2004, setting a three month statutory period for payment of the Issue Fee. Upon failure to receive the Issue Fee the application was held abandoned by Notice of Abandonment mailed July 26, 2005. Applicants state that the Notices were never received and provide statements and docket records providing evidence of non-receipt. In view thereof, the Notice of Abandonment is withdrawn and the application restored to pending status with the mailing of this decision.

The petition is **GRANTED**.

The application will be forwarded to the examiner for mailing of a new Notice of Allowance and Issue Fee Due and Notice of Allowability.

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

George C. Elliott
Director, Technology Center 1600

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Myers Bigel Sibley & Sajovec
PO Box 37428
Raleigh NC 27627

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NOV 1 2 2003

OFFICE OF PETITIONS

In re Application of :
Alexander David Shenderov :
Application No. 10/430,816 :
Filed: May 6, 2003 :
Attorney Docket No. 9293-2DV :

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.10, filed August 12, 2003, requesting that the above-identified application be accorded a filing date of May 6, 2003, rather than the presently accorded filing date of May 8, 2003.

Petitioner alleges that the application was deposited in Express Mail service on May 6, 2003. In support of the allegation, the petition is accompanied by a copy of Express Mail label No. EV353608578US. The "date-in" on the Express Mail label is blank; however, the label contains a United States Postal Service (USPS) stamp of May 6, 2003. The same Express Mail label number was placed on the original application papers located in the official file.

In view of the above, the petition is **granted**. No petition fee is necessary.

The Office of Initial Patent Examination will be notified to correct the filing date to May 6, 2003, and for the mailing of a corrected filing receipt.

Telephone inquiries should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH NC 27627

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JUN 2 9 2007

OFFICE OF PETITIONS

In re Application of	:	
SHENDEROV, Alexander D.	:	
Application No. 10/430,816	:	DECISION ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. **9293-2DV**	:	

This is a decision on the petition under the unintentional provisions of 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 January 13, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed October 13, 2005 . Accordingly, the date of abandonment of this application is January 14, 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 $700 and the publication fee of $300, (2) the petition fee of $750; and (3) a proper statement of unintentional delay.

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

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

Sherry D. Brinkley
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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BROOKS KUSHMAN P.C./LEAR CORPORATION
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD MI 48075-1238

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AUG 28 2006

OFFICE OF PETITIONS

In re Application of :
Andrew P. Mellentine et al :
Application No. 10/430,835 :
Filed: May 6, 2003 :
Attorney Docket No. LEAR 03978 PUS :

ON PETITION

This is a decision on the petition, filed August 23, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on January 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.[1]

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

The examiner of Technology Center AU 3752 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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Paper No. _____

Date : August 28, 2006

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Andrew P. Mellentine et al
Application No. :10/430,835
Filed :May 6, 2003

The above-identified application has been assigned Patent No. 7,100,840 and an issue date of September 5, 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 September 5, 2006:

"All reference to Patent No. 7,100,840 to Andrew P. Mellentine et al of Michigan for FLUID DELIVERY SYSTEM FOR SPRAY APPLICATOR appearing in the Official Gazette of September 5, 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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SAWYER LAW GROUP LLP
2465 E. BAYSHORE ROAD
SUITE 406
PALO ALTO, CA 94303

MAILED

MAR 13 2009

OFFICE OF PETITIONS

In re Application of	:	
Jessica Kuehner, et al.	:	
Application No. 10/430,836	:	DECISION ON PETITION
Filed: May 6, 2003	:	TO WITHDRAW
Attorney Docket No. 8-02-12578/4021P	:	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 23, 2009.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Sawyer Law Group, LLP has been revoked by the assignee of the patent application on February 12, 2009. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

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

cc: CUMMINS INC.
ATTN: INTELLECTUAL PROPERTY GROUP
500 JACKSON STREET
COLUMBUS, IN 47201

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
10/430,836	05/06/2003	Jessica Kuehner	8-02-12578/4021P

CONFIRMATION NO. 4112

POWER OF ATTORNEY NOTICE

29141
SAWYER LAW GROUP LLP
2465 E. Bayshore Road, Suite No. 406
PALO ALTO, CA 94303

OC000000034586012

Date Mailed: 03/04/2009

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 02/12/2009.

- 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).

/tha/

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

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MCDERMOTT WILL & EMERY LLP
4370 LA JOLLA VILLAGE DRIVE, SUITE 700
SAN DIEGO CA 92122

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DEC 15 2006

OFFICE OF PETITIONS
ON PETITION

In re Application of :
Todd R. Burkey :
Application No. 10/430,856 :
Filed: May 5, 2003 :
Attorney Docket No. **062781-0056** :

This is a decision on the petition filed November 20, 2006 under 37 CFR 1.137(b),[1] to revive the above-identified application.

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

This application became abandoned October 3, 2006 for failure to timely pay the issue fee on or before October 2, 2006. Accordingly, a Notice of Abandonment was mailed November 9, 2006.

The issue fee, publication fee and petition fee have all been applied. All other requirements of 37 CFR 1.137(b) having now been met, this application file is being forwarded to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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[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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ARRIS INTERNATIONAL, INC.
3871 LAKEFIELD DRIVE
SUWANEE, GA 30024

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MAY 18 2007

OFFICE OF PETITIONS

In re Application of :
Kenneth Wayne Everett et al :
Application No. 10/430,860 :
Filed: May 5, 2003 :
Attorney Docket No. 8040 :

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 26, 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 January 16, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed October 16, 2006. Accordingly, the date of abandonment of this application is January 17, 2007. A Notice of Abandonment was mailed on February 19, 2007.

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

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

This application is being referred to Publishing Division for appropriate processing in accordance with this decision on petition.

Frances Hicks
Petitions Examiner
Office of Petitions

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PO BOX 980
VALLEY FORGE PA 19482

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OFFICE OF PETITIONS

In re
Richelsoph
Application No. 10/430,861
Filed: May 6, 2003
Patent No. 7,105,024
Issued: September 12, 2006

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed December 16, 2009.

The fee deficiency submission under 37 CFR 1.28 of $810 is hereby **accepted**.

The change of status to large entity has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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ALLAN L. HARMS
SUITE 420
2750 FIRST AVENUE N.E.
CEDAR RAPIDS, IA 52402

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DEC 1 2 2005

OFFICE OF PETITIONS

In re Application of
Michael J. Koelker
Application No. 10/430,862
Filed: May 6, 2003
Attorney Docket No.: None

ON PETITION

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 22, 2005, in the above-identified application, cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3751 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Date : December 12, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Michael J. Koelker
Application No. : 10/430,862
Filed : May 6, 2003

The above-identified application has been assigned Patent No. 6,973,946 and an issue date of December 13, 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 December 13, 2005:

> "All reference to Patent No. 6,973,946 to MICHAEL J. KOELKER of IOWA for SILAGE BAG FILLING MACHINE appearing in the Official Gazette of December 13, 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 3-44I (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 3-9I0 (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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ALLAN L. HARMS
2750 FIRST AVENUE NE
SUITE 420
CEDAR RAPIDS, IA 52402

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DEC 19 2005

OFFICE OF PETITIONS

In re Application of	:	
Michael J. Koelker	:	
Application No. 10/430,862	:	DECISION GRANTING PETITION
Filed: May 6, 2003	:	UNDER 37 CFR 1.137(b)
For: SILAGE BAG FILLING MACHINE	:	

This is a decision on the petition, filed December 9, 2005, 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).

This is also a decision on the petition under 37 CFR 1.314 filed December 9, 2005 to defer issuance of the application into a patent until such time as a decision is rendered on the petition under 37 CFR 1.137(b).

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

The petition under 37 CFR 1.314 is **DISMISSED** as moot as this application has been withdrawn from issue in a decision mailed December 12, 2005 granting a petition to withdraw from issue.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on April 13, 2005. 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 March 30, 2006 accompanies this decision on petition.

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

This application is being forwarded to Technology Center Art Unit 3751 for appropriate action as the nature of the case requires.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

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FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-102

In re Application of	:	
Frederick E. Pollock, III	:	
Application No. 10/430,865	:	ON PETITION
Filed: May 7, 2003	:	
Attorney Docket No. 15926-002001		

This is a decision on the petition under 37 CFR 1.181 filed on April 23, 2009, to withdraw the holding of abandonment.

The petition is **DISMISSED AS MOOT**.

A review of the application file history reveals that a non-final Office action was mailed on May 13, 2008, to which petitioner responded on October 14, 2008. A Notice of Non-Compliant Amendment was mailed on October 23, 2008, allowing a shortened period for response of one month from its mailing date. The period for response to the Notice of Non-Compliant Amendment was extendable five additional months pursuant to 37 CFR 1.136. On April 23, 2009, the instant petition was filed requesting that the period for response to the Notice of Non-Compliant Amendment be recalculated such that the response filed April 23, 2009, would be considered timely (without the payment of an extension of time) because petitioner did not receive the Notice of Non-Compliant Amendment, but only discovered it by a review of the application file on PAIR.

Section 710.06 of the Manual of Patent Examining Procedure provides, in pertinent part, that:

> The Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:
>
> (A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;
>
> (B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and
>
> (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and

> explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

The petition states that the Notice of Non-Compliant Amendment was not discovered until April 14, 2009, after a substantial portion of the extendable period for reply had passed. The situation at hand is complicated by the fact that the correspondence address cited on the petition--that of Dorsey & Whitney--differs from the correspondence address of record. A request to change the power of attorney and correspondence address is noted as being filed December 5, 2007; it does not appear, however, that the request was entered. It is further noted that the signature on the request of December 5, 2007, is illegible. Notwithstanding the December 5, 2007, every correspondence mailed from the USPTO after December 5, 2007, continued to be mailed to Fish & Richardson, LLP, yet a response was received from Dorsey & Whitney. To date, it does not appear that petitioner has made any inquiry into why the correspondence address of record has not been changed. As of the filing of the petition, the correspondence address of record remains that of Fish & Richardson, LLP. Accordingly, petitioner's statements and evidence that the Notice of Non-Compliant Amendment was not received as the offices of Dorsey & Whitney are of no consequence.

The instant petition is being dismissed as moot because the application was not yet abandoned when the response to the Notice of Non-Compliant Amendment was filed and petitioner has authorized an extension of time within the fifth month to be charged to a deposit account to make the April 23, 2009, response timely. Further, petitioner is not able to establish the period for response to the Notice of Non-Compliant Amendment should be reset because petitioner has not established that notice was received late at the correspondence address of record.

Deposit account 50-2054 will be charged $1,175 for the extension of time within the fifth month.

Petitioner should promptly file a proper request to change the power of attorney and correspondence address.

The application file is being directed to Technology Center 3600, GAU 3691 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Gary Abelev
Dorsey & Whitney, LLP
250 Park Avenue
New York, NY 10177

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 3

DUFT SETTER OLLILA & BORNSEN LLC
2060 BROADWAY
SUITE 300
BOULDER CO 80302

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JUL 3 1 2003

OFFICE OF PETITIONS

In re Application of
Dutton
Application No. 10/430,879
Filed: May 6, 2003
Attorney Docket No. 37003/036RIS
For: CORRECTION OF CORIOLIS FLOWMETER MEASUREMENTS DUE TO MULTIPHASE FLOWS

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed May 6, 2003.

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 petition and accompanying exhibits establish that the inventor's attorney was mailed the application papers, including the specification, claims and drawings and the attorney stated that his client would not sign the declaration. In addition, petitioner has shown that Micro Motion, Inc. has a proprietary interest in the above-identified application with an assignment document. Lastly, petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and petitioner has shown 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.

Pursuant to petitioner's authorization, deposit account no. 50-2622 will be charged the $130 fee associated with filing a petition under 37 CFR 1.47(b).

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 forwarded to Technology Center 2800 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

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COMMISSIONER FOR PATENTS
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ROBERT E. DUTTON
1027 WILLOW PLACE
LOUISVILLE CO 80027

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JUL 3 1 2003

OFFICE OF PETITIONS

In re Application of
Dutton
Application No. 10/430,879
Filed: May 6, 2003
Attorney Docket No. 37003/036RIS
For: CORRECTION OF CORIOLIS FLOWMETER MEASUREMENTS DUE TO MULTIPHASE FLOWS

LETTER

Dear Mr. Dutton:

You are named as the sole 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 the sole inventor.

As the named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, 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: DUFT SETTER OLLILA & BORNSEN LLC
2060 BROADWAY
SUITE 300
BOULDER CO 80302

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WITHROW & TERRANOVA
P.O. BOX 1287
CARY NC 27512

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OCT 21 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Ray J. Hutchinson et al :
Application No. 10/430,890 :
Filed: May 6, 2003 :
Attorney Docket No. 2400-756A :

This is a decision on the petition, filed October 20, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 25, 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 2856 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).

Copied from 10438890 on 11/21/2005

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Paper No.

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

COPY MAILED

APR 07 2008

In re Patent No. 7,283,335	:	
Hasegawa et al.	:	DECISION ON REQUEST
Issue Date: October 16, 2007	:	FOR
Application No. 10/430,893	:	RECONSIDERATION OF
Filed: May 6, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 9281-4539	:	

This is a decision on the "REQUET FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed December 17, 2007. Patentees assert that the patent term adjustment should be at least 596 days - 205 days + 528 days for a total of nine hundred nineteen (919) days.

The request for reconsideration of the patent term adjustment under § 1.705(d) is **DISMISSED**.

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

On October 16, 2007, the above-identified application matured into U.S. Patent No. 7,283,335, with a revised Patent Term Adjustment of 391 days. The instant request for reconsideration filed Monday, December 17, 2007 was timely filed within 2 months of the date the patent issued. See § 1.705(d). Patentees assert that an additional period of adjustment of 528 days

should have been entered for the Office taking in excess of three years to issue the patent[1].

With respect to §1.703(b), it is noted that the patent issued three years and 528 days after its filing date. However, the period for over 3 year pendency does not as argued 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. Patentees are incorrect in treating the relevant period as starting on May 6, 2006, the date that is 3 years after the actual filing date of the application.

Any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap, with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f). In this instance, it was properly concluded that the 596 days accorded pursuant to 1.702(a)(1) for Office delay during the pendency of the application overlapped with the 528 days pursuant to 1.703(b). Thus, no additional periods of adjustment was entered for Office delay in issuing the patent.

In view thereof, the patent term adjustment of 391 days indicated in the patent is correct.

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

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[1] Patentees states that there were no circumstances during the prosecution of the application resulting in the notice of allowance that constitute a failure of the Applicant to engage in reasonable efforts to conclude processing or examination of the present application as set forth in 37 C.F.R. § 1.704. Nonetheless, applicants acknowledge that the period of reduction of 205 days entered pursuant to 37 C.F.R. 1.704(b) is correct.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

ROBERT W STROZIER, P.L.L.C
PO BOX 429
BELLAIRE TX 77402-0429

In re Application of	:	
Stephen Ho, et al.	:	
Application No. 10/430,899	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. 02004/06UTL	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 4, 2006, 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 November 2, 2005. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A one-month (1) extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is March 3, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $395, and the submission required by 37 CFR 1.114; (2) the petition fee of $750; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 3727 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petitions Examiner
Office of Petitions

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 5400
SEATTLE, WA 98104

Mail Date: 04/21/2010

Applicant	: Martin T. Pearson	: DECISION ON REQUEST FOR
Patent Number	: 7632583	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/430,903	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1375** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. _____

Date : October 12, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Neal A. Bringe
Application No. :10/430,904
Filed :May 6, 2003

The above-identified application has been assigned Patent No. 6,956,024 and an issue date of October 18, 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 October 18, 2005:

"All reference to Patent No. 6,956,024 to Neal A. Bringe of Missouri for HIGH BETA-CONGLYCININ PRODUCTS AND THEIR USE appearing in the Official Gazette of October 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, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89
Tamara Greene, ST-8C13

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FULBRIGHT & JAWORSKI
600 CONGRESS AVE.
SUITE 2400
AUSTIN TX 78701

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OFFICE OF PETITIONS

In re Application of	:	
Neal A. Bringe	:	
Application No. 10/430,904	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. MONS:002USC2	:	

This is a decision on the petition, filed October 11, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 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.[1]

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

The examiner of Technology Center AU 1654 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

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

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PIONEER HI-BRED INTERNATIONAL, INC.
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CHARLOTTE, NC 28280-4000

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In re Application of Baszczynski et al. :
Application No. 10/430,907 :
Filing Date: May 7, 2003 :
Attorney Docket No. 035718/262665 :

Decision on Petition

This is a decision on the petition filed August 4, 2008, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Facts

The Office mailed a Notice of Allowance on December 3, 2007. The Notice required the submission of an issue fee of $1,440 and publication fee of $300.

Petitioner mailed a copy of the issue fee transmittal form (PTOL-85b) to the Office in compliance with 37 CFR 1.10 on February 27, 2008. The form included authorization to charge the issue fee and publication fee to petitioner's deposit account.

The Office physically received the issue fee transmittal form on February 28, 2008.

The Office mailed a new Notice of Allowance and a new Notice of Allowability on February 29, 2008. The new Notice of Allowance indicating an issue fee of $1,440 and a publication fee of $300 must be paid within three months of the mailing date of the Notice of Allowance in order to avoid abandonment.

On March 4, 2008, the Office charged $1,440 and $300 to petitioner's deposit account per the fee authorization mailed February 27, 2008. Although the fee was charged on March 4, 2008, the actual date of payment of the fee is considered to be February 27, 2008.

Petitioner did not file a response to the second Notice of Allowance. The petition states Examiner Zheng was telephoned with respect to the second Notice of Allowance on March 7, 2008. The petition states Zheng "indicated the second Notice was sent in error and that our timely response to the first Notice would suffice to comply with the requirements."

A Notice of Abandonment was mailed July 23, 2008.

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The instant petition was filed August 4, 2008.

Discussion

The application is abandoned as a matter of law unless:

(1) Applicant failed to receive the second Notice of Allowance, or
(2) Applicant timely responded to the second Notice of Allowance.

Petitioner has failed to demonstrate (1) or (2) above is true. Therefore, the holding of abandonment cannot be withdrawn.

Petitioner's evidence does demonstrate petitioner acted reasonably under the circumstances. However, whether an application becomes abandoned pursuant to 35 U.S.C. 133 or 35 U.S.C. does not depend on whether or not a party acted reasonably.

35 U.S.C. 133 requires that if an action is mailed, and if an applicant fails to respond to such action within 6 months or within any shorter time period set by the Office, the application goes abandoned as a matter of law. The second Notice of Allowance provided petitioner with three months to submit the publication fee. Petitioner could have responded by requesting the Office apply the previously submitted publication fee to the fee required in the new Notice of Allowance. Petitioner did not file the publication fee or any other response to the Notice of Allowance within three months. Therefore, as a matter of law, the application is abandoned.

35 U.S.C. 151 requires a party submit the issue fee within three months of the Notice of Allowance in order to avoid abandonment. Petitioner could have responded by requesting the Office apply the previously submitted issue fee to the fee required in the new Notice of Allowance. Petitioner did not file the publication fee or any other response to the Notice of Allowance within three months. Therefore, as a matter of law, the application is abandoned.

The Office need not determine if the mailing of the second Notice of Allowance was the result of an error by the examiner because 35 U.S.C. 133 and 35 U.S.C. 151 do not distinguish "correct" Office actions from "incorrect" Office actions. Even if a Notice or Office action is incorrect, a reply must be filed. For example, if an applicant fails to respond to a restriction requirement later determined to be untenable as drafted, the application is abandoned. If an Office action is mailed rejecting claims based on anticipation over a reference that was facially not available as prior art against the application, an applicant must still respond to the Office action in order to avoid abandonment.

For the reasons above, the holding of abandonment will not be withdrawn.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(a). A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied

by (1) the required reply, (2) the required petition fee ($540 for a large entity), and (3) a showing that the entire delay in filing the required reply was unavoidable.

As to item (1) above, the instant petition will be treated as a request to apply the issue fee previously paid to the fee required in the Notice of Allowance. As to item (3) above, the showing in the instant petition will be deemed to satisfy the required showing. Therefore, a petition under 37 CFR 1.137(a) filed in response to this decision only needs to include the petition fee of $540.

A PDF "fillable" version of a form that can be used when filing a petition under 37 CFR 1.137(a) can be found at: "http://www.uspto.gov/web/forms/sb0064_fill.pdf".

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision.

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

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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CHARLOTTE, NC 28280-4000

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OFFICE OF PETITIONS

In re Application of Baszczynski et al. :
Application No. 10/430,907 :
Filing Date: May 7, 2003 :
Attorney Docket No. 035718/262665 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed February 4, 2009, to revive the above-identified application.

The petition is **granted**.

Facts

The Office mailed a Notice of Allowance on December 3, 2007. The Notice required the submission of an issue fee of $1,440 and publication fee of $300.

Petitioner mailed a copy of the issue fee transmittal form (PTOL-85b) to the Office in compliance with 37 CFR 1.10 on February 27, 2008. The form included authorization to charge the issue fee and publication fee to petitioner's deposit account.

The Office physically received the issue fee transmittal form on February 28, 2008.

The Office mailed a new Notice of Allowance and a new Notice of Allowability on February 29, 2008. The new Notice of Allowance indicating an issue fee of $1,440 and a publication fee of $300 must be paid within three months of the mailing date of the Notice of Allowance in order to avoid abandonment.

On March 4, 2008, the Office charged $1,440 and $300 to petitioner's deposit account per the fee authorization mailed February 27, 2008. Although the fee was charged on March 4, 2008, the actual date of payment of the fee is considered to be February 27, 2008.

Petitioner did not file a response to the second Notice of Allowance. The petition states Examiner Zheng was telephoned with respect to the second Notice of Allowance on March 7, 2008. The petition states Zheng "indicated the second Notice was sent in error and that our timely response to the first Notice would suffice to comply with the requirements."

A Notice of Abandonment was mailed July 23, 2008.

A petition under 37 CFR 1.181 was filed August 4, 2008.

A decision dismissing the petition under 37 CFR 1.181 was mailed January 2, 2009.

The instant petition was filed February 4, 2009.

Discussion

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), the petition filed August 4, 2008, has been treated as a request to apply the issue fee paid February 27, 2008, to the second Notice of Allowance. As to item (2), petitioner has paid the petition fee of $1,620. 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, Patent Publication Branch, will be informed of the instant decision and the application will be issued as a patent in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

Mail Date: 04/21/2010

Applicant	: Christopher L. Baszczynski	: DECISION ON REQUEST FOR
Patent Number	: 7572634	: RECALCULATION of PATENT
Issue Date	: 08/11/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/430,907	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/07/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **614** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 4/3/02

Paper No.: _____

TO SPE OF : ART UNIT 2858

SUBJECT : Request for Certificate of Correction for Appl. No.: 10430924 Patent No.: 6989663

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. 115

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

ANDREW H. HIRSHFELD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

SPE

2858

Art Unit

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Haynes and Boone LLP
901 Main Street, Suite 3100
Dallas, TX 75202

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MAY 2 5 2006

OFFICE OF PETITIONS

In re Application of	:	
Kiran Ganji et al	:	
Application No. 10/430,943	:	DECISION ON PETITION
Filed: May 7, 2003	:	TO WITHDRAW
Attorney Docket No. 30215.74	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 29, 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 David M. Dell on behalf of all the practitioners associated with Customer Number 27683. All the practitioners associated with the Customer Number 27683 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

There is no indication that the current assignee of record, TX Technology Acquisition Corp., has intervened in the prosecution of this application. Accordingly, future correspondence will be held with the first named inventor; namely, Kiran Ganji, at the address listed below. A courtesy copy of this decision is also being mailed to the current assignee of record; namely, TX Technology Acquisition Corp., at the below-listed address. In papers filed in this case on March 9, 2006, it appears that the firm of Blakely, Sokoloff, Taylor & Zafman is now acting in a representative capacity. If the practitioners associated with the firm of Blakely et al wish to receive future correspondence regarding this application, the appropriate power of attorney documents must be submitted. If the power of attorney is by an assignee, compliance with 37 CFR 3.73(b) must be satisfied.

A non-final Office action setting a three month shortened statutory period was mailed in this application on December 7, 2005. A reply thereto was received on March 9, 2006 (certificate of mailing date of March 7, 2006). Accordingly, this reply will be taken up for appropriate action by Technology Center AU 2163 in the normal course of business.

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

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Kiran Ganji
8822 Saddlehorn Drive, #258
Irving, TX 75063

TX Technology Acquisition Corp.
4250 Burton Drive
Santa Clara, CA 95054

Blakely, Sokoloff, Taylor & Zafman LLP
(Dkt No. 005545.P054)
12400 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90025-1026

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901 Main Street, Suite 3100
Dallas, TX 75202

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MAY 25 2006

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In re Application of	:	
Kiran Ganji et al	:	
Application No. 10/430,943	:	DECISION ON PETITION
Filed: May 7, 2003	:	TO WITHDRAW
Attorney Docket No. 30215.74	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 29, 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 David M. Dell on behalf of all the practitioners associated with Customer Number 27683. All the practitioners associated with the Customer Number 27683 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

There is no indication that the current assignee of record, TX Technology Acquisition Corp., has intervened in the prosecution of this application. Accordingly, future correspondence will be held with the first named inventor; namely, Kiran Ganji, at the address listed below. A courtesy copy of this decision is also being mailed to the current assignee of record; namely, TX Technology Acquisition Corp., at the below-listed address. In papers filed in this case on March 9, 2006, it appears that the firm of Blakely, Sokoloff, Taylor & Zafman is now acting in a representative capacity. If the practitioners associated with the firm of Blakely et al wish to receive future correspondence regarding this application, the appropriate power of attorney documents must be submitted. If the power of attorney is by an assignee, compliance with 37 CFR 3.73(b) must be satisfied.

A non-final Office action setting a three month shortened statutory period was mailed in this application on December 7, 2005. A reply thereto was received on March 9, 2006 (certificate of mailing date of March 7, 2006). Accordingly, this reply will be taken up for appropriate action by Technology Center AU 2163 in the normal course of business.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Kiran Ganji
8822 Saddlehorn Drive, #258
Irving, TX 75063

TX Technology Acquisition Corp.
4250 Burton Drive
Santa Clara, CA 95054

Blakely, Sokoloff, Taylor & Zafman LLP
(Dkt No. 005545.P054)
12400 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90025-1026

RECEIV
JUN 1 5 2006
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UNITED STATES PATENT AND TRADEMARK OFFICE

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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OCT 2 0 2008

OFFICE OF PETITIONS

In re Application of :
Binyam A. Giorgis et al :
Application No. 10/430,949 : ON PETITION
Filed: May 7, 2003 :
Attorney Docket No. :
15872.0014US01/SJO9200200

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 1, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of October 2, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is January 3, 2008.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $1050 extension of time submitted with the petition on July 1, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credit to petitioner's credit card.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810 and the submission required by 37 CFR 1.114; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

This application is being referred to Technology Center AU 2627 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petition Examiner
Office of Petitions

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ARTHROCARE CORPORATION
680 VAQUEROS AVENUE
SUNNYVALE, CA 94086-3523

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APR 17 2007

OFFICE OF PETITIONS

In re Application of	:
Seth A. Foerster	:
Application No. 10/430,961	: DECISION GRANTING PETITION
Filed: May 6, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. OP-06-1	:

This is a decision on the petition, filed April 13, 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 8, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 3734 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the amendment and Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

C:\Documents and Settings\FHicks\My Documents\470\Apr10\430961.wpd

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment.*

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Paper No.

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627-7428

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OCT 21 2003

OFFICE OF PETITIONS

In re Application of	:	
Davis et al.	:	
Application No. 10/430,983	:	
Filed: May 7, 2003	:	ON PETITION
Attorney Docket No.	:	
5051.494CT	:	

This is a decision in response to the petition under 37 CFR 1.10(c), filed August 8, 2003, Requesting the application be accorded a filing date of May 7, 2003, instead of the presently accorded filing date of May 8, 2003.

This Petition is hereby **granted**.

Petitioner alleges that the application was deposited in Express Mail service on May 7, 2003. In support of the allegation, the petition is accompanied by a copy of Express Mail label No. EV193585163US. Although the "Date In" indicated on the Express Mail label is blank, the Express Mail Label is properly addressed to the Commissioner of Patents, and the Express Mail label contains a United States Postal Service (USPS) stamp of May 7, 2003. The same Express Mail label number was placed on the original application papers located in the official file.

In view of the above, the petition is **granted**. No fee is necessary.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/431,000	05/07/2003	Richard T. Lee	0492611-0497 (MIT9734/BWH	4466

24280 7590 11/21/2008
CHOATE, HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON, MA 02110

EXAMINER
KOSSON, ROSANNE

ART UNIT	PAPER NUMBER
1652	

NOTIFICATION DATE	DELIVERY MODE
11/21/2008	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@choate.com

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NOV 20 2008

CHOATE, HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON MA 02110

In re Application of:	:
Lee et al.	:
Serial No.: 10/431,000	: PETITION DECISION
Filed: May 7, 2003	:
Attorney Docket No.: **0492611-0497**	:
(MIT9734/BWH	

This is in response to the petition under 37 CFR § 1.181, filed October 17, 2008, requesting that the finality of the Office action of May 19, 2008 be withdrawn.

BACKGROUND

Applicants filed a proper RCE on April 29, 2008 concurrently with traversals of the examiner's rejections and claim amendments.

In response to the RCE, the examiner mailed a final Office action on May 19, 2008 setting a three month statutory limit for reply. At the time of this final Office action claims 1-6, 8-10 and 12-21 were pending in the application. Claims 1-6, 8-10 and 14-21 were again rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement and as non-enabling. Claims 1-6, 8-10 and 14-21 were again rejected under 35 U.S.C. 112, second paragraph. Claims 1-10, 14-21, 25-28, 31 and 33-40 were again rejected under 35 U.S.C. 103 (a) as unpatentable over Holmes et al. in view of Vacanti et al. Claims 1-6, 8-10 and 14-21 were again provisionally rejected under obviousness-type double patenting. Claims 12 and 13 were withdrawn from consideration.

In response thereto, applicants filed this petition under 37 CFR § 1.181 on October 17, 2008, requesting that the finality of the Office action of May 19, 2008 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on October 17, 2008, applicants argue:

> According to the MPEP:
>
> "The claims of an application for which a request for continued examination (RCE) has been filed may be finally rejected in the action immediately subsequent to the filing of the RCE... where all the claims in the application after [filing the RCE] (A) are drawn to the same invention claimed in the application prior to [filing the RCE], and (B) would be properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to filing of the RCE". MPEP § 706.07(b) *(emphasis* added).

Applicants further point out that while the claims are directed to the same invention claimed in the application prior to the April 29 RCE, the rejection is not a proper final rejection.

> According to the MPEP:
>
> "...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)." MPEP § 706.07(a) (*emphasis* added).

Applicants specifically argue that the final rejection of May 18, 2008 included a new rejection under 35 U.S.C. § 112, first paragraph, for amendments that allegedly failed to comply with the written description requirement because applicants inserted the term "alternating sets" into the claims. Support for the amendment can be found, for example, beginning on page 17, line 27 through page 18, line 30 of the specification. (paragraphs 0061 and 0062 of the published application). As another example the description that".., the ionic residues alternate with one positively and one negatively charged residue (- + - + -+ - +), the peptides are described as 'modulus I;' if the ionic residues alternate with two positively and two negatively charged residues (- - + + - - ++), the peptides are described as 'modulus II,'" provides written description support for the term "alternating set."

It is decided that applicants' arguments are persuasive that the final Office action issued May 19, 2008 was improper and premature since a new ground of rejection was made that was not required by applicants' amendment. Therefore, the finality of the Office action will be withdrawn.

DECISION

The petition is **GRANTED.**

This application will be forwarded to the examiner for an action not inconsistent with this decision

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

Remy Yucel
Director, Technology Center 1600

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TECHNOLOGY CENTER 2100

LEE & HAYES PLLC
421 W RIVERSIDE AVENUE
SUITE 500
SPOKANE, WA 99201

In re Application of:
LAMPSON, et al.
Application Serial No.: 10/431,011
Filed: May 7, 2003
For: **SYSTEM AND METHOD FOR SECURE STORAGE OF DATA USING PUBLIC AND PRIVATE KEYS**

DECISION ON
PETITION *under 37 CFR 1.102*

This is a decision on the petition, filed on November 3, 2005 under MPEP 708.01(I), requesting an expedited action on the merits. This petition has been considered as a request to affirm that this application is under "special" status in accordance with 37 CFR 1.102.

This application is a continuation of SN 09/227,568 filed January 8, 1999.

708.01 [R-2] List of Special Cases, states in part:
(I) Applications pending more than 5 years, ***including those which, by relation to a prior United States application, have an effective pendency of more than 5 years***. See MPEP § 707.02. [emphasis added]

In accordance with MPEP section 708.01(I), applications pending over 5 years, including those which by relation to a prior United States application, should be considered special. This application by virtue of its prolonged pendency is considered special in accordance with PTO policy.

Accordingly, the petition is **Granted**.

The examiner will be notified that this application should be considered as "special" and appropriate for expedited action. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security

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NOV 30 2005

TECHNOLOGY CENTER 2100

LEE & HAYES PLLC
421 W RIVERSIDE AVENUE
SUITE 500
SPOKANE, WA 99201

In re Application of:
LAMPSON, et al.
Application Serial No.: 10/431,012
Filed: May 7, 2003
For: **BOOT BLOCKS FOR SOFTWARE**

DECISION ON
PETITION *under 37 CFR 1.102*

This is a decision on the petition, filed on November 3, 2005 under MPEP 708.01(I), requesting an expedited action on the merits. This petition has been considered as a request to affirm that this application is under "special" status in accordance with 37 CFR 1.102.

This application is a continuation of SN 09/227,568 filed January 8, 1999.

708.01 [R-2] List of Special Cases, states in part:
(I) Applications pending more than 5 years, ***including those which, by relation to a prior United States application, have an effective pendency of more than 5 years***. See MPEP § 707.02. [emphasis added]

In accordance with MPEP section 708.01(I), applications pending over 5 years, including those which by relation to a prior United States application, should be considered special. This application by virtue of its prolonged pendency is considered special in accordance with PTO policy.

Accordingly, the petition is **Granted**.

The examiner will be notified that this application should be considered as "special" and appropriate for expedited action. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security

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ROBERT DEBERARDINE
ABBOTT LABORATORIES
100 ABBOTT PARK ROAD
DEPT. 377/AP6A
ABBOTT PARK IL 60064-6008

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OFFICE OF PETITIONS

In re Application of
Michael S. Allen et al. :
Application No. 10/431,018 :
Filed: May 7, 2003 :
Attorney Docket Number: 6549.USD.2 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 4, 2004, to revive the above identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed September 29, 2003. 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 December 30, 2003. Accordingly, a Notice of Abandonment was mailed April 20, 2004.

Petitioner files the instant petition under 37 CFR 1.137(b). [1]

This application is being forwarded to Technology Center 1625 for appropriate action on the amendment filed October 4, 2004.

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

---

[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)).

UNITED STATES
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Commissioner for Patents
Washington, DC 20231
www.uspto.gov

7/21/03

Fish and Neave
50th Floor
1251 Avenue of the Americas
New York NY 10020-1105

Dear Applicant:

The Box PGPub replacement drawings for application number 10/431,024 received on 6/30/03 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Customer Service, Office of Initial Patent Examination, at 703-308-1202.

UNITED STATES
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TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

Signature of Reviewer, Office of Initial Patent Examination

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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FROMMER LAWRENCE & HAUG LLP
745 FIFTH AVENUE
NEW YORK, NY 10151

Mail Date: 04/21/2010

Applicant	: Tetsujiro Kondo	: DECISION ON REQUEST FOR
Patent Number	: 7599607	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/431,028	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1330** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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DAVID T. BRACKEN
THE LAW OFFICE OF DAVID T. BRACKEN
4839 EAST BOND AVENUE
ORANGE CA 92869

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AUG 3 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Lo Yun Tai	:	
Application No. 10/431,040	:	ON PETITION
Filed: May 8, 2003	:	
Attorney Docket No. 0303.1L1	:	

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 submit the issue fee in a timely manner in reply to the Notice of Allowance mailed May 25, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on August 26, 2004.

The petition is unsigned. However, the signature is ratified by the signature on the transmittal letter submitted with the petition on July 6 2005.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This matter is being referred to Patent Publication.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

SCHWEITZER CORNMAN GROSS & BONDELL LLP
292 Madison Avenue
New York NY 10017

In re application of	:	**DECISION ON PETITION**
Keith Guliner	:	**TO MAKE SPECIAL**
Application No. 10/431,050	:	**(INFRINGEMENT)**
Filed: May 6 2003	:	
For: DIRECTOR CHAIR STORAGE RACK		

This is a decision on the petition under 37 C.F.R § 1.102(d) filed July 11, 2003 to make the above-identified application special. The delay in acting on this petition is regretted.

The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(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 July 11, 2003 meets all of the requirements above and, therefore, the petition is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications; (2) to promptly examine this application out of turn; and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

-- 1

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/mjz: 2/19/04

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PSC SCANNING, INC. - STOEL RIVES LLP
C/O STOEL RIVES LLP
900 SW 5TH AVENUE
PORTLAND, OR 97204

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Mohan L. Bobba, et al.
Application No. 10/431,070
Filed: May 6, 2003
Attorney Docket No.: 51306/284:1

This is a decision on the petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee filed by facsimile transmission on December 13, 2004.

The petition is **GRANTED**.

The above-identified application is being 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 indicates that an Information Disclosure Statement (IDS) is being submitted by U.S. Express Mail.

Petitioner is advised that the issue fee paid in the above-identified application on May 6, 2004, 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] Petitioner is reminded that the IDS must be received before the mailing of a first Office action on the merits.

The application will be referred to Technology Center AU 2876 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
((571) 272-3204

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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The Whitaker Corporation
Suite140
4550 New Linden Hill Road
Wilmington DE 19808-2952

In re Application of :
Pance et al. :
Application No. 10/431,085 : DECISION ON PETITION
Filed: May 7, 2003 :
Attorney Docket No. 18004 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 29, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This above-identified application became abandoned for failure to file a response to a Notice to File Corrected Application Papers which was mailed on July 22, 2003. The Notice to File Corrected Application Papers set an extendable two (2) month period for reply. No timely request for extension of time was obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on September 23, 2003. A Notice of Abandonment was mailed on December 11, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by

37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the 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 (almost four 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 September 23, 2003. 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). 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 having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Notice. 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 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 responsible person(s) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District

LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

Any renewed petition may be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

MAILED

AUG 05 2003

Director's Office
Group 3700

STANLEY H. KREMEN
4 LENAPE LANE
EAST BRUNSWICK, NJ 08816

In re application of Ralph H. Thomas	: : :	**DECISION ON PETITION** **TO MAKE SPECIAL** **UNDER 37 CFR. 1.102(c)**
Serial Number: 10/431093 Filed: May 07, 2003	: :	

For: **DESIGN AND METHOD FOR PRODUCING A SEALING AND SHUT-OFF VALVE SYSTEM ON A PLURAL CHAMBER**

This is a decision on the petition filed on May 07, 2003, under 37 CFR. 1.102(c) to make special the above identified application because of the age/health of the applicant. Since the requirements of the M.P.E.P Section 708.02 IV have been met, the petition will be GRANTED.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only is Petitioner makes a prompt bona-fide effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the Examiner to accomplish this purpose.

Summary: Decision on Petition **GRANTED**.

Richard A. Bertsch
Director
Technology Center 3700
(703) 308-0975

62 10621

rt: 8/04/03

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Commissioner for Patents
United States Patent and Trademark Office
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KENNETH H. JOHNSON
P.O. BOX 630708
HOUSTON, TX 77263

COPY MAILED

NOV 14 2006

OFFICE OF PETITIONS

In re Application of Podrebarac :
Application No. 10/431,101 : Decision on Petition
Filing Date: May 7, 2003 :
Attorney Docket No. CDT 1587-DIV 1 :

This is a decision on the petition filed August 7, 2006, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application. The petition is filed in the alternative under 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **dismissed.**

The petition under 37 CFR 1.137(b) is **granted.**

Facts:

The Office mailed a Notice of Allowability on November 17, 2005. The Notice set a shortened statutory period for reply of three (3) months. The Notice required submission of corrected drawings.

The requirement for corrected drawings was the result of a mistake by the examiner. The examiner had not intended to require corrected drawings.

Petitioner did not file a reply to the Notice of Allowability. As a result, the application became abandoned on February 18, 2005. A Notice of Abandonment was mailed on May 1, 2006.

The petition under 37 CFR 1.181:

Petitioner contends the application is not abandoned since the requirement for corrected drawings arose from a mistake by the examiner.

35 U.S.C. 133 requires that if an action is mailed, and if an applicant fails to respond to such action within 6 months or within any shorter time period set by the Office, the application goes abandoned as a matter of law. The statute does not distinguish "correct" Office actions from "incorrect" Office actions. An Office action in the form of a Notice of Allowability was mailed November 17, 2005. The Notice provided applicants with three months to file a response. Applicant did not file a response to the Notice of Allowability within 3 months. Therefore, as a matter of law, the application is abandoned.

Abandonment is not based on the correctness, in whole or in part, of an Office action. For example, if an applicant fails to respond to a restriction requirement later determined to be untenable as drafted, the application is abandoned. If an Office action is mailed rejecting claims based on anticipation over a reference that was facially not available as prior art against the application, an applicant must still respond to the Office action in order to avoid abandonment.

Petitioner failed to respond to the Notice of Allowability. Such response could have taken the form of a written traversal stating the facts in the instant petition regarding the original drawings. Petitioner could have directly contacted the examiner and taken steps to have the examiner withdraw the requirement in writing prior to the expiration of the time period for response.

For the reasons above, the holding of abandonment will not be withdrawn.

The petition under 37 CFR 1.137(b):

The instant petition requests revival of the application under 37 CFR 1.137(b).

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

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." To the extent any statement of delay in the petition varies from this exact language, the statement will be construed as the equivalent of the statement above.

The Office of Publications will be informed of the instant decision and will take steps to have the application issued as a patent in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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DARA L. ONOFRIO, ESQ.
C/O ONOFRIO LAW
SUITE 1600
1133 BROADWAY
NEW YORK NY 10010

COPY MAILED
APR 22 2004
OFFICE OF PETITIONS

In re Application of	:
Becker et al.	: DECISION GRANTING
Application No. 10/431,123	: PETITION
Filed: 6 May, 2003	:
Attorney Docket BECK 100-US	:

This is a decision on the petition filed on 22 August, 2003, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 6 May, 2003, with four (4) sheets of drawings as a part of the original disclosure.

On 6 May, 2003, the application was filed.

On 2 July, 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 was deposited without drawings and that the filing date of the application would be the date of receipt of the drawings.

In response, on 22 August, 2003, the present petition, and four (4) sheets of drawings were filed. Petitioners argue that four (4) sheets of drawings were filed with the other application papers on 6 May, 2003, and that the drawings were misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt which shows an Office stamp of 6 May, 2003, and the above-identified application number, and acknowledges receipt of, *inter alia*, "4 sheets of informal drawings" was supplied with the present petition. Petitioner requests that the application, including four (4) sheets of drawings, be accorded a filing date of 6 May, 2003.

Upon review of the record, no sheets of drawings deposited on 6 May, 2003, have been located among the application papers. However, the evidence is convincing that the application papers

deposited on 6 May, 2003, included four (4) sheets of drawings, which were subsequently misplaced in the USPTO. Therefore, the application, including four (4) sheets of drawings, was complete on filing and entitled to a filing date of 6 May, 2003.

In view of the above, the petition is granted. The four (4) sheets of drawings submitted with the petition will be used for processing and examination purposes. No petition fee has been paid and none is due.

The "Notice" mailed on 2 July, 2003, was sent in error and is hereby withdrawn.

The application is being returned to Initial Patent Examination Division for processing with a filing date of 6 May, 2003, using the application papers filed on that date, and the four (4) sheets of drawings supplied with the present petition.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : December 1, 2006

TO SPE OF : ART UNIT 2822

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/431137 patent No.: 7,115,480

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Magdalene Talley

Certificates of Correction Branch

703-308-9390 ext. 116

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

SPE

2822

Art Unit

FILE COPY

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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
10/431,139	05/06/2003	2663	417	COWA0001	3	9	4

CONFIRMATION NO. 4508

CORRECTED FILING RECEIPT

OC000000012354950

22862
GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

Date Mailed: 04/14/2004

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)

Ying Xia, San Jose, CA;
Kamlesh Rath, San Ramon, CA;

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 06/30/2003

Projected Publication Date: 11/11/2004

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Synchronization and interference measurement for mesh network

Preliminary Class

370

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/431,141	05/06/2003	3673	375	741014.1016	2	9	1

CONFIRMATION NO. 4521

CORRECTED FILING RECEIPT

OC000000011729943

21831
STEINBERG & RASKIN, P.C.
1140 AVENUE OF THE AMERICAS, 15th FLOOR
NEW YORK, NY 10036-5803

Date Mailed: 01/21/2004

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)

Leopoldo Antonio Cressi, Genova, ITALY;

Assignment For Published Patent Application

Cressi-Sub S.p.A.;

Domestic Priority data as claimed by applicant

Foreign Applications

ITALY FI2002U000049 05/07/2002

If Required, Foreign Filing License Granted: 07/01/2003

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Buoyancy compensator jacket for scuba divers with improved weight pockets

Preliminary Class
405

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/431,145	05/06/2003	2132	852	006224.P001X	9	21	4

CONFIRMATION NO. 4533

CORRECTED FILING RECEIPT

OC000000014427376

Marina Portnova
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025

Date Mailed: 11/22/2004

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)

Kevin T. Rowney, San Francisco, CA;
Michael R. Wolfe, San Francisco, CA;
Mythili Gopalakrishnan, San Francisco, CA;
Vitali Fridman, Belmont, CA;

Power of Attorney:

Marina Portnova--45750

Domestic Priority data as claimed by applicant

This application is a CIP of 10/247,002 09/18/2002

Foreign Applications

If Required, Foreign Filing License Granted: 07/01/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/431,145

Projected Publication Date: Request for Non-Publication Acknowledged

Non-Publication Request: Yes

Early Publication Request: No

Title

Mechanism to search information content for preselected data

Preliminary Class

713

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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Paper No. 3

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JUL 1 1 2003

OFFICE OF PETITIONS

John S. Beulick
Armstrong Teasdale LLP
Suite 2600
One Metropolitan Sq.
St. Louis, MO 63102

In re Application of
Farrell et al.
Application No.10/431,157
Filed: May 7, 2003
Attorney Docket Number: 127035
Title of Invention: METHOD AND APPARATUS TO FACILITATE SEALING WITHIN TURBINES

DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.10 (c) filed on June 30, 2003, requesting that the above-identified application be accorded a filing date of May 7, 2003, rather than the presently accorded filing date of May 6, 2003.

Petitioner contends the application was deposited in Express Mail service on May 7, 2003. In support, petitioner supplied a copy of Express Mail receipt No. EV339990091US. A review of the United States Postal Service's Express Mail Information Database shows the Express Mail package was accepted by the United States Postal Service on May 7, 2003. Petitioner has also provided a copy of the Express Mail Label which shows a "date in" of May 7, 2003.

In view of the above, the petition is **Granted**. No petition fee is required and none has been charged.

The application is being forwarded to Office of Initial Patent Examination for correction of the filing date to **MAY 7, 2003** and issuance of a corrected Filing Receipt.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 306-0251.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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GREENVILLE, SC 29602-1449

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OFFICE OF PETITIONS

In re Application of	:	
Andrei Szilagyi	:	
Application No. 10/431,174	:	ON PETITION
Filed: May 6, 2003	:	
Attorney Docket No. APN-3	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 21, 2005,[1] 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 24, 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 November 25, 2004.

The instant petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentionally delay have been received. Accordingly, the reply to the non-final Office action of August 24, 2004 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

[1] The petition originally filed on July 5, 2005 has not to date been associated with the instant application file.

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 second petition fee ($1,500) is unnecessary and will be credited to petitioner's deposit account in due course.

This matter will be referred to Technology Center AU 3748.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

January 7, 2004

Kalow & Springut
488 Madison Ave.
19th Floor New York, NY 10022

In re Application of: Gerety, Eugene P.
Serial No.: 10/431,181 On Petition
Filing Date: May 6, 2003
For: TWO-DIMENSIONAL PRINTED CODE FOR STORING BIOMETRIC et al

In response to the petition received November 15, 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 Non Provisional Application mailed July 8, 2003. Which set forth a shortened statutory period for reply of two months. Accordingly, the above-identified application became abandoned September 9, 2003.

The application was abandoned in error. The office regrets any inconvenience this may have caused the client.

The application has been completed with the documents received on November 17, 2004 for release to Technology Center 2133.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

January 7, 2004

Kalow & Springut
488 Madison Ave.
19th Floor New York, NY 10022

In re Application of: Gerety, Eugene P.
Serial No.: 10/431,181 On Petition
Filing Date: May 6, 2003
For: TWO-DIMENSIONAL PRINTED CODE FOR STORING BIOMETRIC et al

In response to the petition received November 15, 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 Non Provisional Application mailed July 8, 2003. Which set forth a shortened statutory period for reply of two months. Accordingly, the above-identified application became abandoned September 9, 2003.

The application was abandoned in error. The office regrets any inconvenience this may have caused the client.

The application has been completed with the documents received on November 17, 2004 for release to Technology Center 2133.

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

DATE 10/3/07 APPLICATION NUMBER 10431195

DOC CODE Pet Dec. Pubs DOC DATE 10/15/07

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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TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVEVLAND OH 44114

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OFFICE OF PETITIONS

In re Application of	:	
Ali Emam Bakhsh et al.	:	
Application No. 10/431,195	:	DECISION ON PETITION
Filed: May 7, 2003	:	
Attorney Docket No. TRW(AP)6384	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 22, 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 8, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed September 8, 2006 . Accordingly, the date of abandonment of this application is December 11, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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.

Telephone inquiries concerning this decision should be directed to Terri Williams at (571) 272-2991.

This application is being referred to Publishing Division for processing into a patent.

Liana Walsh
Petitions Examiner
Office of Petitions

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AMSTER ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE
NEW YORK, NY 10016

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MAY 17 2007

OFFICE OF PETITIONS

In re Application of
Hamzeh Karami et al.
Application No. 10/431,200
Filed: May 7, 2003
Attorney Docket No. 34304/17 T

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)[1], filed April 17, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on December 27, 2006, for failure to timely file a reply to the final Office action mailed September 26, 2006, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed April 10, 2007.

The present petition under 37 CFR 1.137(b) is accompanied by a Notice of Appeal.

The Notice of Appeal filed April 17, 2007, 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.

The matter is being referred to Technology Center 3761.

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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OFFICE OF PETITIONS

In re Application of	:	
Todd DePue et al.	:	DECISION
Application No.10/431,211	:	ON PETITION
Filed: May 7, 2003	:	37 CFR 1.137(b)
Attorney Docket No. 1-73867	:	

This is a decision on the petition under 37 CFR 1.137(b), filed March 30, 2005, to revive the above-identified application. The instant application became abandoned for failure to reply to the official action mailed July 6, 2004.

The petition is **GRANTED**.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. If the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3).

Petitioner has met the requirements for filing a grantable petition under 37 CFR 1.137(b).

The application file is being forwarded to Technology Center Art Unit 3616 for appropriate action on the concurrently filed response.

Any questions concerning this matter may be directed to Stephen Cronin at (571) 272-6051, or in his absence, the undersigned at (571) 272-3217.

Brian Hearn

Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Approved for use through 04/30/2009. OMB 0651-0016
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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 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)
6,725,929	2004-04-27	10431217	2003-05-07	68.0218DIV

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	/Bryan P. Galloway/	Date (YYYY-MM-DD)	2008-09-09
Name	Bryan P. Galloway	Registration Number	50312

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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In re Patent No. 6725929
Issue Date: April 27,2004
Application No. 10431217
Filed: May 7,2003
Attorney Docket No. 68.0218DIV

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed September 9,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of September 9,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in 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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2-27-08

In re application of	:	
Park et al.	:	DECISION
	:	ON
Serial No. 10/431,230	:	PETITION
Filed: May 6, 2003	:	
For: METHOD OF TREATING BLADE OF HAIR CLIPPER BY ION IRRADIATION		

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION mailed September 27, 2007.

On April 20, 2007, a non-final office action was mailed to applicant. The Office action contained a 112, second paragraph rejection. The Office action also contained a 103 rejection over claim 1, 3 and 5 of Bache in view of Matossian and a second 103 rejection over claim 2 of Bach in view of Matossian and in further view of Asai.

A reply to the Office action was filed on July 18, 2007. Applicant made an amendment to claim 2, deleting the limitation "which traditionally used as a blade for a hair clipper".

On September 27, 2007, a final office action was mailed. The examiner maintained the rejections of claims 1, 3 and 5 of Bache in view of Motassian. The examiner withdrew the rejection over claim 2 of Bache in view of Motassian and in further view of Asai. The examiner then entered a new rejection over claim 2 of Bache in view of Matossian and in further view of Wexler.

Petitioner has argued that the finality of the last office action is improper. Petitioner argues that the new grounds of rejection were not necessitated by Applicant's amendment.

DECISION

As set forth in the petition, the standard for making an Office action final is set forth in section 706.07(b) of the MPEP which 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).

The new 103 rejection of the final rejection was not necessitated by amendment to claim 2.

The petition is **GRANTED**.

The examiner is being directed to send out a new non-final office action.

Jacqueline M. Stone

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

ROSS J. CHRISTIE
BACHMAN & LAPOINTE, PC
900 CHAPEL STREET, SUITE 1201
NEW HAVEN, CT 06501-2802

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OFFICE OF PETITIONS

In re Application of
Tracee Eidenschink, et al.
Application No. 10/431,231
Filed: May 5, 2003
Attorney Docket No. S63.2-10690US01

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed June 21, 2007.

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue fee on or before March 7, 2007. A Notice of Abandonment was mailed on June 7, 2007. On June 21, 2007, the present petition was filed.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $1,400 issue fee and the $300 publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

The application is being referred to Publishing Division to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: JAMES L. SHANDS
VIDAS, ARRETT & STEINKRAUS
6109 BLUE CIRCLE DRIVE, SUITE 2000
MINNETONKA, MN 55343-9185

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Paper No. 030304

William F. Hamrock, P.A.
50 Winter Harbor Road
Kennebunkport, ME 04046

MAR - 8 2004

In re Application of:
Carl H. Strom
Serial No.: 10/431,240
Filed: May 07, 2003
Attorney Docket No.: **STROM - 1**

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition under 37 C.F.R. § 1.102(c), filed November 14, 2003, to make the above-identified application special.

Petitioner requests that the above-identified application be made special under the accelerated examination procedure set forth in the Manual of Patent Examining Procedure (M.P.E.P.) § 708.02, Section IV: Applicant's Age.

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 evidence showing 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 Carl H. Strom stating that the applicant is sixty-five (65) years of age or more.

Accordingly, the petition is GRANTED.

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 (571) 272-1594.

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
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INTERNATIONAL BUSINESS MACHINES CORPORATION
INTELLECTUAL PROPERTY LAW
650 HARRY ROAD, L2PA/J2C
SAN JOSE, CA 95120-6099

COPY MAILED
OCT 16 2006
OFFICE OF PETITIONS

In re Application of	:	
William John Durica et al	:	
Application No. 10/431,246	:	DECISION GRANTING PETITION
Filed: May 6, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SJ0920020149US1	:	

This is a decision on the petition, filed October 14, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 2, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2114 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\Oct10\431246

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment.*

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650 Harry Road, L2PA/J2C
INTELLECTUAL PROPERTY LAW
SAN JOSE CA 95120-6099

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AUG 24 2007

OFFICE OF PETITIONS

In re Application of :
William John Durica et al :
Application No. 10/431,246 : DECISION ON PETITION
Filed: May 6, 2003 :
Attorney Docket No. :
SJ0920020149US1

This is a decision on the petition under 37 CFR 1.137(b), filed March 15, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to properly submit the issue fee payment on or before February 2, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed November 2, 2006. Accordingly, the date of abandonment of this application is February 3, 2007. A Notice of Abandonment was mailed on March 5, 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 (previously applied from the payment made on October 2, 2006), (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the issue fee is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This application is being referred to Publishing Division for appropriate processing in accordance with this decision accepting the delayed submission of the issue fee.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

7-17-07

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Patent No. : 7,034,423
Ser. No. : 10/431,263
Inventor(s) : Alan D. Crapo, et. al.
Issued : April 25, 2006
Title : ELECTIC POWER STEERING SYSTEM INCLUDING A PERMANENT MAGNET MOTOR
Docket No. : 3174-000010/COA

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 or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
40l Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

A certificate of correction will issue to correct the remaining errors noted in your request.

Eva James
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) **308-9390 ext. 124** or 105

Michael P. Brennan
Harness, Dickey & Pierce, P.L.C.
Attorneys & Counselors
P.O. Box 828
Bloomfield Hills, Michigan 48303

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Bryan Galloway
Schlumberger Technology Corporation
14910 Airline Road
Rosharon, TX 77583

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APR 26 2007

OFFICE OF PETITIONS

In re Application of:
Dinesh Patel, et al.
Application No.: 10/431,284
Filed: May 07, 2003
Atty's Docket No.: 68.0316CIP

DECISION ON PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition for revival of the above-entitled application under 37 CFR 1.137(b), filed August 04, 2006.

The petition is **GRANTED**.

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 mailed December 28, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned at midnight on March 28, 2006.

On August 04, 2006, applicant filed the petition for revival under 37 CFR 1.137(b) considered herein. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that it includes: (1) the petition fee; (2) the required statement of unintentional delay; and (3) the required reply in the form of payment of the issue and publication fees. Accordingly, the issue and publication fee payments are accepted as having been unintentionally delayed.

The application is being referred to the Office Of Publications.

Telephone inquiries concerning this decision should be directed to the undersigned.

Derek A. Putonen
Attorney Advisor
(571) 272-3294

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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HUSCH & EPPENBERGER, LLC
190 CARONDELET PLAZA
SUITE 600
ST. LOUIS MO 63105-3441

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OFFICE OF PETITIONS

In re Application of	:	
Rapp, et al.	:	
Application No. 10/431,291	:	DECISION ON PETITION
Filed: May 7, 2003	:	TO WITHDRAW
Attorney Docket No. 63153-015	:	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 3, 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 Robert C. Haldiman on behalf of all attorneys of record who are associated with customer No. 29493.

All future correspondence will be directed to the first named inventor Gary L. Rapp at the address indicated below.

Telephone inquiries concerning this decision should be directed to April Wise at 571-272-1642.

Denise Pothier
Petitions Examiner
Office of Petitions

cc: Gary L. Rapp
R.R. #1 Box 177
Athens, IL 62613

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
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MYERS BIGEL SIBLEY & SAJOVEC
P.O. BOX 37428
RALEIGH, NC 27627

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SEP 16 2003

OFFICE OF PETITIONS

In re Application of
Sawyer, et al.
Application No. 10/431,299
Filed: May 7, 2003
Attorney Docket No. 9400-11

DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.10(d), filed July 18, 2003, requesting that the above-identified application be accorded a filing date of May 7, 2003, rather than the presently accorded filing date of May 8, 2003.

The petition is **GRANTED**.

Applicants request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service (Express Mail mailing label #EV193585146US) on May 7, 2003, pursuant to the requirements of 37 CFR 1.10. However, the Express Mail mailing label identified in the original application papers does not appear to indicate a "date-in." Applicants allege that the correct date of mailing is May 7, 2003.

In support, the petition is accompanied by a copy of the Express Mail mailing label that does not indicate a "date-in," but has a USPS mail stamp of May 7, 2003. Additionally the USPS "Track and Confirm" report for Express Mail Package #EV193585146US indicates acceptance of this package by the USPS on May 7, 2003.

The USPS mail stamp and the USPS "Track and Confirm" report both indicate Express Mail Package #EV193585146US was deposited with the USPS on May 7, 2003.

In view of the evidence present in the file, it is concluded that the correct date of deposit in Express Mail service is May 7, 2003.

Accordingly, the application is entitled to a filing date of May 7, 2003.

The application is being forwarded to the Office of Initial Patent Examination for issuance of a corrected filing receipt with a filing date of May 7, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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Paper No. 5

GRAY CARY WARE & FREIDENRICH
2000 UNIVERSITY AVENUE
E. PALO ALTO, CA 94303-2248

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FEB 25 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Jinsong Hu et al :
Application No. 10/431,302 :
Filed: May 6, 2003 :
Attorney Docket No. 2102112-990020 :

This is in response to the petition under 37 CFR 1.47(a), filed January 23, 2004.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** 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. Applicants lack item (1) set forth above.

As to item (1), petitioner has failed to adequately show or provide proof that the nonsigning inventors refuse to join in the application after having been presented with the application papers (specification, claims, and drawings). There is no indication whether the nonsigning inventors were presented with a copy of the complete application papers. If the nonsigning inventors were not presented with a copy of the application papers, then they could not attest that they have "reviewed and understand the application papers" and therefore could not sign

the declaration which they were given. Did the nonsigning inventors receive the application papers? See MPEP 409.03(d). Unless petitioner can show that a copy of the application papers was presented to the nonsigning inventors, then petitioner will have to mail a copy of the complete application papers to the nonsigning inventors at their last known address, return receipts 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, telegrams, E-mail, etc., to support a showing that the nonsigning inventors have refused to sign the declaration after having been presented with the application papers. See MPEP 409.03(d).

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 applicant that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

Whenever an omitted inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

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

Telephone inquiries related to this decision should 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

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

GARY CARY WARE & FREIDENRICH
2000 UNIVERSITY AVENUE
E. PALO ALTO, CA 94303-2248

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MAY 2 6 2004

OFFICE OF PETITIONS

In re Application of
Jinsong Hu et al
Application No. 10/431,302
Filed: May 6, 2003
For: COMPUTER PROGRAM METHOD AND APPARATUS TO RECOGNIZE AND NORMALIZE DATA PATTERN BASED INFORMATION

DECISION GRANTING STATUS UNDER 37 CFR 1.47(A)

This is a decision on the renewed petition under 37 CFR 1.47(a), filed May 10, 2004, requesting reconsideration of the decision mailed February 25, 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.

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 2171 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
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HUASHENG SU
38390 REDWOOD TERRACE
FREMONT, CA 94536

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MAY 2 6 2004
OFFICE OF PETITIONS

In re Application of
Hu, Oberoi; Yuan; and Su
Application No. 10/431,302
Filed: May 6, 2003
For: COMPUTER PROGRAM METHOD AND APPARATUS TO RECOGNIZE AND NORMALIZE DATA PATTERN BASED INFORMATION

Dear Mr. Su:

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
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
GRAY CARY WARE & FREIDENRICH
2000 UNIVERSITY AVENUE
E. PALO ALTO, CA 94303-2248

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Dority & Manning, P.A.
Post Office Box 1449
Greenville, SC 29602-1449

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JUN 28 2005

OFFICE OF PETITIONS

In re Application of :
von Behrens et al. :
Application No. 10/431,305 : DECISION GRANTING PETITION
Filed: May 6, 2003 :
Attorney Docket No. APN-5 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 2, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee and publication fee as required by the Notice of Allowance and Fee(s) Due, mailed on October 20, 2004. The Notice set a three-month statutory period to respond. Accordingly, this application became abandoned on January 22, 2005. A Notice of Abandonment was mailed on May 2, 2005.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Petitioner paid the requisite fees and made the proper statement of unintentional delay.

The application will be forwarded to the Office of Patent Publications. Questions relating to the issuance of a patent may be directed to the Office of Patent Publications, Customer Service, at 1-888-786-0101.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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. 061405

COOLEY GODWARD, LLP
3000 EL CAMINO REAL
5 PALO ALTO SQUARE
PALO ALTO CA 94306

AUG 24 2005

In re Application of:	:	
VON BEHRENS et al.	:	
Serial No.: 10/431,305	:	DECISION ON REQUEST TO WITHDRAW
Filed: May 06, 2003	:	FROM RECORD
Attorney Docket No.: **NANI-005/01US**	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed May 09, 2005.

A grantable request to withdraw as attorney of record must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of others. A request to withdraw will not be approved unless at least thirty (30) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period, which can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above stated requirements. The request was signed by Kenneth R. Backus, Sr.

The request is **APPROVED**.

It is noted that the application is now abandoned.

All future communications from the Office will be directed to Jeff Karmilovich, at the below address, until otherwise notified by applicant.

Inquiries related to this decision should be directed to Jose G. Dees at (571) 272-1569.

Jose G. Dees, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: JEFF KARMILOVICH
DORITY & MANNING, P.A.
55 BEATTIE PLACE, SUITE 1600
GREENVILLE SC 29601

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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WALTER W. DUFT
LAW OFFICES OF WALTER W. DUFT
8616 MAIN ST
SUITE 2
WILLIAMSVILLE, NY 14221

Mail Date: 04/21/2010

Applicant	: Randeep Bhatia	: DECISION ON REQUEST FOR
Patent Number	: 7602893	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/431,338	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/07/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1587** 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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300 S. WACKER DRIVE
32ND FLOOR
CHICAGO, IL 60606

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AUG 0 6 2008

In re Application of	:	
Mirkin et al.	:	
Application No. 10/431,341	:	DECISION ON PETITION
Filed: May 7, 2003	:	
Attorney Docket No. 02-338-C	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 4, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2))within the time period provided in 37 CFR 41.37(a)(1). A two-month extension of time was filed on July 13, 2007. As an appeal brief (and appeal brief fee) was not filed within four (4) months of the Notice of Appeal filed June 15, 2007, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on October 16, 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 (RCE) and fee of $405.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $770.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 1634 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1/15/09

TO SPE OF: ART UNIT 1621

SUBJECT: Request for Certificate of Correction for Appl. No.: 6951847 Patent No.: 10431351

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.

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch

703-308-9390 ext. _114__

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

X Approved	All changes apply.
❑ Approved in Part	Specify below which changes do not apply.
❑ Denied	State the reasons for denial below.

Comments:

/Daniel M Sullivan/

SPE, Art Unit 1621

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MADSON & AUSTIN
GATEWAY TOWER WEST
SUITE 900
15 WEST SOUTH TEMPLE
SALT LAKE CITY, UT 84101

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JUN 27 2007

OFFICE OF PETITIONS

In re Application of	:	
Peter J. Spransy et al	:	
Application No. 10/431,352	:	ON PETITION
Filed: May 7, 2003	:	
Attorney Docket No. 3339.2.3	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 4, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed May 22, 2006, which set a shortened statutory period for reply of three (3) months. Two-month extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 23, 2006.

The above-identified application is being revived solely for purposes of continuity with a Request For Continued Examination (RCE) filed on December 4, 2006.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 3635 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

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#6

SHAW PITTMAN
IP GROUP
1650 TYSONS BLVD.
SUITE 1300
MCLEAN, VA 22102

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NOV 24 2003

OFFICE OF PETITIONS

In re Application of
Shahid Butt and Shoaib Zaidi
Application No. 10/431,368
Filed: May 8, 2003
Title: SYSTEM AND METHOD FOR QUANTIFYING ERRORS IN AN ALTERNATING PHASE SHIFT MASK

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.47(a)

This is in response to the "Petition Under 37 CFR 1.47(a)," filed October 16, 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 Declaration. Notice of the filing of this application will also be published in the Official Gazette.

The file 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) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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SHAHID BUTT
117 S. HIGHLAND AVENUE, #1C
OSSINING, NY 10562

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NOV 24 2003

OFFICE OF PETITIONS

In re Application of
Shahid Butt and Shoaib Zaidi
Application No. 10/431,368
Filed: May 8, 2003
Title: SYSTEM AND METHOD FOR QUANTIFYING ERRORS IN AN ALTERNATING PHASE SHIFT MASK

Dear SHAHID BUTT:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Edward Tannouse at (703) 306-9200. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1(800) 972-6382 (outside the Washington D.C. area).

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

SHAW PITTMAN
IP GROUP
1650 TYSONS BLVD.
SUITE 1300
MCLEAN, VA 22102

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OBLON SPIVAK MCCLELLAND
MAIER & NEUSTADT, P.C
1940 DUKE STREET
ALEXANDRIA, VA 22314

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AUG 1 8 2005

OFFICE OF PETITIONS

In re Application of :
Yoshihisa Iwata :
Application No. 10/431,369 : ON PETITION
Filed: January 20, 2003 :
Attorney Docket No. 237381US2S

This is a decision on the petition, filed August 17, 2005 under 37 CFR 1.313(c)(2), to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 1, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2824 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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APPLIED MATERIALS, INC.
PATENT DEPARTMENT, M/S 2061
P.O. BOX 450A
SANTA CLARA, CA 95052

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JUL 29 2005

OFFICE OF PETITIONS

In re Application of :
Anantha K. Subramani, et al. :
Application No. 10/431,399 : ON PETITION
Filed: May 6, 2003 :
Attorney Docket No. USA/ISM/CORE/PVD/P :

This is a decision on the petition under 37 CFR 1.137(b), filed May 31, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 1, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 3, 2005.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail 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; (2) the petition fee of $1500; (3) the required statement of unintentional delay have been received. Accordingly, the petition filed May 31, 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 1775 for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Ashok K. Janah
650 Delancey Street, Suite 106
San Francisco, CA 94107

UNITED STATES PATENT AND TRADEMARK OFFICE

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INTERNATIONAL BUSINESS MACHINES CORPORATION
650 Harry Road, L2PA/J2C
INTELLECTUAL PROPERTY LAW
SAN JOSE, CA 95120-6099

Mail Date: 04/20/2010

Applicant	: Richard Victor Kisley	: DECISION ON REQUEST FOR
Patent Number	: 7610348	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/431,413	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/07/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1194** 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.

Patent 7,330,717 B2 **PATENT**

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IN UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.: 7,330,717 B2 Docket No: LCNT/MOBILITEC 4
Issue Date: February 12, 2008 Patentee: Yoad Gidron et al.
Title A RULE-BASED SYSTEM AND METHOD FOR MANAGING THE PROVISIONING OF USER APPLICATIONS ON LIMITED-RESOURCE AND/OR WIRELESS DEVICES

REQUEST FOR CERTIFICATE OF CORRECTION

Certificate
MAR 05 2008
of Correction

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

It is requested that a Certificate of Correction be issued correcting errors appearing in the above-identified United States patent. Two copies of the text of the Certificate in the suggested form are enclosed.

Pursuant to 1.20(a), the Commissioner is authorized to charge the Certificate of Correction fee, IF ANY, to the Deposit Account No. 20-0782/LCNT/MOBILITEC4.

Issuance of the Certificate of Correction would neither expand nor contract the scope of the claims as properly allowed, and re-examination is not required.

APPROVED: /D.L./

Respectfully Submitted

Yoad Gidron et al.

Date: 3/3/08 By: E M Wall

Eamon J. Wall
Reg. No: 39,414
Patterson and Sheridan, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702

CERTIFICATE UNDER 37 CFR § 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450, or being facsimile transmitted to the United States Patent & Trademark Office, on this 3 day of march 2008

CAROL WILSON Carol Wilson

Name Signature

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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

APPROVED: /D.L./

PATENT NO : 7,330,717 B2

DATED : February 12, 2008

INVENTOR(S) : Yoad Gidron, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Amend page 1, item (63), Related U.S. Application Data to read:

Continuation-in-part of ~~application~~ U.S. Patent Application No. 10/240,409, filed as ~~application~~ International Application No. PCT/IL/02/00139 on Feb. 21, 2002, which claims the benefit of U.S. Provisional Application No. 60/270,638, filed Feb. 23, 2001, and claims the benefit of U.S. Provisional Application No. 60/280,849, filed Apr. 3, 2001, and is a CIP of U.S. Patent Application No. 09/987,514, filed Nov. 15, 2001, which application claims the benefit of U.S. Provisional Application No. 60/270,638, filed Feb. 23, 2001.

Column 1, amend the Cross-Reference to Related Application as follows:

CROSS-REFERENCE TO RELATED APPLICATION

This application is a CIP of U.S. Patent Application ~~Ser.~~ No. 10/240,409, filed Oct. 1, 2002, which is a 371 of International Application No. PCT/IL02/00139, filed Feb. 21, 2002, which claims ~~priority from~~ the benefit of U.S. Provisional Application No. 60/270,638, filed Feb. 23, 2001, and claims the benefit of U.S. Provisional Application No. 60/280,849, filed Apr. 3, 2001, and is a CIP of U.S. Patent Application ~~Ser.~~ No. 09/987,514, filed Nov. 15, 2001, ~~which claims priority from 60/270,638 Feb. 23, 2001 and 60/280,849 Apr. 3, 2001~~ which application claims the benefit of U.S. Provisional Application No. 60/270,638, filed Feb. 23, 2001.

MAILING ADDRESS OF SENDER:
Patterson & Sheridan, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702

PATENT NO. 7,330,717 B2
No. of additional copies

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Atty Docket No: LCNT/MOBILITEC4

Patent 7,330,717 B2

PATENT

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IN UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.: 7,330,717 B2 Docket No: LCNT/MOBILITEC 4 APPROVED: /D.L./
Issue Date: February 12, 2008 Patentee: Yoad Gridron et al.
Title A RULE-BASED SYSTEM AND METHOD FOR MANAGING THE PROVISIONING OF USER APPLICATIONS ON LIMITED-RESOURCE AND/OR WIRELESS DEVICES

CERTIFICATE OF MAILING OR TRANSMISSION
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or being facsimile transmitted to the USPTO, on the date indicated below.

3-3-08
Date

MAIL STOP PETITONS
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Dear Sir:

PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY

Applicants respectfully petition the Commissioner under the applicable sections of 37 CFR 1.78(a) for claiming in this issued patent the benefit of the following priority chain:

This application is a CIP of U.S. Patent Application No. 10/240,409, filed Oct. 1, 2002, which is a 371 of International Application No. PCT/IL02/00139, filed Feb. 21, 2002, which claims the benefit of U.S. Provisional Application No. 60/270,638, filed Feb. 23, 2001, and claims the benefit of U.S. Provisional Application No. 60/280,849, filed Apr. 3, 2001, and is a CIP of U.S. Patent Application No. 09/987,514, filed Nov. 15, 2001, which application claims the benefit of U.S. Provisional Application No. 60/270,638, filed Feb. 23, 2001.

Applicants attempted to reference this chain of priority, in the application from which this patent issued, by filing a Preliminary Amendment to include a "Cross-Reference to Related Applications" section in the specification of the application. However, in the Preliminary Amendment, the Applicants inadvertently stated the priority claim incorrectly.

Specifically, in the Preliminary Amendment, Applicants failed to indicate the relationship between International Application No. PCT/IL02/00139 and U.S. Patent Application No. 09/987,514 (namely, that International Application No. PCT/IL02/00139 is a CIP of U.S. Patent Application No. 09/987,514). Additionally, in the Preliminary Amendment, Applicants

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PAGE 3/5 * RCVD AT 3/3/2008 3:36:17 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-6/31 * DNIS:2738300 * CSID:+17325309808 * DURATION (mm-ss):03-54

incorrectly stated that U.S. Patent Application No. 09/987,514 claims the benefit of both of the cited U.S. Provisional Patent Applications (namely, 60/270,638 and 60/280,849) when, in fact, International Application PCT/IL02/00139 claims the benefit of both of the U.S. Provisional Patent Applications 60/270,638 and 60/280,849 and, further, is a CIP of U.S. Application No. 09/987,514, filed Nov. 15, 2001, which only claims priority from one of the two U.S. Provisional Patent Applications (namely, 60/270,638).

Applicants filed a first Request for a Corrected Filing Receipt, however, this request also recited the incorrect priority claim described hereinabove. Applicants then filed a second Request for a Corrected Filing Receipt, however, this request again recited the incorrect priority claim described hereinabove. Additionally, following allowance of the application by the Examiner, the Examiner, presumably not realizing that a Preliminary Amendment had been filed by the Applicants, entered an Examiner's Amendment inserting a "Cross-Reference to Related Application" section in the application. The Examiner's Amendment, however, also recited the incorrect priority claim described hereinabove.

With respect to the incorrect priority claim concerning the relationship between International Application No. PCT/IL02/00139 and U.S. Patent Application No. 09/987,514 (namely, that International Application No. PCT/IL02/00139 is a CIP of U.S. Patent Application No. 09/987,514), Applicants respectfully submit that the requirements set forth in 37 C.F.R. 1.78(a)(1) have been met in the application from which the present patent issued and, further, that it is clear from the record of the present patent and the associated parent applications that priority is appropriate.

With respect to the incorrect priority claims concerning U.S. Provisional Application No. 60/270,638 and U.S. Provisional Application No. 60/280,849, Applicants respectfully submit that the requirements set forth in 37 C.F.R. 1.78(a)(3) have been met in the application from which the present patent issued and, further, that it is clear from the record of the present patent and the associated parent applications that priority is appropriate.

Additionally, in accordance with the requirements set forth in the applicable sections of 37 CFR 1.78(a), Applicants submit the following:

(i) The references required by 35 U.S.C. 119 and 120 and the applicable sections of 37 CFR 1.78(a) for non-provisional applications, international applications, and provisional applications are concurrently submitted as part of a Request for Certificate of Correction, a copy of which is attached to this petition. The amendments to the specification may be found on Page 2 of the Request for Certificate of Correction:

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APPROVED: /D.L./ MAR - 5 2008

PAGE 4/5 * RCVD AT 3/3/2008 3:36:17 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-6/31 * DNIS:2738300 * CSID:+17325309808 * DURATION (mm-ss):03-54

(ii) The Commissioner is authorized to charge the fee of $1410.00 as set forth in 37 CFR 1.17(t), as well as any additional fees which may be required for this petition, to Deposit Account No. 20-0782/LCNT/MOBILITEC4; and

(iii) The entire delay between the date the claim was due under the applicable sections of 37 CFR 1.78(a) and the filing of this petition was unintentional.

Applicants respectfully submit this Petition and the associated Request for Certificate of Correction, and request acceptance of the priority claim.

Applicants also note that a similar Petition to Accept an Unintentionally Delayed Claim for Priority in being filed concurrently for U.S. Patent Application No. 10/240,409, which is still pending before the Office, in order to correct the priority claim in that application.

Respectfully submitted,

Dated: 3/3/08

Eamon J. Wall
Registration No. 39,414
Attorney for Applicant

PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-530-9404
Facsimile: 732-530-9808

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OFFICE OF PETITIONS

CHANGHUA SUN
34339 N. BOBOLINK TRAIL
GRAYSLAKE IL 60030

In re Application of	:	
Sun	:	DECISION
Application No.: 11/431,442	:	
Filing Date: 10 May, 2006	:	
Attorney Docket No. (None)	:	

This is a decision on the papers/letter considered as a petition filed on 1 March, 2007, to withdraw the holding of abandonment and considered under 37 C.F.R. §1.181.

The Office regrets the delay in addressing this matter, however, the instant petition was presented to the attorneys in the Office of Petitions only at this writing.[1]

For the reasons set forth below the petition as considered under 37 C.F.R. §1.181 is **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.181."

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[1] **NOTE: Monitoring of the status of applications on PAIR can inform one's management of application responses and provide an indication when mailings of Office actions should be expected. Status Inquiries filed at three (3) or four (4) month intervals provide a demonstration of diligence and attention in supporting a petition seeking relief under 37 C.F.R. §1.181.**

(If Petitioner is unable to present even a satisfactory showing to support a petition under 37 C.F.R. §1.137(a), and Petitioner's only alternative will be to file a petition under 37 C.F.R. §1.137(b).)

(2) Thereafter, there will be no further reconsideration of this matter.[2]

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Notice to File Corrected Application Papers (copy enclosed) mailed on 5 June, 2006, with reply due absent an extension of time on or before 5 August, 2006;
- the application went abandoned by operation of law after midnight on 5 August, 2006;
- the Office mailed the Notice of Abandonment on 8 February, 2007;
- on 1 March, 2007, Petitioner filed the instant letter considered as a petition, and averred therein, *inter alia*, that she did not receive the 5 June, 2006, Notice of Abandonment, but failed to satisfy the showing required (see: MPEP §711.03(c), and discussed below).

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)); and those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

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[2] For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Louden, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R.§§1.181, 182, 183.

[3] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

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).[4]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for

---

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(4) Imposing a monetary sanction;
(5) Requiring a terminal disclaimer for the period of the delay; or
(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).
[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

[4] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

the reply now to be accepted on petition.[5]

Delays in responding properly raise the question whether delays are unavoidable.[6] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[7]

And the Petitioner must be diligent in attending to the matter.[8] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[9]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[10]

The commentary at MPEP §711.03(c) provides:

* * *

> **A. Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action**
>
> In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the

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[5] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[6] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[7] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[8] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[9] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

[10] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

> 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.
>
> * **
>
> <u>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</u> rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).
>
> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988). (Emphasis supplied.)
>
> * * *

Moreover, the regulation places upon Petitioner a diligence requirement to seek relief within two (2) months of the act complained of.

It does not appear that Petitioner has satisfied the showing required, as described above.

CONCLUSION

Because it appears that Petitioner has not satisfied in part the burdens set forth in Delgar v. Schulyer, the petition as considered under 37 C.F.R. §1.181 is **is dismissed**.

ALTERNATIVE VENUE

Petitioner may wish to file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay. (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply (the amendment), the petition fee, and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

Further correspondence with respect to this matter should be addressed as follows:[11]

By mail: Commissioner for Patents[12]
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: IFW Formal Filings
(571) 273-8300
ATTN.: Office of Petitions

By hand: Mail Stop: Petition
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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[11] On July 15, 2005, the Central Facsimile (FAX) Number changed to (571) 273-8300. The old FAX number no longer is in service and (571) 273-8300 will be the only facsimile number recognized for centralized delivery. (For further information. see: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/cfax062005.pdf .)

[12] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[13]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

Encl:
Petition forms under 37 C.F.R. §1.137(a) and (b)
5 June, 2006, Notice to File Corrected Application Papers

[13] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing.The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation,or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
11/431,442	05/10/2006	Changhua Sun	

CONFIRMATION NO. 7349
FORMALITIES LETTER

CHANGHUA SUN
34339 N. Bobolink Trail
Grayslake, IL 60030

Date Mailed: 06/05/2006

NOTICE TO FILE CORRECTED APPLICATION PAPERS

Filing Date Granted

An application number and filing date have been accorded to this application. The application is informal since it does not comply with the regulations for the reason(s) indicated below. Applicant is given TWO MONTHS from the date of this Notice within which to correct the informalities indicated below. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

The required item(s) identified below must be timely submitted to avoid abandonment:

- A substitute specification in compliance with 37 CFR 1.52, 1.121(b)(3), and 1.125, is required. The substitute specification must be accompanied by a marked up copy as set forth in 37 CFR 1.125(c) and a statement that the specification contains no new matter (see 37 CFR 1.125(b)). The specification, claims, or abstract page(s) submitted is not acceptable and cannot be scanned or properly stored because:
    - The line spacing on the specification, claims, or abstract is not 1½ or double spaced (see 37 CFR 1.52(b)).
- Replacement claim(s) commencing on a separate sheet in compliance with 37 CFR 1.75(h) and 1.121 is required. Claims must be consecutively numbered and the same claim number cannot be used for more than one claim. See 37 CFR 1.126.

Applicant is cautioned that correction of the above items may cause the specification and drawings page count to exceed 100 pages. If the specification and drawings exceed 100 pages, applicant will need to submit the required application size fee.

Replies should be mailed to: Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

A copy of this notice MUST be returned with the reply.

M-WAILE

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199, or 1-800-972-6382

PART 3 - OFFICE COPY

PTO/SB/61 (04-07)
Approved for use through 09/30/2007. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED 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.)

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/64 (04-07)
Approved for use through 09/30/2007. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

First named inventor:

Application No.: Art Unit:

Filed: Examiner:

Title:

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional.

1.Petition fee

☐ Small entity-fee $ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity – fee $ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____(identify type of reply):

☐ has been filed previously on _____.
☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of $ _____.

☐ has been paid previously on _____.
☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $ _____ for a small entity or $ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature	Date
Typed or printed name	Registration Number, if applicable
Address	Telephone Number
Address	

Enclosures: ☐ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☐ Other:_____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date	Signature
	Typed or printed name of person signing certificate

Privacy Act Statement

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The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether 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
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MAY - 5 2005

In re Application of TAKEHARA ET AL.
Appl. No.: 10/431,452
Filed: May 08, 2003
For: POWER SUPPLYING APPARATUS, DESIGN METHOD OF THE SAME, AND POWER GENERATION APPARATUS

WITHDRAWAL FROM ISSUE
37 CFR 1.313

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue after payment of the issue fee due to the unpatentability of one or more claims. See 37 CFR 1.313.

The issue fee and publication fee are refundable upon request. The applicant may request a refund, or may request that the fees be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue and Publication Fee Due, applicant may request that the previously submitted issue fee and publication fee be applied toward payment of the issue fee and publication fee in the amount identified on the new Notice of Allowance and Issue and Publication Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a specified Deposit Account.

The application is being forwarded to the examiner for action.

Richard K. Seidel
Director
Patent Examining Technology Center 2800

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

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BIRCH STEWART KOLASCH & BIRCH
P.O. BOX 747
FALLS CHURCH, VA 22040-0747

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APR 0 2 2007

OFFICE OF PETITIONS

In re Application of :
Yuuji Tanjou et al :
Application No. 10/431,501 : ON PETITION
Filed: May 8, 2003 :
Attorney Docket No. 1752-0162P

This is a decision on the petition, filed March 29, 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 March 2, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 1745 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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April 15, 2004

APR 21 2004

Robert E. Bushnell
Suite 300
1522 K Street, N.W.
Washington DC 20005

In re Application of:	:	
GRAHAM, BRAXTON B.	:	
Application No. 10/431,531	:	DECISION ON PETITION
Filed: May 08, 2003	:	TO MAKE SPECIAL
For: MEASURING TAPE HOLDING TOOL	:	

This is a decision on the petition under 37 C.F.R. § 1.102, filed May 08, 2003, to make the above-identified application special.

Petitioner requests that the above-identified application be made special under the accelerated examination procedure set forth in the Manual of Patent Examining Procedure (M.P.E.P.) § 708.02, Section IV: Applicant's Age.

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 evidence showing that the applicant is sixty-five (65) years of age or more. No fee is required for this petition.

The petition includes Mr. Graham's Birth Certificate as a showing that applicant is sixty-five (65) years of age or more.

Accordingly, the petition is granted.

An office action was mailed on March 31, 2004[1]. 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.

---

1 The shortened statutory period for response continues to run three months from the date the Office action was mailed.

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.

The petition is granted to the extent indicated.

Inquires regarding this decision should be directed to Lissi Mojica Marquis at (571) 272-1596.

Lissi Mojica Marquis, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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PAUL AND PAUL
2900 TWO THOUSAND MARKET STREET
PHILADELPHIA PA 19103

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DEC 15 2004

OFFICE OF PETITIONS

In re Application of	:	
Claes Magnusson	:	
Application No. 10/431,542	:	ON PETITION
Filed: May 8, 2003	:	
Attorney Docket No. 012-04	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 21, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 12, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on May 13, 2004.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

The application file is being referred to Technology Center AU 3676.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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PAUL AND PAUL
2000 MARKET STREET
SUITE 2900
PHILADELPHIA PA 19103

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JAN 21 2010

In re Patent No. 7,032,939	:	
Issue Date: April 25, 2006	:	
Application No. 10/431,542	:	NOTICE
Filed: May 8, 2003	:	
Attorney Docket No. 2004-012	:	

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.

for Thurman K. Page
Petitions Examiner
Office of Petitions

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EXXON MOBIL CHEMICAL COMPANY
LAW TECHNOLOGY
P.O. BOX 2149
BAYTOWN TX 77522-2149

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FEB 11 2005

OFFICE OF PETITIONS

In re Application of	:	
Anthony G. Karandinos et al	:	
Application No. 10/431,547	:	ON PETITION
Filed: May 7, 2003	:	
Attorney Docket No. 2000M002/3	:	

This is a decision on the paper entitled "Request For Reconsideration Of Holding Of Abandonment", filed September 28, 2004, which is being treated as a Petition under 37 CFR 1.181(a) to Withdraw Holding of Abandonment.

The petition is **GRANTED**.

The application was held abandoned for failure to timely reply to the Notice To File Corrected Application Papers mailed July 25, 2003.

The petition states that the reply was timely submitted on September 22, 2003. To support this assertion, the petitioner has submitted a copy of the postcard receipt showing the receipt date of September 22, 2003 in the USPTO.

MPEP 503 states that "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO."

In 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 the Office of Initial Patent Examination..

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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POPOVICH, WILES & O'CONNELL, PA
8519 EAGLE POINT BLVD
Suite 180
LAKE ELMO, MN 55042

Mail Date: 04/21/2010

Applicant	: Maria Curcio	: DECISION ON REQUEST FOR
Patent Number	: 7607208	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/431,557	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/07/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **846** 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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APR 2 4 2006

OFFICE OF PETITIONS

VENABLE LLP
P.O. BOX 34385
WASHINGTON DC 20045-9998

In re Patent No. 6,986,457
Issued: January 17, 2006
Application No. 10/431,570
Filed: May 8, 2003
Attorney Docket No. 29953-184844

:DECISION ON APPLICATION
:FOR PATENT TERM ADJUSTMENT
: and
:NOTICE OF INTENT TO ISSUE
:CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed March 15, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to ninety-six (96) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of ninety-six **(96)** days.

On May 10, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 57 days. On January 17, 2006, the above-identified application matured into U.S. Patent No. 6,986,457, with a revised PTA of zero (0) days. The instant application for PTA, filed March 15, 2006, was timely filed within two months of the patent grant. Patentees maintain that the patent should have issued with a patent term adjustment of 57 days.

Applicants dispute the entry of a period of reduction of 85 days for applicants taking in excess of three months to respond to the Notice of Allowance mailed May 10, 2005. Applicants submit evidence to show that the holding of abandonment for failure to timely respond to the Notice of Allowance was withdrawn based on their showing that a response had been timely filed on August 9, 2005. In support of a showing that the response was received August 9, 2005, applicants submitted a copy of their date-stamped postcard.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application history reveals that no response to the Notice of Allowance

mailed May 10, 2005 was considered timely filed by the Office and the application became abandoned. Applicants were advised of the abandonment by notice mailed October 13, 2005. In response, on November 3, 2005, applicants filed a petition to withdraw the holding of abandonment. It is specifically noted that the petition to withdraw the holding of abandonment was filed within two months from the mailing date of a notice of abandonment. See § 1.704(c)(4). Moreover, by decision mailed November 29, 2005, the petition was granted on the basis that applicants had shown that a proper response was filed on August 9, 2005.

In view thereof, it is concluded that applicants did not fail to engage in reasonable efforts to conclude processing or examination of the application by delaying in replying to the Notice of Allowance by 85 days.

After the issuance of the patent however, additional delays have been recorded that again have caused the Patent Term to adjust. Specifically, 39 days were added for PTO delay in issuance of the patent four months after the payment of the Issue Fee.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ninety-six 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 NINETY-SIX (96) 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

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 6,986,457 B2

DATED : January 17, 2006

INVENTOR(S) : O'Connell 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 96 days--

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JUN 30 2008

OFFICE OF PETITIONS

JOSEPH J. LAKS
THOMSON LICENSING LLC
2 INDEPENDENCE WAY, PATENT OPERATIONS
PO BOX 5312
PRINCETON, NJ 08543

In re Application of	:	
Robert J. SNYDER, et al	:	
Application No. 10/431,576	:	DECISION ON PETITION
Filed: May 8, 2003	:	
Attorney Docket No. 1752-0490001	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 23, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 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 (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). 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 June 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 Notice of Appeal; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at (571) 272-6735.

This application is being referred to Technology Center AU 2173 for appropriate action by the examiner in the normal course of business on the Appeal Brief filed June 18, 2008.

April Wise
Petitions Examiner
Office of Petitions

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ARLINGTON VA 22203

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Barton F. Haynes et al	:	
Application No. 10/431,596	:	
Filed: May 8, 2003	:	
Attorney Docket No. 1579-813	:	

This is a decision on the petition, filed October 31, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 29, 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 1648 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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NANCY LYDIA KIMMEL
6184 N. NORBORNE CT
DEARBURN HEIGHTS MI 48127

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AUG 29 2007

OFFICE OF PETITIONS

In re Application of Nancy Lydia Kimmel Application No. 10/431,658 Filed: August 11, 2003 For: ACTIVATED CARBON MESH FIBER MATRIX EMBEDDED WITH LITHIUM HYDROXIDE AND ZEOLITE CRYSTALS	: : : : : : : :	DECISION ON PETITIONS

This is a decision on the petitions under (1) 37 CFR 1.181(a), filed April 19, 2007, requesting withdrawal of the holding of abandonment; (2) under 37 CFR 1.137(b); filed May 17, 2007, to revive the above-identified application; and (3) under 37 CFR 1.182 to change applicant's name.

The petition under 37 CFR 1.181(a) is **DISMISSED.**

The petition under 37 CFR 1.137(b) is **DISMISSED.**

The petition under 37 CFR 1.182 is **GRANTED.**

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely pay the issue and publication fees on or before March 19, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed December 19, 2006. Accordingly, the date of abandonment of this application is March 20, 2007. A Notice of Abandonment was mailed on April 13, 2007.

DISCUSSION OF PETITION UNDER 37 CFR 1.181(a)

Petitioner states in the petition of April 19, 2007 that she did not receive the Notice of December 19, 2006 until April 3, 2007, which is after the period set for payment of the issue and publication fees. Therefore, because the Notice was not received at her correspondence address in a timely manner, petitioner requests that the holding of abandonment be withdrawn.

Petitioner's attention is directed to MPEP 710.06(I), which states:

> The Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:
>
> (A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;
>
> (B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and
>
> (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

The petition does not meet requirement (C). Therefore, the holding of abandonment will not be withdrawn.

DISCUSSION OF PETITION UNDER 37 CFR 1.137(b)

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date

for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C). The instant petition lacks item (3).

The statement of unintentional delay is not acceptable at this time. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
>
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
>
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
>
> (3) An assignee as provided for under §3.71(b) of this chapter; or
>
> (4) **All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.**

An unsigned amendment (or other paper, such as the petition in this case) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Nancy Lydia Kimmel) was ever given a power of attorney to act on behalf of inventor Daw Alwerfalli, or that she is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

Likewise, the Part B - Fee(s) Transmittal submitting the issue and publications fees received on April 4, 2007 is not signed. This form must be signed by both applicants.

In view of the above, the petition to revive cannot be granted at this time.

DISCUSSION OF PETITION UNDER 37 CFR 1.182

Petitioner requests that her name be changed to her maiden name of Nancy Lydia Kimmel. In support of the name change, petitioner has submitted a copy of the Judgment of Divorce effecting this change. A request to change an applicant's name is more appropriately a petition under 37 CFR 1.182 and has been so treated.

Office records have been corrected to reflect applicant's change of name. A Corrected Filing Receipt accompanies this decision on petition.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/431,658	08/11/2003	1755	675		1	1

CONFIRMATION NO. 5923

CORRECTED FILING RECEIPT

OC000000025594408

35821
NANCY LYDIA TAJI
6184 N. NORBORNE CT
DEARBURN HEIGHTS, MI 48127

Date Mailed: 08/29/2007

Receipt is acknowledged of this nonprovisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Nancy Lydia Kimmel, Dearborn Hyts., MI;
Daw Rahil Alwerfalli, Dearborn, MI;

Power of Attorney: None

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 09/09/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/431,658

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

ACTIVATED CARBON MESH FIBER MATRIX EMBEDDED WITH LITHIUM HYDROXIDE AND ZEOLITE CRYSTALS

Preliminary Class

502

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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www.uspto.gov

NANCY LYDIA KIMMEL
6184 N. NORBORNE CT
DEARBURN HEIGHTS MI 48127

COPY MAILED

SEP 11 2007

OFFICE OF PETITIONS

In re Application of	:	
Nancy Lydia Kimmel	:	SUBSTITUTE
Application No. 10/431,658	:	DECISION ON PETITIONS
Filed: August 11, 2003	:	
For: ACTIVATED CARBON MESH	:	
FIBER MATRIX EMBEDDED WITH	:	
LITHIUM HYDROXIDE AND ZEOLITE	:	
CRYSTALS	:	

This is a **substitute** decision on the petitions under (1) 37 CFR 1.181(a), filed April 19, 2007, requesting withdrawal of the holding of abandonment; (2) under 37 CFR 1.137(b), filed May 17, 2007, to revive the above-identified application; (3) under 37 CFR 1.182 to change applicant's name; and (4) under 37 CFR 1.48(a) to correct the inventorship in this application. The prior decision addressed the petitions under 37 CFR §§ 1.181(a), 1.137(b) and 1.182; however, the decision failed to address the merits of the request under 37 CFR 1.48(a). This decision now addresses the request under 37 CFR 1.48(a).

The petition under 37 CFR 1.181(a) is **DISMISSED.**

The petition under 37 CFR 1.137(b) is **GRANTED** in view of the granting of the petition under 37 CFR 1.48(a).

The petition under 37 CFR 1.182 is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before March 19, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed December 19, 2006. Accordingly, the date of abandonment of this application is March 20, 2007. A Notice of Abandonment was mailed on April 13, 2007.

DISCUSSION OF PETITION UNDER 37 CFR 1.181(a)

Petitioner states in the petition of April 19, 2007 that she did not receive the Notice of December 19, 2006 until April 3, 2007, which is after the period set for payment of the issue and publication fees. Therefore, because the Notice was not received at her correspondence address in a timely manner, petitioner requests that the holding of abandonment be withdrawn.

Petitioner's attention is directed to MPEP 710.06(I), which states:

> The Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:
>
> (A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;
>
> (B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and
>
> (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

The petition does not meet requirement (C). Therefore, the holding of abandonment will not be withdrawn.

DISCUSSION OF PETITION UNDER 37 CFR 1.48(a)

The request under 37 CFR 1.48(a) seeks to delete Daw Alwerfalli as an inventor.

A request under 37 CFR 1.48(a) must be accompanied by:

1. a request to correct the inventorship that sets forth the desired inventorship change;
2. a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
3. an oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1,43 or § 1.47;
4. the processing fee set forth in § 1.17(i); and
5. if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

The request is accompanied by a statement signed by Daw Alwerfalli stating that he was named in error without deceptive intent, a Declaration executed by the actual inventor (Nancy Lydia Kimmel), and the $130 processing fee. As there is no assignee in this application, the written consent of the assignee is not required.

The request complies with the requirements of 37 CFR 1.48(a). Accordingly, the request is granted and Daw Alwerfalli has been deleted as a joint inventor in this application.

A Corrected Filing Receipt accompanies this decision on petition.

DISCUSSION OF PETITION UNDER 37 CFR 1.137(b)

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 and the publication fee of $300, (2) the petition fee of $750, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

DISCUSSION OF PETITION UNDER 37 CFR 1.182

Petitioner requests that her name be changed to her maiden name of Nancy Lydia Kimmel. In support of the name change, petitioner has submitted a copy of the Judgment of Divorce effecting this change. A request to change an applicant's name is more appropriately a petition under 37 CFR 1.182 and has been so treated.

Office records have been corrected to reflect applicant's change of name.

Telephone inquiries concerning this decision should be directed to Frances Hicks at (571) 272-3218.

This application is being referred to Publishing Division for further processing in accordance with this decision accepting the delayed payment of the issue and publication fees.

Brian Hearn
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/431,658	08/11/2003	1755	675		1	1

CONFIRMATION NO. 5923

CORRECTED FILING RECEIPT

OC000000025756545

35821
NANCY LYDIA TAJI
6184 N. NORBORNE CT
DEARBURN HEIGHTS, MI 48127

Date Mailed: 09/11/2007

Receipt is acknowledged of this nonprovisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Nancy Lydia Kimmel, Dearborn Hyts., MI;

Power of Attorney: None

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 09/09/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/431,658

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

ACTIVATED CARBON MESH FIBER MATRIX EMBEDDED WITH LITHIUM HYDROXIDE AND ZEOLITE CRYSTALS

Preliminary Class

502

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Title 37, Code of Federal Regulations, 5.11 & 5.15

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Paper No. None

BENJAMIN ARTHUR FORTNER
47th STREET
12523 EAST
YUMA AZ 85367

COPY MAILED
SEP 07 2005
OFFICE OF PETITIONS

In re Application of
BENJAMIN ARTHUR FORTNER
Application No. 10/431,662
Filed: May 9, 2003
Title: MULTI-CONFIGURABLE SEGMENTED LADDER

DECSION ON PETITION

This is a decision on the petition filed June 13, 2005, pursuant to 37 C.F.R. §1.137(a)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action, mailed October 20, 2004, which set a shortened statutory period for reply of three (3) months. An after-final amendment was received on January 25, 2005, and an advisory action was mailed on March 1, 2005. A second after-final amendment was filed on April 25, 2005, and an advisory action was sent on May 10, 2005. No further responses were received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. A Notice of Abandonment was mailed on May 25, 2005.

With the present petition, Petitioner has submitted a statement of facts, the petition fee, a Request for Continued Examination, and the associated fee. Petitioner has further submitted a three-month extension of time. An extension of time under 37 C.F.R. §1.136 must be filed prior to the expiration of the maximum extendable period for reply[2]. Accordingly, since the $ 510

1 A grantable petition pursuant to 37 CFR §1.137(a) must be accompanied by:
(1) the required reply (in a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof);
(2) the petition fee;
(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, and;
(4) a terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

2 See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

extension of time submitted with the petition on June 13, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary, and will be refunded via the mailing of a treasury check in due course.

Petitioner has met requirements (1) and (2) above. Requirement (4) does not apply.

Regarding the third requirement above, the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR §1.137(a).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard

35 USC §133 states, "Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable." (emphasis added)

"In the specialized field of patent law, ... the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. His interpretation of those provisions is entitled to considerable deference."[3]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account[4]."

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[5]

Nonawareness of a PTO rule will not constitute unavoidable delay[6]

---

3 Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA)1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir. 1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1425, 7 U.S.P.Q.2d (BNA) 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."

4 Id.

5 See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

6 See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not

The burden of showing the cause of the delay is on the person seeking to revive the application[7].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[8].

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present[9].

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account[10]."

A petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable[11]."

The Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and the applicant is bound by the consequences of those actions or inactions[12]. Specifically, petitioner's delay caused by the mistakes of negligence of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133[13].

The actions of the attorney are imputed to the client, for when a petitioner voluntarily chooses an attorney to represent him, the petitioner cannot later avoid the repercussions

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constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

7 Id.

8 See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

9 In re Mattullath, 38 App. D.C. at (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

10 Smith v. Mossinghoff, 671 F.2d at 538; 213 USPQ at 982.

11 Haines, 673 F. Supp. at 314, 316-17; 5 USPQ2d at 1131-32.

12 Link v. Wabash, 370 U.S. 626, 633-634 (1962).

13 Haines, 673 F.Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32; 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. 103, 131 (Comm'r Pat. 1891).

of the actions or inactions of this selected representative, for clients are bound by the acts of their lawyers/agents, and constructively possess "notice of all facts, notice of which can be charged upon the attorney[14]."

Courts hesitate to punish a client for its lawyer's gross negligence, especially when the lawyer affirmatively misled the client," but "if the client freely chooses counsel, it should be bound to counsel's actions[15]."

The regulations and portion of the MPEP relevant to the abandonment of this application

37 C.F.R. § 1.31 Applicants may be represented by a registered attorney or agent.

An applicant for patent may file and prosecute his or her own case, or he or she may be represented by a registered attorney, registered agent, or other individual authorized to practice before the Patent and Trademark Office in patent cases. See §§ 10.6 and 10.9 of this subchapter. The Patent and Trademark Office cannot aid in the selection of a registered attorney or agent.

[50 FR 5171, Feb. 6,1985, effective Mar. 8, 1985]

37 C.F.R. §1.135 Abandonment for failure to reply within time period.

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

(c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

[Paras. (a), (b), and (c), 47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; para. (d) deleted, 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

Application of the standard to the current facts and circumstances

With the instant petition, Petitioner has set forth that the Applicant prepared the application himself. After his claims were rejected, Applicant retained patent counsel. Patent counsel prepared a response, and the claims were again rejected. During this time, Applicant was in the hospital, which made it difficult for him to consult with his attorney as to how to best respond to

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14 Link at 633-634.

15 Inryco, Inc. v. Metropolitan Engineering Co., Inc., 708 F.2d 1225, 1233 (7th Cir. 1983). See also, Wei v. State of Hawaii, 763 F.2d 370, 372 (9th Cir. 1985); LeBlanc v. I.N.S., 715 F.2d 685, 694 (1st Cir. 1983).

the rejection. Petitioner, presumably upon his dismissal from the hospital, discharged his attorney and prepared the response of April 25, 2005.

Petitioner should be aware that petitions filed under 37 C.F.R. §1.137(a) (where the cause of the abandonment is characterized as "unavoidable") have a very stringent standard associated with them, and carry a high bar of proof which must be submitted to show that the entire period of delay was truly unavoidable. As such, a delay caused by an applicant's inexperience with the patent system is not rendered "unavoidable."

Petitioner has set forth that the entire period of delay could not have been avoided, but he does not appear to give any reason why he believes this to be the case. Petitioner chose to prepare the application himself. Upon deciding that it might behoove him to seek professional assistance, he retained the services of a patent attorney. The claims filed by the attorney were rejected by the Examiner – but there is no guarantee that the retaining of counsel will result in the allowance of the claims which he submits on behalf of his client. Petitioner has indicated that a stay in the hospital prevented him from communicating with his attorney – but this stay did not prevent him from filing the April response.

In summary, it cannot be determined what about this delay Petitioner believes should be deemed by the undersigned to have been unavoidable.

Conclusion

For these reasons, the petition under 37 C.F.R. §1.137(a) must be **DISMISSED**.

Alternate venue

Petitioner may also wish to consider filing a petition under the unintentional standard, 37 CFR §1.137(b)[16]. Petitioner should be made aware that although the surcharge is significantly higher ($750 for a small entity), the standard associated with a petition filed under this section is far less stringent than the standard associated with a delay asserted to be "unavoidable". A form for this petition may be located at http://www.uspto.gov/web/forms/sb0064.pdf. However, should Petitioner wish to pursue this option, he must still address the issue of whether the entire period of delay was not intentional.

---

16 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.

Response

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.137(a) *(or 1.137(b), if applicable)*". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski.

Any renewed petition may be submitted by mail[17], hand-delivery[18], or facsimile[19]:

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

17 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

18 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

19 571-273-8300 - please note this is a central facsimile number. On July 15, 2005, the Central FAX Number changed to 571-273-8300. To give customers time to adjust to the new Central FAX Number, faxes sent to the old number (703-872-9306) will be routed to the new number until September 15, 2005.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
www. uspto. gov

BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO, CA 94303

COPY MAILED
JUN 28 2006
OFFICE OF PETITIONS

In re Application of :
Tianmei Ouyang et al :
Application No. 10/431,668 : ON PETITION
Filed: May 8, 2003 :
Attorney Docket No. LIFE-041CON

This is a decision on the petition filed, June 22, 2006 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 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]

The power of attorney submitted June 22, 2006 is not accepted. It is noted that the Statement under 37 CFR 3.73(b) was not received. Therefore, in order for the power of attorney to be acceptable, compliance with 37 CFR 3.73(b) must be satisfied. A form for complying with the provisions of 37 CFR 3.73(b) may by found on the USPTO.gov website (Form No. PTO/SB/96).

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

---

[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).

This matter is being referred to Technology Center AU 1655 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

cc: Kagan Binder, PLLC
Suite 200, Maple Island Building
221 Main Street North
Stillwater, MN 55082

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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HAYNES AND BOONE, LLP
IP SECTION
2323 VICTORY AVENUE
SUITE 700
DALLAS, TX 75219

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OCT 3 1 2008

OFFICE OF PETITIONS

In re Patent No. 7,399,306	:	
Issue Date: July 15, 2008	:	
Application No. 10/431,681	:	NOTICE
Filed: May 8, 2003	:	
Attorney Docket No. 41914.482	:	

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

A. Burgess Lowe
101 East Maple Street
North Canton OH 44720

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JAN 19 2007

OFFICE OF PETITIONS

In re Application of
Aaron P. Tondra et al.

Application No. 10/431,707
Filed: May 8, 2003
Attorney Docket No. 2641

DECISION GRANTING PETITION
UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 11, 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* January 3, 2007 *cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. Shannon V. McCue appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. If Mr. Shannon V. McCue desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

Telephone inquiries should be directed to Terri Williams at (571) 272-2991.

This application is being referred to Technology Center AU 1744 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

cc: **Shannon V. McCue**
Renner, Kenner, Greive, Bobak, Taylor & Weber
First National Tower, 4th Floor
Akron, OH 44308

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

IBM CORPORATION
IPLAW SHCB/40-3
1701 NORTH STREET
ENDICOTT, NY 13760

Mail Date: 04/20/2010

Applicant	: Jeremy A. Chiappetta	: DECISION ON REQUEST FOR
Patent Number	: 7617141	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/431,724	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/08/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1424** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

K&L Gates LLP
P.O. Box 1135
CHICAGO, IL 60690

Mail Date: 04/20/2010

Applicant	: Bryan D. Wolf	: DECISION ON REQUEST FOR
Patent Number	: 7628703	: RECALCULATION of PATENT
Issue Date	: 12/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/431,755	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/08/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1176** 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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Patent No. : 7,144,830 B2
Ser. No. : 10/431,763
Inventor(s) : Ian Gregory Hill, et. al.
Issued : December 5, 2006
Title : PLURAL LAYER WOVEN ELECTRONIC TEXTILE, ARTICLE AND METHOD
Docket No. : SARA14576A

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(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 102

Patent Docket Administrator
Lowenstein Sandler P.C.
65 Livingston Avenue
Roseland NJ 07068

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PATENT DOCKET ADMINISTRATOR
LOWENSTEIN SANDLER P.C.
65 LIVINGSTON AVENUE
ROSELAND NJ 07068

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JAN 16 2008

OFFICE OF PETITIONS

In re Patent No. 7,144,830 :

Issue Date: December 5, 2006 :

Application No. 10/431,763 : ON PETITION

Filed: May 8, 2003 :

Attorney Docket No. SARI4576A

This is a decision on the petition filed July 27, 2007, which is being treated as a request under 37 CFR 3.81(b)[1] to add the second 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 matter may be directed to the undersigned at (571) 272-3222. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

The file is being forwarded to the Certificate of Correction Branch for issuance of the requested Certificate of Correction.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

[1] See *Official Gazette* of June 22, 2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 4

Donald O. Nickey
Cardinal Health, Inc.
7000 Cardinal Place
Dublin OH 43017

COPY MAILED

JUL 2 5 2003

OFFICE OF PETITIONS

In re Application of
Bergey, Detwiler, Hussey, Koptis,
Lipoveskaya & Mohiuddin
Application No.: 10/431,769
Filed: May 8, 2003
Attorney Docket No.: RPS6116-US
For: HAND HELD DISPENSING AND
APPLICATION APPARATUS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed May 8, 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 May 8, 2003 with a declaration executed by 5 of 6 inventors and a Rule 47 petition with the required $130 fee. The petition states that non-signing joint inventor Kurt Koptis has been contacted, but has not responded to requests for his review of the specification and signature on the declaration.

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).

This petition lacks item (1) above.

As to item (1), Applicants have failed to establish that the inventor has refused to sign the declaration. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. 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).

Mr. Koptis must have the complete application in his possession in order to make an informed decision as to whether he joins in its filing. When petitioners can show that Mr. Koptis was

mailed and received the complete application and that he either refused to sign the declaration or would not respond to the request that he sign the declaration, petitioners will have satisfied this requirement.

Any written refusal to sign the declaration should be included as documentary evidence in any reconsideration petition. If there is an oral refusal, the facts surrounding the refusal should be included in a declaration by a party with first hand knowledge of the refusal. If it is concluded by the 37 CFR 1.47 applicant that a non-signing inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an 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
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

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

Donald O. Nickey
Cardinal Health, Inc.
7000 Cardinal Place
Dublin OH 43017

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OCT 09 2003

OFFICE OF PETITIONS

In re Application of
Bergey, Detwiler, Hussey, Koptis,
Lipoveskaya & Mohiuddin
Application No.: 10/431,769
Filed: May 8, 2003
Attorney Docket No.: RPS6116-US
For: HAND HELD DISPENSING AND
APPLICATION APPARATUS

DECISION NOTING JOINDER
OF INVENTOR & PETITION
UNDER 37 CFR 1.47(A)
DISMISSED AS MOOT

Papers filed on September 16, 2003 in reply to "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on July 25, 2003, included a Declaration signed by the previously nonsigning inventor, Kurtis Koptis, in compliance with 37 CFR 1.63.

In view of the joinder of the inventor, 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 will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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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Docket Clerk
P.O.Drawer 800889
Dallas TX 75380

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AUG 17 2009

OFFICE OF PETITIONS

In re Patent No. 7,558,268	:	
Wybenga et al.	:	
Issue Date: 07/07/2009	:	
Application No. 10/431770	:	ON REQUEST FOR
Filing or 371(c) Date: 05/08/2003	:	RECONSIDERATION OF
Attorney Docket No.	:	PATENT TERM ADJUSTMENT
SAMS01-00255	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 CFR 1.705(b)," filed June 3, 2009. Applicants submits that the correct patent term adjustment to be indicated on the patent is 1104 days, not 864 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request correction on the basis that the Office will take in excess of three years to issue this patent.

The request for reconsideration patent term adjustment is **DISMISSED**.

Notice of Allowance was mailed April 16, 2009. The instant application for patent term adjustment under 37 CFR 1.705(b) was timely filed June 3, 2009. However, prior to the rendering of a decision on the application for patent term adjustment under 37 CFR 1.705(b), the above-identified application matured into U.S. Patent No. 7,558,268 on July 7, 2009 with a patent term adjustment of 1110 days.

The request for recalculation of the patent term adjustment was based on the projected issuance date of October 27, 2009. Applicants postulate that if the application issues on October 27, 2009, this would be 1268 days after three (3) years from the filing date of the application. Because 992 days are accounted for (910 days of adjustment under 37 CFR 1.702(a)(1)), reduced by 82 days of applicant delay under 37 CFR 1.704(b), applicants argue for an additional adjustment of 276 days (1268 days – 992) days).

Applicants do not dispute the adjustment of 910 days and the reductions of 46 days accorded at the time of allowance.

Applicants assert that the adjustment should be reduced an additional 36 days for filing a Corrected Appeal Brief on June 17, 2008, 36 days after filing an Appeal Brief on May 12, 2008. The filing of an amended appeal brief is not a reply under 37 CFR 1.704(c)(7), nor is it a supplemental reply under 37 CFR 1.704(c)(8). Accordingly, reduction pursuant to 37 CFR 1.704 is not warranted.

Given the initial 910 days of Office delay and the 46 days of applicant delay and the time allowed within the time frames for processing and examination, the application issued three years and 1156 days after its filing date. Accordingly, at issuance, the Office properly entered 246 additional days of patent term adjustment for the Office taking in excess of three years to issue the patent, and the patent issued with a patent term adjustment of 1110 days.

In view thereof, at the time of issuance, the patent was properly accorded an overall adjustment of 1110 days (adjustments totalling 1156 days less reductions totalling 46 days). Accordingly, no adjustment to the patent term will be made.

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 Attorney Derek Woods, at (571) 272-3232.

Alesia Brown
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov
DW 09-03

Paper No. 4

IANDIORIO & TESKA
260 BEAR HILL ROAD
WALTHAM MA 02451-1018

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SEP 1 6 2003

OFFICE OF PETITIONS

In re Application of	:	
Tenenbaum et al.	:	
Application No. 10/431,778	:	ON PETITION
Filed: 7 May, 2003	:	
Atty's Dkt No. MERLIN-02J	:	

This is a decision on the petition styled under 37 CFR 1.181, filed on 27 August, 2003, requesting that the above-identified application be accorded a filing date of 7 May, 2003, with Figure 6 described in the specification as a part of the original disclosure.

The petition is granted.

The application was filed on 7 May, 2003. However, on 4 August, 2003, Initial Patent Examination Division mailed a "Notice" stating, *inter alia*, that the application had been accorded a filing date but that Figure 6 described in the specification appeared to have been omitted.

In response, on 27 August, 2003, petitioners filed a copy of 10 sheets of drawings, including one (1) sheet of drawings containing Figure 6, and the present petition. Petitioners argue that the one (1) sheet of drawings containing Figure 6 was filed with the other application papers on 7 May, 2003, but was subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt bears a USPTO Office stamp dated "05/07/03", and showing the above-identified application number, and identifies the application by first named inventor's name, invention title, and docket number, and itemizes the filing of, *inter alia*, "10 pgs. drawings;". Petitioners request that the application, including one sheet of drawings containing Figure 6 as described in the specification, be accorded a filing date of 7 May, 2003.

A review of the record reveals that one (1) sheet of drawings containing Figure 6 of the specification is not located among the application papers received in the official file on 7 May, 2003. However, the evidence is convincing that the application papers deposited on 7 May, 2003, included one (1) sheet of drawings containing Figure 6 and that sheet of drawings was subsequently misplaced in the Office. Therefore, the application, including drawing Figure 6, is entitled to a filing date of 7 May, 2003.

The "Notice" mailed on 4 August, 2003, is vacated to the extent that it stated that Figure 6 described in the specification appeared to have been omitted.

In view of the above, the petition is granted. The petition fee of $130.00 will be refunded to counsel's deposit account, No. 09-0002.

The application will be processed using the application papers filed on 7 May, 2003, and the copy of one (1) sheet of drawings containing Figure 6 described in the specification, supplied on 27 August, 2003. The copies of the other sheets of drawings supplied with the present petition will not be used for processing or examination, but will be retained in the official file.

The period for submitting replacement drawings set forth in the Notice mailed on 4 August, 2003, continues to run. Failure to timely submit replacement drawings will result in abandonment of the application. Extensions of time are available in accordance with 37 CFR 1.136(a).

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 7 May, 2003, using the application papers filed on that date, and the copy of one (1) sheet of drawings containing Figure 6 supplied with the present petition, and for an indication in Office records that 10 sheets of drawings were present on filing.

Telephone inquires 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

Paper No. 082504

DAVID L. FEHRMAN
MORRISON & FOERSTER LLP
555 W. 5TH STREET, 35TH FLOOR
LOS ANGELES, CA 90013

OCT 1 2004

In re Application of:	:	
SHINICHI HAMAGUCHI	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Serial No.: 10/431,782	:	
Filed: May 08, 2003	:	
Attorney Docket No.: **51480-20024.00**	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed December 30, 2003.

The request is **DISMISSED** as moot.

A review of the application file record reveals a proper revocation and power of attorney to the attorneys of Muramatsu & Associates was filed on April 12, 2004. As such, the power of attorney for the attorneys and agents requesting withdrawal has already been revoked. Accordingly, the present request is moot, and must be dismissed.

All future communications form the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Inquiries related to this decision should be directed to Edward Westin at (571) 272-1594.

Edward Westin

Edward Westin, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: MURAMATSU & ASSOCIATES
7700 IRVINE CENTER DRIVE, SUITE 225
IRVINE, CA 92618

OIPE JC80
JAN 2 4 2005
PATENT & TRADEMARK OFFICE

FW

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	CIP of 10/431,783	Confirmation No.: Not yet assigned
Applicant(s)	:	Nicholas Gerald GREY, et al.	
Filed	:	January 24, 2005	
TC/A.U.	:	Not yet assigned	
Examiner	:	Not yet assigned	
Title	:	SURFACE CLEANING APPARATUS	
Docket No.	:	ERPC.117532	

01/28/2005 FFANAEIA 00000028 192112 10431783
01 FC:1464 130.00 DA

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-145

PETITION GRANTED

William Krynski
Special Program Examiner
TC 1700
2-10-05

PETITION TO MAKE SPECIAL UNDER 37 CFR § 1.102(d)
ON THE BASIS OF ACTUAL INFRINGEMENT

Dear Sir:

Applicant requests that this application be examined on an expedited basis by way of grant of this Petition. This Petition is being filed with the application, which is a continuation-in-part of Serial No. 10/431,783. This application also claims priority from Application Serial No. 60/564,296. Also enclosed with this petition are an Application Data Sheet, an IDS, and the petition fee set forth in 37 CFR § 1.17(h).

This request is based on actual infringement. Further to that regard, the undersigned states as follows:

1. It is believed that there is an infringing device or product actually on the market or method in use. The actually infringing device was purchased on behalf of Applicant, and a copy of the instruction booklet from the actually infringing device is attached to this Petition. A print out of a web page showing the actually infringing device is also included.

2. A rigid comparison of the device believed to be infringing the claims of this application has been made against the claims, and in the opinion of the undersigned, some of the claims of this application are unquestionably infringed.

Void date: 01/28/2005 FFANAEIA
01/28/2005 FFANAEIA 00000027 192112 11040064
06 FC:1464 130.00 CR

119750v1

01/28/2005 FFANAEIA 00000027 192112 11040064
06 FC:1464 130.00 DA

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THE LAW OFFICE OF ROBERT R. WARD, JR., ESQ.
8170 SW 93RD AVE
MIAMI, FL 33173

MAILED

JUN 14 2010

OFFICE OF PETITIONS

In re Patent No. 7,017,495	:	
Issue Date: March 28, 2006	:	
Application No. 10/431,786	:	ON PETITION
Filed: May 6, 2003	:	
Patentee(s) Richard Sexton	:	

This is a decision on the petition under 37 CFR 1.378(c), filed April 23, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Richard Frank Sexton
3331 S.W. 104 Ct.
Miami, FL 33165

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Paper No. 7

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OFFICE OF PETITIONS

GRAY, CARY, WARE & FREIDENRICH LLP
1221 SOUTH MOPAC EXPRESSWAY
SUITE 400
AUSTIN TX 78746-6875

In re Application of
Lakshman S. Tamil, Glen Collier,
Mitch Entezari, Allesandro Fabbri,
Hari Gopalakrishan, Justin Hunt,
Quan Jiang, Bing Li, Lee McFearin,
Joseph McQuade, Earl Ponceti, Scott
A. Rothrock, Frederick A. Rush,
Alexander A. Smith, and David Wolf
Application No. 10/431,795
Filed: May 8, 2003
Attorney Docket No. YOTTA1330-1
Title: CONTAINER BASED
CROSSCONNECT

DECISION ON PETITION
UNDER 37 C.F.R. §1.47(b)

This is in response to the petition under 37 C.F.R. §1.47(a)[1], filed October 1, 2003.

The above-identified application was filed on May 8, 2003, without an executed oath or declaration and identifying Lakshman S. Tamil, Glen Collier, Mitch Entezari, Allesandro Fabbri, Hari Gopalakrishan, Justin Hunt, Quan Jiang, Bing Li, Lee McFearin, Joseph McQuade, Earl Ponceti, Scott A. Rothrock, Frederick A. Rush,

[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.

Alexander A. Smith, and David Wolf as the joint inventors. On October 4, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" (Notice), requiring an executed oath or declaration in compliance with 37 CFR §1.63 and a surcharge for the late filing of the oath or declaration. This Notice set a two-month period for reply.

In reply, applicant filed the petition, along with the associated fee, a one-month extension of time to make timely this reply, a statement as to the last known address for each of the non-signing joint inventors, and a declaration which has been executed each of the joint inventors save inventors Fabbri, McQuade, and Rush.

Petitioner has asserted that the non-signing inventors cannot be found. Petitioner sent a complete copy of the application to each of the non-signing inventors, and the packages were returned as undeliverable. Petitioner then attempted to reach inventor Fabbri by telephone, but the line was busy each time he tried to call. Regarding inventor McQuade, directory assistance did not provide a telephone number. As for inventor Rush, directory assistance provided a number for the wrong Frederick Rush.

Rule 47 applicant has met requirements (1) - (3) above.

Regarding the fourth requirement above, Petitioner has not submitted adequate proof that diligent efforts have been made to locate the non-signing inventors. *As petitioner has set forth that the non-signing joint inventor cannot be reached, petitioner is required to establish that a diligent effort was made to locate the non-signing inventor.* There is no indication that Rule 47 applicant attempted to verify the addresses for the non-signing inventors.

Regarding the first of the three non-signing joint inventors, no search was completed. As for the later two, the search which was conducted by the petitioner was too narrowly tailored. Directory assistance requires a city name. Since petitioner has indicated that Yotta, the former employer of the inventors, has gone under, it is plausible that each of the joint inventors has relocated to another city, or possibly even another state to find employment. As such, the search was too narrow to constitute a diligent search.

If attempts to obtain a forwarding address or to locate the non-signing inventor by other means such as through E-mail, telephone, or the Internet fail, then applicant will have provided the necessary proof required under 37 C.F.R. §1.47 that the inventor cannot be reached. Details of the efforts to locate the non-signing inventor should be set forth in an affidavit or declaration of facts by a person with first hand knowledge of the details.

Applicant should submit documentary evidence such as the results of an E-mail or Internet search. It is important that the statement contain facts as opposed to conclusions[2].

Regarding the fifth requirement above, petitioner has not submitted a declaration which complies with 37 CFR §1.63. The declaration submitted with the instant petition contains non-initialed

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2 See MPEP 409.03(d).

and non-dated changes by inventors Gopalakrishan, Quan, and Smith, and non-dated changes by inventors Bing, Ponceti, and Rothrock[3].

For this reason, 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 "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 inventors coupled with a declaration which corrects the deficiencies above. **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 reply to this letter may be submitted by mail[4], hand-delivery[5], or facsimile[6]. **Please note that the later two have changed, as of December 1, 2003.**

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

3 MPEP 605.04(a).
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
6 (703) 872-9306.

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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No. 7

GRAY, CARY, WARE & FREIDENRICH LLP
1221 SOUTH MOPAC EXPRESSWAY
SUITE 400
AUSTIN TX 78746-6875

COPY MAILED

MAR 0 1 2004

OFFICE OF PETITIONS

In re Application of
Lakshman S. Tamil, Glen Collier, Mitch Entezari, Allesandro Fabbri, Hari Gopalakrishan, Justin Hunt, Quan Jiang, Bing Li, Lee McFearin, Joseph McQuade, Earl Ponceti, Scott A. Rothrock, Frederick A. Rush, Alexander A. Smith, and David Wolf
Application No. 10/431,795
Filed: May 8, 2003
Attorney Docket No. YOTTA1330-1
Title: CONTAINER BASED CROSSCONNECT

DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.47(b)

This is in response to the renewed petition under 37 C.F.R. §1.47(a)[1], filed February 6, 2004.

The above-identified application was filed on May 8, 2003, without an executed oath or declaration and identifying Lakshman S. Tamil, Glen Collier, Mitch Entezari, Allesandro Fabbri, Hari Gopalakrishan, Justin Hunt, Quan Jiang, Bing Li, Lee McFearin, Joseph McQuade, Earl Ponceti, Scott A. Rothrock, Frederick A. Rush, Alexander A. Smith, and David Wolf as the joint inventors. On October 4, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" (Notice), requiring an executed oath or

[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.

declaration in compliance with 37 CFR §1.63 and a surcharge for the late filing of the oath or declaration. This Notice set a two-month period for reply.

The original petition, filed October 1, 2003, was filed with a declaration which has been executed each of the joint inventors save inventors Fabbri, McQuade, and Rush. This was dismissed via the mailing of a decision on December 4, 2003, for failure to establish that a diligent search was performed for these non-signing inventors. It was also set forth that the declaration was not acceptable, as it contained non-initialed and non-dated changes by inventors Gopalakrishan, Quan, and Smith, and non-dated changes by inventors Bing, Ponceti, and Rothrock[2].

With the renewed petition, petitioner has included a declaration which has been executed by the latter two previsouly non-signing inventors. Petitioner has also corrected each of the errors to the declaration, with the exception of the non-dated change by inventor Ponceti.

Petitioner has asserted that "MPEP 605.04(a) and 37 CFR 1.52(c)(1) indicate that interlineations SHOULD be initialed and dated, rather than MUST be initialed and dated (emphasis included)." Petitioner might wish to consider reviewing both MPEP 605.04(a) and 37 CFR 1.52(c)(1). In the former, the sentence immediately following the sentence which uses the word "should" sets forth "the Office will not consider whether noninitialed and/or nondated alterations were made before or after signing of the oath or declaration but **will** require a new oath or declaration (emphasis added).

Petitioner's submissions have been considered. The documents Petitioner has submitted has established that a diligent search was conducted for non-signing inventor Fabbri[3]. As for the declaration, the newly submitted declaration will be accepted, and inventor Ponceti will be considered a non-signing inventor[4].

As such, the above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). <u>This application is hereby accorded Rule 1.47(a) status</u>.

As provided in Rule 1.47(a), this Office will forward notice of this application's filing to the non-signing inventors at the addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the application will be forwarded to Technology Center 2600 for further processing.

Telephone inquiries concerning *this decision* should be directed to the undersigned at (703) 305-0011.

Paul Shanoski
Attorney
Office of Petitions
United States Patent and Trademark Office

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2 MPEP 605.04(a).

3 For inventor Fabbri, the addresses obtained from the search results differ from that which is listed on the declaration. It is presumed that the address on the declaration is the last known address.

4 It is presumed that the address to which the declaration was sent was the last-known address for inventor Ponceti, which is the address which appears on the declaration.

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OFFICE OF PETITIONS

BARNES & THORNBURG LLP (IT)
11 SOUTH MERIDIAN STREET
INDIANAPOLIS IN 46204

In re Application :
Carl T. Wittwer et al. :
Application No. 10/431,804 : DECISION ON APPLICATION
Filed: May 8, 2003 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. **43387-72748** :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705 filed June 8, 2010. Applicant requests that the determination of patent term adjustment be corrected to 920 days, in part on the basis that the Office will take in excess of three years to issue this patent. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Kappos, No. 2009-1120 (Jan. 7, 2010).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the patent term adjustment relating to those provisions until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

To the extent that applicant otherwise requests correction of the patent term adjustment at the time of the mailing of the Notice of Allowance, the application for patent term adjustment is GRANTED.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is four hundred twenty-four **(424)** days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On March 10, 2010, 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 420 days. The instant application for patent term adjustment was timely filed [2] on or before payment of the issue fee.

With respect to the patent term adjustment at the time of the mailing of the notice of allowance, applicants acknowledge the period of adjustment of 682 days for Office delay and the periods of reduction of 63, 33, 59 and 91 days for applicant delay (in association with the responses filed February 12, 2007, September 17, 2007, April 4, 2008, June 16, 2009).

Applicants dispute the entry of a period of reduction of 16 days for applicant's response to the non-Final Office Action mailed February 27, 2006. Applicants argue that the response was filed June 8, 2006 and calculate Applicant delay at 12 days, but the Office incorrectly indicates the response was filed June 12, 2006 and incorrectly

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[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

[2] PALM records indicate that the issue fee was paid on June 8, 2010.

calculates 16 days of applicants' delay. Applicants assert that the correct number of days of delay is 258 in accordance with 35 USC 154(b)(2)(C)(ii) and 37 CFR 1.704(b). Four (4) days are at issue.

The reduction of 16 days has been found to be incorrect. A review of the application file reveals that, as stated by applicants, their response to the non-Final Office Action mailed February 27, 2006, is of record in the application with a date of receipt by the Office of June 12, 2006 with a certificate of mail date of June 8, 2006 and a one month extension of time. Thus, the Office should not have entered June 12, 2006 as the date the response was filed or assessed applicants a delay of sixteen (16) days.

Given the 682 days for PTO delay and the 258 days of Applicant delay, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is four hundred twenty-four (424) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Director
Office of Petitions

Day : Sunday
Date: 7/18/2010

PALM INTRANET

Time: 10:45:26

PTA Calculations for Application: 10/431804			
Application Filing Date:	05/08/2003	PTO Delay (PTO):	682
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	262
Post-Issue Petitions:	0	Total PTA (days):	424
PTO Delay Adjustment:	4		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
115	07/18/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	4		
90	03/10/2010	MAIL NOTICE OF ALLOWANCE			
89	03/03/2010	ISSUE REVISION COMPLETED			
88	03/03/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
87	03/03/2010	CASE DOCKETED TO EXAMINER IN GAU			
86	03/02/2010	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
85	03/02/2010	DOCUMENT VERIFICATION			
84	03/01/2010	NOTICE OF ALLOWABILITY			
83	02/22/2010	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
82	02/02/2010	DATE FORWARDED TO EXAMINER			
81	01/29/2010	AMENDMENT AFTER FINAL REJECTION			
80	10/30/2009	ELECTRONIC REVIEW			
79	10/30/2009	EMAIL NOTIFICATION			
78	10/30/2009	MAIL FINAL REJECTION (PTOL - 326)	14		73
77	10/26/2009	FINAL REJECTION			
76	03/03/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
75	06/16/2009	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
74	07/13/2009	DATE FORWARDED TO EXAMINER			
73	06/16/2009	RESPONSE AFTER NON-FINAL ACTION		91	68
72	06/16/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
71	03/03/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

70	12/17/2008	ELECTRONIC REVIEW			
69	12/17/2008	EMAIL NOTIFICATION			
68	12/17/2008	MAIL NON-FINAL REJECTION	135		65
67	12/08/2008	NON-FINAL REJECTION			
66	07/08/2008	DATE FORWARDED TO EXAMINER			
65	04/04/2008	RESPONSE AFTER NON-FINAL ACTION		59	60
64	04/04/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
62	01/29/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
61	01/24/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
60	11/05/2007	MAIL NON-FINAL REJECTION			
59	10/29/2007	NON-FINAL REJECTION			
58	09/17/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
57	09/17/2007	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
56	09/20/2007	DATE FORWARDED TO EXAMINER			
55	09/17/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
54	09/20/2007	DATE FORWARDED TO EXAMINER			
53	09/17/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		33	47
52	09/20/2007	DISPOSAL FOR A RCE / CPA / R129			
51	09/17/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
50	09/17/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	09/17/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
48	09/17/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
47	05/15/2007	MAIL FINAL REJECTION (PTOL - 326)			
46	05/14/2007	FINAL REJECTION			
45	04/20/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
44	04/11/2007	CORRESPONDENCE ADDRESS CHANGE			
43	02/23/2007	DATE FORWARDED TO EXAMINER			
42	02/12/2007	RESPONSE AFTER NON-FINAL ACTION		63	40
41	02/12/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			

40	09/11/2006	MAIL NON-FINAL REJECTION			
39	09/07/2006	NON-FINAL REJECTION			
38	06/14/2006	DATE FORWARDED TO EXAMINER			
37	06/12/2006	RESPONSE AFTER NON-FINAL ACTION		16	35
36	06/12/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
35	02/27/2006	MAIL NON-FINAL REJECTION			
34	02/21/2006	NON-FINAL REJECTION			
33	10/03/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
32	03/15/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	02/03/2006	DATE FORWARDED TO EXAMINER			
30	01/26/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
29	12/21/2005	MISCELLANEOUS INCOMING LETTER			
28	12/23/2005	MAIL RESTRICTION REQUIREMENT	533		-1
27	12/21/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
26	05/31/2005	CASE DOCKETED TO EXAMINER IN GAU			
25	03/22/2005	CORRESPONDENCE ADDRESS CHANGE			
24	03/22/2005	CORRESPONDENCE ADDRESS CHANGE			
23	01/14/2005	CASE DOCKETED TO EXAMINER IN GAU			
22	06/05/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
21	06/05/2004	REFERENCE CAPTURE ON IDS			
20	08/04/2003	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
19.7	10/03/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	10/03/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	06/05/2004	CASE DOCKETED TO EXAMINER IN GAU			
17.7	03/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	03/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	08/27/2003	APPLICATION DISPATCHED FROM OIPE			
15	08/28/2003	APPLICATION IS NOW COMPLETE			
14	07/31/2003	ADDITIONAL APPLICATION FILING FEES			
13	05/08/2003	CLAIM PRELIMINARY AMENDMENT			

12	07/31/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
11	07/31/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
10	08/18/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
9	07/25/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
7	05/08/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
6	06/04/2003	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
5	05/30/2003	CLEARED BY L&R (LARS)			
4	05/29/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	05/22/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/08/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	05/08/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6-29-2005

TO SPE OF : ART UNIT 2851

SUBJECT : Request for Certificate of Correction on Patent No.: 6,893,130

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

Certificates of Correction Branch

Tel. No. 703-308-9309 ext. 116

MAGDALENE TALLEY

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:

W Davis

SPE

2851

Art Unit

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ALFRED M. WALKER
225 OLD COUNTRY ROAD
MELVILLE NY 11747-2712

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FEB 0 1 2006

OFFICE OF PETITIONS

In re Application of	:	
Darling, Charles W. III	:	
Application No. 10/431,839	:	ON PETITION
Filed: May 7, 2003	:	
Attorney Docket No. VERSATILE CART-CON	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 17, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the Issue Fee Transmittal with payment of the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

This matter is being referred to the Publishing Division for processing into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions

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SEP 22 2004

PHARMACEUTICAL PATENT ATTORNEYS, LLC
55 MADISON AVENUE
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MORRISTOWN NJ 07960-7397

In re Application of	:
Ashok Kumar et al	:
Serial No.: 10/431,847	: PETITION TO MAKE SPECIAL
Filed: May 7, 2003	:
Attorney Docket No.: IPCA	:

This is in response to applicants' petition filed March 22, 2004, to make the above-identified application special under the provisions of 37 CFR 1.102(d).

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, VIII. 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

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BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

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JAN 21 2009

In re Patent No. 6,916,935 :
Issue Date: July 12, 2005 :
Application No. 10/431,847 : NOTICE
Filed: May 7, 2003 :
Attorney Docket No. 124907-00109

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

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SEP 18 2005

BOYLE FREDRICKSON NEWHOLM
STEIN & GRATZ, S.C.
250 E. WISCONSIN AVENUE
SUITE 1030
MILWAUKEE, WI 53202

In re application of John Heaven et al. Application No. 10/431,854 Filed: May 8, 2003 For: CONTENT DISTRIBUTION SYSTEM AND METHOD	:	**DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION)**

This is in response to the petition filed on September 12, 2005 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references in accordance with 37 CFR 1.111 (b) and (c).

The petition fails to adequately meet requirements (B) above. Regarding item (B), the petition fails to include an election without traverse, or a statement that applicant is willing to elect without traverse should a restriction or election be required.

For the above stated reasons, the petition is **DISMISSED**.

Petitioner is given one more opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

Applicant should promptly submit a renewed petition to the Commissioner of Patents and Trademarks, PO Box 1450, Alexandria, VA 22313-1450. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
571-272-6619

RAR/dew: 09/19/05

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NOV - 9 2005

BOYLE FREDRICKSON NEWHOLM
STEIN & GRATZ, S.C.
250 E. WISCONSIN AVENUE
SUITE 1030
MILWAUKEE, WI 53202

In re application of John Heaven et al. Application No. 10/431,854 Filed: May 8, 2003 For: CONTENT DISTRIBUTION SYSTEM AND METHOD	: : : : : : :	**DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION)**

This is in response to the renewed petition filed on October 27, 2005 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(i); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references in accordance with 37 CFR 1.111 (b) and (c).

Since all of the requirements for special status under MPEP § 708.02 VIII have now been met, the petition is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes

a prompt ***bona fide*** effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED.**

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
571-272-6587

KJD/dew: 11/01/05

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Paper No. 4

TUNG & ASSOCIATES
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BLOOMFIELD HILLS, MI 48302

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NOV 21 2003

OFFICE OF PETITIONS

In re Application of
Chang
Application No. 10/431,860
Filed: May 8, 2003
Attorney Docket No. 67,200-1057

ON PETITION

This decision concerns the September 5, 2003 petition which, in essence, requests that the July 3, 2003 "Notice of Omitted Item(s) in a Nonprovisional Application" for the above-referenced application ("7/3/03 Notice") be withdrawn. The petition is being properly treated as a petition under 37 CFR 1.53.

The petition is **GRANTED.**

The application was deposited on May 8, 2003. The 7/3/03 Notice states that a filing date has been accorded this application, but several drawings (Figures 8-13) described in the specification appear to have been omitted from the filed application. The petition then followed, asserting that the allegedly omitted drawings were filed with the other application papers on May 8, 2003.

The Office has located the drawings in the application file. The petition is thus granted. The 7/3/03 Notice is hereby vacated.

The application is now complete.

No petition fee is owed. The $130 charge made to a credit card has been credited to the same credit card.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 8, 2003, using the papers filed on that date, and for indicating in the USPTO record that 6 sheets of drawings (Figures 1-13) were present on filing. Thereafter, the file will be forwarded to Technology Center 2600 for examination in due course.

Telephone inquiries should be directed to Petitions Attorney RC Tang at (703) 308-0763.

Christina T. Donnell

Christina T. Donnell
Senior Attorney
Office of Petitions

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Walter R. Evanyk
3200 Sherrye Dr
Plano TX 75074-4693

In re Application of
Evanyk, Shane Walter et al
Serial No.: 10/431,865
Filed: May 8, 2003
Docket: 0357
Title: ADVANCED PHYSIOLOGICAL MONITORING SYSTEMS AND METHODS

DECISION ON PETITION TO WITHDRAW FINALITY OF REJECTION UNDER 37 CFR 1.181

This is a decision on the petition filed on Oct. 18, 2007 by which petitioner requests withdrawal of the finality of the Office Action dated Aug. 23, 2007. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed.

A review of the relevant prosecution history shows that in response to the examiner's restriction requirement of Mar. 16, 2006, the applicant elected Species I on April 7, 2006 for examination. On Jun. 23, 2006, the examiner issued a non-final Office action rejecting all the elected claims 1-4, 8, 12, 24, 25, 31 and 35. In particular, the examiner rejected, inter alia, claims 1-3, 8, 12, 24, 25, 31 and 35 under 35 U.S.C. 102(e) as anticipated by Carter et al U.S. Pat. 6,659,947. The examiner also rejected, claims 1, 3-4 under 35 U.S.C. 102(e) as anticipated by Warkentin et al U.S. Pat. 6,471,645. In response to the non-final Office action of Jun. 23, 2006 and after filing a few corrected sets of amendments to the claims for compliance with 37 CFR § 1.121, on Dec. 8, 2006, the applicant filed an amendment to the claims with cancellation of previously rejected claims and the addition of new claims 43-56. On Feb. 7, 2007, the examiner gave another restriction requirement for those newly added claims 42-56. In response to the second restriction requirement, the applicant elected the Group I invention, claims 43, 44, 47 and 49-56. However, the amendment of Mar. 6, 2007 was found non-compliant. On Aug. 1, 2007, the applicant filed a compliant amendment. The examiner on Aug. 23, 2007, issued a final rejection. In particular, the examiner rejected newly added claims 43, 44, 47 and 49-56 under 45 USC 102(b) as anticipated by De Luca U.S. Pat. 6,238,388.

On Oct. 18, 2007, petitioner filed the current petition requesting withdrawal of the finality of the Office action of Aug. 23, 2007. The petitioner is of the opinion that the final Office Action is premature because the newly added claims 43, 44, 47 and 49-56 include limitations the

examiner should reasonably have expected to be claimed in accordance with MPEP 706.07(a), 3rd paragraph and the examiner used the new prior art reference, De Luca, U.S. Pat. 6,238,338 issued by Examiner Astorino, who is also the same examiner in the present application. Examiner Astorino knew about this prior art reference at the time the non-final Office action of June 23, 2006 was issued. Therefore, this seems to the applicants to be an improper exercise of authority by the examiner. It appears that applicants have not been given a "full and fair hearing" inasmuch as it is believed that applicants could amend the claims to overcome the De Luca reference. Petitioner further believes it was improper to issue a final rejection based on a newly cited reference in this application. It the past, no final rejection would be issued in a second office action when a new reference was cited.

Analysis of Application Record

Petitioner requests withdrawal of the finality of the Office action mailed Aug. 23, 2007. The issue in the current petition is whether the newly added and elected claims 43-44, 47 and 49-56 have changed the scope from the previously rejected and now cancelled claims 1-4, 8, 12, 24, 25, 31 and 35, which necessitated the new ground of rejection in the final Office action of Aug. 23, 2007. In order to determine any changes of the scope of claims, a comparison of at least the independent claims 1, 12, 24 and 35 and the newly added independent claims 43, 47, 49, 52, 53, 55 and 56 must be made.

The original claims 1, 12, 24 and 35 as filed on May 8, 2003 are reproduced below:

Claim 1 (original and canceled) A wireless *physiological~biological* parameter measuring system comprising: at least one transducer affixed to an animate body such as a patient/athlete for measuring at least one physiological/biological parameter of said body and generating signals representing said at least one physiological/biological parameter; an electronic unit coupled to each said transducer for receiving said physiological/biological parameter signals from said at least one transducer and wirelessly transmitting said parameter signals at a first frequency; at least one remote R/T unit for receiving said wirelessly transmitted parameter signals from said electronic units; and a display monitor unit coupled to said at least one remote R/T unit for visually displaying said parameter signals.

Claim 12 (original and canceled) A wireless physiological/biological parameter measuring system comprising: a plurality of transponders affixed to an animate body, each of said transponders including (1) a transducer for sensing at least one physiological/biological parameter of said body and generating an electronic signal representing said at least one sensed parameter and (2) an electronic unit for receiving said physiological/biological parameter signals and wirelessly transmitting said parameter signal at a first frequency; a signal associated with each wireless transmission to identify each said transponder; a receiver/transmitter unit located on said human body for receiving each wireless transmission from each of said transponders and retransmitting each of said received wireless transmissions to at least one remote signal receiver; and a display unit coupled to said at least one remote R/T signal unit for visually displaying said physiological/biological parameter signals.

Claim 24 (original and canceled) A method of measuring physiological/biological parameters of an animate body comprising the steps of: affixing at least one transducer to said animate body for generating a signal representing a physiological/biological parameter of said body; coupling an electronic unit to each said transducer for receiving said physiological/biological parameter signals from said at least one transducer and wirelessly transmitting said parameter signals at a first frequency; receiving said wirelessly transmitted parameter signals from said electronic unit with at least one remote RIT unit; and coupling a display unit to said R/T unit for visually displaying said parameter signals. visually displaying said physiological/biological parameter signals.

Claim 35 (original and canceled) A method of measuring physiological/biological parameters of an animate body comprising the steps of: affixing a plurality of transponders to an animate body such as a patient/athlete; including in each transponder (1) a transducer for sensing a physiological/biological parameter of said body and generating an electronic signal representing said sensed parameter and (2) an electronic unit for receiving said physiological/biological parameter signal and wirelessly transmitting said parameter signal at a first frequency; associating a signal with each wireless transmission to identify each said transponder; locating a receiver/transmitter unit on said animate body for receiving each wireless transmission from each of said transponders and retransmitting each of said received wireless transmissions to at least one remote RF signal receiver at a given RF frequency; and coupling a display unit to said remote RF signal receiver for visually displaying each of said physiological/biological parameter signals.

The newly added independent claims 42, 47, 49, 52, 53, 55 and 56 as filed on Aug. 1, 2007 are also reproduced below:

43. (new) An animate body physiological/biological parameter wireless monitoring system comprising: at least one non-implanted RF transponder adapted to be affixed to the animate body undergoing surgery for wirelessly transmitting in real time at least one animate body parameter measured during surgery to at least one remote RF signal receiver; the at least one RF transponder comprising: a transducer for measuring the at least one physiological/biological parameter of the animate body and generating electronic signals representing the at least one measured parameter; and an RF electronic unit for wirelessly transmitting RF data representing the generated electronic signals from the transducer directly to the least one remote RF signal receiver without the use of a hardwired system; and a display monitor unit for displaying the parameter signals received by the at least one remote RF signal receiver in real time at least during the surgery.

47. (new) An animate body physiological/biological parameter wireless monitoring system comprising: at least one non-implanted RF transponder affixed to the animate body for wirelessly transmitting in real time at least one measured animate body physiological/biological parameter directly to at least one remote RF signal receiver; the at least one transponder comprising: a transducer for measuring the at least one physiological/biological parameter of the animate body and generating electrical signals representing the at least one measured parameter; and an RF electronic unit for wirelessly transmitting RF data representing the at least one parameter signal from the transducer directly to the least one remote RF signal receiver without the use of a hard-wired system; and a display monitor for displaying said measured body parameter signals received by the at least one remote RF signal receiver in real time.

49. (new) An animate body physiological/biological parameter wireless monitoring system for transmitting in real time measured animate body parameters from the animate body directly to at least one remote RF signal receiver comprising: a plurality of non-implanted RF transponders adapted to be affixed to the animate body, each of the transponders wirelessly transmitting at a first frequency at least one measured animate body physiological/biological parameter each of the plurality of transponders comprising: a transducer for measuring the at least one physiological/biological parameter of the animate body and generating electronic signals representing the at least one measured parameter; and an RF electronic unit for wirelessly transmitting data representing the parameter signals in real time at the first frequency; and a non-implanted receiver/transmitter (R/T) adapted to be affixed to the animate body to receive measured animate body parameters at the first frequency from the plurality of RF transponders affixed to the animate body and to transmit the received measured animate body parameters directly to the at least one remote RF signal receiver at a given frequency in real time without the use of a hard-wired system; an identification code associated with each transponder that identifies the corresponding transponder and that is transmitted at the given frequency directly to the at least one remote RF signal receiver by the receiver/transmitter (R/T) along with the data representing the measured parameter signals; and a display monitor unit associated with the at least one remote RF signal receiver for displaying the identification of each transponder AND the received parameter signals in real time.

52. (new) A physiological/biological parameter wireless monitoring system comprising: at least one non-implanted transponder adapted to be affixed to an animate body, the at least one transponder comprising: (1) a transducer for sensing at least one physiological/biological parameter of the animate body and generating at least one electronic signal representing the at least one sensed parameter; and (2) an RF electronic unit for receiving the

physiological/biological parameter signal from the transducer and wirelessly transmitting the at least one electronic signal representing the at least one parameter signal at a first frequency; and identification signals associated with each wireless transmission from the RF electronic unit to identify the at least one transponder; an RF receiver/transmitter unit adapted to be affixed to the animate body for receiving the wireless transmission at the first frequency from the at least one affixed transponder, including both the transponder identification signal and the at least one parameter signal, and retransmitting each of said received wireless transmissions at a given frequency in real time to at least one remote RF signal receiver without the use of a hardwired system; and a display unit for visually displaying the at least one physiological/biological parameter signal and the associated identification signals received by the at least one remote RF signal receiver from the receiver/transmitter (R/T) unit without the use of a wireless system.

53. (new) A method of monitoring physiological/biological parameters of an animate body comprising the steps of: adapting at least one transducer to be affixed to the animate body for generating signals representing at least one physiological/biological parameter of the animate body; receiving the generated physiological/biological parameter signals from the at least one affixed transducer with a non-implanted RF receiver/transmitter (R/T) unit that wirelessly transmits the parameter signals in real time; receiving the wirelessly transmitted parameter signals from the RF receiver/transmitter unit affixed to the animate body with at least one remote RF receiver/transmitter (R/T) unit without the use of a hard-wired system; and receiving the parameter signals from the at least one remote receiver/transmitter (R/T) unit with a display unit for visually displaying the received parameter signals for monitoring.

55. (new) A method of wirelessly monitoring physiological/biological parameters of an animate body comprising the steps of: adapting a plurality of non-implanted RF transponders to be affixed to an animate body, each of the transponders: (1) sensing at least one physiological/biological parameter of the animate body with at least one transducer and generating at least one electronic signal representing the at least one sensed physiological/biological parameter; and (2) receiving the at least one generated physiological/biological parameter signals from the transducer with an electronic unit and wirelessly transmitting the at least one electronic signal representing the at least one sensed parameter in real time at a first frequency; associating an identification signal with each electronic unit wireless transmission to identify each transmitting transponder; adapting a R/'F receiver/transmitter unit to be affixed to the animate body for receiving each wireless transmission at the first frequency from each of the RF electronic units; and retransmitting each of the received wireless transmissions with the R/T receiver/transmitter unit at a given frequency DIRECTLY TO at least one R/T signal receiver remote from the animate body in real time without the use of a hardwired system; and visually displaying the physiological/biological parameter signal received in real time by the at least one R/T signal receiver remote from the body for monitoring.

56. (new) A wireless physiological/biological parameter monitoring system comprising: at least one transducer adapted to be affixed to an animate body for measuring at least one physiological/biological parameter of the animate body and generating electronic signals representing the at least one physiological/biological parameter; an RF electronic unit for receiving the physiological/biological parameter signals from the at least one transducer and wirelessly transmitting the parameter signals; at least one remote RF receiver for receiving the wirelessly transmitted parameter signals directly from the RF electronic unit without the use of a hard-wired system; and a display monitor coupled to the at least one remote R/T unit for visually displaying the parameter signals received by the RF receiver to enable the signals to be visually monitored.

A comparison of the new independent claims 43, 47, 49, 52, 53, 55 and 56 reveals that the new independent claims contain at least one of the additional limitations of "non-implanted", "directly to least one remote RF signal receiver" and "without the use of a hardwired system" that the original claims 1, 12, 24 and 35 did not require. Particularly, the applicant argues the importance and novelty of these added limitations on pages 5-16 of the Remarks filed on Sep. 18, 2006 that the prior art US patents to Carter and Warkentin do not show or teach as applied in the non-final Office action of Jun. 23, 2006. The arguments were persuasive and overcome the rejections based on the Carter and Warkentin references. However, the newly added language to the newly added independent claims 43, 47, 49, 52, 53, 55 and 56 indeed change the scope of the original and now cancelled independent claims 1, 12, 24 and 35. In view of the newly added

limitations in the new claims regarding "non-implanted", "directly to least one remote RF signal receiver" and "without the use of a hardwired system", the examiner needed to conduct an expanded search, re-evaluate and re-interpret the claims and apply the prior art references accordingly in the final rejection of the new claims. Although new claim 56 does not claim a non-implanted device it does contain the important added limitations regarding "signals directly from the RF electronic unit without the use of a hard-wired system".

Based on the record, these added limitations in new claims 43, 47, 49, 52, 53, and 55-56 in the amendment filed on Aug. 1, 2007 necessitated the new grounds of rejection based on DeLuca patent in accordance with M.P.E.P. 706.07(a)[1] mailed on Aug. 23, 2007.

Petitioner also argues that examiner should have anticipated the applicant's amendment when conducting the search of prior art in preparation of the non-final Office action of Jun. 23, 2006. This line of argument is not persuasive because the examiner would not have known in advance that the applicant would add new claims 43, 47, 49, 52, 53 and 55-56 with new limitations regarding "non-implanted", "directly to least one remote RF signal receiver" and "without the use of a hardwired system" to define over the prior art patents to Carter and Warkentin.

Petitioner also suggested that the examiner knew of the prior art DeLuca patent during preparation of the non-final Office action of Jun. 23, 2006 and failed to make of the record. This argument is too speculative and has no bearing in the propriety of the final rejection.

In the petition, petitioner also argues that the applicant has not been given a full and fair hearing inasmuch as it is believed that the applicant could amend the claims to overcome the DeLuca patent. This is not true. Under the circumstances, the applicant may still request reconsideration in an amendment after final rejection although entry is not a matter of right. Additionally or alternatively, applicant may appeal the rejection to the Board of Patent Appeals and Interferences or file a Request for Continuing Examination (RCE) with additional amendments to the claims.

Conclusion

Based on the analysis of the record, the examiner was correct in finding that the newly added claims differ in scope from the original and cancelled claims. Accordingly, the change in scope of newly added claims in applicant's amendment of Aug. 1, 2007 resulted in the new grounds of rejection in the final Office action of Aug. 23, 2007. The requested relief to withdraw the finality of Office action cannot be granted.

The application is being forwarded to Supervisory Patent Examiner of Art Unit 3736 waiting for response to the final rejection of Aug. 23, 2007. Petitioner may file a request for reconsideration of this decision, without fee. However, such a request must be filed within two months of the

[1] MPEP 706.07(a) states in relevant part: "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)." (*Emphasis added*).

date of this decision. See 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 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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PATRICK REILLY
BOX 7218
SANTA CRUZ CA 95061-7218

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OCT 19 2006

OFFICE OF PETITIONS

In re Application of :
McCauley :
Application No. 10/431,866 :
Filed: May 8, 2003 :
Attorney Docket No. MCC3-386 :
For: METHOD AND DEVICE FOR TIMING OFFSET IN AN OPTICAL GUN INTERACTION WITH A COMPUTER GAME SYSTEM

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on June 21, 2006 (certificate of mailing date June 19, 2006) to revive the above-identified application.

This application became abandoned for failure to timely respond to the final Office action mailed June 20, 2005, which set an extendable three month period for reply. Accordingly, this application became abandoned on September 21, 2005. The filing of the present petition precedes the mailing of A Notice of Abandonment.

Applicant has submitted a RCE and required fee and amendment in reply to the June 20, 2005 final Office action, an acceptable statement of the unintentional nature of the delay in responding to the June 20, 2005 final Office action, and the petition fee.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 3714 for consideration of the RCE and amendment filed on June 21, 2006 (certificate of mailing date June 19, 2006).

Telephone inquiries pertaining to this decision may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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Commissioner for Patents
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Alexandria, VA 22313-1450
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PATRICK REILLY
BOX 7218
SANTA CRUZ CA 95061-7218

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AUG 28 2006
OFFICE OF PETITIONS

In re Application of :
Jack McCauley :
Application No. 10/431,867 :
Filed: May 8, 2003 :
Title: Method and Device For Optical Gun Interaction with a Computer System

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 19, 2006, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a complete reply to the non-final Office Action of July 6, 2004. A response and a three month extension of time were filed on January 10, 2005 (certificate of mailing January 5, 2005) A Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on April 26, 2005 which set an extendable reply period of one month. A reply was received on May 27, 2005 (certificate of mailing May 25, 2005). On July 18, 2005, a Notice indicating the amendment submitted was not fully responsive was mailed. The Notice provided a one month period of reply. This application became abandoned on August 19, 2005. A Notice of Abandonment was mailed on July 14, 2006.

This petition is hereby **Granted**.

This application is being forwarded to Technology Center 3700 for further processing.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

Charlema R. Grant
Petitions Attorney
Office of Petitions

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JAMES E. PARRIS
BOX 233
HAILEY, ID 83333

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MAY 19 2005

OFFICE OF PETITIONS

In re Application of :
Bruce Mallea :
Application No. 10/431,868 : ON PETITION
Filed: May 7, 2003 :
Attorney Docket No. 041003300-2 :

This is a decision on the petition under 37 CFR 1.173(b), filed April 26, 2005 and supplemented on May 10, 2005, 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 September 10, 2004, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The amendment submitted on November 30, 2004, did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed February 25, 2005. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed, and no extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on December 11, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Request for Continued Examination (RCE); (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of September 10, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 3617 for processing of the RCE and for consideration of the Amendment filed May 10, 2005.

Wan Laymon
Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Commissioner for Patents
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12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES CA 90025-1030

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OCT 19 2006
OFFICE OF PETITIONS

In re Application of :
Quach :
Application No. 10/431,871 : ON PETITION
Filed: May 7, 2003 :
Attorney Docket No. 42P15177 :
For: METHOD AND APPARATUS FOR AVOIDING LIVE-LOCK IN A MULTINODE SYSTEM

This is a decision on the petition under 37 CFR 1.137(b), filed June 19, 2006 (certificate of mailing date June 16, 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)." Petitioner is advised that this is not a final agency decision.

This application became abandoned for failure to timely reply to the final Office action, mailed October 5, 2005, which set an extendable three month period for reply. No extensions of time being obtained and no reply being filed, the application became abandoned on January 6, 2006. A Notice of Abandonment was mailed on May 31, 2006.

A grantable petition pursuant to 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. 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 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

Petitioner is reminded that after a final Office action, there are only five possible replies: (1) a Notice of Appeal, (2) the filing of a continuing application, (3) a 37 CFR 1.129(a) submission, if appropriate, (4) an amendment after final that makes the case ready for issuance or (5) an RCE. To be a proper reply, an amendment after final must eliminate all of the Examiner's rejections, and thus place the case in *prima facie* condition for allowance. Examiner Shin has indicated that the reply filed June 19, 2006 (certificate of mailing date June 16, 2006) fails to place the application in *prima facie* condition for allowance. Please see the enclosed Advisory Action Before the Filing of an Appeal Brief for more details.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 – ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Advisory Action Before the Filing of an Appeal Brief for application no. 10/431,871

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/431,871	QUACH, TUAN M.	
	Examiner	Art Unit	
	Christopher B. Shin	2181	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 6-19-2006 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 _____months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-16*.
   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: _____.

Continuation of 3. NOTE: newly added limitations require further consideration that was not earlier presented.

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LOS ANGELES CA 90025-1030

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FEB 15 2007

OFFICE OF PETITIONS

In re Application of :
Quach :
Application No. 10/431,871 :
Filed: May 7, 2003 :
Attorney Docket No. 42P15177 :
For: METHOD AND APPARATUS FOR AVOIDING LIVE-LOCK IN A MULTINODE SYSTEM

ON PETITION

This is a decision on the reconsideration petition under 37 CFR 1.137(b), filed November 17, 2006 (certificate of mailing date November 13, 2006), to revive the above-identified application.

This application became abandoned for failure to timely reply to the final Office action, mailed October 5, 2005, which set an extendable three month period for reply. No extensions of time being obtained and no reply being filed, the application became abandoned on January 6, 2006. A Notice of Abandonment was mailed on May 31, 2006.

Applicant has submitted a RCE and required fee and amendment in reply to the October 5, 2005 final Office action, an acceptable statement of the unintentional nature of the delay in responding to the October 5, 2005 final Office action, and the petition fee.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 2181 for consideration of the RCE filed on November 17, 2006 (certificate of mailing date November 13, 2006) and the amendment filed on June 19, 2006 (certificate of mailing date June 16, 2006) and resubmitted with the present petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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LOVELAND OH 45140

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OFFICE OF PETITIONS

In re Application of :
Timothy J. Justice :
Application No. 10/431,883 : ON PETITION
Filed: May 8, 2003 :
Attorney Docket No. IP 021634 :

This is a decision on the petition to withdraw the holding of abandonment, filed December 12, 2005, under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**.

The application was held abandoned on September 12, 2005, for failure to timely pay the issue fee by September 9, 2005 in accordance with the Notice of Allowance mailed June 9, 2005.

Petitioner argues that notwithstanding a revocation and power of attorney filed May 5, 2004, Notice of Acceptance of Power of Attorney mailed by the USPTO on May 17, 2004 and other communications properly addressed to the assignee subsequent to the filing of the revocation, the Notice of Allowance and Notice of Allowability were mailed to an incorrect address.

Further, petitioner argues that in acknowledging the error, the USPTO remailed the Notice of Allowance on October 31, 2005 and restarted the period for payment of the issue fee to January 31, 2005.

A review of the file confirms the arguments made by petitioner. In view thereof, the Notice of Abandonment mailed November 11, 2005 was also mailed in error and is hereby withdrawn. No petition fee is due and none has been charged.

This matter is being referred to the Publishing Division to await payment of the issue fee and upon receipt, for this application to be processed into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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6412 BRANDON AVE.
145
SPRINGFIELD, VA 22150

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OFFICE OF PETITIONS

In re Application of	:	
John N. Magno, et. al.	:	
Application No. 10/431,885	:	ON PETITION
Filed: May 8, 2003	:	
Attorney Docket No. 95156159-7	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 31, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s) (1).

The above-identified application became abandoned for failure submit the issue fee, publication fee and formal drawings in a timely manner in reply to the Notice of Allowance and Fee(s) Due/Notice of Allowability mailed November 17, 2005. A Notice of Abandonment was mailed on August 21, 2006.

The Office acknowledges receipt of $750 for payment of the petition fee with no actual petition and $700 for payment of the issue fee submitted on March 31, 2006. Receipt is also acknowledged of $300 for payment of the publication fee and submission of the instant petition along with $750 for payment of the petition fee submitted on August 31, 2006. However, there is no indication that corrected formal drawings as required by the Notice of Allowability of

November 17, 2005 have been submitted. Accordingly, this application cannot be revived until corrected formal drawings have been submitted.

Since a review of the record shows that the petition fee of $750 was charged to petitioner's deposit account on March 31, 2006 with no actual petition, that fee is being credited back to petitioner's deposit account.

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.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Enclosure: Courtesy Copy of the Notice of Allowability mailed November 17, 2005, including changes required by the Draftsperson's Review (PTO/948) mailed September 13, 2004.

"COURTESY COPY"

Notice of Allowability	Application No.	Applicant(s)
	10/431,885	MAGNO ET AL.
	Examiner	Art Unit
	Tuyet Vo	2821

-- 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 9/07/2005.

2. ☒ The allowed claim(s) is/are 2-67.

3. ☐ 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.

4. ☐ 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.

5. ☒ 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 ~~9/13/2005~~. 9/13/2004 AMS
   (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).

6. ☐ 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 9/07/2005
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 _____.

TUYET VO
PRIMARY EXAMINER

COPY

DETAIL ACTION

Reasons For Allowance

1. Claims 2-67 are allowed.

2. The following is an examiner's statement of reasons for allowance: the prior art of record fails to disclose a lighting device comprising light source comprising at least a first feedback layer adapted to receive and reflect light; a first electrode formed on the first feedback layer; one or more semi-conducting layers formed over the first electrode, at least one of the one or more semi-conducting layers comprising luminescent material; a second electrode disposed over the more semi-conducting layers; and a second feedback layer adapted to receive and reflect light disposed over the second electrode; and a light distribution element disposed adjacent to one or both of the first feedback layer and the second feedback layer and adapted to distribute light emitted therefrom, wherein one or both of the first layer and the second layer comprises a photonic crystal structure as required in claim 1 or comprises a layer of holographic recording material as required in claim 15. Similar limitations found in claims 16, 17, 25, 29, 30, 32, 33, 36, 42, 44, 45, 61, 63 and 64 are allowable as well.

3. The remaining dependent claims are allowable for at least above reason.

4. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. None of recorded prior arts stands alone or combination with others discloses all limitation required in claim invention.

Remarks

Amendment filed September 07, 2005 has been entered.

Correspondence

Any comments considered necessarily by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuyet Vo whose telephone number is (571) 272 1830. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272 1834. The fax phone number for the organization where this application or proceeding assigned is (571) 273-8300 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571 272 2800.

Information regarding the status of an application or status information for publicing/unpublicing applications may be obtained from the Patent Application Information Retrieval (PAIR) system, see http://pair-direct.uspto.gov. Should you have questions on access to the PAIR system, contact the Electronic Business Center (EBC) at toll free 866-217-9197.

Tuyet Vo
Primary Examiner
November 13, 2005

COPY

Form PTO-948 (Rev. 06/03)
Application No. 10/421,985

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

NOTICE OF DRAFTSPERSON'S PATENT DRAWING REVIEW

The drawing(s) filed (insert date) 5-8-03 are:

A. ____ approved by the Draftsperson under 37 CFR 1.84 or 1.152.

B. ✓ objected to by the Draftsperson under 37 CFR 1.84 or 1.152 for the reasons indicated below. Corrected drawings are required.

1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings: Black ink or Color (3 sets required).
___ Color drawings are not acceptable until petition is granted. Fig(s)____
___ Pencil and non black ink not permitted. Fig(s)____

2. PHOTOGRAPHS. 37 CFR 1.84(b)
___ One (1) full-tone set is required. Fig(s)____
___ Photographs may not be mounted. 37 CFR 1.84(e)
___ Photographs must meet paper size requirements of 37 CFR 1.84(f). Fig(s)____
___ Poor quality (half-tone). Fig(s)____

3. TYPE OF PAPER. 37 CFR 1.84(e)
___ Paper not flexible, strong, white, and durable. Fig(s)____
___ Erasures, alterations, overwritings, interlineations, folds, copy machine marks not accepted. Fig(s)____

4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes:
21.0 cm by 29.7 cm (DIN size A4) or
21.6 cm by 27.9 cm (8 1/2x 11 inches)
___ All drawing sheets not the same size. Sheet(s)____
___ Drawings sheets not an acceptable size. Fig(s)____

5. MARGINS. 37 CFR 1.84(g): Acceptable margins:
Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm
___ Margins not acceptable. Fig(s)____
____ Top (T) ____ Left (L)
____ Right (R) ____ Bottom (B)

6. VIEWS. 37 CFR 1.84(h)
REMINDER: Specification may require revision to correspond to drawing changes, e.g., if Fig. 1 is changed to Fig 1A, Fig 1B and Fig. 1C, etc., the specification, the Brief Description of the Drawings, must likewise be changed.
___ Views not labeled separately or properly. Fig(s)____

7. SECTIONAL VIEWS. 37 CFR 1.84(h)(3)
___ Sections designation should be noted with Arabic or Roman numbers. Fig(s)____

8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i)
___ Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned so that the top becomes the right side, except for graphs. Fig(s)____

9. SCALE. 37 CFR 1.84(k)
___ Scale not large enough to show mechanism without crowding when drawing is reduced in size to two-thirds in reproduction. Fig(s)____

10. CHARACTER OF LINES, NUMBERS, & LETTERS. 37 CFR 1.84(l)
✓ Lines, numbers & letters not uniformly thick and well defined, clean, durable, and black (poor line quality). Fig(s) 3

11. SHADING. 37 CFR 1.84(m)
___ Solid black areas pale. Fig(s)____
___ Solid black shading not permitted. Fig(s)____

12. NUMBERS, LETTERS, & REFERENCE CHARACTERS. 37 CFR 1.84(p)
✓ Numbers and reference characters not plain and legible. Fig(s) 2, 4, 5
✓ Figure legends are poor. Fig(s) 1-6
___ Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(1) Fig(s)____
___ English alphabet not used. 37 CFR 1.84(p)(2) Fig(s)____
___ Numbers, letters and reference characters must be at least 32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3). Fig(s)____

13. LEAD LINES. 37 CFR 1.84(q)
___ Lead lines missing. Fig(s)____

14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.84(t)
___ Sheets not numbered consecutively, and in Arabic numbers beginning with number 1: Sheet(s)____

15. NUMBERING OF VIEWS. 37 CFR 1.84(u)
___ Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig(s)____

16. DESIGN DRAWINGS. 37 CFR 1.152
___ Surface shading shown not appropriate. Fig(s)____
___ Solid black surface shading is not permitted except when used to represent the color black as well as color contrast. Fig(s)____

COMMENTS

Reviewer J. C. Hass
Date 7-23-04
If you have questions, call (703) 305-8404.
Attachment to Paper No. ____

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SPRINGFIELD, VA 22150

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JAN 07 2008

OFFICE OF PETITIONS

ON PETITION

In re Application of :
John N. Magno, et. al. :
Application No. 10/431,885 :
Filed: May 8, 2003 :
Attorney Docket No. 95156159-7 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed on December 14, 2006, to revive the above-identified application. The delay in responding is regretted.

The petition satisfies the requirements of 37 CFR 1.137(b), in that, petitioner has supplied the reply in the form six (6) pages of replacement drawings containing Figures 1-6. Therefore, the petition is **GRANTED**.

This application file is being referred to the Office of Data Management for further processing.

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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Paper No. 6

STERLON R. MASON
HOGAN & HARTSON L.L.P.
500 S. GRAND AVENUE
SUITE 1900
LOS ANGELES, CA 90071-2611

MAILED

SEP 1 5 2004

Technology Center 2100

In re Application of: TAKEI, et al.
Application No. 10/431,893
Filed: May 8, 2003
For: DESKEW CIRCUIT AND DISK ARRAY CONTROL DEVICE USING THE DESKEW CIRCUIT, AND DESKEW METHOD

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed July 30, 2004, under 37 C.F.R. §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. §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 filed July 30, 2004 meet all of the criteria set forth above.

SUMMARY: Petition to Make Special **GRANTED**.

The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. §708.02, Section VIII. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
703-308-0885

BLJ: 9/15/04

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ORUM & ROTH
53 W. JACKSON BLVD
CHICAGO IL 60604

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NOV 08 2005

OFFICE OF PETITIONS

In re Application of :
Eden Dubuc :
Application No. 10/431,907 : ON PETITION
Filed: May 8, 2003 :
Attorney Docket Number: 13429 :
Title of Invention: Side Projecting Led Signal :

This is a decision on the petition filed October 17, 2005, 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 March 1, 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 June 2, 2005. A Notice of Abandonment was mailed on September 2, 2005.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The requirements for a grantable petition under 37 CFR 1.137(b) have been met. This petition is hereby **Granted**.

there is no indication that Petitioner herein was ever empowered to prosecute the instant application. If Petitioner desires to receive future correspondence regarding this

application, the appropriate power of attorney documentation and change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary

This application is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries should be directed to the undersigned at (571) 272-3215.

Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: Scott A. McCollister
Fay, Sharpe, Fagan, Minnich & McKee, LLP
1100 Superior Avenue, Seventh Floor
Cleveland, OH 44114-2579

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Paper No. 8

ALLEN D. BRUFSKY, P.A.
600 5th Avenue South
Suite 205
NAPLES FL 34102

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SEP 16 2004

OFFICE OF PETITIONS

In re Application of
DeSorbo
Application No. 10/431,912
Filed: May 8, 2003
Attorney Docket No. 6619-P-601
For: SHOULDER MOUNTED SUPPORT ASSEMBLY TO HOLD CAMERA OR CAMCORDER

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a) to revive the above-identified application. The petition was filed on May 27, 2004(certificate of mailing date May 24, 2004).

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(b)." 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 reply to the October 7, 2003 non-final Office action, which set an extendable three (3) month period for reply. No timely reply was received. Accordingly, the above-identified application became abandoned on January 8, 2004. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof; (2) the petition fee as set forth in § 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply

until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section. This petition does not satisfy requirement (3).

Regarding (3), the showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable". 35 USC § 133. Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term 'unavoidable' "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

In the instant case, petitioner has failed to provide adequate evidence that the delay was unavoidable. Petitioner asserts that the delay in responding to the October 7, 2003 non-final Office action was unavoidable because the application was not docketed into Hahn Loeser & Parks, LLP's docketing system and therefore, the due date for responding to the October 7, 2003 non-final Office action was overlooked.

The petition is accompanied by two affidavits – one by Robert J. Clark, patent attorney with Hahn Loeser & Parks, LLP and one by Patricia A. Mauk, legal assistant with Hahn Loeser & Parks, LLP.

Mr. Clark states that Mr. Brufsky, the attorney of record, joined Hahn Loeser & Parks, LLP in late 2003. Several of Mr. Brufsky's clients' files were assigned to Mr. Clark. Mr. Clark became aware that Mr. Brufsky was going to leave the firm and take his clients with him. Mr. Clark did not prepare a response to the October 7, 2003 non-final Office action because he had higher priority items to handle and there was a high probability that Mr. Brufsky was leaving soon. On January 15, 2004, Mr. Clark was ordered by a managing partner to mark the cover of all Brufsky files with actions due within 90 days and give the files to Mr. Clark's secretary, Patricia Mauk, who would then give the files to the managing partner's secretary. Mr. Clark did so and deposited the file in question, along with other Brufsky files, on Ms. Mauk's desk.

Ms. Mauk states that during September to December 2003 the firm of Hahn Loeser & Parks, LLP was processing the file return and internal abandonment of another client with a large number of files. Ms. Mauk states that by the time that task was completed, she mistakenly believed that the two files left on her desk had been handled. They had file numbers on them that did not correspond to the firm's numbering system, so she left them on her desk.

On April 29, 2004 she examined the files more closely and realized that they were files which should have been returned to Mr. Brufsky. Ms. Mauk states that these two Brufsky files were never docketed into the firm's system and that is why they were never detected as missing when all the other Brufsky files, which were properly docketed, were returned to Mr. Brufsky.

Petitioner has not shown that the events leading to the abandonment and were unavoidable.

Mr. Brufsky was and remains the only attorney of record for this application. When he joined Hahn Loeser & Parks in late 2003, was there a procedure in place for entering transfer cases into the firm's docketing system? If so, who was responsible for seeing that the Brufsky cases were entered into the system and how did the system break down?

Mr. Clark, a fellow attorney, was handling the application on behalf of Mr. Brufsky. If the numbering style was different from that of the firm's, why didn't Mr. Clark recognize that fact and have the case docketed in the firm's system? Even though the application was not docketed into the firm's system, Mr. Clark was aware of the necessity to respond to the October 7, 2003 Office action. He decided not to respond by January 7, 2004 because he had other matters to attend to and he thought Mr. Brufsky was going to leave the firm. Preoccupation with other matters which took precedence over the above-identified application does not constitute unavoidable delay. See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

Ms. Mauk was very busy with processing the file return and internal abandonment of another client with a large number of files from September to December 2003. In January 2004, after the file return and internal abandonment of another client was completed, Mr. Clark left this application file and another Brufsky file on Ms. Mauk's desk with notes attached. Ms. Mauk didn't recognize the numbering system on the two Brufsky files, so she just let them sit on her desk until late April 2004. The Office does not find Ms. Mauk's delay in reviewing the two files to be unavoidable. If the files were not identified in the firm's numbering style, Ms. Mauk should have investigated further. Leaving an unidentified file on one's desk for more than three months is not the mark of a reliable employee.

In short, petitioner has not shown that the intial failure to docket the Brufsky files was unavoidable, petitioner has not shown that Mr. Clark's delay in addressing the October 7, 2003 Office action was unavoidable, and petitioner has not shown that Ms. Mauk's delay in treating unidentified files on her desk was unavoidable.

The petition under 37 CFR 1.137(a) is dismissed.

ALTERNATIVE VENUE

Petitioner should consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $ 665.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450
ATTN: E. Shirene Willis

By hand: Crystal Plaza 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202
ATTN: E. Shirene Willis

By FAX: (703) 872-9306
ATTN: Office of Petitions – E. Shirene Willis

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-6712.

E Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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Commissioner for Patents
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Paper No. 10

ALLEN D. BRUFSKY, P.A.
600 5th Avenue South
Suite 205
NAPLES FL 34102

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OCT 2 2 2004

OFFICE OF PETITIONS

In re Application of :
DeSorbo :
Application No. 10/431,912 : ON PETITION
Filed: May 8, 2003 :
Attorney Docket No. 6619-P-601
For: SHOULDER MOUNTED SUPPORT ASSEMBLY TO HOLD CAMERA OR CAMCORDER

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application. The petition was filed on September 28, 2004 (certificate of mailing date September 24, 2004).

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely reply to the October 7, 2003 non-final Office action, which set an extendable three (3) month period for reply. No timely reply was received. Accordingly, the above-identified application became abandoned on January 8, 2004. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

The provisions of 37 CFR 1.137(b) 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;

(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)

Pursuant to petitioner's authorization, deposit account no. 15-0450 will be charged a $665.00 petition fee.

Petitioner has met the above-listed requirements. Therefore, the petition is granted.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

After the mailing of this decision, the application file will be returned to Technology Center 2800 for consideration of the amendment filed on May 27, 2004 and resubmitted with the instant petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

cc: ROBERT J. CLARK
HAHN LOESER & PARKS, LLP
TWIN OAKS ESTATE
1225 WEST MARKET STREET
AKRON, OH 44313-7188

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OFFICE OF PETITIONS

3M INNOVATIVE PROPERTIES COMPANY
P.O. BOX 33427
ST PAUL, MN 55133-3427

In re Application of :
Goff, et al. :
Application No. 10/431,944 : DECISION
Filed: 8 May, 2003 :
Attorney Docket No. 54418US018

This is a decision on the petition filed on 12 September, 2005, and considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.

The Office regrets the delay in addressing this matter, however, the instant petition was presented to the attorneys in the Office of Petitions only at this writing.[1]

The petition as considered under 37 C.F.R. §1.181 is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply to a Notice of Allowance/Allowability and Fees Due mailed on 5 November, 2004, with reply due under a non-extendable deadline on or before Monday, 7 February, 2005;
- the application went abandoned by operation of law after midnight 7 February, 2005;
- the Office mailed the Notice of Abandonment on 25 August, 2005;

[1] **NOTE: Monitoring of the status of applications on PAIR can inform one's management of application responses and provide an indication when mailings of Office actions should be expected. Status Inquiries filed at three (3) or four (4) month intervals provide a demonstration of diligence and attention in supporting a petition seeking relief under 37 C.F.R. §1.181.**

- on 12 September, 2005, Petitioner filed a petition and averred, *inter alia*, timely filing on 22 November, 2004, of the reply in the form of a request for continued examination (RCE) and fee with a submission under 37 C.F.R. §1.114 in the form of an IDS, and in support of that averment presented, *inter alia*, copies of: the reply, two (2) Office FAX-receipt confirmation sheets that together clearly indicate receipt by the Office of a copy of the RCE and fee authorization and the IDS—notably, although a review of the original application transmittal indicates a general authorization for fees to be charged to Deposit Account 13-3723 during pendency of the application, it does not appear that the Office charged the fees in question at the time of filing, and these are now charged;

- on 1 April, 2005, Petitioner submitted an IDS document, and thereafter, on 27 June, 2005, the Examiner acknowledged receipt of the 22 November, 2004, and 1 April, 2005, IDS filings;

- further, as of this writing it appears that Petitioner filed additional IDS documents on 2 August and 12 September, 2006; and again on 23 March, 4 April, and 15 November, 2007.

Notably, the availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)), and that those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

---

[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—
(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5]

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paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;

(2) Returning papers;

(3) Precluding a party from filing a paper, or presenting or contesting an issue;

(4) Imposing a monetary sanction;

(5) Requiring a terminal disclaimer for the period of the delay; or

(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).

[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

[3] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[4] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[5] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[8]

The commentary at MPEP §711.03(c) provides:

* * *

> **B. Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed**
>
> 37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), * (e), or (g) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.
>
> Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in

---

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

[8] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

> response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.
>
> Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. §1.8(b) and MPEP § 512. As stated in 37 C.F.R §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).
>
> 37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. 1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP § 512.
>
> * * *

And the regulation requires that relief be sought within two (2) months of the act complained of.

Petitioner appears to have satisfied the requirements herein.

CONCLUSION

Petitioner has satisfied the burdens herein, and the petition as considered under 37 C.F.R. §1.181 is **granted** and the 25 August, 2005, Notice of Abandonment is **vacated**.

The instant application is released to Technology Center 2800 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[9]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[9] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

Mail Date: 04/20/2010

Applicant	: Edward D. Goff	: DECISION ON REQUEST FOR
Patent Number	: 7619529	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/431,944	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/08/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1061** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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. 4

NIKOLAI & MERSEREAU, P.A.
900 SECOND AVENUE SOUTH
SUITE 820
MINNEAPOLIS MN 55402

COPY MAILED

SEP 22 2004

OFFICE OF PETITIONS

In re Application of :
Pavel V. Korchagin et al :
Application No. 10/431,946 : DECISION GRANTING PETITION
Filed: May 8, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 20020330.CPP :

This is a decision on the petition, filed July 13, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on May 7, 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 December 30, 2004 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 3652 for examination in due course.

Karen Creasy

Karen Creasy
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

AUG 18 2006

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. 6,996,908	ORLOFF ET AL.	:
Issue Date: 2/14/06		: **DECISION DISMISSING**
Appl. No.: 10/431,949		: **PETITION**
Filed: May 08, 2003		: *37 CFR 1.324*
For: WET SHAVING ASSEMBLY		:

This is a decision on the petition under 37 CFR 1.48, filed 2/22/05, and the request filed under 37 CFR 1.322. In view of the fact that the patent has already issued, the request under 37 CFR 1.48 has been treated as a petition to correct inventorship under 37 CFR 1.324. See MPEP 1481.

The petition is dismissed.

A petition to correct inventorship as provided by 37 CFR 1.324 requires (1) a statement from each person who is being added as an inventor that the inventorship error occurred without any deceptive intention on their part, (2) a statement from the current named inventors (including any "inventor" being deleted) who have not submitted a statement as per "(1)" either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change, (3) a statement from all assignees of the parties submitting a statement under "(1)" and "(2)" agreeing to the change of inventorship in the patent; such statement must comply with the requirements of 37 CFR 3.73(b); and (4) the fee set forth in 37 CFR 1.20(b). *This petition lacks items: a statement from the current named inventors either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change; and a statement from all assignees, complying with 37 CFR 3.73(b), of the parties submitting a statement under (2) above agreeing to the change of inventorship in the patent.*

B. Ash

Boyer D. Ashley
Supervisory Patent Examiner
Art Unit 3724
Patent Examining Group 3724

Richard R. Michaud
The Michaud-Duffy Group, LLP
306 Industrial Park Road, Suite 206
Middletown, CT 06457

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : Mar. 7, 2006

PETITIONS : LOC 4700 (Karen Creasy)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,996,908

A response is requested with respect to the accompanying request for a certificate of correction. This response is for an IFW application, **please send this form with your decision - to be scanned into the IFW contents as DOC CODE: COCX**.

then return a message in MADRAS to Team: PUBSCofC, User: employee (named below). Please complete this form and have it scanned, within **7** days.

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please see the Petition for Inventorship. Your denial or approval decision is needed below.

sp STACY STACY POWELL

Thank You For Your Assistance

Certificates of Correction Branch

Tel. No. 703-308-9390 x120

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☐ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☒ **Denied** — State the reasons for denial below.

Comments:

Fails to comply with 1.324.

B. Ash

BOYER D. ASHLEY
SUPERVISORY PATENT EXAMINER
SPE

3724
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4-13-07

TO SPE OF : ART UNIT 2883

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/431,957 Patent No.: 6,917,736

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.

Should COFC be Approved

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Certificates of Correction Branch

703-308-9390 ext. 117

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☑ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes do not apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

SPE

2883

Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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LISA M. SOLTIS
ILLINOIS TOOL WORKS INC.
3600 WEST LAKE AVENUE
GLENVIEW IL 60025

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MAR 28 2008

OFFICE OF PETITIONS

In re Application of
Young et al.
Application No. 10/431,961
Filed: May 8, 2003
Attorney Docket No. 13993

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 27, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of February 26, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is May 27, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

It is noted that an Appeal Brief was filed on January 28, 2008.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

This application is being referred to Technology Center AU 3752 for review of the appeal brief submitted on January 28, 2008.

Charlema Grant

Charlema Grant
Petitions Attorney
Office of Petitions

SPE: E. Look

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/5/02

TO SPE OF : ART UNIT 3745

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/431,964 Patent No.: 6942456

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: _____

Ed Look
SPE

3745
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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HICKMAN PALERMO TRUONG & BECKER, LLP
2055 GATEWAY PLACE
SUITE 550
SAN JOSE, CA 95110

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NOV 2 1 2006

OFFICE OF PETITIONS

In re Application of	:	
LEI, et al.	:	
Application No. 10/431,972	:	DECISION GRANTING PETITION
Filed: May 07, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 50277-2219	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 17, 2006, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 13, 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 Patricia Volpe at 571-272-6825.

This application is being referred to Technology Center AU 2163 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

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

Ellis, Kevin (AU2188)

From: Newsome, Lamonte
Sent: Wednesday, June 10, 2009 5:04 PM
To: Ellis, Kevin (AU2188)
Subject: 10431974

Paper No.: _____

DATE : 6/10/09

TO SPE OF : ART UNIT 2117

SUBJECT : Request for Certificate of Correction for Appl. No.: 10431974 Patent No.: 6976142 B1

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (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.

q **Approved** **All** changes apply.

q **Approved in Part** Specify below which changes **do not** apply.

q **Denied** State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

/Kevin L Ellis/ 2117

SPE **Art Unit**

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JUL 0 6 2007

OFFICE OF PETITIONS

Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, IL 60610

In re Application of

Patricia L. Stokes et al.
Application No. 10/431,982
Filed: May 8, 2003
Attorney Docket No. 66082-0002

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 13, 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, ***attorney no longer represents Cogito LLC in the prosecution of this application***, do not meet any the conditions set forth in 37 CFR 10.40.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to Terri Williams at 571-272- 2991.

T. Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Cogito LLC**
2576 Broadway, #106
New York, NY 10025-5657

16 MAR 2004

#6

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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MADISON & METCALF
15 West South Temple, Suite 900
Salt Lake City, Utah 84101

In re Application of	:	
BACIU, Radu, et al.	:	
U.S. Application No.: 10/432,004	:	DECISION ON PETITION
PCT No.: PCT/CA01/01616	:	UNDER 37 CFR 1.47(a)
International Filing Date: 19 November 2001	:	
Priority Date: 17 November 2000	:	
Attorney's Docket No.: 2600.2.10	:	
For: SHEET MATERIAL WITH ANTI-SLIP	:	
SURFACE	:	

This decision is issued in response to applicants' 26 November 2003 submission of a "Petition Under 37 CFR 1.47(a) Regarding Nonsigning Inventor." Applicant has paid the required petition fee.

BACKGROUND

On 19 November 2001, applicants filed international application PCT/CA01/01616 which claimed a priority date of 17 November 2000 and which designated the United States. On 23 May 2002, a copy of the international application was communicated to the United States Patent And Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 17 May 2003.

On 16 May 2003, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the small entity basic national fee.

On 26 August 2003, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements indicating that a declaration in compliance with 37 CFR 1.497 and the $65 small entity surcharge for filing the declaration later than thirty months after the priority date were required.

On 26 November 2003, applicants filed a response that included a declaration executed by two of the three inventors, payment of the required surcharge, the fee for a one month extension of time to respond, and the petition under 37 CFR 1.47(a) considered herein. The petition seeks acceptance of the application without the signature of inventor Radu BACIU, whom applicants claim has refused to execute the application.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the non-signing inventor; (3) an oath or declaration by the other inventors on behalf of themselves and the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Applicants here have authorized submitted the petition fee, and the petition includes a statement of the nonsigning inventor's last known address. Items (1) and (2) are therefore satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

> An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed a declaration executed by two of the three inventors and including an unsigned signature box identifying the nonsigning inventor (Radu BACIU). This application is treated as having been executed by the available inventors on their behalf and on behalf of the nonsigning inventor. Item (3) is therefore satisfied.

Regarding item (4), the petition asserts that the nonsigning inventor has refused to execute the declaration. However, before a refusal to execute the application can be claimed, the MPEP § 409.03(d) requires that the nonsigning inventor be provided with a copy of the complete application, including specification, drawings, and claims. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made."

Here, the evidence submitted by applicants to demonstrate Mr. BACIU's purported refusal to execute the application is contained in the petition itself and the accompanying affidavit of Sydney T. Bennett. These materials state that Mr. Bennett mailed a copy of an Assignment to Mr. BACIU's last known address in June 2003, and that he mailed a copy of the complete application papers to the same address in October 2003. No response has been received from Mr. BACIU. However, no evidence is provided to confirm that the materials mailed to Mr. BACIU have been received by the nonsigning inventor. Under these circumstances, where the Office is being asked to accept the silence of the nonsigning inventor as evidence of a refusal to sign, petitioner must provide some evidence that the application materials have been received by the nonsigning applicant, and that such materials included a clear request for applicant to sign and return the required documents. Absent further firsthand

evidence that the application and request for signature have been received by Mr. BACIU (i.e., a copy of the cover letter, listing enclosures, with a confirmation of mail receipt), item (4) cannot be considered satisfied.

Applicants' have failed to satisfy all the requirements of a grantable petition under 37 CFR 1.47(a). The petition therefore cannot be granted on the present record.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and should include adequate evidence that the nonsigning inventor has been presented with a copy of the complete application papers and has refused to execute the application, as discussed above and in the form required by MPEP § 409.03(d).

No additional petition fee is required. Failure to file a timely response will result in abandonment of the application.

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Richard M. Ross
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19 APR 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

#8

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

MADSON & METCALF
15 West South Temple, Suite 900
Salt Lake City, Utah 84101

In re Application of BACIU, Radu, et al. U.S. Application No.: 10/432,004 PCT No.: PCT/CA01/01616 International Filing Date: 19 November 2001 Priority Date: 17 November 2000 Attorney's Docket No.: 2600.2.10 For: SHEET MATERIAL WITH ANTI-SLIP SURFACE	DECISION ON RENEWED PETITION UNDER 37 CFR 1.47(a)

In a decision mailed by this Office on 16 March 2004, applicants' petition under 37 CFR 1.47(a) was dismissed without prejudice for failure to satisfy all the requirements of a grantable petition. Specifically, applicants had not provided adequate evidence that the nonsigning inventor, Radu BACIU, had refused to sign the application documents.

On 17 February 2004, applicants filed the "Transmittal Of Corrected Affidavit Supporting Petition Under 37 CFR 1.47(a) Regarding Nonsigning Inventor" considered herein as a renewed petition. The renewed petition includes a supplemental statement from Sydney T. Bennett, who earlier had provided a statement that he had provided the nonsigning inventor with a copy of the application materials. In the supplemental statement, Mr. Bennett states that the nonsigning inventor called him and asked for a bonus payment in exchange for his signature on the application papers.

This supplemental statement provides further evidence with respect to the nonsigning inventor's refusal to execute application papers herein. However, the supplemental statement does not provide confirmation that applicant has received the complete application papers, as required before a petition can be granted. Applicant must provide the supplemental materials referred to in the previous decision (i.e., copy of the cover letter, listing enclosures, return receipt) before the petition can be granted.

CONCLUSION

The renewed petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and should include adequate evidence that the nonsigning inventor has been presented with a copy of the

complete application papers, as discussed above and in the previous decision, and in the form required by MPEP § 409.03(d).

No additional petition fee is required. Failure to file a timely response will result in abandonment of the application.

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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06 MAY 2004

#10

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

MADSON & METCALF
15 West South Temple, Suite 900
Salt Lake City, Utah 84101

In re Application of: BACIU, Radu, et al.	:	
U.S. Application No.: 10/432,004	:	DECISION ON SECOND
PCT No.: PCT/CA01/01616	:	RENEWED PETITION
Int'l Filing Date: 19 November 2001	:	(37 CFR 1.47(a))
Priority Date: 17 November 2000	:	
Attorney's Docket No.: 2600.2.10	:	
For: SHEET MATERIAL WITH ANTI-SLIP SURFACE	:	

In a decision mailed by this Office on 19 April 2004, applicants' renewed petition under 37 CFR 1.47(a) was dismissed without prejudice. Specifically, the decision stated that applicants had failed to provide sufficient evidence that the nonsigning inventor had been presented with a copy of the complete application papers and had refused to execute the application.

On 26 April 2004, applicants filed the second renewed petition under 37 CFR 1.47(a) considered herein. The renewed petition is accompanied by a second affidavit from Sidney T. Bennett and a copy of the 21 October 2003 letter sent by Mr. Bennett to the nonsigning inventor. The present submission, in combination with the previously submitted petition materials, satisfies the final requirement of a grantable petition under 37 CFR 1.47(a).

The renewed petition is therefore appropriately **GRANTED**. The application is accepted under 37 CFR 1.47(a) without the signature of Inventor Radu BACIU.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address set forth in the petition, and notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accord with this decision. The date under 35 U.S.C. 371 (c)(1), (c)(2), and (c)(4) is 26 November 2003.

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06 MAY 2004

06 MAY 2004

Radu BACIU
Apartment #1 - 123 7th Street
New Westminster
British Columbia
CANADA V3M 1L1

In re Application of: BACIU, Radu, et al.
U.S. Application No.: 10/432,004
PCT No.: PCT/CA01/01616
International Filing Date: 19 November 2001
Priority Date: 17 November 2000
Attorney's Docket No.: 2600.2.10
For: SHEET MATERIAL WITH ANTI-SLIP SURFACE

Dear Mr. BACIU:

You are identified as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
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Counsel of Record:
MADSON & METCALF
15 West South Temple, Suite 900
Salt Lake City, Utah 84101

19 JAN 2005

#6

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ALEXANDRIA, VA 22313-1450
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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

In re Application of	:	
AHLGREN, Ove	:	
Application No.: 10/432,009	:	DECISION
PCT No.: PCT/SE01/02796	:	
Int. Filing Date: 14 December 2001	:	
Priority Date: 20 February 2001	:	
Attorney Docket No.: 11709.57USWO	:	
For: DEVICE AT A SADDLE	:	

This decision is in response to applicant's "PETITION TO WITHDRAW HOLDING OF ABANDONMENT" filed in the United States Patent and Trademark Office (USPTO) via facsimile transmission on 30 November 2004, which has been treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 14 December 2001, applicant filed international application PCT/SE01/02796, which designated the United States and claimed a priority date of 20 February 2001. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 29 August 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 20 August 2003.

On 16 May 2003, applicant filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 30 September 2003, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required. The Notification set a two-month extendable period for reply.

On 20 October 2004, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DE/EO/909) indicating that the application was abandoned as to the United States of America.

On 30 November 2004, applicant filed the instant "PETITION TO WITHDRAW HOLDING OF ABANDONMENT", which has been treated as a petition under 37 CFR 1.181.

The petition was accompanied by, *inter alia*, a date-stamped postcard receipt and a copy of a declaration of the inventor.

DISCUSSION

Applicant has provided sufficient evidence to establish that on 29 August 2003 applicant filed a declaration of the inventor. The proof is in the form of the copy of the receipt for the above-identified application which bears a USPTO date stamp of 29 August 2003 and which itemizes the declaration and identifies the above-captioned docket number and application number. Further, practitioner states that the copy of the declaration filed 30 November 2004 is a copy of the declaration originally filed 29 August 2003. Therefore, in view of the date-stamped receipt and practitioner's statement, the declaration received on 30 November 2004 may properly be accepted as originally received in the USPTO on 29 August 2003. The NOTIFICATION OF MISSING REQUIREMENTS mailed 30 September 2003 and the NOTIFICATION OF ABANDONMENT mailed 20 October 2004 are hereby vacated.

The declaration filed 29 August 2003 is in compliance with 37 CFR 1.497(a)-(b). The surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date has been paid.

CONCLUSION

The petition under 37 CFR 1.181 is **GRANTED** for the reasons set forth above.

The NOTIFICATION OF MISSING REQUIREMENTS mailed 30 September 2003 is **VACATED**.

The NOTIFICATION OF ABANDONMENT mailed 20 October 2004 is **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application in accordance with this decision.

Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (571) 272-3301
Facsimile: (571) 273-0459

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 02/23/07

TO SPE OF : ART UNIT 1756

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/432015** Patent No.: **7122227**

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: _____

LINDA F. HUTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

SPE

1756
Art Unit

23 SEP 2003

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Lowe Hauptman Gilman & Berner, LLP
1700 Diagonal Road
Suite 300
Alexandria, VA 22314

In re Application of	:	
Guiragossian, et al.	:	
Application Serial No.: 10/432,034	:	
PCT No.: PCT/FR01/02187	:	DECISION ON PETITION
Intl. Filing Date: 06 July 2001	:	UNDER 37 CFR 1.137(b)
Priority Date: 07 July 2000	:	
Attorney's Docket No: 4590-177	:	
For: Electronic Device with a Thermally Conducting	:	
Encapulant	:	

This decision is in response to applicants' "PETITION TO REVIVE ABANDONED APPLICATION UNDER 37 CFR 1.137(b)", filed 19 May 2003.

BACKGROUND

On 06 July 2001, applicants filed International Application PCT/FR01/02187 which claimed priority to an earlier French application filed on 07 July 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau. A demand for international preliminary examination, in which the United States was elected, was filed on 16 January 2002 prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee expired on at midnight on 07 January 2003.

On 19 May 2003, applicants filed national stage papers in the United States including, inter alia, a transmittal letter stating that the application was being filed under 35 U.S.C. 371, an English translation of the international application, the oath or declaration, and an assignment. On 20 May 2003, applicants filed the instant petition.

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that the application be revived on the grounds of

unintentional delay must be filed promptly after applicant becomes aware of the abandonment and must be accompanied by: (1) the required reply, unless previously filed, (2) the petition fee required by law, (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional and (4) a terminal disclaimer (for applications filed before 8 June 1995).

As to item (1), the petition was accompanied by the required reply including a check for the U.S. Basic National Fee.

As to item (2), the petition is accompanied by the required petition fee.

As to item (3), the petition is accompanied by applicants' statement that 'the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional."

As to item (4), a terminal disclaimer is not required in the present case.

CONCLUSION

The request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

The petition under 37 CFR 1.137 (b) is **GRANTED**.

Deposit account 07-1337 will be charged $130.00 for filing the oath or declaration after twenty or thirty months from the priority date and $130.00 for filing the English translation after twenty or thirty months from the priority date.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the present application, including according the present application a 35 USC 371 (c) date of 19 May 2003.

Boris Milef
PCT Legal Examiner
PCT Legal Office

Kenya A. McLaughlin
PCT Legal Office Detailee
PCT Legal Office

Telephone: (703) 305-0010
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#2

PTO/SB/64 (10-01)
Approved for use through 10/31/2002. OMB 0651-0031
United States Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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PETITION FOR REVIVAL ON AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)	Docket Number (Optional) 4590-177

First named inventor: **Nicolas GUIRAGOSSIAN**

Application No. **PCT/FR01/02187** Art Unit:

Filed: **July 6, 2001** Examiner:

Title: **ELECTRONIC DEVICE WITH A THERMALLY CONDUCTING ENCAPSULANT**

RECEIVED
27 AUG 2001
International Division

Attention: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305 9282

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The due date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus extension 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 delay 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 $ 1,300.00 (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 **Application for US National Phase of PCT/FR01/02187** (identify type of reply)
☐ has been filed previously on _____.
☒ is enclosed herwith.

B. The issue fee of $ _____.
☐ has been filed previously on _____.
☐ is enclosed herwith.

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistance Commissioner for Patents, Washington, DC 20231

05/23/2003 GFREY1 00000122 10432034
04 FC:1453 1300.00 OP

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 _____, 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 herwith (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 delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit information and authorization on PTO-2038.

May 19, 2003
Date

Kenneth M. Berner
Signature

Kenneth M. Berner, Reg. No. 37,093
Typed or printed name

Telephone
Number (703) 684-1111

LOWE HAUPTMAN GILMAN & BERNER, LLP
CUSTOMER NO. 22429
1700 Diagonal Road
Suite 300, Alexandria, Virginia 22314
Address

Enclosures:
- ☒ Fee Payment **(Fees are to be charged to a credit card. A credit card information and authorization is enclosed)**
- ☒ Reply **(Application for U.S. National Phase of PCT/FR01/02187)**
- ☐ Terminal Disclaimer
- ☐ 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: Assistant Commissioner for Patents, Box DAC, Washington D.C. 20231
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916

Date

Signature

Type or printed name of person singing certificate

'09 SEP 2003

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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George R Petit
Connolly Bove Lodge & Hutz
1990 M Street N W
Suite 800
Washington DC 20036-3425

In re Application of	:	
BAILEY	:	
Application No.: 10/432,039	:	DECISION ON
PCT No.: PCT/GB01/04768	:	
Int. Filing Date: 29 October 2001	:	PETITION UNDER
Priority Date: 27 October 2000	:	
Attorney Docket No.: 20234-00084-US	:	37 CFR 1.137(b)
For: HAPTIC INPUT DEVICES	:	

This decision is in response to applicant's "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)" filed 19 May 2003.

BACKGROUND

On 29 October 2001, applicant filed international application PCT/GB01/04768, which designated the United States and claimed a priority date of 27 October 2000. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 02 May 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 28 April 2003 (27 April 2003 being a Sunday).

On 19 May 2003, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, an assertion of small entity status, the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the earliest priority date, and the instant "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)"

DISCUSSION

A petition to revive the present application under 37 CFR 1.137(b) must include:
(1) The required reply;
(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 was unintentional.

As to item (1), applicant submitted the basic national fee for a small entity on 19 May 2003.

As to item (2), applicant submitted the petition fee for a small entity on 19 May 2003.

As to item (3), the required statement has been provided.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

CONCLUSION

The petition under 37 CFR 1.137(b) is **GRANTED** for the reasons set forth above.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including according the application a 35 U.S.C. 371(c) date of **19 May 2003**.

Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (703) 308-2066
Facsimile: (703) 308-6459

UNITED STATES PATENT AND TRADEMARK OFFICE

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MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

COPY MAILED

OCT 19 2007

OFFICE OF PETITIONS

In re Application of	:	
Karl Schrodi	:	
Application No. 10/432,040	:	DECISION ON PETITION
Filed: September 20, 2002	:	TO WITHDRAW
Attorney Docket No. 44912056000	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed May 18, 2007.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Morrison & Foerster, LLP has been revoked by the assignee of the patent application on August 8, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: KEVIN SPIVAK
BELL, BOYD & LLOYD, LLC
70 WEST MADISON STREET
SUITE 3100
CHICAGO, IL 60602

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02 SEP 2003

George R. Pettit
Connolly Bove Lodge & Hutz LLP
1990 M Street N.W., Suite 800
Washington, D.C. 20036-3425

In re Application of	:	
BAILEY, Ralph-Peter Steven	:	
Application No.: 10/432,042	:	DECISION ON PETITION
PCT No.: PCT/GB01/04782	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 29 October 2001	:	
Priority Date: 27 October 2000	:	
Attorney Docket No.: 20234-00083-US	:	
For: IMPROVEMENTS IN PARALLEL LINK MACHINE DESIGN		

The petition to revive under 37 CFR 1.137(b) filed 19 May 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has submitted the basic national fee of $450 and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

Deposit Account No. 22-0185 has been charged a $65.00 surcharge fee under 37 CFR 492(e) for supplying an oath or declaration later than 30 months from the earliest claimed priority date.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.

Anthony Smith

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
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www.uspto.gov

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

Mail Date: 04/20/2010

Applicant	: Sadaatsu Kato	: DECISION ON REQUEST FOR
Patent Number	: 7643559	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/432,044	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/19/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1095** 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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Mail Date: 05/17/2010

Applicant : Sadaatsu Kato
Patent Number : 7643559
Issue Date : 01/05/2010
Application No : 10/432,044
Filed : 05/19/2003

: 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 **1185** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (PTA) days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days** from the mail date of this notice, whichever is longer, to file a request for reconsideration of this PTA calculation. See 35 U.S.C. § 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4).

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this PTA calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2), and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this PTA calculation, including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right of review of the USPTO's PTA determination in the United States District Court for the District of Columbia, patentee must ensure that the steps required under 35 U.S.C. § 154 (b)(4) are taken in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. § 154(b)(4).

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1990 M Street N.W., Suite 800
Washington, D.C. 20036-3425

In re Application of	:	
BAILEY, Ralph-Peter Steven	:	
Application No.: 10/432,052	:	DECISION ON PETITION
PCT No.: PCT/GB01/04758	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 26 October 2001	:	
Priority Date: 26 October 2000	:	
Attorney Docket No.: 20234-00085-US	:	
For: A MULTI-AXIS SPINDLE HEAD		

The petition to revive under 37 CFR 1.137(b) filed 19 May 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has submitted the basic national fee of $900 and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.

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